

3. Purchasing

Update 14

A MODULE OF THE

**TEXAS EDUCATION AGENCY
FINANCIAL ACCOUNTABILITY SYSTEM
RESOURCE GUIDE**

Published by

**Texas Education Agency
Austin, Texas
January 2010**

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3. Purchasing

3.1. Purchasing Overview

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.
- *Operational Link.* Purchasing supports instructional delivery, administration, and other services. Performance and goal achievement throughout the school district depend 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. These distinct organizational units need a procurement process that is responsive to their needs.

- The *competition among vendors* for school district business. The strong competition among vendors for school district business 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 but balance them with objective purchasing decisions.
- 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.
- The many "*gray*" areas relating to purchasing methods and procedures. Complex and diverse needs create challenges for districts to determine the appropriate purchasing methods. Ever-changing legislative, executive, and judicial decisions at both the state and federal levels further complicate the procurement process.

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 purchase order creation, vendor selection and relations, and merchandise receiving techniques.
- *Purchasing Responsibilities* details purchasing function organization and staffing and includes information on areas such as staff development and interfacing with the users.
- *Competitive Procurement Options* addresses competitive procurement options including legal requirements for procurement and award of contracts.
- *Cooperative Purchasing* provides a review of cooperative purchasing arrangements and ways they can benefit school districts.

3.1.1.Purchasing Policy

The school district 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. While school district administrators are not authorized to override state law or board policy, they can customize the purchasing function to provide for regulatory compliance while minimizing procedures and related costs.

The purchasing function should be the result of conscious 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. Development of this structure must be an interactive process which is cross-functional in providing a sense of ownership for user/designers.

A good design identifies the best purchasing methods and subsequently employs them throughout the school district. It correlates the diversity of school district operations and the important nature of the services with the timing of service delivery. As an example, planning for and subsequent procurement of instructional support materials for both students and teachers should be coordinated at the school district and campus levels to meet both the school calendar and class 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. 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, pre-competitive 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 including automated systems, diskettes, CD-ROM, imaging and microfiche. Alternatively, it may use hard copy or a combination of methods. Each school district should select the methods best suited to its needs.

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. Specific areas of quality control may be grouped as:

- Administrative Control activities may include:
 - Independent review of account coding
 - Confirmation of availability of funds
 - Confirmation of utilization of approved vendors
 - Confirmation of legal compliance with bid, proposal and quotation requirements
- Review of pricing and price extensions
 - Product and Services Control activities may include:
 - Product testing
 - Ongoing analysis of product quality and quality of service delivery
 - Product reliability analysis
- Vendor Performance Control activities may include:
 - Review of compliance with contractual terms for prices
 - Analysis of timeliness and accuracy of product delivery

- Responsiveness to problems

A consistent program for *purchasing staff development and training* is important to effective purchasing activity. The complexity of the purchasing environment demands that staff members responsible for purchasing goods and services periodically receive training in policy and procedures. Purchasing training should include all levels of employees providing at least basic information about the school district's purchasing function. 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, continuing education programs and departmental meetings.

3.1.2.Purchasing Design

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.

Comprehensive information about specific purchasing design issues school districts face follow in this module. They include more detail on the purchasing process, purchasing responsibilities, cooperative purchasing and competitive procurement with examples from representative school districts. The examples can be utilized as references and guides which can be customized to meet individual school district requirements.

3.1.3.Purchasing Ethics

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.

Numerous problems may be encountered including:

- Employees, in an effort to get the job done successfully and on time, are 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. 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.
- 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.

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.

3.2. The Purchasing Process

Establishing an effective purchasing process requires attention to many components. The following components are addressed:

- **Purchasing Procedures Manual.** This section describes the importance of having a formally adopted manual which clearly delineates the district’s purchasing policies and procedures. The section also contains information on the typical content of a procedures manual.
- **Vendor Selection and Relations.** This section addresses the methods that a school district should utilize to select vendors to provide goods and services. Also provided is information regarding management of vendor relations, techniques for evaluating vendors and information on vendor communication.
- **Requisition Process.** This section defines and describes the elements of the requisition process and describes the relationship of this important “front-end” step to other interrelated steps comprising the purchasing function.
- **Purchase Orders.** This section outlines the content of a typical purchase order as well as the major steps in processing of purchase orders to meet user needs. Also provided are examples of:
 - A purchase order
 - Purchase order processing flow
 - Purchase order register

- **Receiving/Distribution.** This section provides guidelines on techniques for properly receiving materials from vendors and subsequently distributing these to the appropriate staff member and location within the school district.
- **Control Environment.** This section describes the importance of having a strong control environment to protect school district resources and the integrity of the overall purchasing process. It also identifies common control problems within the school district purchasing system.

3.2.1.Purchasing Procedures Manual

Every school district, large and small, should have a written manual describing its purchasing policies and procedures. It should be designed to assist campus level and department level personnel in the purchasing of supplies and services. Rules and guidelines for those purchases consistent with relevant statutes, regulations and board policies are a vital part 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 can either stand alone or be made a part of a financial and accounting manual.

A school district's purchasing manual typically will address the following items:

- Purchasing goals and objectives
- Statutes, regulations and board policies applicable to purchasing

Note: State law and Texas Attorney General Opinions establish the minimum requirements for school districts, and a district's governing board has broad discretion to establish stricter local policies.

- Purchasing authority
- Requisition and purchase order processing

- Competitive procurement requirements and procedures
- Vendor selection and relations
- Receiving
- Distribution
- Disposal of obsolete and surplus property

Many manuals also discuss request for payment vouchers and repair and service of equipment.

Including examples of forms is helpful to users of the manual. These may include:

- Bid or proposal form
- Purchase Order
- Purchase Requisition (if separate from the purchase order)
- Receiving Report
- Vendor Performance Evaluation form
- Request for Payment voucher

3.2.2. Vendor Selection and Relations

A good purchasing system establishes standards for both school district personnel and vendors. Some of the guidelines address the structure of the vendor system and some, the relationship between the school district and vendors.

3.2.2.1. Vendor List

The school district should compile an *approved vendor list*. This list includes the names and addresses of various vendors and the products and services they offer. Vendors are encouraged to submit their names for inclusion on the list and are asked to complete an application form similar to that of Brownsville Independent School District shown in [Exhibit 1](#). Soliciting and including as many vendors as possible results in a complete and functional list of vendors with whom the school district conducts business.

The purchasing department maintains the vendor list, analyzing and updating it on a periodic basis. It is distributed to campuses and departments within the school district so that school district employees are aware of the approved vendors.

3.2.2.2. Vendor Award Criteria

Texas Education Code 44.031 states that in determining contract awards to vendors, the district shall consider:

- 1) The purchase price
- 2) The reputation of the vendor and of the vendor's goods and services
- 3) The quality of the vendor's goods or services
- 4) The extent to which the goods or services meet the district's needs
- 5) The vendor's past relationship with the district
- 6) The impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses
- 7) The total long-term cost to the district to acquire the vendor's goods or services

- 8) Any other relevant factor specifically listed in the request for bids or proposals. Factors that a school district may consider under this criteria would include:
- Vendor response time
 - Compatibility of goods/products purchased with those already in use in the district

Under previous law, the district *could* consider any of these criteria; however, [HB 273](#) enacted by the 80th Legislature now requires a district to consider all 8 criteria effective for contracts entered into on or after June 16, 2007.

It is important to note that under Section 44.035, 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.

3.2.2.3. Vendor Communications

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.

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.

Exhibit 1. Brownsville Independent School District Vendor List Form

BROWNSVILLE INDEPENDENT SCHOOL DISTRICT

PURCHASING DEPARTMENT

VENDOR LIST FORM

FOR (Description of Goods/Services Provided) _____

Company name: _____

Contact person: _____

Mailing address: _____

Company address _____

City: _____ State: _____ Zip _____

Telefax number _____ Phone number _____

FOR _____

Company name: _____

Contact person: _____

Mailing address: _____

Company address _____

City: _____ State: _____ Zip _____

Telefax number _____ Phone number _____

FOR _____

Company name: _____

Contact person: _____

Mailing address: _____

Company address _____

City: _____ State: _____ Zip _____

Telefax number _____ Phone number _____

FOR _____

Company name: _____

Contact person: _____

Mailing address: _____

Company address _____

City: _____ State: _____ Zip _____

Telefax number _____ Phone number _____

3.2.2.4. Vendor Gifts and Relations

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

Note: "Gift to a Public Servant" is a Class A misdemeanor offense if the recipient is a government employee who exercises some influence in the purchasing process of the governmental body.

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. [HB 1491](#) passed by the 80th Legislature made modifications to the requirements for conflict of interest statements. Refer to the [Texas Ethics Commission website](#) for additional information and sample 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.

A sample affidavit from Northside Independent School District is shown in [Exhibit 2](#).

Exhibit 2. Northside Independent School District Sample Affidavit

ETHICS

CONFLICT OF INTEREST

AFFIDAVIT

DISCLOSURE OF SUBSTANTIAL INTEREST IN A BUSINESS ENTITY

State of Texas

County of _____

I, _____ (name) _____, as a Trustee of the

Independent School District Board of Trustees make this affidavit and hereby on oath state the following: I, or a person related to me, have a substantial interest in a business entity, as those terms are defined in Local Government Code Sections 171.001-171.002, that would experience a special economic effect distinguishable from its effect on the public by a vote or decision of the board or in real property for which it is reasonably foreseeable that the board's action will have a special economic effect on the value of the property distinguishable from its effect on the public on the value of the property distinguishable from its effect on the public.

The business entity or real property is:

(_____

name and address of business or description of property)

—

(“I” or name of relative and relationship (have/has) a substantial interest in this business entity or real property for the following reasons: (check all that apply).

Ownership of 10 percent or more of the voting stock or shares of the business entity.

Ownership of 10 percent or more of the fair market value of the business entity.

Ownership of \$15,000 or more of the fair market value of the business entity.

Funds received from the business exceed 10 percent of (my, her, his) gross income for the previous year.

Real property is involved and (I, he, she) (have/has) an equitable or legal ownership with a fair market value of at least \$2,500.

Upon the filing of this affidavit with the School Board’s secretary, I affirm that I shall abstain from participation in any decision involving this business entity or real property, unless permitted according to Loc. Govt Sec. 171.006.

Signed this _____ day of _____, 19____

3.2.2.5. Vendor Performance Evaluation

A system for the evaluation of vendors and their performance is important to support an effective purchasing function. Factors to consider for inclusion in the evaluation are:

- Timeliness of deliveries
- Service availability
- Completeness and accuracy of order
- 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* by telephone and told specifically how the school district wants the problem corrected. The school district should *keep a record* of all phone calls, 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 approved vendor list and discontinuing any business with the vendor.

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

3.2.3. Competitive Procurement Options

Texas Education Code 44.031 (a) states that all contracts, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate, for each 12-month period are to be made by the method that provides the best value to the district. The law enumerates several options for competitive procurement that are available to school districts. These options include:

- Competitive bidding
- Competitive sealed proposals
- Request for proposals, for services other than construction services
- Interlocal contracts
- Design-build contracts
- Contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager; or
- Job order contract for the minor construction, repair, rehabilitation, or alternation of a facility
- The reverse auction procedure as defined by Section 2155.062(d), Government Code
- The formation of a political subdivision corporation under Section 304.001, Local Government Code

This module will provide a general overview of these procurement options; however, for more detailed information, districts should refer to the *Handbook on Purchasing for Texas Public Schools, Junior Colleges and Community Colleges*, which is included in this module as [Appendix 1](#).

3.2.3.1. Competitive Bids

Competitive bidding is a formal process that may also be referred to as competitive sealed bidding, sealed bidding or formal bidding. It is an option available to school districts for the procurement of goods and services. The purpose of competitive bidding is to stimulate competition and obtain the lowest practical price for the work, service and/or item(s) needed. The competitive bidding process requires that bids be evaluated and awards made based solely upon bid specifications, terms and conditions contained in the request for bids document, and according to the bid prices offered by vendors and pertinent factors that may affect contract performance.

State law requires that the purchase, lease or lease-purchase of a school bus must be competitively bid when the contract is valued at \$20,000 or more ([Texas Education Code §44.031\(1\)](#)).

[HB 2411](#) passed by the 80th Legislature allows for competitive sealed proposals as an alternate procurement method to competitive bidding for bank depository services.

The advertisement for bids, description in the request for bids of item(s), work and/or services and specific terms and conditions must be done in a manner that stimulates competition and obtains the lowest practical price. A request for bids contains the following elements:

- Purchase description or specifications covering the item(s) to be obtained
- Work and/or services needed
- Terms and conditions for the proposed bid contract
- Time and place for opening bids and other provisions

The bid process itself should be structured and incorporated into school district purchasing procedures. This process should involve:

- Development of clear specifications
- Advertising for competitive bids
- Responding to vendor questions

- Procedures for opening and tabulating the bids
- Analysis of the bids to ensure compliance with requirements
- Recommending the vendor(s) for bid award
- Award of the bid by the board

Competitive bidding is further defined and the specifications for bid documents and newspaper advertisements as well as other terms and conditions pertinent to the competitive bid process are found in the *Handbook on Purchasing for Texas Public Schools, Junior Colleges and Community Colleges*, which is included in this module as [Appendix 1](#).

Because competitive bidding is one of the most complicated areas of purchasing, a separate section of this module is devoted to this purchasing method.

3.2.3.2. Competitive Sealed Proposals/Request for Proposals

The competitive sealed proposal process is an alternative to competitive bidding. The terms and conditions of competitive sealed proposals are identical to those for competitive bidding except that an important difference between competitive sealed proposals and competitive sealed bidding relates to the finality of initial offers. Under competitive sealed proposals, changes in the nature of a proposal, and in prices, may be negotiated after proposals are opened. In contrast, changes in the price of goods and services are not negotiable in the competitive bidding process. The competitive sealed proposal process provides for full competition among proposals and allows for negotiation with the proposer or proposers to obtain the best services at the best price. Competitive proposal procedures are recommended where other procurement procedures are not required according to state or federal rules, laws or regulations, in order to stimulate competitive prices for services.

Competitive bidding is prohibited for certain types of professional services, including engineering, architecture, accounting and certain other services ([Chapter 2254 Government Code](#)). However, [Government Code §2254.004](#) does specify a two-step proposal process for obtaining services from architects, engineers, and land surveyors.

[HB 2411](#) passed by the 80th Legislature allows for competitive sealed proposals as an alternate procurement method to competitive bidding for bank depository services.

A Request for Proposals (RFP) is a part of the competitive sealed proposal process. 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 must be done first, if a construction contract

- 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

Note: A Request for Proposals may also be used as a procurement option to generate a non-sealed competitive proposal, but only for services other than construction services. In this instance, a school district may open the proposal upon receipt and begin the negotiation process for the offered goods/services.

3.2.3.3. Catalog Purchases

Catalog purchases as provided by Subchapter B, [Chapter 2157, Government Code](#) were eliminated as a method to competitively purchase contracts valued over \$25,000 effective September 1, 2007 ([§44.031\(a\) Texas Education Code](#), enacted by 80th Legislative Session [HB-2918](#)).

Prior to September 1, 2007, school districts could participate in the catalog purchasing program of the Texas Building and Procurement Commission which provided purchasing services for local governments. Catalog purchase procedures could be utilized for the acquisition of computer equipment, software and services *only*. Catalog purchases were an alternative to other procurement methods if the catalog purchasing process provided the best value to the district.

See section 3.3.1, User Interface, for information regarding internally-generated catalogs.

See section 3.5 for additional information on Cooperative Purchasing.

3.2.3.4. Interlocal Contract

A district can contract or 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 (formerly the Texas Building and Procurement Commission or General Services Commission) to purchase goods and any services reasonably required for the installation, operation, or maintenance of the goods. The purpose of an interlocal contract may be to study the feasibility of using an interlocal contract to perform a governmental function or service, or to provide a governmental function or service that each party to the contract is authorized to perform individually.

Local governments that are parties to an interlocal contract for the performance of a service may, in performing the service, apply the law applicable to a party as agreed by the parties. (Section 791.012, Government Code)

Requirements for interlocal contracts include:

- Authorization by the governing body of each party to the contract
- Statement of the purpose, terms, rights and duties of the contracting parties

- Specification that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party

Interlocal contractual payments must fairly compensate the party who performs the services or functions under the contract. In addition, the parties to an interlocal contract may create an administrative agency or designate an existing local government to supervise the performance of the contract. Consequently, the agency or designated local government can employ personnel, perform administrative activities and provide administrative services necessary to perform the interlocal contract (Government Code 791.011-791.025).

A district that enters into a purchasing contract valued at \$25,000 or more under certain cooperative purchasing contracts must document any contract-related fees, including management fees, and the purpose of each fee. The amount, purpose, and disposition of any fee must be presented in a written report annually as an agenda item in an open meeting of the board of trustees. This written report may be audited by the commissioner. This requirement applies only to a contract entered into on or after the effective date of June 16, 2007. ([TEC 44.0331](#))

A sample interlocal contract agreement is shown in the *Handbook on Purchasing for Texas Public Schools, Junior Colleges and Community Colleges* which is included in this module as [Appendix 1](#).

3.2.3.5.Design/Build Contract

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.

Design/build is an alternative to other competitive procurement options. However, the use of a design/build contract must be through request for qualifications, as described in Section 44.036, Texas Education Code, for selection of the vendor to provide the facility and/or financing. Districts should consider contracting with a separate construction manager to supervise design/build activities in light of the complexity of monitoring a design/build project.

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).

3.2.3.6.Sole Source

Selected purchases may be exempt from competitive procurement if they meet established criteria for a sole source purchase (the item is only available from one source):

- Identification and confirmation that competition in providing the item or product to be purchased is precluded by the existence of a patent, copyright, secret process or monopoly;
- A film, manuscript, or book;
- A utility service, including electricity, gas, or water; and
- A captive replacement part or component for equipment.

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

It is incumbent upon the district to obtain and retain documentation from the vendor which clearly delineates the reasons which qualify the purchase to be made on a sole source basis.

3.2.3.7.Price Quotes

[HB 987](#), 81st Regular Legislative session, repealed TEC 44.033, which required price quotes for purchases of personal property between \$10,000 and \$25,000 in the aggregate for a 12-month period. This bill became effective June 19, 2009.

To obtain the most competitive price, a district at its option *may obtain price quotes* for items costing *less than \$50,000*. The district's purchasing procedures should clearly define the lower figure for which quotes are required and *obtain and retain* written verification of the prices quoted. Unlike the mandatory competitive procurement described for purchases over \$50,000, if an item costs less than \$50,000, a district may utilize price quotations to stimulate competition and to attempt to receive the most favorable pricing.

Note: Although districts may design purchasing structures with requirements *more restrictive* than those mandated by the state, the district requirements regarding competitive procurement procedures, price quotes, purchase orders, emergency purchases and blanket purchase orders *must not be less restrictive*.

3.2.3.8.Petty Cash Purchases

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. 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.

3.2.3.9.Junior College Purchases

[HB 962](#) 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 44.031](#). The effective date of this change was June 19, 2009.

3.2.4.Purchase Orders

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.

3.2.5.Requisition Process

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 or electronically (through use of automated systems) for the purchase of supplies, services, equipment, etc.

3.2.5.1.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. Requisitions which require expenditures from the Special Revenue Fund should be approved by the program administrator.

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

3.2.5.2.Requisition Format

Requisitions should include certain items:

- A description of items to be purchased
- The quantity needed
- A suggested vendor (should be from the district's approved vendor list)
- 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. An example of a purchase requisition/purchase order is shown in [Exhibit 3](#).

IMPORTANT CONDITIONS

1. All communications concerning back orders, price increases, cancellations, etc. to this Purchase Order should be directed to Purchasing Office, TX
2. Purchasing Office must be notified of all items put on back order and of their expected delivery date.
3. No changes or substitutions will be permitted without prior approval.
4. Invoices exceeding amount of Purchase Order more than \$50 must have written approval of the Director of Purchasing.
5. Tax exempt under Chapter 20, Title 122A, revised Civil Statutes of Texas.
6. Delivery terms and transportation charges F.O.B. destination; freight prepaid and added to invoice.
7. The School District will not pay interest on bills overdue.
8. No C.O.D. shipments of any character will be accepted.
9. The PURCHASE ORDER NUMBER MUST APPEAR on all invoices, packages, delivery tickets, etc.
10. The School District is not responsible for goods delivered or work done without a written Purchase Order.
11. Title and Risk of Loss: The title and risk of loss of the goods shall not pass to the buyer until buyer actually receives and takes possession of the goods at the point of delivery.
12. Right of Inspection: Buyer shall have the right to inspect all goods at delivery before accepting them.
13. Applicable Law: This purchase order shall be governed by the Uniform Commercial Code as adopted in the State of Texas and in force on the date of this order.
14. Cash discount periods will be computed either from the date of delivery and/or acceptance of the goods ordered or the date of receipt of correct and proper invoices prepared in accordance with the terms of the District's purchase order, whichever date is later.
15. Invoices for Partial shipments are acceptable.
16. Do not reference more than one Purchase Order per Invoice.
17. Material Safety Data Sheet Required.

3.2.5.3.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

- Proper signatures
- Adequate description
- Proper account coding
- Overall completeness

The request is then assigned a purchase order number, vendor number (if applicable), purchase order date, and a cancellation 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.

3.2.5.4.Purchase Order Process

The purchase order is the written evidence of orders placed as a result 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.).

3.2.5.5.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.

3.2.5.6. 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 (usually up to \$500 per month per vendor), 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.

3.2.5.7. Emergency Purchases

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. 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.

3.2.5.8. 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.

3.2.6. Receiving and Distributing Purchases

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.

3.2.6.1.The Receiving Function

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.

3.2.6.2.Receiving Report

A 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. 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.

3.2.6.3. 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.

3.2.6.4. 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.

3.2.7. Control Environment

A district needs a strong control environment in which to perform the purchasing function. The purchasing *manual* 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.

Also, 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.

3.3. Purchasing Responsibilities

An effective purchasing system requires several key components. One of the most important of these is a good organization that is staffed with well-trained people. Roles and related responsibilities must be clearly defined and be adapted to meet the unique operating environment of the district. Although purchasing organization structures may vary, most provide for performing functions that are similar. Also, the organizational unit responsible for purchasing should strive toward enhancing efficiency and competency through training for both purchasing staff and users.

3.3.1. User Interface

Most important to the central purchasing function are the users. Well-designed and properly functioning, the purchasing department *serves well its users* justifying its very existence. The foundation of purchasing is the identification of the needs of the users. To be successful, the needs of the users must be met satisfactorily. If the purchasing process is not responsive or slow to respond, the user may attempt to obtain goods and services using alternative methods which may violate purchasing policies.

The key to the success of the purchasing system is a *free flow of information* between the purchasing department and the users. The central purchasing department should attempt to *obtain feedback* from the user community through user surveys, suggestion boxes, and other methods. The purchasing department may also provide product information, brochures and even internally developed *catalogs* for use in the selection of goods. Users must know how to complete requisition forms perhaps by using a *short instruction* sheet provided by the purchasing department. Coordination and cooperation must be developed to unite the technical expertise of purchasing and the needs of the users to effectively meet the educational objectives.

Note: The Brownsville Independent District purchasing department publishes specialized catalogs with pictures and detailed descriptions of items, including cost. These specialized catalogs are separated into like categories and distributed to the campuses and/or departments they serve. For example, the lawn and garden equipment catalog goes to the lawn and garden department; the office equipment and supplies catalog, to offices. Prices of the items listed and illustrated have been obtained through competitive bids and approved by the Board of Trustees.

These catalogs facilitate the purchasing process by enabling users to see items and determine, based on pictures and descriptions, if the items satisfy their needs. The user also knows that the purchase will be expeditious, because the district has already awarded bids for these items. These catalogs are published annually and revised as needed during the year.

3.3.2. Purchasing Functions and Roles

The organization of the purchasing function within a district may depend on various factors, one of which is the size of the district. In smaller districts, administrators and support staff “wear many hats” and they may be responsible for purchasing in addition to several other major functional areas. In larger districts, staffing levels are greater allowing for personnel to be more specialized and to perform a specific function such as purchasing.

The purchasing process includes a wide range of procurement functions including planning, acquisition, quality assurance, contract administration and distribution. Basic purchasing functions include the following:

- The organization and administration of procurement/purchasing as determined by the superintendent and the board.
- The acquisition of goods and services requested consistent with state and federal law, board of education policies and sound business practices.

- The distribution of goods and services to users in a timely and responsive manner with assurance that quality standards have been met.

Assignment of roles may vary according to number of people employed in purchasing, but typical assignments include:

- A *purchasing director or purchasing agent* is primarily responsible for the effective operation of the purchasing system. Typically, he/she:
 - Manages the procurement of goods and services in a timely and cost efficient manner
 - Approves purchase orders and service contracts, including competitive procurement specifications and tabulations
 - Assists in the development and modification of purchasing policies and procedures and is responsible for the implementation of such policies and procedures
 - Resolves problems encountered within the purchasing function
 - Establishes and monitors good working relations with vendors
 - Provides for communication with vendors (i.e., pre-competitive procurement conferences, competitive procurement openings, etc.) and approves vendor communication with campuses and departments
 - Ensures that district staff is aware of relevant purchasing statutes, regulations, and board policies through either formal or informal training programs
 - Stays current on purchasing statutes, regulations, and practices by attending various purchasing related courses, seminars or workshops, and by reading current purchasing periodicals and books
- A *purchasing supervisor/purchasing assistant* assists the purchasing director by:
 - Managing assigned activities within the purchasing department
 - Preparing competitive procurement specifications
 - Evaluating competitive procurement tabulations
 - Maintaining vendor list

- Supervising the processing of purchase orders for approval by the purchasing director
 - Evaluating the performance of vendors
 - Assisting users
 - Supervising buyers
- *Buyers* are responsible for the purchase of goods and services for the district following state and federal laws and local board policy. They may:
 - Write, review and modify specifications for competitive procurements
 - Assist in the evaluation of competitive procurements
 - Identify sources to obtain competitive prices and terms
 - Assist in maintaining an updated vendor list from which purchases can be made
 - Obtain and verify vendor price quotes
 - The clerical *support staff* performs the daily clerical activities within the purchasing department, including:
 - Typing competitive procurement specifications and competitive procurement award notices
 - Assisting in competitive procurement tabulations
 - Distributing requisitions/purchase orders copies to campuses/departments and vendors
 - Performing other miscellaneous clerical support tasks
 - Assisting users

A list of functions and how they might be assigned in districts of various sizes are illustrated in [Exhibit 4](#).

Exhibit 4. Possible Assignment of Duties by Size of District

Function	Position in a Small District	Position in a Medium Size District	Position in a Large District
Supervises entire purchasing function of the district	Superintendent	Purchasing Agent	Administrator of Purchasing
Supervises the acquisition of goods and services in a timely and efficient manner	Superintendent	Purchasing Agent	Administrator of Purchasing
Assists in the development and modification of new and existing purchasing policies and procedures	Superintendent	Purchasing Agent	Administrator of Purchasing
Approves all purchase orders and service contracts	Superintendent	Purchasing Agent	Administrator of Purchasing
Supervises and coordinates the operations of the department	Superintendent	Purchasing Assistant	Purchasing Supervisor Purchasing Assistant
Purchases goods and services for the district	Superintendent	Purchasing Agent and/or Purchasing Assistant	Buyers
Writes, reviews, modifies specifications for competitive procurements	Clerical Support	Purchasing Agent and/or Purchasing Supervisor	
Evaluates competitive procurement, prices, quality, qualifications	Superintendent	Purchasing Supervisor Purchasing Assistant	Purchasing Supervisor Buyers
Performs clerical duties such as mailing and distributing copies of purchase orders	Clerical Support	Clerical Support	Clerical Support
Maintains purchase order files	Clerical Support	Clerical Support	Clerical Support
Types competitive procurement award letters	Clerical Support	Clerical Support	Clerical Support
Assists in competitive	Clerical Support	Clerical Support	Clerical Support

Function	Position in a Small District	Position in a Medium Size District	Position in a Large District
procurement tabulation			
Distributes goods and services to users	Clerical Support	Clerical Support	Clerical Support
Evaluates vendors	Superintendent	Purchasing Assistant	Purchasing Supervisor
Compiles and Maintains vendor lists	Clerical Support	Clerical Support	Purchasing Supervisor
Resolves problems within the purchasing function and/or organization	Superintendent	Purchasing Agent	Purchasing Administrator
Communicates with vendors	Superintendent	Purchasing Agent and/or Purchasing Assistant	Buyers
Assists in vendor communication between campuses and departments	Clerical Support	Purchasing Agent	Purchasing Administrator Purchasing Supervisor Purchasing Assistant
Implements training and development activities for purchasing staff	Superintendent	Purchasing Agent	Purchasing Administrator
Stays current on Purchasing laws and practices	Superintendent	Purchasing Agent	Purchasing Administrator
Coordinates district purchases to obtain best price	Superintendent	Purchasing Assistant	Buyers

Examples of the organization of the purchasing function assignments for districts of various sizes ([Exhibit 5](#), [Exhibit 6](#) and [Exhibit 7](#)) show different organizational structures and reporting relationships.

Exhibit 5. Example Independent District Purchasing Organization (Enrollment of Approximately 38,000)

<u>Personnel</u>	<u>Responsibilities</u>
Administrator of Purchasing	<ul style="list-style-type: none"> • Responsible for the supervision of the entire purchasing function of the district, including: <ul style="list-style-type: none"> -Obtaining goods and services in a timely and efficient manner -Assisting in the development and modification of new and existing -Purchasing policies and procedures • Approves all purchase orders • Reports to the Superintendent
Senior Purchasing Coordinator	<ul style="list-style-type: none"> • Supervises and coordinates the operations of the purchasing department • Reports to the Administrator of Purchasing.
Buyer	<ul style="list-style-type: none"> • Purchases goods and services for the district in accordance with state and federal laws and local board policies • Writes, reviews, modifies specifications for competitive procurement • Evaluates best low offer, price, quality, qualifications

<u>Responsibilities</u>	
<u>Personnel</u>	
Clerical Support	Performs clerical duties such as mailing out and distributing copies of purchase orders, maintaining purchase order files, typing competitive procurement award letters, and assisting with competitive procurement tabulations.

Exhibit 6. Example Independent School District Purchasing Organization (Enrollment of Approximately 15,000)

<u>Responsibilities</u>	
<u>Personnel</u>	
Purchasing Agent	<ul style="list-style-type: none"> • Assumes responsibility for activities in the purchasing department • Approves purchase orders and vendor selections • Attends competitive procurement openings • Supervises clerical personnel
Purchasing Assistant	<ul style="list-style-type: none"> • Organizes and manages the routine work activities in the purchasing department including the processing of purchase orders and service contracts, preparation of competitive procurement, and compilation of competitive procurement tabulations
Clerical Support	<ul style="list-style-type: none"> • Performs clerical duties such as mailing out and distributing copies of purchase orders, maintaining purchase order files, typing competitive procurement award letters, and assisting with competitive procurement tabulations

Exhibit 7. Example Independent School District Purchasing Organization (Enrollment of Approximately 1,300)

Personnel	Responsibilities
Superintendent	<ul style="list-style-type: none"> • Serves as the purchasing agent of the school district, assuming responsibility for the effective operation of the purchasing system • Approves all purchase orders and service contracts • May delegate certain other responsibilities and duties to others but is responsible to the board for the effective operation of the system
Business Office Personnel/Clerical Support	<ul style="list-style-type: none"> • Performs clerical duties such as processing purchase orders and service contracts • Maintains possession and control of all purchase order blanks, obtains price quotes from vendors, • Prepares competitive procurement specifications and compiles competitive procurement tabulations for Superintendent's approval

3.3.3. Maximizing Efficiency

3.3.3.1. Centralized vs. Decentralized Purchasing

A district should strive to maximize the efficiency of its purchasing function. As recommended by TEA, the purchasing function should be centralized within the district for maximum efficiency to be achieved. Centralized and decentralized purchasing is defined by the Council of State Governments publication, *State and Local Governmental Purchasing*, as follows:

- *Centralized purchasing* is defined as “a system of purchasing in which authority, responsibility, and control of activities are concentrated in one administrative unit.”
- *Decentralized purchasing* is defined as “a system of purchasing in which there is a varying degree of delegation of authority, responsibility, and control of purchasing activities to the several using agencies.”

Centralized purchasing is more efficient than decentralized purchasing because it enables a district to coordinate the common purchase requirements of campuses and departments to obtain better prices. For example, when two campuses requisition the same goods and/or services, a *centralized* purchasing department may combine the goods/services on the same purchase order and arrange for more favorable price terms. Better planning, reduced paperwork, and reduced costs result from centralized purchasing.

Centralizing the purchasing function strengthens internal controls. A centralized purchasing department typically:

- Receives and coordinates purchasing requisitions/purchase orders from campuses or departments
- Communicates with vendors regarding prices and terms of purchases
- Processes and approves all purchase orders
- Issues purchase orders to vendors
- Receives purchases at central warehouse locations

- Coordinates competitive procurement processes
- Distributes goods based on purchase requirements

Centralizing the purchasing function does not erode the principles of site based management. Purchase requisitions still originate at the campus or department level where needs are identified. Centralized purchasing carries out the site-based requisitions and improves the internal controls within the purchasing function.

The area in which internal controls are improved most is in the purchase approval process. In centralized purchasing, every purchase within the district is reviewed by the centralized purchasing department to prevent violations of state and federal law and local school board policies. A centralized purchasing function with varying levels of authority and a receipt and distribution process provides another strong internal control.

Centralized purchasing may, however, delegate certain routine activities. Well-written instructions for the delegated activities and careful monitoring of their performance are recommended.

In decentralized purchasing, campuses and departments may issue purchase orders, communicate directly with vendors, and receive goods at other than central locations. If purchases are made inappropriately, violation of laws, regulations and school board policies may result.

In summary, a centralized purchasing function is essential to efficiency in purchasing for the following reasons:

- It provides for the coordination and consolidation of smaller purchases into larger volume purchases for the entire district.
- Vendors and the business community have a single central contact within the district.
- The purchasing department and its personnel have experience and are trained in purchasing, sourcing, prices, and vendor relations which saves the district money and allows for a more efficient process.
- The purchasing department and its personnel are trained in state and federal laws and local board policies applicable to purchasing providing for better compliance.

3.3.3.2.Purchasing card (p-card) benefits

Purchasing cards can provide efficiency, transparency and security when utilized correctly. 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.

3.3.3.3.Purchasing card (p-card) benefits

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.

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

- 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.

3.3.4. Training and Staff Development

A district should provide for purchasing training and staff development. This training should extend beyond the professional staff to include other staff which often is involved either directly or indirectly in the purchasing process.

Training should be ongoing. Individuals within the department 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 external or internal resources.

External training may include seminars or workshops conducted by TEA, an independent public accounting firm, or by professional associations. 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.

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.

Throughout the training and staff development, a common basis of purchasing theory should be established and reinforced -- ensuring that the principles and standards of good public purchasing are applied consistently.

3.3.5. Control Environment

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

- *Approval of purchase requisitions at the campus and departmental levels.* The campus principal or department head should review for need and approve purchase requisitions before they are submitted to the centralized purchasing department for processing.
- *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.

- *Supervision of purchasing process.* Vigilance in the supervision of the entire purchasing function on a daily basis is essential.
- *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 is in agreement 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.

3.3.6. Electronic Bids or Proposals

A school district may receive bids or proposals through electronic transmission if the board of trustees of the school district adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time. An electronic bid or proposal is not required to be sealed, but if the governing statutes or rules require paper bids or proposals to be sealed, the same requirements would apply to an electronic process. [HB 987](#), 81st Legislature, effective June 19, 2009]

Properly implemented, a school district should achieve a reliable, less expensive, faster, and more accurate process due to elimination of printing, postal, and manual-intensive preparation costs. There are multiple software solutions available to manage the electronic bid/proposal process.

3.4. Competitive Bidding

Competitive bidding is a purchasing method which is utilized frequently by districts in the procurement of goods and services. It is among the most complex methods however, due to the detailed management necessary and to the legal and procedural constraints that govern it. This general overview of competitive bidding is supplemented with Texas Education Agency's *Handbook on Purchasing for Texas Public Schools, Junior Colleges and Community Colleges* (the Handbook). The *Handbook* is a comprehensive manual on the subject and is currently in use statewide.

All districts must establish a competitive procurement process that complies with statutory requirements. The first step is to educate district personnel in the requirements through a staff development program. This program may include outside training resources, in-service training, self-study or a combination of these methods. The focus should be on requirements for bidding which include:

- A contract for the purchase, lease or lease-purchase of one or more school buses must be competitively bid when the contract is valued at \$20,000 or more.

Even though the list above appears straightforward, numerous exceptions, special situations and requirements may complicate or change the requirement for bidding. Many of these are addressed in the *Handbook*. For questions about individual situations that arise in a district, numerous external resources are available including TEA, the Attorney General's Office, the Comptroller of Public Accounts, or purchasing practitioners in other districts or other governmental entities.

Knowledge of laws and regulations is an important foundation. Certain processes, however, are essential if competitive bidding is to work effectively in a district:

- *Requirements Planning.* A district plans for major purchases to be made during the next twelve months identifying the products or services and when they are needed. The award of bids is scheduled to ensure timely delivery so that operations are not interrupted. From that schedule, a mechanism for coordinating bidding of like or similar items on a district-wide basis is developed. As an example, the requirements planning process identifies the number of copiers to be purchased district-wide, plans for bids to be awarded and delivery made prior to the start of the school year. Requirements planning also enables the district's purchasing official to analyze and plan their workloads.
- *Activities and Responsibilities for Bid Specifications and Bid Award.* This process structures the total bid package which includes developing and reviewing specifications, incorporating these specifications into a standard bid form, determining objective bid award criteria, advertising the bid, responding to vendor questions,

tabulating/analyzing bid responses, and recommending a vendor for bid award. Establishing time frames and delineating responsibility for each activity is crucial. In accordance with the Texas Education Code, Section 44.035, 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.

- *Development of an Approved Vendor List.* The identification and qualification of vendors for specific products can facilitate the bid process in two ways. First, the district can identify vendors who are interested in doing business with the district and their products and services. Second, the district can monitor the vendor's responses to bids and performance when they are awarded a bid.

3.4.1. The Handbook

The *Handbook* ([Appendix 1](#)) provides districts an invaluable and comprehensive guide to competitive procurement and purchasing. A unique feature of the handbook is the question-and-answer format which anticipates district questions. The questions and answers were designed to feature real examples that district staff face in day-day-to day operations. Several examples and sample documents also are included. The major sections of the *Handbook* address the following topics or areas:

- Purchasing Ethics
- Personal Property -- Questions and Answers
- Services -- Questions and Answers
- Construction/Real Property -- Questions and Answers
- Competitive Procurement Categories
- Competitive Bidding

3.5. Cooperative Purchasing

A progressive trend in district purchasing is cooperative purchasing (see [Interlocal Contracts](#)). It involves one district participating with either other districts or governmental entities to acquire goods and services. In Texas, cooperative purchasing agreements currently exist between districts and:

- The Comptroller (previously the Texas Building and Procurement Commission or General Service Commission)
- Education Service Centers
- Cities
- Counties/County Departments of Education
- Community College Districts
- Certain nonprofit corporations

In some cases, a district may participate in multiple cooperative purchasing arrangements.

3.5.1. Cooperative Purchasing Benefits

Cooperative purchasing agreements are popular because they offer some advantages over individual buying (see [Interlocal Contracts](#)). Benefits of cooperative purchasing may be realized by districts of all sizes and can include:

- *Cost savings on products or services.* A cooperative purchasing arrangement can increase the buying power of a single district with volume discounts.
- *Savings on administrative costs.* A cooperative arrangement can reduce administrative costs relating to performing the purchasing function. Cost savings can include major areas such as salaries and benefits, supplies, office equipment and contracted services. A cooperative can result in the elimination of redundant costs which may be associated with individual districts performing their own purchasing functions. Although purchasing cooperatives may charge annual fees for overhead costs, many districts can realize savings on both products and administration.
- *Accessibility to more products and services.* A cooperative may provide districts the opportunity to buy a greater variety of products and services. The district chooses what is best for its needs at lower costs.

3.5.2. Cooperative Purchasing Arrangements

Cooperative purchasing arrangements (see [Interlocal Contracts](#)) may be open-ended allowing all who qualify to join. The Comptroller Cooperative Purchasing Program (formerly the Texas Building and Procurement Commission or General Services Commission cooperative purchasing program) is such a program. Others may be selectively formed by two or more entities (i.e., an interlocal program).

The [Cooperative Purchasing Program](#) (State of Texas Co-op) provides for districts the ability to purchase goods and services through the Comptroller (previously the Texas Building and Procurement Commission). Procurement duties previously handled by the Texas Building and Procurement Commission were transferred to the Comptroller effective September 1, 2007. It extends state contract prices to districts and other governmental entities. Under the Local Government Code 271.081-271.083 and V.T.C.A. Section 2155.202 and 2175.001(1) of the Texas Government Code, Title 10, Subtitle D, a district can participate in this program after its board of trustees executes a resolution certifying that it is an eligible participant and designating authorized administrative personnel who will act on behalf of the district.

Interlocal purchasing cooperatives may consist of districts, counties, county education departments, cities, educational service centers, community college districts, nonprofit corporations created and operated to provide one or more governmental functions and services to other local governmental entities. The size of the cooperative may vary as may the variety of services and products offered. Some of these cooperatives have two members, while others have up to 100 members. A district may participate in multiple

cooperatives. District boards simply adopt resolutions authorizing participation. The statutory authority is granted under Title 7, Chapter 791 of the Texas Government Code.

3.5.3. Operating Characteristics

The operating characteristics vary widely. In some cases the lead agency in the cooperative having received and combined orders from participating districts, purchases in bulk and stores purchases in a centralized warehouse. This lead agency then serves as the member districts' principal "vendor" and distributes goods as they are ordered and subsequently invoices the district. It may offer a catalog of centralized warehouse merchandise. Distribution may be either direct delivery to the district or by pick-up at the cooperatives' central warehouse. Other operating arrangements may allow each district to order directly from approved vendors at bulk prices negotiated by the cooperative. A third arrangement may have a lead agency serving as a warehousing site for other districts with each district responsible for pick-up of goods and products.

Some areas to investigate about cooperatives being considered by districts are:

- Variety of products and services offered
- Cost of these products and services as compared with other cooperatives or the district's individual ability to buy these products or services
- Timing and method of delivery
- Participation charges including administrative and operating costs
- Reputation for overall service delivery including problem resolution
- Administrative requirements placed on member districts including paperwork or related issues

3.5.4. Fee Disclosure

A district that enters into a purchasing contract valued at \$25,000 or more under certain cooperative purchasing contracts must document any contract-related fees, including management fees, and the purpose of each fee. The amount, purpose, and disposition of any fee must be presented in a written report annually as an agenda item in an open

3.6. Purchasing Policy Manual - Model Content Outline

A district's purchasing policy manual is a valuable tool for all employees. The manual should be continually revised and updated to reflect changes in purchasing law as well as district practice. In the development of a purchasing policy manual, districts should include the following elements:

- Purchasing Organization
 - Chief procurement officer - role and responsibilities
 - Roles and responsibilities of district personnel
 - Training and continuing education

- Competitive Procurement Options
 - Competitive procurement
 - -- Conditions for use
 - -- Invitation to bid
 - -- Public notice
 - -- Bid acceptance and evaluation procedures
 - -- Correction/withdrawal of bids; cancellation of awards criteria
 - -- Bid award procedures

- Competitive sealed proposals
 - Conditions for use
 - Request for competitive sealed proposals procedures and format
 - Public notice
 - Receipt/evaluation procedures for proposals
 - Procedures for negotiation with vendors
 - Procedures for the award of a contract
- Request for proposals
 - Format
 - Conditions for use (non-sealed)
 - Negotiation procedures
 - Evaluation criteria
 - Contract award procedures
- Interlocal contracts
 - Conditions for use (types of services)
 - Regulations
 - Authorization for agreements
- Competitive bidding process for construction contracts
 - Conditions for use
 - Invitation to bid

- Public notice
- Bid acceptance and evaluation procedures
- Correction/withdrawal of bids; cancellation of awards criteria
- Bid award procedures
- Competitive sealed proposal process for construction contracts
 - Conditions for use
 - Competitive sealed proposal procedures and format
 - Public notice
 - Receipt/evaluation procedures for proposals
 - Procedures for negotiation with vendors
 - Procedures for the award of a contract
- Construction manager-agent process for construction contracts
 - Conditions for use
 - Selection of architect or engineer
 - Procedures for the award of a construction manager-agent
- Construction manager-at-risk process for construction contracts
 - Conditions for use

- Selection of architect or engineer
- Request for competitive sealed proposals procedures and format
- Public notice
- Receipt/evaluation procedures for proposals
- Procedures for negotiation with vendors
- Procedures for the award of a contract
- Job order contract for facilities repair process
 - Conditions for use
 - Selection of architect or engineer, if applicable
 - Request for competitive sealed proposals procedures and format
 - Public notice
 - Receipt/evaluation procedures for proposals
 - Procedures for negotiation with vendors
- Reverse auction procedure
 - Conditions for use
 - Request for electronic bids
 - Public notice
 - Bid acceptance and evaluation procedures

- Procedures for the award of a contract
- Design/Build contracts
 - Criteria for use
 - Requirements
 - Request for competitive sealed proposals format
 - Selection/evaluation procedures
- Price Quotations
 - District policy on price quotations for purchases less than \$50,000 (if applicable)
- Emergency Purchases
 - Definition
 - Authorization process
 - Source selection methods
 - Documentation required
- Sole Source Procurement
 - Definition
 - Conditions for use
 - Documentation required
- Purchase Orders

- Guidelines for preparation
- Blanket purchase orders
- Emergency purchase orders
- Flow and timing of purchase orders
- Approval process
- Cancellation of purchase orders
- Central Warehouse Requisitioning
 - Criteria for use (items available)
 - Procedures for requisition
 - Flow and timing of requisitions
 - Approval process
- Vendor Relations
 - Approved vendor list
 - Vendor contact
 - Vendor evaluations
- Supply Management
 - Transfer of surplus supplies
 - Disposal of surplus supplies
- Purchasing Ethics

- Legal Considerations
 - Texas Education Code requirements
 - Uniform Commercial Code requirements for buying and selling

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Introduction

Statutory Authority

Statutes containing requirements for competitive *purchasing/contracting processes* for districts are found in the Texas Education Code, Local Government Code, *Government Code*, Texas Revised Civil Statutes, Texas Attorney General Opinions, federal regulations and other sources. The Handbook on Purchasing for Texas Public Schools, Junior Colleges and Community Colleges was written to provide information about purchasing and also be a ready reference regarding:

Purchasing ethics

Questions and answers on bidding and purchasing topics

Example purchasing documents

Purchasing laws

Texas Attorney General Opinions

Definitions of purchasing terms

School District Defined

According to Section 271.003(9), Local Government Code, "school district" means an independent school district, common school district, community college district, junior college district or regional college district organized under the laws of this state.

Purchasing Under Texas Education Code

Under Texas Education Code §44.031(a);(b), "all contracts, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate, for each 12-month period shall be made by the method, of the following methods, that provides the best value for the district:

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

Lastly, federally funded professional service contracts must be let on a competitive basis (34 CFR 80).

Competitive Bidding Defined

Competitive bidding is a formal process consisting of procedures that may also be referred to as competitive sealed bidding, or more simply as sealed bidding or formal bidding. According to the American Bar Association Model Procurement Code, "Competitive bidding...is the preferred method of procurement."

The request for bids contains the purchase description or specifications covering the item(s), work and/or services needed, the terms and conditions for the proposed bid contract, the time and place for opening bids and other provisions, as necessary. The advertisement for bids; and description in the request for bids of item(s), work and/or services needed, and specific terms and conditions must be done in a manner that accomplishes the primary purposes of competitive bidding - stimulate competition and obtain the lowest practical price for the work, service and/or item(s) needed.

Purpose and Intent for Competitive Bidding

The purpose and intent of competitive bidding is to help public schools secure the best work and materials at the lowest practical prices by stimulating competition. If a district advertises purchasing needs relating to large expenditures, then economies of scale - purchasing in large quantities - will probably result in lower costs either per unit item or in the aggregate. Another reason for competitive bidding - it's an open process.

Sterrett v. Bell, 240 S.W.2d 516, 520 (Tex. Civ. App. - Dallas 1951, no writ hist.).

The purpose and intent of competitive bidding laws were defined in Sterrett v. Bell, as follows:

- "Gives opportunity to bid...on the same undertaking...upon the same thing;"
- "Requires all bidders be placed upon the same plane of equality...each bid; upon the same terms and conditions;"
- "Stimulates competition and prevents favoritism;" and
- "Secures the best work and materials at the lowest practical price."

Competitive Proposals Defined

Competitive proposal procedures provide for full competition among proposals. The procedures allow for negotiation with the proposer or proposers to obtain the best services at the best price. During the evaluation process prior to award of a contract, the negotiation process allows modification and alteration of both the content of the proposals and price (the competitive bidding process requires that bids be evaluated and awards be made solely upon bid specifications, terms and conditions contained in the request for bids document, and according to the bid prices offered by vendors and pertinent factors that may affect contract performance; no substantive changes are permitted to the bid terms, conditions and specifications).

Professional and nonprofessional service contracts involving federal funds are required to be let on a competitive basis, under 34 CFR Section 80.36 (Code of Federal Regulations). Competitive procurement procedures, Section 44.031(a)(2)-(9), TEC, are for certain procurement situations as an alternative to competitive bidding procedures. *Chapter 2254.003, Government Code*, prohibits competitive bidding for certain types of professional services, including engineering, land surveying, architectural, accounting and certain other services. Competitive proposal procedures are recommended where other procurement procedures are not required according to state or federal rules, laws or regulations, to stimulate competitive prices for services.

In connection with certain professional service contracts, specifically architectural or engineering, Chapter 2254, Government Code, requires a two-step negotiation process.

The two-step process only allows negotiation of price after an initial selection based upon demonstrated competence and qualifications of the person/firm.

[TEC 45.206](#) ([HB 2411](#) passed by the 80th Legislature) allows competitive sealed proposals to be used in addition to competitive bidding for procuring bank depository services.

Competitive Quotations Defined

[HB 987](#) 81st Regular Legislative session, repealed TEC 44.033, which required price quotes for purchases of personal property between \$10,000 and \$25,000 in the aggregate for a 12-month period. This bill became effective June 19, 2009.

The competitive quotation process may be used for making purchases involving dollar amounts less than \$50,000, in the aggregate, for a twelve-month period *at the district's option*. The purpose of competitive quotation procedures is to obtain the lowest practical prices for needed items, as is the purpose for competitive procurement. This method of procurement is appropriate when competitive procurement procedures are not required.

The extent of time and administrative effort required for this procedure is much less than what is required for competitive procurement, because detailed specifications describing items to be purchased do not have to be written and the board of trustees is not involved in awarding a contract.

Centralized Purchasing Function

Centralized purchasing is the act of combining related items/commodities of various departments to coordinate purchases and obtain better prices. Centralized purchasing enables a district to coordinate purchases when two or more campuses or departments have common requirements for supplies and equipment.

The centralized purchasing function is used to coordinate purchases of two or more campuses or departments as follows:

Combining on purchase order forms the individual purchase requirements of two or more teachers, departments, or campuses; and

Arranging for favorable purchase terms, for example discount from retail or catalog prices, for items to be purchased "as needed" by individual employees (minimizes cash flow and warehouse storage requirements associated with large single order quantities).

Ensure district compliance with state laws and local policies concerning purchasing.

Cooperative Purchasing Groups-Interlocal

A centralized purchasing function can also be performed on a regional level through a cooperative/interlocal agreement among districts or the regional education service center. Cost savings through a regional centralized purchasing function are achieved through both discounted prices and administrative cost savings to individual districts

Texas Education Code District Purchasing Law Limit Summary

\$20,000	School Bus Lease/Lease Purchase/Purchase, (TEC 44.031(1)); see also Section 34.001 TEC)
\$50,000	Public Works Contracts/Real Property
\$50,000	Personal Property
\$50,000	Nonprofessional services
\$50,000	Energy Management Systems

Competitive Quotes Summary

No longer required – repealed by HB 987, 81st Regular Legislative session

Child Nutrition Programs

Effective July, 1, 2001, competitive procurement requirements for the federal child nutrition program are based upon annual purchasing requirements in Subchapter B, Chapter 44, Texas Education Code, with the exception of professional services, such as food service

management contracts. Contracts for professional services are required to be awarded using competitive procurement procedures, if the annual contractual amount or purchase requirement is \$100,000 or more for each 12-month period. Historically, all contracts involving the child nutrition program were required to be awarded using competitive procurement processes if the annual purchase requirement was \$10,000 or more for each 12-month period. This change will provide regulatory relief in this area of school district management. This change will not be effective in school districts until local district policies are amended, as applicable.

Models for Competitive Procurement Process Model

Model Competitive Bidding Process for Personal Property and Services

**MODEL COMPETITIVE BIDDING
PROCESS FOR PERSONAL PROPERTY
AND SERVICES**

- **Plan/Market Analysis**
- **Evaluate Purchasing Needs**
- **Prepare Bid Specifications**
- **Advertise**
- **Pre-bid Conference ***
- **Open Bids**
- **Evaluate Bids**
- **Award Bids**
- **Monitor Bidder Performance**

* **Optional Procedure as Needed**

Model Competitive Bidding Process for Construction Contracts

MODEL COMPETITIVE BIDDING PROCESS FOR CONSTRUCTION CONTRACTS*

- **Board Determination Before Advertising** - Board of trustees must determine the method under Section 44.031 TEC that will provide the best value for the district before advertising
- **Advertising/Public Notice Requirements** - Once per week for two weeks prior to bid submission deadline; in county where District's central administrative office located.
- **Solicitation/RFQ Information Requirements** - District to utilize architect/engineer for design and preparation of construction documents for the project.
- **Contract Award Criteria** - At the bid amount to the bidder offering the best value to the District according to the selection criteria established by the District.
- **Contract Pricing** - Lump sum fixed-price.
- **Inspection And Testing** - District to independently obtain inspection and testing services using two-step procurement process for selection of A/E services.
- **Bonding Requirements** - Payment bond for contract in excess of \$25,000; performance bond (in addition to payment bond) for contract in excess of \$100,000.
- **Subcontracting Requirements** - None.
- **Contractor Self-Performance Limitations** - None.
- **Bid Disclosure Requirements Or Restrictions** - Public bid opening and bids read aloud; evaluations of bids are made available to public seven days after contract award.
- **Term Of Contract Limitations** - None specified.
- **Prequalification Of Bidders/Offerors** - Nothing specified.
- **Safety Record of Bidders Considered** – if board has adopted written definition

and criteria for determining, given notice to bidders, and determinations aren't arbitrary

Model Competitive Sealed Proposal Process for Personal Property and Services

Model Competitive Sealed Proposal Process for Personal Property and Services

- **Define Task to be Performed by Vendor or**
- **Define item(s) to be purchased**
- **Establish Criteria for Selection of Proposal**
- **Determine relative importance of criteria**
- **Identify Potential Providers**
- **Set Timelines**
- **Advertise**
- **Optional Pre-Proposal Conference***
- **Preliminary Proposal Evaluation**
- **Optional Negotiation with Vendors
Reasonably Likely to be Selected for Award**
- **Award of Contract**
- **Contract Monitoring/Administration**

* **Optional Procedure as Needed**

Model Competitive Sealed Proposal Process for Construction Contracts

MODEL COMPETITIVE SEALED PROPOSAL PROCESS FOR CONSTRUCTION CONTRACTS*

Board Determination Before Advertising - Board of trustees must determine the method under Section 44.031 TEC that will provide the best value for the district before advertising

Advertising/Public Notice Requirements - Once per week for two weeks prior to proposal submission deadline; in county where District's central administrative office located.

Solicitation/RFCSP Information Requirements - RFCSP to include construction documents prepared by independent A/E, selection criteria, estimated budget, project scope, schedule, and other information necessary for contractors to respond to RFCSP.

Owner A/E Services Required - A/E required to prepare the construction documents for the project.

Contract Award Criteria - District to evaluate and rank each proposal based upon published selection criteria which may include pricing, experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors demonstrating capabilities of offeror.

Contract Pricing - No limitations.

Inspection And Testing - District to independently obtain inspection and testing services using two-step procurement process for selection of A/E services.

Bonding Requirements - Payment bond for contract in excess of \$25,000; performance bond (in addition to payment bond) for contract in excess of \$100,000.

Subcontracting Requirements - None required.

Contractor Self-Performance Limitations - None.

Proposal Disclosure Requirements Or Restrictions - Proposals publicly opened and names of offerors and prices, if any, read aloud; evaluations of proposals are made available to public seven days after contract award.

Term Of Contract Limitations - None specified.

Prequalification Of Proposers/Offerors - Prequalification of offerors permitted; prequalification decision not a conclusive determination regarding ultimate rejection or acceptance of subsequently submitted proposal.

Model Interlocal Agreement Process

Model Interlocal Agreement Process

- **Board Resolution**
- **Interlocal contract**
- **Identify items (services) to be purchased or performed**
- **Interlocal administrator does the following:**
- **Develop specifications which are acceptable to all parties**
 - **Develop vendor list**
 - **Advertise**
- **Award is made by parties to interlocal agreement**
- **Performance is monitored by parties to interlocal agreement and reported to the administrator**
- **Contract Monitoring/Administration**

Model Construction Manager - Agent Process for Construction Contracts

MODEL CONSTRUCTION MANAGER - AGENT PROCESS FOR CONSTRUCTION CONTRACTS*

- **Board Determination Before Advertising** - Board of trustees must determine the method under Section 44.031 TEC that will provide the best value for the district before advertising
- **Advertising/Public Notice Requirements** - Once per week for two weeks prior to bid or proposal submission deadline; in county where District's central administrative office located.
- **Solicitation/RFQ Information Requirements** - None specified.
- **Owner A/E Services Required** - A/E required to prepare the design and construction documents for the project.
- **Contract Award Criteria** - Selection based on demonstrated competence and qualifications utilizing two-step procurement process for selection of A/E services.
- **Contract Pricing** - None specified other than fair and reasonable price; pricing to perform construction manager services, including general conditions, normally will be cost reimbursement with fee.
- **Inspection And Testing** - District or CM/Agent may contract for independent inspection and testing services using two-step procurement process for A/E services.
- **Bonding Requirements** - None required.
- **Subcontracting Requirements** - None.
- **Contractor Self-Performance Limitations** - CM/Agent may only self-perform general conditions.
- **Term Of Contract Limitations** - None specified.

Model Construction Manager-At-Risk Process for Construction Contracts

MODEL CONSTRUCTION MANAGER-AT-RISK PROCESS FOR CONSTRUCTION CONTRACTS*

- **Board Determination Before Advertising** - Board of trustees must determine the method under Section 44.031 TEC that will provide the best value for the district before advertising
- **Advertising/Public Notice Requirements** - Once per week for two weeks prior to bid or proposal submission deadline; in county where District's central administrative office located.
- **Solicitation/RFQ(Two Step) / RFP (One Step Process) Information Requirements** - RFQ to include info on site, project scope, schedule, selection criteria, estimated budget, and other info useful in selection of CM-At-Risk.
- **Owner A/E Services Required** - A/E required to prepare the design and construction documents for the project.
- **Contract Award Criteria** - Selection criteria may include experience, past performance, safety record, proposed personnel and methodology, and other factors demonstrating capabilities of CM. Selection to be based on published selection criteria and ranking evaluation.
- **Contract Pricing** - Fee plus price for performance of general conditions.
- **Inspection And Testing** - District to independently obtain inspection and testing services using two-step procurement process for selection of A/E services.
- **Bonding Requirements** - Payment bond for contract in excess of \$25,000; performance bond (in addition to payment bond) for contract in excess of \$100,000.
- **Subcontracting Requirements** - CM-At-Risk must publicly advertise and solicit competitive bids or competitive sealed proposals for all major elements of work other than the general conditions.
- **Contractor Self-Performance Limitations** - CM-At-Risk may self perform any of the major elements of work; but must first submit a bid or proposal in the same manner as other trade contractors or subcontractors and the District must determine that the CM-At-Risk's bid or proposal provides the best value.
- **Bid/Proposal Disclosure Requirements Or Restrictions** - CM-At-Risk proposals to be publicly opened and names of offerors and prices, if any, read aloud. All trade contractor or subcontractor bids or proposals are made available to public within seven days after final selection or after award of contract; evaluations of bids and proposals are made public seven days after contract award.
- **Term Of Contract Limitations** - None specified.

Model Design/Build Process for Construction Contracts

MODEL DESIGN/BUILD PROCESS FOR CONSTRUCTION CONTRACTS*

- **Board Determination Before Advertising** - Board of trustees must determine the method under Section 44.031 TEC that will provide the best value for the district before advertising
- **Advertising/Public Notice Requirements** - Once per week for two weeks prior to bid or proposal submission deadline; in county where District's central administrative office located.
- **Solicitation/RFQ Information Requirements** – Phase I - RFQ to include info on project site, project scope, budget, special systems, and selection criteria. Phase II - RFP to include design criteria package containing legal description, survey, interior space requirements, special material requirements, budget and/or time requirements, etc.
- **A/E Services Required** - District must designate engineer or architect to act as representative; preparation of design criteria package may require A/E services; District's A/E must review all design elements for scope compliance.
- **Contract Award Criteria** - Phase I - qualification of maximum of five potential offerors based upon past experience, technical competence, capability to perform, past performance, and other appropriate factors. No cost related or pricing information permitted. Phase II - selection of firm proposal offering best value based upon demonstrated competence and qualifications, safety and long-term durability of project, feasibility of proposed project, ability to meet schedules, costing methodology, and other appropriate factors.
- **Contract Pricing** - None specified. Normally lump sum fixed-price or cost reimbursement plus fee with guaranteed maximum price.
- **Independent Engineer or Architect** - District shall designate an engineer or architect independent of the design-build firm to act as its representative for the duration of the work on the facility using two-step procurement process for selection of A/E services.
- **Inspection And Testing** - District to independently obtain inspection and testing services using two-step procurement process for selection of A/E services.
- **Bonding Requirements** - Payment bond for contract greater than \$25,000; performance bond (in addition to payment bond) for contract greater than \$100,000. Design services excluded from coverage of payment and performance bonds.
- **Subcontracting Requirements** - A/E team member of design-build firm must be selected based on demonstrated competence and qualifications; no other limitations.
- **Contractor Self-Performance Limitations** - None.
- **Term Of Contract Limitations** - None specified.

Model Job Order Contract for Facilities Repair Process

MODEL JOB ORDER CONTRACT FOR FACILITIES REPAIR PROCESS*

- **Board Determination Before Advertising** - Board of trustees must determine the method under Section 44.031 TEC that will provide the best value for the district before advertising
- **Advertising/Public Notice Requirements** - Once per week for two weeks prior to bid or proposal submission deadline; in county where District's central administrative office located.
- **Solicitation/RFP Information Requirements** - Description of the types and classifications of the work.
- **Owner A/E Services Required** – If A/E required to prepare the design and construction documents for the project, district shall select on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code
- **Contract Award Criteria** - District may award contracts to one or more contractors based upon pricing, experiences, past performance, proposed personnel and methodology, safety record, and other appropriate factors.
- **Contract Pricing** - specify one or more published construction unit price books and the applicable divisions or line items; or provide a list of pre-priced work items and require the offerors to bid or propose one or more coefficients.
- **Inspection And Testing** - Nothing specified.
- **Bonding Requirements** - Bonds are provided on individual job orders, not on overall job order contract. Payment bond for job order in excess of \$25,000; performance bond (in addition to payment bond) for job order in excess of \$100,000.
- **Subcontracting Requirements** - None required.
- **Contractor Self-Performance Limitations** - None.
- **Proposal Disclosure Requirements Or Restrictions** - Proposals publicly opened; evaluations of proposals are made available to public seven days after contract award.
- **Term Of Contract Limitations** – May set any desired term and /or options, however, if no term is specified then the term may not exceed two years and is not renewable. .
- **Prequalification Of Bidders/Offerors** - Nothing specified.

Model Competitive Quotation Process

Model Competitive Quotation Process

- **Plan/Identify Categories of Personal Property Purchases Less Than \$50,000**
- **Coordinate Purchasing Requirements**
- **Advertise for Eligible Vendors for Identified Categories**
- **Qualify Eligible Vendors**
- **Compile Vendor List by Category**
- **Solicit Written Quotations for Products to Meet User Requirements During the Year**
- **Issue Purchase Orders to Lowest Responsible Vendors Submitting Quotations**
- **Maintain Files/Records of Quotations**
- **Evaluate Vendor Performance**

At district's local option – not required for purchases < \$50,000 in the aggregate over a 12-month period

Model Reverse Auction Procedure

MODEL REVERSE AUCTION PROCEDURE

- **Board Determination Before Advertising** - District determines the method under Section 44.031 TEC that will provide the best value for the district before notice to obtain goods and/or services by reverse auction is published on the Internet. District also establishes provisions for administration of reverse auction procedure that are advantageous to the local government and fair to vendors.
- **Public Notice Requirements** – Once per week for two weeks prior to bid or proposal submission deadline; in county where District’s central administrative office located.
- **Develop Specifications for Items or Scope of Services**
- **Advertise Specifications or Scope of Work to Identified Vendors on Internet site**
- **Evaluate Electronic Bids Submitted by Vendors**
- **Qualify Eligible Vendors**
- **Contract Award Criteria** - Selection based on relevant factors.
- **Select Vendor Providing Best Value**
- **Obtain Final Bid in Writing** – Final electronic bids and winning bid(s) with digital signature(s) and/or other documentation are to be retained
- **Issue Purchase Order**
- **Evaluate Vendor Performance**

Model Request for Qualifications Process for Energy Conservation Measures

Model Request for Qualifications Process for Energy Conservation Measures

- **Define Task to be Performed by Vendor or**
- **Define Item(s) and/or Services to be Purchased**
- **Establish Criteria for Selection of Qualifications**
- **Establish Criteria for Selection of Proposals***
- **Determine Relative Importance of Criteria**
- **Identify Potential Providers**
- **Set Timelines**
- **Advertise in Newspaper**
- **Optional Pre-Request for Qualifications/Proposal Conference***
- **Preliminary Qualifications (and/or Proposals*) Evaluation**
- **Select Most Highly Qualified Provider of Goods and/or Services on Basis of Demonstrated Competence and Qualifications**
- **Attempt to Negotiate Fair and Reasonable Price with Selected Provider**
- **If Negotiations Fail, Then Formally End Negotiations; and Select the Next Most Highly Qualified Provider and Attempt to Negotiate Fair and Equitable Price**
- **Obtain Payment and Performance Bond(s) for Installation of Energy Conservation Measures**
- **Award of Contract**
- **Contract Monitoring/Administration**

General Ethical Standards

Credit for the content of this chapter 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.

People involved in the purchasing process are exposed to more than ordinary temptation to abuse the powers of their office. This is because they direct the spending of a large amount of public money. Of course, it is a serious breach of the public trust to subvert the public purchasing process by directing purchases to certain favored vendors, or to tamper with the purchasing process, whether it is done for kickbacks, friendship or any other reason.

State law relating to violation of purchasing requirements imposes upon violators certain criminal penalties, which are found in Section 44.032, Texas Education Code, and Chapter 271.029, Local Government Code.

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.

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.

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. [HB 1491](#) passed by the 80th Legislature made modifications to the requirements for conflict of interest

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statements. Refer to the [Texas Ethics Commission website](#) for additional information and sample forms.

Questions and Answers - Personal Property

Advertising

1. Is direct mailing of specifications to vendors required in addition to advertisement in a newspaper?

No. The Texas Education Code District purchasing law only requires districts to publish notice; however, in most circumstances, districts will enhance the effectiveness of the process if notices are mailed to businesses that have had or may have an interest in offering competitive procurement offers. This is especially true for districts in counties that have newspapers of limited circulation. Districts need to be careful that the procedures used to contact vendors directly do not favor a particular vendor and that the procedures allow a potential vendor to be added to the list at any time. Many districts optionally publish bid notices on their website. (§44.031(g), Texas Education Code)

2. What should be included in an advertisement for formal competitive procurement offer?

The following are required by law:

- Name of the district
- General category or description of what is to be competitively procured
- Date, time, and location where competitive procurement offers will be received
- Address and telephone number for location where invitation to competitive procurement and general instructions and specifications may be obtained (§44.031(g), Texas Education Code)
- The date, time, and location when competitive procurement offers will be opened and read are included in the advertisement.

3. When preparing a newspaper advertisement for purchases of personal property valued between \$10,000 and \$25,000 how are the categories specified?

In most instances, the example subcategories shown in the Competitive Procurement Categories Chapter of the Handbook on Purchasing for Texas Public Schools, Junior and Community Colleges will be sufficiently descriptive. Additionally, what is appropriate for one district compared to another depends upon the respective vendor bases and/or market availability. The requirement to obtain quotes on purchases of personal property valued between \$10,000 and

\$25,000 was repealed by HB 987, effective June 19, 2009. A district may require quotes for purchases less than \$50,000 at its own option.

4. The locally published newspaper has a very limited readership. Can the district advertise instead in a newspaper published in an adjoining county?

No. The district must advertise in the newspaper published in the county the district is located. However, in order to improve the effectiveness of its advertisement to potential vendors, advertisements may be placed in a newspaper(s) published elsewhere in addition to a newspaper published in the county where the district is located. Furthermore, the district may fax/mail copies of specifications to various vendors on the same date newspaper advertisement(s) are published. (§44.031(g), Texas Education Code)

Brands

5. Are brand names allowed in specifications?

Yes. Specifications may include brand names. All efforts should be made to describe in a practical or economical manner the item being purchased, if not, then brand names may be used if followed by the words "or equal."

In connection with "or equal" the contract specifications, district's decisions regarding comparability of products are final, but should be based upon defined performance criteria.

The district may wish to conduct its own tests and analyses of "or equal" brands. If so, the district can state on the face of the request for competitive procurement offers form "Vendor submitting brands and model numbers other than those specified may be requested to furnish samples of their offerings." (§15.05, Business and Commerce Code)

6. How does one specify particular breakfast cereals that students like without specifying brand names?

Specifications for ready-to-eat cereals are not difficult to write, and, in fact, most cereals have a generic name written right under their trade names. Some generic names of cereals are as follows:

Toasted oat cereal, donut-shaped
Puffed wheat cereal, sugar-coated
Cornflakes, sugar-coated
Shredded wheat biscuits, small, sugar-coated

7. If a brand is specified, what other information must be included in the specification?

It is recommended that the specification must clearly set forth and convey to prospective vendors the general style, type, character, and quality of the brand desired and that equivalent products will be acceptable. (§15.05, Business and Commerce Code; 34 CFR 80.36(c)(1),(2);(3))

Contract Provisions

8. Can a district make subsequent purchases of previously competitively procured items if the specifications in the request for competitive procurement allow for additional units or a specified dollar volume?

Yes, if the specifications request competitive procurement offers for additional units or an additional dollar volume amount. If not provided for in the original contract, subsequent purchases of \$50,000 or more are to be treated as separate contracts and must be purchased using one of the methods in Section 44.031, Texas Education Code. Such purchases cannot be made from the same vendor, even at the same competitive procurement price(s), without competitive pricing.

9. What are the contract terms under an award?

The district's specifications, terms and conditions are contract terms that are legally binding upon awarding the contract to the vendor, and establish quality/performance requirements of the vendor and the personal property being purchased. District officials have broad discretion to write specifications according to local purchase needs and service requirements. (§11.151(b), Texas Education Code)

10. What should be the maximum acceptable escalation of prices under a multi-year contract?

There is no maximum acceptable escalation price; however, a district should carefully review multi-year contracts before awarding a contract under this type of extended contract term. Multi-year contracts must have an annual renewal/non-appropriation clause (see Section 271.903 of the Local Government Code). It is within a district's discretion to establish in specifications what the maximum allowable escalation will be or how it will be calculated from a standard index if the option to extend the contract is exercised. It is recommended that escalation provisions in contracts be capped by the consumer price index. The contract should require vendors to justify price increases, require approval by the district before any price increases take place and allow a district the option to rescind a contract if a proposed price increase is not reasonable in the opinion of district officials.

Writing multi-year contracts can save time, labor, and money. However, using multi-year contracts and automatically granting renewals without a documented substantive decision-making process can result in their misuse.

11. Can a district execute multi-year contracts?

Yes. Multi-year contract terms must contain a specified term length, such as three years (the Texas Education Code purchasing law will apply at the end of that time period of three years or when terminated if prior to the three-year term).

Definitions

12. What is personal property?

Personal property includes, but is not limited to, any item or thing that can be moved from one location to another or is consumable and does not include real property, such as land, buildings, and repair or renovation to any building. The term “personal property” includes related classes or types of items, or consumable supplies, such as, athletic supplies, automotive supplies, office supplies, cafeteria equipment, cafeteria commodities, gasoline, books, instructional supplies, insurance, and so forth. (§271.003(8), Local Government Code, Attorney General Opinion DM 418 (1996))

13. What is the difference between competitive sealed proposals and a request for proposal?

A competitive sealed proposal is more formal in that certain details are closed to inspection at the opening date. In contrast, a request for proposal is not required to be sealed and may be discussed with the vendor immediately upon receipt by the district.

Doesn't Apply

14. Does the Texas Education Code District purchasing law apply to purchases involving nongovernmental funds, such as, purchases by student groups?

No. The Texas Education Code District purchasing law does not apply to purchases involving student activity funds recorded under an Agency Fund. Purchases by student groups are not covered by the Texas Education Code

District purchasing law, because the bid requirements only apply to purchases by a district or those funds under the control of the governing board. Examples of items purchased by student groups that are exempt include: class rings, yearbook pictures, class pictures, and graduation caps and gowns. In most situations involving purchases by student groups, the district's role is to facilitate the purchases. Please note that outside groups such as, PTA, booster clubs, and student groups that are not directly funded and managed by the district, cannot use the district's tax exempt certificate, because outside groups are not tax exempt entities, but are considered non-profit groups by the IRS. Outside groups must obtain their own tax exempt certificate.

15. Does the Texas Education Code Purchasing law apply to the sale of surplus personal property by a district?

No. Although there is no provision in statute requiring a district to use competitive procurement procedures when selling surplus personal property, there is a fiscal responsibility of the district to obtain the best price possible and use a competitive process. Furthermore, a district may avoid public relation problems concerning the appearance of improprieties related to purchases of property by the district's employees. (Section 11.151, Texas Education Code)

Federal

16. Is a written contract required by federal procurement regulations?

Yes. In addition, the Common Rule requires the inclusion of specific contract provisions or conditions in procurement contracts.

To have a valid contract, one party must make an offer and the other party must accept the offer on the terms contained in the offer. Another requirement is that the offer must be definite on all essential terms, that is, it must identify the parties to the contract and specify the subject matter, the time for performance, and the price. When districts send out Invitations to Bid/Request for Proposal they are asking vendors to provide certain quantities of goods at a specific price. The district must then accept the offer for there to be a contract.

Some systems insert a contract clause in their Invitations to Bid/Request for Proposal (the Invitation to Bid also contains the contract provisions required by Federal regulations). To award the contract, the district (1) designates the item(s) to be awarded, (2) signs the contract clause, and (3) mails a copy to the address listed by the vendor on the Invitation to Bid/Request for Proposal.

Other systems accept an offer by sending an award letter that lists item(s) which have been awarded to the vendor ((1) the Invitation to Bid/Request for Proposal must specify that the Competitive procurement Award letter, when mailed to the vendor at the address listed on the Invitation, will constitute acceptance of the offer, and (2) the Invitation to Bid/Request for Proposal must contain the

contract provisions required by Federal regulations). (34 CFR Part 80)

17. How does the federal conflict of interest rule apply to purchases?

The federal conflict of interest rules apply to expenditures involving federal funds. The federal conflict of interest rules are much more stringent than state conflict of interest law. Under the common rule and other federal regulations, the conflict of interest prohibitions extend to employees of districts whereas state law applies only to board members. If an employee is involved in administering, directing, or authorizing a transaction funded by a federal program, that employee and members of the employee's immediate family cannot have a financial interest in a vendor associated with transactions funded by the federal program. This prohibition applies to employees and their immediate families who are, for example, sales representatives for computer manufacturers or food distribution companies. (34 CFR 80.36(b)(3))

Financing/Lease-Purchase/Rent

18. Does the Texas Education Code District purchasing law apply to items acquired under lease-purchase agreements?

Yes. The Texas Education Code District purchasing law also applies to personal property acquired through lease-purchase agreements, such as, office equipment, buses, and computer equipment.

Caution is recommended when entering into lease agreements; even if the district does not initially intend to purchase under a lease-purchase plan, at a later time the district may wish to own the property. However, at that time a purchase cannot be made under the Texas Education Code purchasing law retroactively in order to exercise a bargain-price purchase option. In such a circumstance, one of the methods under the Texas Education Code purchasing law would be applied. (Note: see Local Government Code §271.903 concerning nonappropriation clause for multi-year contracts.)

Attorney General opinion No. GA-0494 listed under the opinions in this module provides more information. Both the contract with the vendor and a separate lender would be required to use one of the procurement methods if the dollar thresholds are met.

19. Does the Texas Education Code District purchasing law apply to the rental of personal property such as the rental of a copier?

Yes. Rental contracts are required to be let under the Texas Education Code

purchasing law, unless exempted through sole source. Furthermore, the rental of personal property may be executed through an interlocal agreement.

20. Does the Texas Education Code District purchasing law, §44.031, apply to financing for the purchase of personal property?

Texas Education Code District purchasing law §44.031 applies to all contracts made by a district. A district is required to obtain a contract for financing that provides the best value. Depending on the market availability, the best value may be obtained through an individual financial institution rather than through the vendor selling the personal property. If a separate contract for financing is not obtained through a separate financial institution, then each contract will stand on its own; an individual contract valued at \$50,000 or more for the purchase of an item and the financing in the aggregate must comply with the Texas Education Code District purchasing law.

21. Is insurance required to be purchased under the Texas Education Code purchasing law?

Yes. §44.031(a), Texas Education Code applies to all contracts and requires the purchase of insurance to be obtained by one of the nine options.

Food

22. Is it more advantageous to award food service item contracts by item, by class or group of items, or by total?

It should be noted that Subsection 44.031(a), Texas Education Code, requires use of the competitive procurement method that will provide the best value for the district.

Whether it is more advantageous to award contracts by item, class of items, or total sum will depend on a combination of factors including:

What is the size of the district and its location, for example, rural or located in or near a metropolitan area, and is the system large enough so that vendors could profitably handle only a portion of the business, or would they need all of the business to make delivery worthwhile?

What are the capabilities of the vendors in the area? For example, are there several full-service vendors in the area or are the vendors limited in the lines of merchandise they carry. Do some vendors in your area handle only red meat, other ham and sausage, and other chicken, fish and prepared items? If so, it would not be advantageous to have an all or nothing competitive procurement for chilled and frozen meat.

What are the district's capabilities for storing and transporting deliveries? For example, if the district has a delivery truck and a central warehouse with a refrigerator and a freezer and can accept a drop shipment, the district may want to award the competitive procurement by item.

A district needs to explore all of its options and then estimate the cost for each option. The option which provides the best value for the district for the least cost should be chosen. (Attorney General Opinion DM-14 (1991); §§11.151(b); 44.031(a) Texas Education Code)

23. Does the bidding preference law under Section 2252.004 Government Code apply to child nutrition programs?

Yes. Although Section 2252.004, Government Code states "this section does not apply to a contract involving federal funds," the bidding preference law has been interpreted to apply to child nutrition programs, because federal funding of these programs is only a partial subsidy for most districts.

24. Is there a contractual arrangement under which a district may legally award a food service management company the contract for food and nonfood items, in light of Texas Attorney General Opinion DM-14, which states that a board may not delegate the purchase of food products and supplies to a food service management service?

Yes. A district may legally award a contract for food and nonfood items to a food service management company under a turnkey contractual arrangement. Under a turnkey contractual arrangement, a menu for the entire contract period or a cyclical menu is included as part of the competitive procurement specifications. Competitive procurement specifications for the menu regarding food portions and estimated numbers of students to be served provide vendors with adequate details to determine quantities of food commodities and nonfood items. Accordingly, the turnkey arrangement is similar in form to a commodities contract.

If a district is also requesting a competitive procurement offer for management of food service operations, this should be done as a separate component of the competitive procurement specifications. Additionally, the specifications should require *vendors* to delineate the portion of the total competitive procurement amount that pertains to management services.

25. What does the term produce cover?

Fresh, perishable agricultural products, fruits and vegetables as distinguished

from grains and other staple products. It does not include canned, dehydrated or frozen items.

26. Does the \$50,000 competitive procurement threshold apply to purchases of commodities and other personal property in Child Nutrition Program?

Yes. Effective July 1, 2001, the competitive procurement threshold amounts in Subchapter B, Chapter 44, Texas Education Code apply in addition to the applicable competitive pricing rules for child nutrition programs for professional services contained in Office of Management and Budget (OMB) Circular No. A-102, Attachment O, and 7 CFR 220.16 (Code of Federal Regulations).

General Procurement

27. How does a district determine a category of related classes or types of items?

Competitive procurement categories, which will vary for individual districts, are determined by grouping related items that have a common purpose or function in district operations. Vendor and market availability also affect the determination of competitive procurement categories and result in several specific sub-categories of items within a broad functional area of district operations. For example, there are several sub-categories for food service operations, including milk, bread, fresh meats and poultry, and canned/dried/frozen foods and non-food supplies. In connection with automotive supplies there are a few specific sub-categories, including for example, original equipment manufacturer parts (OEM), after market parts, and lubricants. Proper planning which includes a review of the past year's historical usage levels will minimize the number of purchases that cannot be anticipated for the fiscal year. See [Competitive Procurement Categories](#) chapter.

28. What are the purchasing requirements for a school district with an ADA of 180,000 or more?

A school district with 180,000 or more that has formally adopted a site-based decision making plan that delegates purchasing decisions to the campus level is not required to aggregate and jointly award purchasing contracts on a district-wide basis. If a district chooses to implement a site-based purchasing policy all dollars thresholds are determined on a campus basis. A school district with an ADA of 180,000 or more may choose a more restrictive policy. (§§44.031(m) and 44.033(e) Texas Education Code)

29. How can a district competitively procure items that fluctuate in price frequently?

For items that fluctuate in price significantly and frequently (fuels, cafeteria commodities, and other similar items), a district can request competitive prices according to a benchmark, for example, OPIS (Oil Pricing Information Services).

A benchmark price may be obtained weekly, monthly, or quarterly. Whenever possible, the benchmark should be based upon an official industry or government price list. A benchmark should not be subject to influence by vendors or by the district. (Attorney General Opinion DM-14 (1991); §11.151(b), Texas Education Code)

30. Can an award price be based upon a discount from catalog or retail prices?

Yes. If it is not practical to specify exact purchase quantities for certain categories of items, such as miscellaneous instructional supplies, a district may request in the terms and conditions that vendors submit competitive procurement offers based upon a discount from a catalog price. A district under this arrangement would state in the terms and conditions that purchases will be made during the year as items are needed (see number 22 below). Districts should always attempt to estimate the approximate quantity or dollar amount of items that will be purchased in order to obtain the best prices. (Attorney General Opinion DM-14 (1991); §11.151(b), Texas Education Code)

31. Who can be authorized to open competitive procurement offers?

The board of trustees may authorize employees or representatives of the district to open competitive procurement offers, evaluate competitive procurement offers and make recommendations to the board regarding award of contracts. In order to lessen the possibility of an irregularity involving favoritism toward a particular vendor, a district may want to have two employees from separate departments involved in evaluating competitive procurement offers. (Attorney General Opinion DM-14 (1991); §11.151(b), Texas Education Code)

32. How many days after publication of notice should bids, proposals or qualifications be opened?

There is no minimum time requirement in Texas Education Code; however, vendors require a reasonable amount of time after the second advertisement to prepare and submit bids, proposals and/or qualifications. Additionally, districts must provide in the advertisement the date that bids/proposals/qualifications are to be publicly opened. In most instances, districts will specify the public opening will immediately follow the deadline for submitting bids, proposals or qualifications. Districts should consider adoption of a standard procedure.

33. Must an award of contract for personal property automatically be to the lowest vendor?

No. For purchases of personal property, there is no requirement to award a contract to the lowest vendor; however, according to the Texas Supreme Court, board members are required "to act faithfully in the exercise of their best judgment so as to best serve the interest of their district." Good management practices would dictate that any time the lowest vendor is not accepted, detailed documentation should be maintained as to why the lowest competitive procurement offer was not the best value to the district. The reason the lowest competitive procurement offer was not accepted should be documented on the competitive procurement offer evaluation sheet. If the competitive procurement offer is not responsive, document what requirement was not met. For the competitive pricing process, the Texas Education Code District purchasing law (§44.031(b) states eight considerations the district shall consider when determining to whom to award a contract to. Under previous law, the district could consider any of these criteria; however, [HB 273](#) enacted by the 80th Legislature now requires a district to consider all 8 criteria effective June 16, 2007. (Attorney General Opinion DM-14 (1991); §11.151(b) Texas Education Code)

34. What additional criteria constitute adequate justification for awarding a contract to other than the lowest-cost vendor?

In regard to the Texas Education Code purchasing law, there is no requirement in state law that a contract for personal property be awarded to the lowest-cost vendor; however, a decision to award a contract to a vendor other than the lowest-cost vendor should reflect the exercise of sound discretion by the district.

Additional criteria for selecting an offer higher than the lowest-cost offer might be.

The item or service offer is not responsive to the specifications, to the invitation to bid/proposal, or to the general instructions.

The vendor is not responsible (vendor integrity documented by record of past performance).

The contract is awarded because of the bidding preference law, Government Code, Title 10, Section 2252.003.

The financial and technical resources of the vendor are not adequate to service the contract.

There is evidence of noncompliance with public policy or federal and state laws.

The impact on the ability of the district to comply with laws and rules related to historically-underutilized businesses.

Quality of the vendor's goods or services.

The extent to which the goods or services meet the district's needs.

Delivery or service requirements create the need for award to a local vendor.

The safety record of the vendor.

35. Is the lowest-cost vendor that is not awarded a contract required to be notified and provided a public hearing?

No. There is no requirement in law (§44.031, Texas Education Code) that the lowest vendor be notified or provided a public hearing prior to the award of a contract for personal property to a vendor who was not the lowest competitive procurement offer.

36. How long are contract records required to be maintained on file in a district?

Under State law - 1990 Texas Record Retention Act - Texas Revised Civil Statutes, these records are to be maintained according to the retention schedule published by the State Librarian. However, if federal funds are involved in a particular contract, then U.S. Department of Education regulations require retention of contract documents for five years, after the end of the project period. A district must keep on file copies of offers received from vendors including those that are rejected (late offers may be returned unopened to vendors), in order to show compliance with the Texas Education Code District purchasing law, and to comply with state and federal requirements concerning retention of records. (34 CFR 80.42, §203.041, Texas Local Government Code)

37. How do the purchasing requirements apply to expenditures involving more than one fund source?

If the total expenditures from all fund sources, of related items available from a single vendor, are \$50,000 or more then the purchasing requirements apply. Many transactions are funded from a combination of federal, state and/or local

funds and, accordingly, compliance with both state and federal rules, laws, and regulations is necessary. Federal rules concerning purchasing requirements contained in the Common Rule, 34 CFR 80.36(a), adopt under reciprocity State laws in this area. However, other federal regulations that affect contract provisions, and the administration of programs must be implemented by districts, such as, requirements contained in the Common Rule found in 34 CFR Part 80 and all additional terms and assurances contained in grant applications.

A school district with 180,000 or more that has formally adopted a site-based decision making plan that delegates purchasing decisions to the campus level is not required to aggregate and jointly award purchasing contracts on a district-wide basis. If a district chooses to implement a site-based purchasing policy all dollars thresholds are determined on a campus basis. A school district with an ADA of 180,000 or more may choose a more restrictive policy. However, if federal funds are involved, competitive procurement policies at the campus level must be at least as restrictive as federal regulations related to competitive procurement. (§§44.031; 44.033(e); Texas Education Code)

38. Can a district cooperatively purchase personal property, that is, can a district that has a large central warehouse and freezer purchase in volume for two or more districts?

Yes. In fact, Chapter 791, Texas Government Code, (which superseded Article 4413(32c), Texas Revised Civil Statutes) and federal regulations encourage such practices. Interlocal agreements or contracts must be duly authorized by the governing body of each district to the contract or agreement. An interlocal contract or agreement contains the purpose, terms, rights, objectives, duties, and responsibilities of the contracting parties.

39. Are competitive procurement offers required to be date-stamped?

No, however this practice is recommended in order to help document that the integrity of the competitive procurement process was not affected by allowing vendors to submit late competitive procurement offers.

40. When should a bid be used instead of a proposal process?

A bid process should be used when the purchase price will likely be favorable; specifications are fully known and are feasible to fully specify; and/or an apples to apples comparison is possible.

A proposal process should be used when negotiation will be helpful to obtain a favorable price; specifications need to be completed through the negotiation process; and/or price is not the prime factor in the evaluation of vendors' offers.

41. Would it be to the district's advantage to estimate quantities of items required during a contract period?

Yes. It is to the district's advantage, in any request for competitive pricing, to estimate quantities of specific items required during a contract period. Providing estimates of specific quantities to be purchased also helps vendors and their suppliers determine manufacturing and delivery schedules. A problem with indefinite supply contract, wherein a price discount is obtained on an unspecified quantity of items, is that there is not a meeting of the minds and, accordingly, an indefinite supply contract may be difficult to enforce in a court of law.

42. How can a district organize its purchasing system so that all the activities are completed and the system operates smoothly?

By using the same procedure that management uses in organizing large on-going projects, that is, the Critical Path Method (CPM). The Critical Path Method helps you to identify all the tasks that have to be done, put the tasks in proper sequence, and plan enough time to complete all the tasks. First, it's helpful to establish contract periods for the various items to be purchased.

Next, decide on a target completion date for each contract period (that is, the date when the first delivery will be made). Work backwards from the target completion dates and identify everything that has to be done by that date. For example,

- Awarding of Contract by Board of Trustees - __ days/weeks before delivery
- Opening of Competitive procurement offers - __ days/weeks before award
- Issuing Competitive procurement Documents - __ days/weeks before competitive procurement offer opening
- Advertisement - __ days/weeks before competitive procurement offer opening
- Make-Ready Time - __ days/weeks

Purchasing officials will be better able to plan for the time elements by talking with other purchasing officials and with vendors. Districts may find it helpful to develop a purchasing calendar for the year using the information from the Critical Path development.

43. Is centralized purchasing applicable under site-based management?

Yes. The principles of centralized purchasing apply regardless of the degree that managerial authority has been delegated to campus-based management/decision-making/improvement teams. Just as centralized purchasing plays a role in coordinating the common purchase requirements of different campuses, and departments, it has a similar role in interfacing with site-based management teams. This restriction does not apply to districts with

ADA of 180,000 or more that have formally adopted a site-based decision making plan that delegates purchasing decisions to a campus level under subsection (m) of Section 44.031, Texas Education Code.

44. Does Section 44.031(a), Texas Education Code, require a contract term of twelve months?

No. The reference in Section 44.031(a), Texas Education Code, to a twelve-month period is for the purpose of determining applicable purchasing procedures required for anticipated aggregate purchases in each category during a twelve-month period. If anticipated aggregate purchases will equal or exceed \$50,000, then the purchasing methods described under Section 44.031(a), TEC are required.

45. Are bid/proposal/qualifications specifications required to be available for distribution on the first day that the request for bids/proposals/qualifications is advertised?

Yes. Advertisement requirements are intended to provide notice to vendors regarding the district's purchase needs and are also intended to provide adequate time for vendors to prepare competitive procurement offers. Because it is not economical to describe in the advertisement the complete details about the district's purchasing needs, it is standard practice to state in the advertisement that a request for bid/proposal/qualifications document, containing specifications, is available from a particular individual/office of the district. In other words, written specifications are to be available, without delay, from a representative of the district, if complete details are not provided in the newspaper advertisement.

46. Can a district require vendors to provide alternate products for testing prior to the due date for competitive procurement offers?

No. A district shall not require a deadline for submitting alternate products that is earlier to the due date for competitive procurement offers. Such a practice is contrary to the requirement that all vendors be placed on the same plane of equality. A district may provide information concerning brands/products that are disqualified, based upon the district's testing or analysis of quality or suitability.

47. What provision in the state law addresses payment of interest on overdue payments to vendors? (as defined in Chapter 2251, Government Code)

Under 2251.027, Government Code, districts must comply with the following provisions:

(a) A political subdivision shall compute interest imposed on the political subdivision under this chapter.

(b) The political subdivision shall pay the interest at the time payment is made on the principal.

(c) The political subdivision shall submit the interest payment with the net amount due for goods and services.

(d) The political subdivision may not require a vendor to petition, bill, or wait an additional day to receive the interest due.

(e) The political subdivision may not require a vendor or subcontractor to agree to waive the vendor's or subcontractor's right to interest under this chapter as a condition of the contract between the parties.

48. When is a school district required to establish a long range energy plan to reduce the district's annual electric consumption by 5%?

Beginning with the 2008 state fiscal year (2007-08 base year), a plan should be established. For each strategy for achieving energy efficiency, the total net costs and savings should be determined for the seven year period following implementation of the strategy. [SB 300 81st Leg.](#)

49. You ask for a bid bond, but there is no requirement for a performance bond. How long do you hold the bid bond after the board awards a bid if the relationship is consummated by a purchase order?

A "Bid Bond" in Texas public school bidding practice is a good faith deposit furnished by the vendor with his offer to meet or exceed the stated specifications for a bid price. It is required only when the purchasing district decides that a bid bond is necessary. It does discourage irresponsible competitive procurement offers, and if not furnished when called for can be the basis for rejecting a bid. By general definition and understanding, it is an earnest money deposit to assure that the selected vendor will execute a contract in accordance with the response submitted to the bid specifications. Unless specifically stated in the published specifications, it probably cannot be retained beyond the time that the contract is executed or otherwise made. If it were stated in the specifications that the bid bond would be held until the goods or services were provided, it would become by definition a "performance" bond. On the facts given, the vendor made an "offer"; the district made an "acceptance" (the purchase order); these two events complete a contract and the bid bond cannot be retained beyond this event. The vendor becomes liable for damages for breach of contract from this date forward. A performance bond is

an assurance that a third party will perform the contract, or provide the funds to perform the contract, in the event the vendor or contractor fails to perform.

Internet/Fax

50. What are the legal consequences for accepting competitive procurement offers through a facsimile transmission, on-line electronic transmission, or an electronic commerce network?

Any possible legal consequences would be related to the fact that the competitive procurement offers are not sealed. Sealing competitive procurement offers maintains the integrity of a competitive process. Districts should adopt policies and procedures to ensure the identification, security and confidentiality of competitive procurement offers submitted through use of facsimile transmission, on-line electronic transmission or an electronic commerce network. (§271.083(c), Local Government Code; §2054.060, Government Code)

51. May a district send bid specifications electronically?

Yes. A district may send bid specifications electronically. However, a district should have alternate means of sending bid specifications to vendors that lack electronic access. A problem arises because electronic media may not be legally enforceable for price and other issues if transferred to another media and then altered from their original form. Such problems may be minimized through local policies requiring original documents in paper in addition to electronic form or through use of electronic imaging technology.

52. Can a district purchase goods and services electronically?

Yes. A school district may purchase goods and services electronically.

53. Can a school district receive electronic bids?

Yes. A school district may receive bids or proposals through electronic transmission if the security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time. [HB 987 81st Leg.](#)

Local Policy

54. Can a district write restrictive specifications in order to standardize equipment and repair parts?

Yes. There are two general reasons for standardization.

Prior purchases of equipment have established technical requirements necessary for an integrated technical system to operate.

Bona fide economic benefits will result - lower costs for service contracts; lower costs for training the district's maintenance employees to repair and maintain the equipment.

55. Can a district's local policies be more restrictive than requirements under state law?

Yes. State law and Texas Attorney General Opinions establish the minimum requirements for districts, and a district's governing board has broad discretion to establish stricter local policies that require competitive procurement procedures for aggregate purchases below \$50,000 over a 12 month period. (Attorney General Opinion DM-14 (1991); §11.151(b), Texas Education Code)

56. Can a district continue to use competitive bidding/proposal procedures in awarding contracts for purchases of personal property valued between \$10,000 and \$25,000?

Yes. A district's local policy concerning competitive bidding/proposal requirements may be more restrictive than corresponding statutorily defined requirements. A local board of trustees' has a fiduciary responsibility to demonstrate a proper exercise of discretion in fiscal management.

57. May a district's board of trustees appropriate or delegate its authority under Subchapter B, Chapter 44, Texas Education Code?

Districts are advised to consult with an attorney regarding a board's proposed action to delegate its authority under Subchapter B, Chapter 44, Texas Education Code, to a designated person, representative, or committee in connection with an action authorized or required by the subchapter to be taken by a school district.

Multiple Awards

58. Can a district award multiple contracts?

Yes. Under this arrangement, the specifications are to specify that multiple awards will be made. If a vendor specifies that prices are subject to "all or

none" restriction, then this vendor's offer may be rejected. This practice is appropriate when making awards for library books and instructional supplies, for example. However, the award to every vendor is discouraged because this would not serve to promote competition. (Attorney General Opinion DM-14 (1991); §11.151(b), Texas Education Code)

59. Can contracts be awarded to every vendor that submits a competitive procurement offer?

This practice is not recommended unless it is not practical to limit the contract award to one vendor. Purchasing officials fail to exercise sound discretion when making excessive multiple contract awards. If a decision is made to make multiple awards, that decision must demonstrate a bone fide effort to limit the award of contracts to vendors offering the best competitive procurement offers. The preferred method of making multiple awards is to designate one primary and secondary vendor or, if necessary, a limited number of primary vendors and secondary vendors.

In most instances, multiple contract awards are less effective than a single contract award for the purpose of stimulating competition among vendors. Business decisions in awards must be consistent with the purpose and intent for competitive bidding, which is to stimulate competition in order to secure the best work and materials at the lowest practical price, *Sterrett v. Bell*, 240 S.W.2d 516, 520 (Tex. Civ. App. - Dallas 1951).

60. When purchasing personal property, is it appropriate to divide my district into geographical sectors and assign each sector to a local vendor to ease deliveries?

No. Assigning each campus or geographical sector to a local vendor would not allow for maximum open and free competition. You may divide the district into geographical sectors to efficiently organize deliveries but vendors must be allowed to submit competitive procurement offers for any or all of the contract. (§15.05, Business and Commerce Code; 34 CFR 80.36(c))

Open Records

61. Prior to the contract award, are certain details in proposals exempted under the Open Records Act?

Yes. Certain details in proposals would be exempted under the Open Records Act prior to the contract award, because, if released, would give advantage to a competitor (Government Code 552.104). Districts should state in the request for proposal documents which portion(s) of the proposal are to be read at the opening. However, after the contract award the proposals in their entirety, except for proprietary information would become open records. Please note, if the district receives a written request for information that the district considers to be within one of the exceptions under Subchapter C(1), Section 552.001,

Government Code, a decision must be requested from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The district must ask for the attorney general's decision within a reasonable time but not later than the 10th business day after the date of receiving the written request. A written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission. The district wishing to withhold information must submit written comments stating the reasons why the information should be withheld. (Subchapter G, Section 552.301, Government Code; amended by the 75th Legislative Session, House Bill No. 951)

62. Are felony conviction notices from vendors public record?

Yes, upon the awarding of the contract. All records received from successful or unsuccessful vendors are subject to the open records act.

63. In what ways will the information on criminal history record be made available to the public and media?

Districts must provide information to the requester or file a request for an Attorney General's Opinion within ten days of receiving the request for open records.

64. If a district rejects a competitive procurement offer on the basis of a vendor's criminal record, can the district be liable in any way, if information concerning rejection of a competitive procurement offer is published in newspapers?

No. Section 44.031, Texas Education Code allows a district to consider a vendor's reputation when awarding a contract.

Other Methods

65. What are some exemptions for a district to the Texas Education Code District purchasing law?

Purchases from the State of Texas Cooperative Purchasing Program (Comptroller--formerly the Texas Building and Procurement Commission or General Services Commission).

Purchases from the Texas Department of Corrections (Texas Correctional

Industries).

Purchases from the Texas Industries for Blind and Handicapped.

Purchases through cooperative purchasing pools under interlocal agreements. (Chapter 791, Texas Government Code)

Emergency purchases necessary to repair or replace damaged equipment that is destroyed or severely damaged, because the time delay imposed by the competitive purchasing process would prevent or substantially impair the conduct of classes or other essential school activities (see §44.031(h), Texas Education Code).

Purchases through the Department of Information Resources (DIR) and other state agencies such as the Texas General Land Office State Energy Marketing Program

Items available from only one source, that comply with Section 44.031(j)(1), Texas Education Code.

66. Can equipment be purchased from the State Bid Contract without a district going through the required purchase process?

Yes. All items on the State Bid Contract have been awarded under the Texas Education Code District purchasing law. You may purchase the item through the Comptroller (formerly the Texas Building and Procurement Commission) at the State bid price from a vendor who was awarded the contract for the item, if the board has adopted the required resolution to participate in the state bid contracts. (Chapter 791, Texas Government Code)

67. After an initial purchase from a State Bid Contract of the Comptroller (formerly the Texas Building and Procurement Commission), is a district required to purchase all products, such as furniture, from the State Bid Contract for the remainder of the fiscal year?

No. There is no requirement in law requiring a district to continue to purchase all items covered by a State Bid Contract after the district's initial purchase. A district may purchase additional items from other vendors during the remainder of the fiscal year.

68. Are districts allowed to purchase from cooperative purchasing pools operating in other regional education service center areas?

Yes. A district may participate in other cooperative purchasing pools, anywhere in the state, upon board adoption of a resolution, in accordance with statutes

covering interlocal governmental cooperation agreements. (Chapter 791, Government Code)

69. Can districts purchase from federal contracts without local competitive procurement procedures?

Yes. Section 271.103, Subchapter G, Local Government Code, added by the 75th Legislature allows local governmental entities to purchase goods or services available under Federal supply schedules of the United States General Services Administration to the extent permitted by federal law. However, a temporary freeze has been placed by the federal government on purchases by non federal entities from federal contracts.

70. I would like to make a catalog purchase from the Texas Building and Procurement Commission. Where do I find the guidelines?

Catalog purchases were eliminated as a method to competitively purchase contracts valued over \$25,000, effective September 1, 2007. ([§44.031\(a\) Texas Education Code](#), enacted by 80th Legislative Session [HB-2918](#))

See Section 3.3.1 regarding internally-developed catalogs.

Preferences

71. Can contracts be restricted to only local vendors?

Yes, in limited situations. Contract awards may be restricted to vendors located in Texas, such as, produce and landscape plants from Texas. Otherwise, Texas Attorney General Opinion No. H-1086 established that, as a general matter, a contract may not be awarded to one not a low competitive procurement offer on the sole basis that the said competitive procurement offer is a local merchant or businessman. Of course circumstances may exist in which the proximity of the vendors relates to the determination of the lowest responsible bidder, which determination is within the reasonable discretion of the contracting authority. (Attorney General Opinion H-1086 (1977), §44.042, Texas Education Code)

72. Is a district required to give preference to Texas agricultural products?

Yes, according to Section 44.042, Texas Education Code, a school district that purchases agricultural products shall give preference to those produced, processed, or grown in Texas if the cost to the school district is equal and the quality is equal. "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. In addition school districts are required to give preference to agricultural products produced, processed, or grown in other states in the United States over foreign products if the cost to the school district is equal and the quality is equal.

73. Is a school district required to give preference to Texas vegetation?

Yes, according to Section 44.042(c), Texas Education Code, a school district that purchases vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation if the cost to the school district is equal and the quality is not inferior.

74. Are there restrictions concerning awarding contracts to out-of-state vendors?

Yes. Section 44.042, Texas Education Code, contains provisions that provide preference to Texas vendors in connection with produce and landscape plants. Furthermore, a district is required to evaluate competitive procurement offers received from nonresident vendors according to the bidding preference law of the state in which the nonresident vendor's principal place of business is located. All of the states that border Texas, and others, have various vendor preference laws in connection with certain types of businesses located and/or products produced within those states, according to Government Code, Title 10, Section 2252.003. Accordingly, a district is required to award a contract to a vendor whose principal place of business is located in Texas, if none of the out-of-state vendors submit lower competitive procurement offers than a resident (Texas) vendor by the percentage stated in the bidding preference laws of the other state(s), except for agricultural products as defined in Texas Education Code Section 44.042. A summary of the bidding preference laws of other states is published each year in the Texas Register.

75. An out-of-state vendor from a state that has a bidding preference law of 5% for products grown, produced or manufactured in that state submits a competitive procurement offer only 2% lower than competing competitive procurement offers for products grown, produced or manufactured in Texas. Must the out-of-state vendor's competitive procurement offer be at least another 3% lower in order to be awarded a competitive procurement offer, under Article 601(g)(b)(1), Texas Revised Civil Statutes?

Yes. Under these circumstances, a Texas district is required to award the contract to a vendor submitting competitive procurement offers for products grown, produced or manufactured in Texas. According to Texas Attorney General Opinion No. JM-696, Government Code, Title 10, Section 2252.003 was designed to create a "reciprocity requirement in the award of state contracts so that vendors from other states would face the same under-bid/proposal requirements in Texas contracts that Texas vendor would experience on

comparable contracts in those states."

76. Is there a minimum preference percentage applicable to the award of competitive procurement offers for recycled or recyclable items?

No. There is no minimum percentage amount specified under Section 361.426, Health and Safety Code. Although there is no minimum percentage preference, this general requirement expresses legislative intent in regard to districts' business decisions. Increased demand for recycled or recyclable items will lower manufacturing and consumer costs, and decrease landfill waste; increased district purchases can significantly impact the demand for these products.

77. Can a contract be awarded to a vendor (who is not the lowest monetary offeror) on the basis of estimated taxes to be paid to the district, or local jobs created, or salaries and wages to be paid/paid by the vendor?

No. Contracts cannot be awarded on the basis of estimated taxes to be paid to the district or local jobs created or salaries and wages to be paid/paid by a prospective vendor (Attorney General Opinion DM-113 (1992)).

Problems

78. Can a district reject any or all offers from vendors?

Yes. A district can reject any and all offers; a board may decide to reject all offers and readvertise for any reason. Furthermore, a board may reject all offers and decide to postpone a purchase indefinitely. (Attorney General Opinion DM-4 (1991))

79. Is a district required to re-advertise for competitive procurement offers if no competitive procurement offers are returned?

No. A district may elect to use one of the other options in Section 44.031, Texas Education Code, as appropriate. Texas Attorney General Opinion No. DM-4, which was written for a similar question involving counties, provides appropriate guidance to districts - a district must re-advertise if no competitive procurement offers are returned. Obviously, the first question is why? Would advertisement in other newspapers within the county or in other counties result in competitive procurement offers? Was the invitation sent to all potential vendors? Was there sufficient time for a vendor to adequately prepare a response? Were the specifications unduly restrictive? Were the delivery schedules unrealistic? (Attorney General Opinion DM-4 (1991))

80. Is there a minimum number of competitive procurement offers that must be received before the award of a contract?

No. There is no such requirement under the Texas Education Code purchasing law; therefore, a single competitive procurement offer could be accepted. Whether an adequate number of competitive procurement offers were received is determined by local market conditions. Furthermore, local policies may establish a minimum number of competitive procurement offers. The point to consider is that regardless of dollar value, districts should attempt to have open and free competition. If the district is in a small rural county and there are only two produce vendors who provide service to your area, two may be sufficient. However, in a larger metropolitan area where there are six produce vendors, all six should be given an opportunity to submit competitive procurement offers.

81. How does one handle the situation where once all competitive procurement offers have been awarded, several campuses find they need several items that the district did not obtain competitive procurement offers?

If an item, or several items, are inadvertently omitted, you may purchase them using spot purchase procedures if the purchases will be less than \$50,000, or competitive pricing if the purchases will be \$50,000 or more.

82. Suppose after sending out request for formal competitive procurement offers requiring delivery at campus sites, the district receives a very low offer from a vendor who can make a drop delivery. The district has a central warehouse and can accept a drop delivery. Can the district accept this even though the specifications did not mention the acceptability of drop delivery?

No, because this would not be responsive to the competitive procurement terms. It is possible that one of the other vendors would have competitive procurement offer an even lower price on a drop shipment, had you offered the vendor that opportunity. If the district will accept a drop shipment, the district must clearly state this in the invitation to submit competitive procurement offer. The competitive procurement offer from the vendor who can make a drop shipment or delivery at a much lower price is actually a nonresponsive competitive procurement offer and must be rejected. Regulations specify that the invitation for submit competitive procurement offer, including specifications and pertinent attachments, shall clearly define the items or services needed in order for bidders to respond properly to the invitation. If the district wants deliveries made to campuses, the district should include a list of campuses and addresses in the bid specifications so that bidders may calculate transportation costs.

83. Can a district using the formal competitive bidding award a contract for a four-cylinder car to a vendor that submitted the low offer, although the competitive bidding specifications were for an eight-cylinder car?

No. If a district awards a contract for items that were not covered by competitive bidding specifications under competitive bidding, the district may be subject to adverse legal action by vendors, because of unequal treatment, and/or legal authorities, for not obtaining competitive bidding offer specifically for the items purchased. In such circumstances, a district would be advised to reject all competitive bidding offers, in order to modify the competitive bidding specifications under competitive bidding and re-advertise for bids for the type of equipment desired.

84. How should a district handle a vendor who received an award, and failed to deliver certain items and, in several instances, items delivered were different from the items that were specified or vendor delivered substituted products other than specified?

If a vendor fails to deliver certain items or delivers substituted items that do not meet specifications the district should do the following:

- a) Document the problem, noting the date and writing an accurate description of the problem.
- b) Next, notify the vendor by telephone of the problem and tell the vendor specifically how the district wants the problem corrected. With even the best vendors, problems occasionally arise and frequently a single phone call is all that is needed to correct a problem.
- c) A district should keep a record of the dates of all phone calls and what was discussed in the event that talking with the vendor does not resolve the problem.
- d) If the problem continues, consult with the district's legal counsel, give the vendor written notification of the problem, state that the district expects immediate correction, and that failure to do so will be considered a breach of contract and could result in the cancellation of the contract.
- d) If the vendor seems to be making little effort to resolve the problem to your satisfaction, you should discuss the problem with the district's attorney and explore options open to the district.
- e) If cancellation of the contract becomes necessary, a district should also take steps to disqualify the vendor from future competitive procurement process. Even if the contract is not canceled, district may want to consider taking action to disqualify the vendor from future competitive procurement process.

85. If a procurement contract is terminated for any reason during the fiscal year is a district required to obtain competitive procurement offers before additional purchases are made for items in a competitive procurement category covered by the contract?

Whether a district must obtain competitive procurement offers before making

additional purchases after the termination of a contract depends upon the circumstances. If purchases in a competitive procurement category would be \$50,000 or more during the remainder of the fiscal year, the purchasing requirements of the Texas Education Code purchasing law would apply.

86. Should a district allow late competitive procurement offers as a matter of waiving competitive procurement technicalities?

No. A district should avoid treating a late competitive procurement offer as an allowable condition that can be waived as a competitive procurement technicality. Not only will the district face possible legal action by the vendors who submitted timely competitive procurement offers, but other vendors submitting late competitive procurement offers will argue in regard to the district's definition of too late.

87. Can a district reject a competitive procurement offer because a vendor refused to provide samples, when the terms required samples be furnished?

Yes. However, a district could waive this omission as a competitive procurement technicality, or require the vendor to furnish samples before the district awards the competitive procurement contract.

88. What can a district do if a vendor will not provide written confirmation of telephone quotes?

If the use of quotes is required by local policy, the district should notify the vendor that the vendor may be disqualified and deleted from the vendor list. Effective June 19, 2009, HB 987 repealed the requirement for quotes on purchases of property between \$10,000 and \$25,000.

89. Once a bid has been awarded by the Board of Trustees and an award notice has been sent to the vendor, but not assigned a purchase order number, can an item be removed from the bid if a need arises that was not foreseen and the money is not available?

Because a legally enforceable contract exists, the district should discuss the situation with an attorney and the vendor. The district should also inform the vendor that all other contract provisions will be honored.

90. Are there limits to the amount of money that can be awarded against a local governmental entity for breach of a contract?

An award is limited to the balance due and owed by the local governmental entity under the contract, the amount owed for change orders, reasonable and necessary attorney's fees that are equitable and just and interest as allowed by law. [HB 987 81st Leg.](#)

Sales/Specials/Auctions/Wholesale Clubs

91. Can a district take advantage of a manufacturer's close-out?

Yes. A district can take advantage of a manufacturer's close-out if the purchasing laws are followed, and the district does not violate contracts with other vendors. For the fiscal year, a district may apply spot purchase procedures for up to \$50,000 of purchases, and must apply competitive procurement methods for greater than \$50,000 of purchases, in each category of related items.

92. Vendors will often make a special offer on a particular item. For example, they will offer charbroiled beef patties at much lower than the district's contract price, or they will offer an item not presently used at a special price that is below market value, or they will offer an incentive such as equipment, or other prizes. Can a district take advantage of these specials?

Yes, as discussed below:

When a vendor offers an item at a lower price than the contract price--Once you have contracted for an item and accepted the contracted for price, you are not free to obtain competitive procurement offers or to purchase from anyone other than the vendor who has received the contract unless (1) you have specified an amount in the contract, (2) you will still purchase that amount from the vendor, and (3) you want to purchase an amount in addition to what was contracted for. Small purchase procedures may be used in obtaining prices on the additional merchandise, unless the additional purchases will exceed \$50,000.

When a vendor offers an item you are not presently using at a special price below market value--All purchases under competitive procurement must be based on specifications which clearly describe the item to be purchased. If you have tried a new product and would like to purchase it, competitive sealed offers must be obtained if purchases will be \$50,000 or more (spot purchase procedures may be used to purchase additional quantities of items in a competitive pricing category, if purchases will be less than \$50,000).

When a vendor offers incentives, the prices paid for all purchases should be based solely on the offer by the responsible vendor giving a district the best competitive procurement prices meeting specifications. When "incentives," such as prizes, equipment, etc., are offered and accepted, (1) the "incentive" must in no way affect the decision to purchase, and (2) the "incentive" must become the property of the district and under no condition becomes the property of an individual. Special offers often mean higher prices, or lower quality, or

both. Frequently, special prices are offered on old merchandise that the vendor wants to move.

93. How can a district take advantage of going-out-of-business or seasonal sales?

The requirement to obtain competitive procurement offers does not preclude taking advantage of seasonal sales or going-out-of-business sales. For each category of related items, there is an allowance of up to \$50,000 for spot purchases (purchases that are reasonably anticipated to be \$50,000 or more are subject to one of the nine (9) competitive procurement methods, as applicable under Sections 44.031(a), Texas Education Code). Some districts time their purchasing periods to coincide with off-season sale periods, in order to obtain better prices; prices obtained by individual districts during off-season sales periods are sometimes lower than bid prices obtained by the Comptroller (formerly the Texas Building and Procurement Commission). Some districts include language in their general specifications requiring vendors to lower their prices below competitive procurement offer prices to match prices offered to other customers during off-season sales.

94. How can a district take advantage of auctions to purchase used equipment in light of the fact that it is not possible to obtain competitive procurement offers in an auction- type setting?

In regard to auctions of used equipment, such items represent additional categories of personal property. A district could purchase up to \$50,000 of used equipment without going out for competitive procurement offers without regard for previous spot purchases of new equipment.

95. How can a district write specifications that allow purchases from "wholesale clubs" or discount stores that do not deliver when general specifications ask for a delivered price?

If a district's general specifications are written to require delivery, such as, F.O.B. - Destination, but certain local "wholesale clubs" or discount stores do not deliver, then a district should revise its general specifications. (Districts should evaluate all relevant cost factors in determining the best value, including the cost of sending personnel to a vendor's place of business to make purchases for the district, such as, payroll, travel and other costs.) The district's general specifications could be amended to require vendors to specify both prices that include delivery and, also, cash-carry prices. The key here is that competitive procurement specifications, terms and conditions required by a district become contract provisions upon the award of a competitive procurement offer; and, accordingly, a district has broad latitude to specify whatever contract provisions that best suit the circumstances and the district's needs. Accordingly, the net price of an item is the key to equal comparison. (Attorney General Opinion DM-14 (1991); §11.151(b), Texas Education Code)

96. As a purchasing official, I am frustrated because I am paying more for items using the purchasing methods described under Section 44.031(a), TEC, than what various items sell for at a local "wholesale club" store which refuses to submit competitive procurement offers stating prices for more than two weeks. How can a district overcome this problem?

To overcome this problem, a district may use a blanket competitive procurement arrangement requesting a discount from retail prices or catalog prices for an estimated dollar volume of purchases. Under this type of arrangement, districts compare prices for twenty or thirty different items representing high volume purchase requirements, as a benchmark to determine the best value. An offer from a "wholesale club" merchant showing a zero discount from its prices may represent the best value when compared with other competitive procurement offers of varying discounts from retail or catalog prices that reflect higher net prices. Accordingly, the net price of an item is the key to equal comparison. Districts have broad discretion to write specifications accordingly to local purchase needs and service requirements.

Obviously, a district must exercise caution under a blanket contractual arrangement, because the vendor is free to increase base prices after the stated period of time. (It is within the district's discretion to establish the period of time that prices must remain firm, whether for two weeks or six months.) Additionally, the contract may be difficult to enforce if purchase quantities are stated in terms of overall estimated dollar volume instead of specific purchase quantities. (Attorney General Opinion DM-14 (1991); §11.151(b), Texas Education Code)

Sole Source

97. How does the exemption to the Texas Education Code District purchasing law apply to patented or copyright protected items?

To be a bona fide exemption to the Texas Education Code District 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. (§44.031(j)(1), Texas Education Code)

98. How does one document that an item is sole source?

As new products are developed, it is possible that a product may be available from a sole source. To document that this is the case, some districts require a letter to confirm these circumstances from the vendor or manufacturer of the product. A statement could be attached to the requisition that indicates a sufficient number of vendors have been contacted to determine that only one practical source of supply exists or provides the reasons only one source exists.

99. Is instructional software that is copyrighted and only available from a single distributor or the producer required to be obtained according to the provisions of the Texas Education Code purchasing law?

No. 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. (§44.031(j)(1), Texas Education Code)

Specific Products

100. What are the legal requirements for purchasing produce and motor fuel?

Section 44.031(a), Texas Education Code, exempts produce and motor fuel from competitive procurement procedures in Section 44.031. Prior to the passage of HB 987, TEC 44.033 required price quotations for these items. Districts are recommended to continue to get quotes for these items in order to secure the best prices for the district. Effective June 19, 2009 there is no statutory requirement to competitively procure these 2 items under state or local law; however, as categories, they will normally exceed \$50,000 annually and should be competitively procured. If federal funds are used, federal requirements apply.

101. Can a district use competitive bidding for produce and motor fuel?

Yes. Section 44.031(a), Texas Education Code, does not prohibit the award of competitive bids for produce and motor fuel.

102. Are districts required to purchase school buses and bus tires under the State Bid Contract of the Comptroller (formerly the Texas Building and Procurement Commission)?

No. However, a district may purchase school motor vehicles and bus tires through the Comptroller (formerly the Texas Building and Procurement Commission) or through competitive bidding process if the purchase is \$20,000 or more, under Subchapter B, §44.031(l), Texas Education Code. Procurement

duties previously handled by the Texas Building and Procurement Commission were transferred to the Comptroller effective September 1, 2007.

103. What requirements apply to purchases of sheet music?

Items within the broad category of sheet music, instruments and instrument repair available from a single vendor, anticipated to be an aggregate purchase quantity of \$50,000 or more, during the year, are required to be competitively priced. However, copyrighted sheet music available from only one distributor is exempt from bidding under the sole source provisions of Section 44.031(j)(1), Texas Education Code. Furthermore, the district's evaluation of competitive procurement offers submitted from different vendors may result in the award of contracts to one or more vendors in each sub-category.

104. What are the disclosure requirements related to insurance providers serving school districts?

Subchapter E, Chapter 21, Texas Insurance Code requires health insurance providers that enter into contracts with governmental entities to provide the entity with detailed reporting of the claims information. Specifically, the Insurance Code requires reporting of the following: A.) Total amount of charges submitted to the carrier for persons under the employer health benefit plan; B.) The total amount of payments made by the carrier to health care providers for persons covered by the plan; C.) To the extent available, information on claims paid by type of health care provider, including the total hospital charges, physician charges, pharmaceutical charges, and other charges. This information may only be used by the governmental entity for contract bidding purposes.

Although the Insurance Code only requires disclosures by health insurance provider in competitive bidding situations, an entity may specifically include these types of disclosure requirements in insurance contracts regardless of the procurement methods utilized. Disclosure requirements that are specifically outlined in the insurance contract may assist the entity in obtaining insurance claims information that will increase competition in future procurement cycles.

105. What requirements apply to purchases of light bulbs?

A school district shall purchase the commercially available model of light bulb compatible with the light fixture that uses the fewest watts for the necessary light output in each type of light fixture in an instructional facility. (TEC 44.903 added by [HB 3693](#), 80th Legislature)

Thresholds

106. What are the purchasing requirements relating to unanticipated purchases of some items that are made during the year? These items might include, but are not limited to: repair parts, laboratory supplies, instructional materials, and no single purchase is \$50,000 or more. Furthermore, purchases of these related items in the aggregate may exceed \$50,000 over the year. What are the purchasing requirements relating to these purchases?

If a district can demonstrate these purchases could not be reasonably anticipated and there is no evidence to indicate willful intent to circumvent the purchasing laws, these types of items may be purchased using spot purchase or price quote procedures.

107. The contract award was for \$51,000 of supplies. The district issued a purchase order for the amount. One month later you need the same quantity; the district decides to purchase another \$51,000, because the bid conditions stated the district had the right to increase or decrease quantities. Is this purchase legal?

On the facts given, the second purchase should be made under the provisions of §44.031. That is not to say that a bid extension broad enough to include the second purchase could not be written. But if the only notice to the public was that the district "had the right to increase or decrease" the bid award, the second or subsequent purchases without limit to the amount of the increase may be construed as an unreasonable increase by competing vendors. Accordingly, under the circumstances described in the question, the provision does not appear to be a reasonable interpretation of "increase."

108. If estimated purchase requirements were less than \$50,000 but quotations were received in excess of \$50,000, is a district required to readvertise in order to be in compliance with the advertising requirements applying to contracts of \$50,000 or more? (This question assumes the district has a local policy that requires the use of quotations for less than \$50,000.)

Yes. A district would have to readvertise the request for competitive procurement offers in order to be in compliance with Section 44.031(g), Texas Education Code, which requires a district to advertise once a week for two weeks prior to awarding contracts, if the contract is valued at \$50,000 or more.

109. Competitive procurement offers are requested for frozen meat for a twelve-month period but the district actually orders meat weekly during that period. No invoice during the period even comes close to \$50,000, but during the twelve months the district will spend well over \$50,000. Must the district use one of the nine purchasing methods described under Section 44.031(a), Texas Education Code?

Yes. According to federal regulations the purchasing methods described under Section 44.031(a), TEC, apply to the aggregate amount of supplies and materials to be purchased. In this example, the aggregate amount is the value of frozen meat purchased during the twelve-month competitive procurement period, available from the same vendor. (34 CFR 80.36(d))

110. The district will be financing the purchase of computer equipment through the vendor selling the personal property. The total cost, sale price plus interest, will be \$51,000 (\$5,000 interest, and \$46,000 for the equipment). Is this purchase required to be obtained under §44.031, TEC?

Yes. The purchase would be required to be made under the Texas Education Code purchasing law because the value of the overall contract is more than \$25,000.

111. Are materials used by a district in construction, maintenance, repair or renovation work subject to the \$50,000 threshold amount?

Yes. Materials purchased for construction, maintenance repair or renovation purposes are required to be competitively purchased if the materials are valued at \$50,000 or more.

Work-arounds

112. Does limited storage space exempt a district from Texas Education Code purchasing law requirements?

No. Storage space limitations will affect a district's specific terms regarding delivery times and purchase quantities. Such a condition is not sufficient, in and of itself, to exempt a district's purchase(s) from the Texas Education Code District purchasing law.

Alternatively, districts may expand upon the standard terms and conditions indicating that the items are to be purchased "as needed." This can be accomplished by including additional terms and conditions relating to "as needed" purchases on the face of the request for competitive procurement offers, as follows: "Quantities shown are estimates only. They are based on prior year usage. Approximate annual expenditure is \$____. Items are to be ordered "as needed" over a period of _____ (for example, sixty days, four months, or one year) and prices are to be firm for that period."

113. Can a district avoid the need to competitively purchase items through sequential purchases?

No. Sequential purchases of related items within a fiscal year with the intent to circumvent the Texas Education Code District purchasing law constitute a criminal offense (TEC §44.032).

Depending on the individual circumstances and the type of property being purchased, the district's best interest may be better served by requesting annual contracts. Purchasing officers must determine whether an amount that is \$50,000 or more is allocated in the budget for purchases of related items that represent competitive pricing categories (see the [Competitive Procurement Categories](#) chapter at 3.7.17).

A school district with 180,000 or more that has formally adopted a site-based decision making plan that delegates purchasing decisions to the campus level is not required to aggregate and jointly award purchasing contracts on a district-wide basis. If a district chooses to implement a site-based purchasing policy all dollars thresholds are determined on a campus basis. A school district with an ADA of 180,000 or more may choose a more restrictive policy. (§§44.031; 44.033 Texas Education Code)

114. Are split purchases allowed to avoid the purchasing requirements required by law?

No. Districts are not to split purchases that would be considered one purchase under normal purchasing practices, such as, monitors and central processing units would be considered one purchase in most instances.

A school district with 180,000 or more that has formally adopted a site-based decision making plan that delegates purchasing decisions to the campus level is not required to aggregate and jointly award purchasing contracts on a district-wide basis. If a district chooses to implement a site-based purchasing policy all dollars thresholds are determined on a campus basis. A school district with an ADA of 180,000 or more may choose a more restrictive policy. (§§44.031; 44.032; 44.033(e); Texas Education Code)

115. Are component purchases allowed to avoid the state purchasing requirements?

No. The Texas Education Code District purchasing law applies to the aggregate purchase. Therefore, districts may not circumvent the purchasing requirements by purchasing related items, or equivalent items from separate vendors, under separate purchase orders (component parts) that cannot serve in and of themselves the purpose and function for which the purchase is being made, such as, a refrigerator shell, a freezer shell and compressor equipment for food storage. Separate, sequential and component purchases are illegal and subject

district officials to possible criminal prosecution.

A school district with 180,000 or more that has formally adopted a site-based decision making plan that delegates purchasing decisions to the campus level is not required to aggregate and jointly award purchasing contracts on a district-wide basis. If a district chooses to implement a site-based purchasing policy all dollars thresholds are determined on a campus basis. A school district with an ADA of 180,000 or more may choose a more restrictive policy. (§§44.031; 44.032; 44.033(e); Texas Education Code)

Questions and Answers – Services

1. **May a district's board of trustees appropriate or delegate its authority under Subchapter B, Chapter 44, Texas Education Code?**

Districts are advised to consult with an attorney regarding a board's proposed action to delegate its authority under Subchapter B, Chapter 44, Texas Education Code, to a designated person, representative, or committee in connection with an action authorized or required by the subchapter to be taken by a school district.

2. **Are districts required to award contracts on a competitive basis for a contractor to operate food service operations?**

Yes. According to Texas Attorney General Opinion No. DM-14, public schools participating in the federal school nutrition programs must award contracts for the management of school food service on a competitive basis (competitive procurement offers). If the proposed services also provide for the contractor to provide food products and food service supplies, the board or governing body cannot delegate the purchasing function for these purchases to a food service management company by contract or otherwise (DM-14). Therefore, if a contract includes the purchase of food products or supplies valued at \$50,000 or more from a vendor also providing food service management services, then competitive procurement offers are required, regardless of the degree of participation in the federal child nutrition program.

Seeking competitive procurement offers for food service products or supplies from qualified vendors other than food service management companies is a sound purchasing practice and will encourage competition. Contracts for only management services may be awarded under competitive procurement.

3. **Are districts required to award contracts for services on a competitive basis for a contractor to provide services for maintenance of buildings?**

Yes. According to Section 44.031, Texas Education Code, all contracts proposed to be made by any board shall be made according to the Texas Education Code purchasing law when said contracts are valued at \$50,000 or more. If the purchase of supplies or equipment also included in the services under contract exceed \$50,000 in the aggregate for a twelve-month period, the Texas Education Code purchasing law will apply regardless of the value of the contract amount.

A district is not required to limit contracts to maintenance contractors, but should seek competitive procurement offers from other qualified vendors providing the required supplies and equipment (a contract award may be made to both a maintenance contractor and to a separate vendor(s) for maintenance supplies).

4. **Are districts required to award contracts on a competitive basis for a contractor to operate transportation services?**

If the district is contracting for professional management services only, no competitive procurement offers are required. However, if the district is contracting for services which will include purchase, lease or lease with an option to purchase of school buses in excess of \$20,000 in the aggregate over a twelve-month period from the contractor, a contract must be made in accordance with the Texas Education Code purchasing law. The district must comply with Section 34.008 of the Texas Education Code.

Although competitive purchasing is not required for contracts for professional management services only, districts should award such contracts on a competitive basis (competitive proposals) whenever practical, in accordance with sound business discretion.

5. **Are districts compelled under Texas statutes to award contracts on a competitive basis for non-professional services?**

Yes. According to Section 44.031, Texas Education Code, all non-professional service contracts are required to be awarded under competitive procurement, such as service contracts for typewriters, photocopy machines, computers telephone repair and other equipment.

Service contracts for professional or non-professional services involving federal funds are required to be let on a competitive basis (competitive procurement), under CFR Section 80.36, Code of Federal Regulations. Districts will avoid a conflict between federal regulations and Chapter 2254, Government Code, in connection with certain professional services, such as engineering, architectural and accounting services, if a district only uses competitive proposal procedures to obtain such services.

6. **If a proposed contract includes both professional services and the purchase of personal property and prices are not specified for the services portion of the contract, must the purchase be made under competitive procurement methods in Section 44.031, Texas Education Code?**

Yes. If a district is entering into a lump-sum contract price agreement that includes professional services in addition to the purchase of personal property valued \$50,000 or more, Texas Education Code District purchasing law requirements will apply. This applies to various types of professional service agreements, such as instructional services incorporating computer learning systems designed for programs involving at-risk students. Accordingly, it is recommended that

professional services be under a separate contract from the purchase of supplies and materials. (Note: Multi-year contacts, such as lease agreements and various kinds of service agreements, should have a nonappropriation clause. A legislative example of a requirement for this clause is found in Local Government Code 271.903. The clause provides a district, on an annual basis, the right to rescind a contract during the budget process if financial resources of the district are insufficient to meet the financial liabilities of said contract).

7. Does the Texas Education Code District purchasing law apply to vehicle and/or equipment repairs?

Yes. The Texas Education Code District purchasing law applies to vehicle and equipment repairs if repairs costing \$50,000 or more are required in the aggregate over a twelve-month period. (§44.031(a), Texas Education Code)

8. What types of professional services are exempt from competitive procurement?

State law prohibits competitive bidding in connection with obtaining the services of architects, certified public accountants, registered engineers, optometrists, physicians, surgeons, land surveyors, landscape architects, registered nurses and state certified or state licensed real estate appraisers. (Chapter 2254, Government Code)

Undue emphasis upon price in evaluating proposals from certified public accountants may be construed as having obtained services by competitive bidding, and as a violation of State law.

9. Are professional services, other than those specifically identified in Section 44.031(f) Texas Education Code, exempt from the Texas Education Code District purchasing law?

Yes. Sec. 44.031 does not define professional services; however, DM-418 quotes several previous attorney general opinions stating that professional services no longer includes only the services of lawyers, physicians, or theologians, but also those members of disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence including guest speakers, consultants, writers, and artists. (Attorney General Opinion DM-418 (1996))

10. Is there a particular process for the selection of an architect, engineer or land surveying services?

Yes. Chapter 2254, Government Code, a two-step process when negotiating a contract with an architect, engineer or land surveyor. The initial selection is based upon demonstrated competence and qualifications of the person or firm. After a district makes its selection, it may then negotiate a contract at a fair and reasonable price. (SB-626, 75th Legislative Session, Regular Session)

11. Does the Texas Education Code District purchasing law §44.031 (TEC) permit annual renewal clauses?

The Texas Education Code District purchasing law applies to any annual contract as well as contracts that allow renewal at the end of the one-year term. If the original multi-year contract terms contain an annual opt-out clause for a specified period of time, for example, three years, then the Texas Education Code District purchasing law will apply at the end of that time period (three years).

12. Are advertising services, such as special booklet ads, newspapers, and radio ads subject to the Texas Education Code District purchasing law §44.031 (TEC)?

Yes, depending on market availability, sole source vendor situation, and the extent to which advertising needs require separate contracts with multiple advertisers. Segregation by geographic area covered by different newspapers and other media may be used to determine if the \$50,000 threshold applies.

13. May energy conservation system contracts be awarded under a request for qualifications process instead of competitive bidding?

Yes. Section 44.901 of the Texas Education Code states, a district shall let this type of contract under a request for qualifications process according to procedures established for professional services by Section 2254.004, Government Code. Notice of the request for qualifications shall be published in the manner required for competitive bidding.

14. May a district extend its depository contract without implementing the competitive bidding or competitive sealed proposal process?

Yes. A district and the district's depository bank may agree to extend a depository contract for two additional two-year terms without use of the competitive bidding or competitive sealed proposal process. The contract term and any extension must coincide with the district's fiscal year. (§45.205, Texas Education Code, amended by [HB 2411](#), 80th Legislature)

15. What are construction manager-agents and construction managers-at-risk?

A construction manager-agent is a sole proprietorship, partnership, corporation or other legal entity that provides consultation to the school district regarding construction, rehabilitation, alteration or repair of the facility. A construction manager-agent represents the district in a fiduciary capacity, except that it may

perform general conditions as provided by the contract. (Section 44.037, Texas Education Code)

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 school district regarding construction during and after the design of the facility. (Section 44.038, Texas Education Code)

16. May a district select a contractor for construction services under competitive sealed proposal procedures?

Yes. Except use of request for proposals, district may select a contractor for construction services, under any of the options listed in Section 44.031(a), Texas Education Code, as appropriate. (Sections 44.039 and 44.040, TEC)

17. What is an energy savings performance contract?

An energy savings performance contract is a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of school facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the measures over a specified period.

18. What services are covered under an energy savings performance contract?

An energy savings performance contract covers the installation or implementation of:

- (1) insulation of a building structure and systems within the building;
- (2) storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;
- (3) automatic energy control systems, including computer software and technical data licenses;
- (4) heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption;
- (5) lighting fixtures that increase energy efficiency;
- (6) energy recovery systems;
- (7) electric systems improvements;
- (8) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;
- (9) water-conserving landscape irrigation equipment;
- (10) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:
 - (A) landscape contouring, including the use of berms, swales, and terraces;and
 - (B) the use of soil amendments that increase the water-holding capacity of the soil, including compost;

- (11) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;
- (12) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;
- (13) equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses;
- (14) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or
- (15) other energy or water conservation-related improvements or equipment, including improvements or equipment relating to renewable energy or nonconventional water sources or water reuse.

19. Are there provisions for energy savings performance contract financing?

An energy savings performance contract may be financed:

- under a lease/purchase contract that has a term not to exceed 20 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing;
- with the proceeds of bonds, or
- under a contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures.

20. Are there special conditions for energy savings performance contracts?

- Each energy or water conservation measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations.
- An energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which the public water supply system officials do not have sanitary control, to be returned to the potable water supply.
- 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.
- Before entering into an energy savings performance contract, the board shall require the provider of the energy or water conservation measures to file with the board a payment and performance bond relating to the installation of the measures in accordance with Chapter 2253, Government Code. The board may also require a separate bond to cover the value of the guaranteed savings on the contract.

- An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation measures to guarantee the amount of the savings to be realized by the school district under the contract. If the term of an energy savings performance contract exceeds one year, the school district's contractual obligations in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures, as determined by the school district in this subsection, divided by the number of years in the contract term.
- An energy savings performance contract shall be let according to the procedures established for procuring certain professional services by Section 2254.004, Government Code. Notice of the request for qualifications shall be published in the manner provided for competitive bidding.
- Before entering into an energy savings performance contract, the board must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. Sections 1001.053 and 1001.407, Occupations Code, apply to work performed under the contract.

Questions and Answers - Construction/Real Property

1. **May a district's board of trustees appropriate or delegate its authority under Subchapter B, Chapter 44, Texas Education Code?**

Districts are advised to consult with an attorney regarding a board's proposed action to delegate its authority under Subchapter B, Chapter 44, Texas Education Code, to a designated person, representative, or committee in connection with an action authorized or required by the subchapter to be taken by a school district.

2. **What is one of the requirements for action to be taken by a board of trustees prior to advertising for competitive procurement offers?**

The board of trustees of a school district that is considering contracting for construction services using one of the methods described in Section 44.031(a) must determine which method provides the best value for the district.

3. **When selecting a procurement method for a construction contract, may a school board adopt a policy designating one purchasing method as the default method?**

Texas Education Code 44.035(a) requires the board of a school district considering a construction project to determine, before advertising, which method provides the best value for the district. It is the position of TEA that a school board may satisfy this statutory requirement by adopting a board policy that designates one of the 44.031(a) purchasing methods as the default "best value" method. Such a policy should be adopted by resolution describing the board's rationale for selecting the default method and should also provide a mechanism for the board to select another method upon recommendation by district staff.

4. **Is a district required to make the evaluation of bids or proposals public?**

Yes. Districts are required to make all bid or proposal evaluations public not later than the seventh day after the date the contract is awarded.

5. **Should plans and specifications developed by an outside service firm (i.e., architects and engineers) be reviewed by the purchasing department?**

Yes. To ensure conformance with district business office policies and procedures, complex contracts should be reviewed by the purchasing department and by the district's attorney.

6. **What dollar amount for the construction of a new building requires the professional seal of an architect?**

Occupations Code §1051.703 requires involvement of a registered professional architect for new buildings costing \$100,000 or more.

7. **What dollar amount for alterations or additions to an existing building requires the professional seal of an architect?**

Occupations Code §1051.703 requires involvement of a registered professional architect for alterations and additions to existing buildings costing \$50,000 or more.

8. **What dollar amount requires the professional seal of an engineer?**

Occupations Code §1001.053 requires the following for a public work:

- (a) involvement of a registered engineer required for projects involving electrical or mechanical engineering costing more than \$8,000;
- (b) involvement of a registered engineer required for projects not involving electrical or mechanical engineering costing more than \$20,000.

9. **What types of construction activities that do not involve structural, electrical or mechanical engineering fall under the Texas Education Code District purchasing law?**

The various types of work involved in the construction of a building should not be treated as separate expenditures if part of the same construction, repair or renovation. The term "construction, repair, or renovation" means related types of construction work common to a public works project, such as, construction of a building, repair/improvement to a building, paving parking lots, and replacement of air conditioner compressors. Accordingly, supplies and materials for repair, renovation, or construction are to be purchased together, if available from the same vendor.

However, the cost of various components of a project should be considered if a district is acting as its own general contractor and using outside contractors for the various phases of the construction work. If so, the work may be categorized according to building trades, to determine whether the Texas Education Code purchasing law requirements apply. (§44.031(a), 44.040 TEC; §271.024, Local Government Code, Attorney General Opinion JC-0037)

10. **Are changes to architectural plans allowed?**

Yes. Changes to architectural plans do not have to be competitively procured separately, if the changes can be appropriately handled as a change order. Though there is no statute that addresses change orders in regard to districts, the statute that covers this area in connection with county governments illustrates legislative intent. That statute allows change orders for up to 25% of the project cost. If necessary, change orders can: (1) make changes in plans or specifications; or (2) decrease or increase the quantity of work to be performed or materials, equipment, or supplies to be furnished. However, this does not mean that a district can redefine the project. Change orders should be authorized by appropriate district officials, including maintenance or district project managers, business officials and also the board of trustees.

In cases where districts can treat significant changes in plans as a separate project and bid or obtain competitive sealed proposals for the additional work, they will avoid the necessity of recontracting the entire project.

11. May a district require a deposit covering the return of architectural plans?

Yes. However, the deposit may not be unreasonable so as to restrict competition.

12. Must interest be paid on excessive retainage amounts for construction contracts?

Yes. Interest must be paid if the retainage is greater than 5%. (Retainage funds are amounts held by the district on construction contracts until services are complete. According to Chapters 2252 and 2253, Government Code, districts are required to place retainage funds in an interest bearing account to be paid to the prime contractor, upon completion of the contract. Retainage is the amount withheld from periodic progress payments made to the contractor while the work is in progress and may not exceed the greater of 10 percent of the amount of the contract. (§2252.032, Government Code; §2253.076, Government Code)

13. Who should be present at the public bid or competitive sealed proposal opening?

It is suggested that at least two employees of the district be present. At least one employee should be directly involved with the procurement process. This action may be delegated to the district's representative, including a construction manager agent or construction manager at-risk.

14. What are acceptable factors for determination of the best value?

Acceptable factors for determination of the best value may include: experience; skill; ability; business judgment; financial capacity; integrity; honesty; possession of the necessary facilities, equipment and/or bonding; previous performance; reputation; promptness; and estimated time of completion (when relevant to purchases of personal property, these factors may be used by districts in determining the best bid). Additionally, Section 44.031, Texas Education Code District purchasing law provides a list of factors that shall be used to determine the best value to the district.

15. If competitive procurement offers are not received, must a district readvertise for competitive procurement offers?

Yes. Texas Attorney General Opinion No. DM-4 which was written in regard to this issue concerning county governments provides guidance that can be applied to situations involving districts. DM-4 requires a county government to readvertise for competitive procurement offers if no competitive procurement offers are received. According to this opinion, a governmental entity must continue to readvertise unless otherwise exempted by statute.

16. How can one investigate the quality of coverage offered by a surety under performance and payment bonds?

It is recommended that the bond be from a surety that is listed in the Texas Department of Insurance [Bond Resources "Insurance Companies That May Offer Surety Bonds"](#). An additional source is [Federal Register - Circular 570](#), which is updated annually. Review the listings to verify that the company is authorized to do business in Texas and is authorized to do business up to the limit of the contract.

If the bond exceeds \$100,000, the surety must hold a certificate of authority from the U.S. Secretary of Treasury or have obtained reinsurance for any liability in excess of \$100,000 according to Insurance Code Chapter 3503.005.

It should be recognized that the mere fact a surety is listed by the Texas Department of Insurance is not a guarantee that the surety can fully perform its bond obligations if called upon to do so. Sureties do fail and leave bond obligations unperformed. If a contractor proffers a bond from a surety about whom a District harbors any misgivings, it is appropriate for the District to make inquiries about the current financial stability of the surety, including asking for proof of sound reinsurance, proof that claims are being met, and current financial information. It may be preferable to relet a project rather than award a contract to a contractor with a weak surety. (§3503 Insurance Code; §2253.022, Government Code; Chapter 53, Property Code)

17. At what threshold must districts require payment and performance bonds?

Payment bonds are required on construction projects costing \$25,000 or more.

Performance bonds are required on construction projects costing \$100,000 or more.

Payment and performance bonds are required on an energy savings performance contract. (TEC 44.901)

However, districts are not prohibited from requiring payment and performance bonds for projects costing below these threshold amounts. Construction contracts over \$100,000 must have bonding from surety companies which are Treasury listed.

Payment and performance bonds are to be returned to the unsuccessful vendors as soon as possible after the contract award.

18. Must a contract award for construction type work be awarded to the lowest responsible bidder, if competitive bidding is used?

A district shall award a competitively bid contract at the bid amount to the bidder offering the best value to the district according to the results of the evaluation of competitive procurement offers, using the evaluation criteria and relative weights. The selection criteria may include the factors listed in Section 44.031(b), TEC. In accordance with Texas Education Code, Section 44.035, 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. (§44.040; 44.035 Texas Education Code)

19. Is a low bidder that is not awarded a bid required to be notified and provided a public hearing?

Section 44.040 - Selecting Contractor For Construction Services Through Competitive Bidding, of the Texas Education Code does not require that the lowest responsible bidder be provided an opportunity for a public hearing if the bid award will be to a bidder who was not the lowest bidder. (§44.040, Texas Education Code)

20. What are legal expenditures involving bond funds?

The bond referendum approved by the voters establishes legal expenditures from the bond proceeds. A district should also consult its bond attorney. Additionally, expenditures should be approved by the purchasing department and board policies.

21. What dollar amount triggers the competitive procurement process in public works projects?

In connection with individual contracts that include labor for construction, maintenance, renovation and repair of a building, the Texas Education Code District purchasing law requirements apply if the individual contract amount is more than \$50,000. If the district purchases supplies and materials for public works projects separately from contracts for labor, competitive procurement requirements apply to purchases of supplies and materials if they are valued at \$50,000 or more, (Section 44.031, TEC). If contracts for public work projects are awarded using the competitive bidding method, then certain sections of Chapter 271, Local Government Code as identified in §40.040 of the Texas Education Code may be applied.

22. Who, in addition to the general contractor, must be covered by workers compensation insurance?

All other persons providing services on the project, DM-300.

23. What forms of workers compensation coverage must be obtained by contractors and subcontractors for construction projects?

Contractors must obtain a certificate of coverage which includes a certificate of insurance, a certificate of authority to self-insure issued by the Workers' Compensation Commission, or a coverage agreement, TWCC-81, TWCC-82, TWCC-83, or TWCC-84 (28 TAC 110.110 (c)(7)). Note sole proprietorships with no employees are exempted.

24. What document must districts have concerning workers compensation?

The district must have certificate of coverage prior to issuing a notice to proceed with construction. Note sole proprietorships with no employees are exempted.

25. What dollar level of project triggers requirement of workers compensation coverage?

All contractors/subcontractors working on building or construction contracts must have workers compensation insurance regardless of the project's dollar amount. (DM-300, Letter Opinion 92-60)

26. What are the penalties for noncompliance with workers compensation laws?

In addition to the district's exposure for monetary claims resulting from injuries, the contractor's failure to comply with workers compensation laws is a breach of contract by the contractor which entitles the governmental entity to declare the

contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the district.

27. Can a district reject a bid based on the amount of subcontractors?

No. There is no limit on the amount of work which can be subcontracted for a project. JM-881.

28. Are districts required to publish prevailing wage rates? Where can the district obtain this information?

Yes. Government Code 2258.022 requires districts to ascertain and specify prevailing wage rates in the competitive procurement offers or in the contract awarded for each type of workmanship or craft needed for the project. It is mandatory for contractors and subcontractors to ensure that prevailing wage rates are paid.

Districts can obtain this information from their regional Department of Labor office or they may conduct their own survey on prevailing wage rates.

29. Does the Texas Education Code District purchasing law apply to the rental of real property?

Yes. All contracts at \$50,000 or more for rental of real property are required to be let under the Texas Education Code purchasing law i.e. request for competitive procurement offers, unless exempted through sole source. Furthermore, real property contracts may be executed through interlocal agreement.

30. Does the Texas Education Code District purchasing law apply to the financing portion of an individual contract that includes construction/real property?

Yes. Market availability can be overcome through a separate contract with a financing institution or the vendor selling the real property being purchased. According to local circumstances, districts may have a separate contract for financing or seek contracts through vendors of the property being purchased. If a separate contract is not obtained from a financial institution, then each contract will stand on its own. For an individual contract valued at over \$50,000 in the aggregate for real property and financing, the district must comply with the Texas Education Code District purchasing law.

31. Does the Texas Education Code District purchasing law apply to the purchase of real property?

Yes. It is the position of the Texas Education Agency that the purchase of real property, such as land and buildings, is subject to requirements of Section 44.031, Texas Education Code. However, the sole source provisions may apply in most situations for reasons relating to market availability of suitable real property.

32. Must a school district comply with the requirements of the Texas Public Property Finance Act when it purchases real property or an improvement to real property with cash?

No. A Texas court of appeals (in *Bandera I. S. D. v. Hamilton*) has held that the Texas Public Property Finance Act does not apply to cash purchases made with moneys from available funds. In other words, a school district using cash to buy real property or an improvement to real property (i.e. a building) need not comply with Local Government Code Chapter 271, Subchapter A. Among other things, that chapter requires a district that is financing a real property acquisition to give the public notice of the proposed acquisition and an opportunity to petition for a referendum on whether the contract to acquire the property should be approved. As a result of the court's holding, a taxpayer cannot prevent the district from purchasing such property for failure to comply with these requirements.

33. Should contractor costs be audited on construction contracts?

While it is unnecessary to audit contractor costs on a competitively procured project (the competition should provide adequate protection against excessive profits to the contractor), it is essential that any cost reimbursement, cost plus a fee, or guaranteed maximum form of contract that might be used as a part of a competitively negotiated or design/build contract arrangement include a full right of the District to audit construction cost.

34. What criteria should be used in selecting from the construction procurement options?

The Texas Education Code offers many construction procurement options: competitive bidding; competitive sealed proposals; requests for proposals; construction manager agent; construction manager at-risk; job order contracts and design/build.

In reviewing financing arrangements for public construction projects, it is the position of the Public Finance Division of the Texas Attorney General that the procurement method used should be designed to produce the best value for the acquisition. Competitive bidding has many attributes for arriving at best value:

The final price is arrived at competitively, and should reflect the market.

There is little room for favoritism between an awarding official and a bidder, since the award goes to the contract that provides the best value.

The use of the system has spawned a construction community willing to invest heavily in estimating departments whose sole aim is to compete against other contractors for the right to become the lowest bidder on public projects.

Although the newly authorized optional methods are not as clearly aimed at arriving at the lowest price, they may result in the best overall value if special circumstances are present, e.g. an urgent time deadline making a negotiated, phased construction process advisable; e.g. a non-standard science facility might be best suited for a design/build approach. Before using a method other than competitive bidding, a District should make a determination that there is a genuine value reason why the competitive bidding process, designed to obtain a competitive price, should not be used for the particular procurement.

35. Is a district permitted to negotiate with more than one offeror? Is a district required to notify an offeror that negotiations are being terminated?

When selecting a contractor for construction services, the district is to negotiate with the best ranked offeror according to the results of the ranking of bids, competitive sealed proposals and/or qualifications. The district is to formally notify an offeror that negotiations will be terminated before initiating negotiations with the next best ranked offeror.

Questions about Construction Manager-At-Risk Contracts

36. Is there a requirement to make public all bids or proposals awarded under a construction manager at-risk contract?

Yes. All bids or proposals are to be made public after the award of the contract or within seven days after the date of final selection of bids or proposals, whichever is later.

37. Will the construction manager-at-risk provide a guaranteed maximum price or fixed contract sum when it responds to the request for competitive sealed proposal?

Generally not. Since the construction manager-at-risk is usually retained during the design phase to work with the architect or engineer in developing the plans and specifications, there generally will be no plans or specifications on which the construction manager-at-risk could fix a price for anything other than the general conditions work and the proposed fee. (Credit provided to the Association General Contractors)

38. After the request for qualifications or competitive sealed proposal are opened and the offerors are ranked, can the school district negotiate with more than one offeror at once?

No. The school district is to begin negotiations with the first ranked offeror and attempt to negotiate a contract satisfactory to both parties. If the school district is unable to negotiate a contract acceptable to both parties, negotiations with the first ranked offeror must be formally terminated in writing at which time the school district may begin negotiations with the next best ranked offeror. (Credit provided to the Association General Contractors)

39. Are construction managers-at-risk required to make all bid or proposals public?

Yes. Districts are required to make all competitive procurement offers public after the contract is awarded or within seven days after the date of final selection of competitive procurement offers, whichever is later.

40. Can the construction manager-at-risk self-perform work other than general conditions work?

Yes, but the construction manager-at-risk must submit a competitive bid or competitive sealed proposal along with any other trade contractor or subcontractor that is solicited to perform the specific item of work pursuant to public advertisement. The construction manager-at-risk's bid will be evaluated with all other offerors for the trade work and the school district will select the contractor that offers the best value to the school district. (Credit provided to the Association General Contractors)

41. When are the payment and performance bonds required by Chapter 2253 of the Texas Government Code required to be obtained by the school district from the construction manager-at-risk?

Payment and performance bonds must be obtained by the school district from the construction manager-at-risk. The bonds are to be delivered in the amount of contract amount or guaranteed maximum price if known at the time a construction manager-at-risk contract is executed. The bonds are to be in the amount of the project budget if the contract amount or guaranteed maximum price have not been determined when the construction manager-at-risk contract is executed. The bonds are to be delivered within 10 days after the date the construction manager at-risk firm executes the contract unless the construction manager at-risk firm furnishes a bid bond or other financial security acceptable to the district to ensure that the construction manager-at-risk firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Questions about Design-Build Contracts

42. Is the design-build firm required to utilize competitive bidding or competitive sealed proposals to award contracts to trade contractors or subcontractors for the various portions of construction work on the project?

The statutorily required procedure is request for qualifications.

43. Is there any limitation on the scope of work that the design-build firm may self-perform?

The design-build firm may self perform all or any portion of the work they so choose. Unlike the construction manager-agent or construction manager-at-risk methods of contracting, there is no statutory limitation upon the scope of work that may be self-performed by the design-build firm. Once again, the absence of a statutory provision limiting the scope of work that may be self-performed by the design-builder does not prevent the school district from including provisions in the design-build contract which address the scope of work that may be self-performed. (Credit provided to the Association General Contractors)

44. When are the payment and performance bonds required by Chapter 2253 of the Texas Government Code required to be obtained by the school district from the design-builder?

Payment and performance bonds must be obtained by the school district from the design-build firm. The bonds are to be delivered in the amount of contract amount or guaranteed maximum price if known at the time a design-build contract is executed. The bonds are to be in the amount of the project budget if the contract amount or guaranteed maximum price have not been determined when the design-build contract is executed. The bonds are to be delivered within 10 days after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the district to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Questions about Job Order Contracts for Facilities Repair

45. May a school district award new construction under the job order contracting method?

The statute authorizes job order contracts for “the minor construction, repair, rehabilitation, or alteration of a facility,” if the work is of a recurring nature but the delivery times are indefinite and indefinite quantities and orders are awarded substantially on the basis of prescribed and prepriced tasks.

46. For what duration may a job order contract be awarded?

Section 44.041(h) of the Education Code states that the base term of a job order contract is for the period and any renewal option that the district sets forth in the request for proposals. If the district fails to advertise that term, the base term may not exceed two years and is not renewable without further advertisement and solicitation of proposals.

47. May a school district adjust rates based on a pre-agreed formula or by negotiation after the initial rates expire?

The statute does not specifically address negotiation after the initial rates expire. However, Section 44.041(b) of the Texas Education Code states that the district may establish contractual unit prices for a job order contract by: (1) specifying one or more published construction unit price books and the applicable divisions or line items; or (2) providing a list of work items and requiring the offerors to bid or propose one or more coefficients or multipliers to be applied to the price book or work items as the price proposal. Additionally, Section 44.041(h), Texas Education Code, states that the job order contract may contain any renewal option, which may include negotiation of initial rates, in accordance with the terms and conditions that the district sets forth in the request for proposals.

48. May the school district require bonds from contractors even if the job orders are under the monetary thresholds where state law requires payment and/or performance bonds?

There is a 1986 Texas Attorney General Opinion (Opinion No. JM-505) which dealt with the predecessor statute to the current statute that requires contractors to post bonds. This opinion concluded that the governmental authority could not require performance and payment bonds on public works contracts where the amount of the contract was under the statutorily mandated threshold where performance and payment bonds are required. Under Section 2253.021 of the Texas Government Code, which is applicable to school districts, a performance bond is required if the contract is in excess of \$100,000.00 and a payment bond is required if the contract is in excess of \$25,000.00. Although Attorney General Opinions do not have binding effect as law, the Attorney General Opinion mentioned above would suggest that a school district may not be entitled to require bonds on job orders that are less than the amounts at which the Government Code requires bonds. (Credit provided to the Association General Contractors)

49. Do the requirements for performance bonds, payment bonds and prevailing wage rate apply to situations covered by Section 44.031(h) of the Texas Education Code involving emergency repairs or construction of facilities?

Section 44.031(h) only exempts emergency repair or construction of facilities from the nine methods of competitive procurement as stated in Section 44.031(a).

Performance bonds are still required for construction projects over \$100,000 and payment bonds are still required for construction projects over \$25,000. Prevailing wage rates still apply as per Government Code §2258.

Competitive Procurement Categories

The following is a partial list of related categories to be used as a guide to determine requirements under the Texas Education Code District purchasing law. Districts shall add to this list as aggregate dollars of contracts exceed the threshold amount. This list is noninclusive. Note: Items in the supplies and materials sub-categories or within each equipment/nonconsumable category listed below must be considered as an aggregate purchase if available from a single vendor; however, contracts may be split into seasonal purchases.

Category/Subcategories

Athletics

- Athletic/Trainer Supplies
- Various Sports and Supplies (i.e., Baseball, Basketball, Cross Country, Football, Golf, Soccer, Swim, Tennis, Track, Volleyball)
- Uniforms
- Equipment/Nonconsumables

Custodial

- Chemicals/Janitorial Supplies/Paper Products/Can Liners
- Contracted Services
- Equipment/Nonconsumables

Food Service

- Bread
- Dry Goods, Canned and Frozen Foods
- Fresh Meat and Poultry
- Milk

- Produce
- Non-Food Supplies
- Equipment/Nonconsumables

Instructional/General - Capital Equipment

- Art Equipment
- Audio Visual Equipment
- Band Instruments
- Computers/Hardware and Software
- Copy Machines
- Instructional Furniture
- Library Furniture
- Office Equipment
- Office Furniture
- Playground Equipment
- Science Equipment
- Telephone Equipment
- Instructional/General - Supplies
- Art Supplies
- Dictionaries
- Duplicating Paper

- Industrial Gases
- Instructional Teaching Aids/Supplies
- Library Books/Periodicals/Filmstrips/Videos/Cassettes
- Maps and Globes
- Nursing Supplies
- Office Supplies
- Physical Education Supplies
- Science Supplies

Maintenance

- Electrical Supplies/Parts
- Freon
- Ground Maintenance Supplies (Fertilizer, Mulch, etc.)
- HVAC Supplies/Parts
- Lumber and Related Building Materials
- Paint
- Plumbing Supplies/Parts
- Roofing Supplies
- Equipment/Nonconsumables

Transportation

- Automotive Parts and Supplies
- Lubricants/Oils
- Fuel

- Buses (Lease/Rent/Lease Purchase/Buy)
- Capital Equipment
- Storage Tanks

Vehicles, Trucks and Vans

Bank Depository

Printed Forms

Nonprofessional Services

- Photocopy services, personal computer services and other equipment service contracts

Real Property

- Land
- Buildings

Insurance

Competitive Bidding

Contracts \$50,000 or More

TEC §44.031(g) - Specifies requirements for advertising for competitive bids.

Bid Document Elements

This section includes a brief explanation of each element contained in a bid document. The following items are necessary in the preparation of a bid document and in requesting bids.

Note: It is important to note that each element must be appropriately structured to suit the proposed items or services bid. Districts are encouraged to obtain example documents from other districts and to identify acceptable ways to customize bid documents.

Newspaper Advertisement

Notice to Bidders

Standard Terms and Conditions

Special Terms and Conditions

Evaluative Criteria and Relative Weights *are mandatory for construction services*

Specifications

- Scope and Intent
- Definitions and Applicable Documents
- Requirements
- Quality Assurance

Bid Acknowledgment Form/Response Sheet

Felony Conviction Notice

Newspaper Advertisement

Statutory citations covering newspaper advertisements and bid specifications for bids and proposals, such as personal property, services, and real property, are found in the Texas Education Code §44.031(g).

Sample Wording of Competitive Sealed Bid Advertisement:

"Notice to Bidders

Sealed bids for furniture, Bid No. 91-09-1713, addressed to Mr. Purchasing Agent, Local Independent School District Distribution Center, 1234 Happy Street, Happy, Texas 77064-9990 or PO Box 692003, Happy, TX 77999-2003 will be received at the above address until 2 p.m., Thursday, October 10, 199X, at which time they will be publicly opened and read. Bid forms and specification may be obtained by calling (555) 555-5555."

Notice to Bidders

The introductory section of a bid document commonly referred to as "Notice to Bidder" or "Letter to Bidder" indicates pertinent facts about the bid. The notice should include the following information:

- Bid Name/Number
- Opening Date/Time
- Location of Bid Opening
- Mailing Address for Bid Response

Public Works Contracts

The applicability of requirements of Chapter 271, Subchapter B, Local Government Code, Competitive Bidding On Certain Public Works Contracts is described in Section 44.040, Texas Education Code. It states that unless otherwise specifically provided subsection 44.040(b), Subchapter B, Chapter 271, Local Government Code, does not apply to a competitive bidding process under Subchapter B, Chapter 44, Texas Education Code. It also states that only Sections 271.026, 271.027(a), and 271.0275, Local Government Code, apply to the district's competitive bidding process.

Standard Terms and Conditions

Terms and conditions are requirements that are binding upon the vendor awarded the bid and they communicate the district's expectations in regard to the bidder's performance in connection with the district's purchase.

The following is a compilation of standard terms and conditions that may be used in bid documents. It is suggested each district verify with their attorney for appropriate language acceptable to each situation.

- I. **Seller to Package Goods:** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently packed as follows: (a) Seller's name and address; (b) Consignee's name, address and purchase order or purchase release number and the supply agreement number if applicable; (c) Container number and total number of containers, e.g. box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
- II. **Shipment Under Reservation Prohibited:** Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
- III. **Title and Risk of Loss:** The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery.
- IV. **Delivery Terms and Transportation Charges:** F.O.B. Destination Freight Prepaid unless terms are specified otherwise in bid: Buyer agrees to reimburse Seller for transportation costs in the amount specified in Seller's bid, or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs, provided Buyer shall have the right to designate what method of transportation shall be used to ship the goods.
- V. **No Placement of Defective Tender:** Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender provided, where the time for performance has not yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.
- VI. **Place of Delivery:** The place of delivery shall be that set forth on the purchase order. Any change thereto shall be effected by modification as provided for in

Clause 20, "Modifications," hereof. The terms of this agreement are "no arrival, no sale."

VII. Invoices and Payments:

- A. Seller shall submit separate invoices, in duplicate, on each purchase order after each delivery. Invoices shall indicate the purchase order number, shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight weight bill when applicable, should be attached to the invoice. Mail to: Sample Independent School District, Attn.: Finance Dept., PO Box 10000, Sample City, Texas 7XXXX. Payment shall not be due until the above instruments are submitted after delivery. Suppliers should keep the Finance Department advised of any changes in your remittance addresses.
- B. Do not include Federal Excise, State or City Sales Tax. School District shall furnish tax exemption certificate, if required.

VIII. Gratuities: The Buyer may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Seller, or any agent, or representative of the Seller, to any officer or employee of the School District with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making or any determinations with respect to the performing of such a contract. In the event this contract is canceled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.

IX. Special Tools and Test Equipment: If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by the Seller as such.

X. Warranty Price:

- A. The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by

others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense.

- B. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty, the Buyer shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- XI. Warranty Products: Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the bid invitation and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.
- XII. Safety Warranty: Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act (OSHA) of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by Buyer will be at Seller's expense.
- XIII. No Warranty By Buyer Against Infringements: As part of this contract for sale, Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall Buyer be liable to Seller for indemnification in the event that Seller is sued on the grounds of infringement or the like. If Seller is of the opinion that an infringement or the like will result, the Seller will notify Buyer to this effect in writing within two weeks after the signing of this agreement. If Buyer does not receive notice and is subsequently held liable for the infringement or the like, Seller will hold Buyer harmless. If Seller in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that Buyer will pay Seller the reasonable cost of his search as to infringements.
- XIV. Right of Inspection: Buyer shall have the right to inspect the goods at delivery before accepting them.

- XV. Cancellation: Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller or if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies that Buyer may have in law or equity.
- XVI. Termination: The Buyer in accordance with this provision may terminate performance of work under this order in whole or in part. Termination of work there under shall be effected by the delivery to the Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of rights of Buyer set forth in Clause 15, herein.
- XVII. Force Majeure: If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.
- The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority; insurrections; riots; epidemics; landslides; lighting; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.
- XVIII. Assignment Delegation: No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

- XIX. Waiver: No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.
- XX. Modifications: This contract can be modified or rescinded only by a writing signed by both parties to the contract or their duly authorized agents.
- XXI. Interpretation Parole Evidence: This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.
- XXII. Applicable Law: The Uniform Commercial Code shall govern this agreement. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.
- XXIII. Advertising: Seller shall not advertise or publish, without Buyer's prior consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.
- XXIV. Right to Assurance: Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he/she may demand that the other party give written assurance of his/her intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
- XXV. Venue: Both parties agree that venue for any litigation arising from this contract shall lie in Sample County, Texas.
- XXVI. Prohibition Against Personal Interest in Contracts: Any board member which has any substantial interest, either direct or indirect, in any business entity seeking to contract with the district, shall, before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any participation in the matter. This is not required if the vote or decision will not have any special effect on the entity other than its effect on the public. However, if a majority of the governing body are also required to file, and do file similar affidavits, then the member is not required to abstain from further

participation. Vernon's Texas Codes Annotated, Local Government Code Chapter 171.

Evaluative Criteria and Relative Weights (*mandatory for construction services*)

The evaluative criteria and relative weights are as follows:

1. Price (x%);
2. Reputation of the vendor and of the vendor's goods or services (x%);
3. Quality of the vendor's goods or services (x%);
4. Extent to which the goods or services meet the district's needs (x%);
5. The vendor's past relationship with the district (x%);
6. The impact on the ability of the district to comply with laws and rules relating to historically underutilized business (x%);
7. The total long-term cost to the district to acquire the vendor's goods or services (x%); and
8. Other relevant factors specifically listed in the request for proposals (x%).

Special Terms and Conditions

The following compilation of special terms and conditions may be used in bid documents. These terms and conditions should be included only when applicable to the commodity or service bidding.

I. Term of Contract

The bid document should specify the contract period if contract is for more than a onetime purchase of quantity indicated in specifications.

Example: The Sample District accepts bids on maintenance chemicals for a one year period beginning January 15, 19XX and ending January 14, 19XX.

II. Extension Clause

Request may be made on certain contracts for an extension of the existing contract.

Example: This contract may be renewed for two (2) additional years if the vendor and Sample District mutually agree and no increases in costs are incurred except for the growth of the district. (Add nonappropriation clause language §271.903 Local Government Code.)

III. Special Delivery Terms

As staggered deliveries are required or various delivery locations within the District are required, the terms should be specified out for the vendor.

Example 1: All deliveries shall be freight prepaid FOB destination with bid prices reflecting freight and delivery charges to two locations within Sample District.

Example 2: Due to limited storage facilities, delivery is requested in two (2) shipments: 2,000 cases delivered September 1, 20XX and 2,000 cases delivered December 1, 20XX.

IV. Remedies for Non-Performance

If, at any time, the contractor fails to fulfill or abide by the terms, conditions, or specifications of the contract, Sample Independent School District reserves the right to:

Purchase on the open market and charge the contractor the difference between contract and actual purchase price (cover), or

- A. Deduct such charges from existing invoice totals due at the time, or
- B. Cancel the contract within thirty (30) days written notification of intent

V. Right To Investigate Capacity

- A. Financial Information
- B. Business Records (Federally Funded Contracts)

VI. Bidder Qualification

Bidders may be required to prove their qualifications concerning, including but not limited to, the following criteria:

- A. Financial capabilities

- B. Bonding status
- C. Contractual history (references)
- D. Ability to fulfill and abide by the terms and specifications
- E. Quality and stability of product and sources

VII. Insurance Requirements (Example)

Insurance Required - The contractor shall provide the following insurance certification in the amounts shown and under the conditions noted before any authorization will be given to commence delivery or installation:

- A. General
 - 1. No work will be commenced until all requirements of this section have been approved by the District in writing. The District will be furnished a certificate of insurance acceptable, prior to the commencement of any work.
 - 2. The insurance shall contain a provision that at least thirty (30) days prior written notice shall be given to the District in the event of cancellation, material change or non-renewal.
 - 3. Insurance shall be underwritten by a company rated not less than B+VII in the Best's latest published guide.
 - 4. There shall be a hold harmless agreement in which the contractor assumes liability on the contract and holds the School District harmless.
 - 5. The contractor shall purchase and maintain in force the following kinds of insurance and bonds for operations under construction contracts and as specified in each section.
 - 6. Certificate of insurance should contain a waiver of subrogation as well as district or an additional insured party.
- B. Worker's Compensation requirements
 - A. Appendix A, page 14.6.

- C. Casualty Insurance
These dollar amounts will carry according to district evaluated exposure.
- D. Workers' Compensation as statutory provisions require.
- E. Commercial General Insurance (Occurrence basis only)
 - 1. Bodily Injury and Property Damage Each Occurrence
\$300,000
 - 2. General Aggregate \$600,000
 - 3. Products/Completed
 - 4. Operations Aggregate \$600,000
 - 5. Personal and Advertising
 - 6. Injury Occurrence \$300,000
 - 7. Fire Damage, Legal
 - 8. Liability Any One Fire \$50,000
 - 9. Medical Expenses Any One Person \$5,000
- F. The District shall be named as an additional insured by endorsement on the contractor's policy as to the subject job.
- G. Business (Commercial) Automobile Liability Insurance coverage for all owned, non-owned and hired vehicles:
 - 1. Bodily Injury Each Person \$100,000
 - 2. Each Accident \$300,000
 - 3. Property Damage Each Occurrence \$100,000
 - 4. No deletions/exclusions from standard coverage form allowed without written consent of Sample Independent School District.
- H. Umbrella Liability Insurance (Excess) - \$1,000,000.00
The owner shall be named as an additional insured on the contractor's policy as to the subject job.

- I. This policy shall provide coverage over the Workers' Compensation, Commercial General Liability and Business Automobile Liability.
- VIII. Liquidated damages
There may be a clause in liquidated damages where the parties agree at the outset to a time for completion, and to the imposition of liquidated damages for delay in the event the contractor is late and is not entitled to an extension of time.
- IX. Builder's risk insurance for major construction work
- X. Material Safety Data Sheets (MSDS)
The Sample District requires product verification in the form of MSDS reports submitted at the time of the bid opening and on any product offered by a vendor as an alternate to the Specifications.

Sample Specification Format

Specification for good/service

1.0 Scope and Intent

- 1.1 Scope: Explain title and summarize the applicable sections to the specification.
- 1.2 Intent: State use of the item and using department. The intent section also defines the classification of the item.

2.0 Definitions and Applicable Documents

- 2.1 Definitions: Define technical and critical terms where necessary.
- 2.2 Applicable Documents: List and reference all documents referred to in the specification, including title, edition or issue number, year of publication and publisher or originating organization. If necessary, state where the document(s) can be located.

3.0 Requirements

- 3.1 Performance Requirements and Characteristics: List all functional needs and performance requirements. Include work related needs that the time must fulfill.

3.2 Design Features and Requirements: List all design requirements, including materials, manufacturing standards and directions, dimensions, physical characteristics, and workmanship standards.

3.3 Other Requirements: List any requirements not covered in the first two sections, such as warranty, installations and training.

4.0 Quality Assurance

4.1 Test Requirements: List any testing requirements including sampling, inspection, laboratory certifications and other quality control requirements.

4.2 Remedies and Penalties: List all remedies available to the government for noncompliance with specifications. Detail penalties on the provider for failure to perform or comply.

Bid Acknowledgment Form

The acknowledgment form is the signed contract of the bid document. It is advisable to include a non-collusion statement in the acknowledgment page.

An example of a non-collusion statement is as follows:

"The undersigned affirms that they are duly authorized to execute this contract, that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other Bidder, and that the contents of this bid as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this bid."

Vendor _____

Address _____

Phone _____

Fax Number _____

Bidder (Signature) _____

Bidder (Print Name) _____

Position With Company_____

Signature of Company Official Authorizing This Bid_____

Company Official (Print Name)_____

Official Position_____

Felony Conviction Notice

Statutory citation covering notification of criminal history of contractor is found in the Texas Education Code §44.034. Following is an example of a felony conviction notice:

Felony Conviction Notification

Section 44.034, Texas Education Code, Notification of Criminal History, Subsection (a), 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

I, the undersigned agent for the firm named below, certify that the information concerning notification of felony convictions has been reviewed by me and the following information furnished is true to the best of my knowledge.

Vendor’s Name: _____

Authorized Company Official’s Name (Printed):

- A. My firm is a publicly-held corporation; therefore, this reporting requirement is not applicable.

Signature of Company Official:

- B. My firm is not owned nor operated by anyone who has been convicted of a felony:

Signature of Company Official:

- C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony:

Name of Felon(s): _____

Details of Conviction(s):

Signature of Company Official:

Example District Board Policy for Protests

Right to Protest

Any bidder/offeror, who is aggrieved in connection with a procurement, may protest to the Chief Financial Officer or his designee. The protest shall be submitted in writing within fifteen calendar days after the facts or occurrences giving rise thereto.

Procurements after Protest

In the event of a timely protest, the purchasing office shall not proceed further with the procurement unless the Chief Financial Officer or his designee makes a determination that the award of the contract is necessary to protect substantial interests of the district.

Authority to Resolve Protests

The Chief Financial Officer or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved bidder/offeror concerning a

procurement.

Protest Determination

The Chief Financial Officer or his designee shall promptly issue a determination relating to the protest. The determination shall:

state the reasons for the action taken; and

inform the protester of the right to appeal the determination to the Board of Trustees.

Notice of Determination

A copy of the determination issued shall immediately be mailed to the protester and other bidders or offerors involved in the procurement.

Sample Insurance Agent Affidavit

INSURANCE AGENT AFFIDAVIT

To be completed by appropriate Insurance Agent(s)

and submitted by Bidder as a Bid attachment.

(Name of Bidder)

I, the undersigned agent, certify that the insurance requirements contained in the Request for Bids and as listed below, have been reviewed by me with the above identified Bidder. If the named Bidder is awarded a contract by the _____ District ("the District"), I affirm that I will be able, within ten (10) days after Bidder is notified of such award, to furnish a valid Certificate of Insurance and/or applicable bonds to the District meeting all of the requirements contained in the Request for Bids for the coverage listed below: (Check all that apply):

(a) Commercial General Liability

1. Bodily Injury: _____

2. Property Damage _____

(b) Owner's/Contractor's Protective Liability _____

(c) Business Vehicle Liability

1. Bodily Injury: _____

2. Property Damage: _____

(d) Commercial Umbrella Liability _____

(e) Worker's Compensation _____
and Employers Liability

(f) Payment Bond _____

(g) Performance Bond _____

(h) Builders Risk _____

Name of Insurance Agency: _____

Address of Agency: _____ City/State/ZIP: _____

Telephone Number: _____ Facsimile Number: _____

Agent (Signature): _____ Date: _____

Agent (Print or Type): _____

SUBSCRIBED AND SWORN to before me by the above named on this
the ____ day of _____, _____.

Notary Public in and for the State of _____

My Commission expires: _____

NOTE TO AGENT:

IF THE ABOVE TIME REQUIREMENT IS NOT MET, THE DISTRICT RESERVES THE RIGHT TO
DECLARE THIS BIDDER NON-RESPONSIVE. IF YOU HAVE QUESTIONS CONCERNING THESE
REQUIREMENTS, PLEASE CALL THE DISTRICT'S PURCHASING DEPARTMENT
AT (____) ____-____.

TELEPHONE NUMBER _____

FAX NUMBER _____

BUSINESS CLASSIFICATION

SOLE PROPRIETORSHIP PARTNERSHIP CORPORATION

YEAR ESTABLISHED/INCORPORATED _____

TYPE OF BUSINESS (CHECK ALL THAT APPLY)

RETAIL WHOLESALE SERVICE CONSTRUCTION MANUFACTURING
 FRANCHISE BROKER DISTRIBUTOR

FEDERAL TAX PAYER I.D. NUMBER _____

ANNUAL GROSS SALES FOR LAST CALENDAR YEAR _____

TOTAL NUMBER OF FULL-TIME EMPLOYEES _____

MAJOR CUSTOMER

REFERENCES	CITY/STATE	CONTACT NAME & TITLE	TELEPHONE NUMBER	ANNUAL SALES AMOUNT
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(WHO CAN ADDRESS YOUR PERFORMANCE)

NAME OF PARENT COMPANY_____

STREET ADDRESS OR P. O. BOX_____

CITY/STATE/ZIP_____

MAJOR PRODUCTS OR SERVICES PROVIDED. (Product line sheets may be attached)

() YES() NO TO THE BEST OF YOUR KNOWLEDGE, ARE ANY FULL OR PART TIME EMPLOYEES, OWNERS, OFFICERS, DIRECTORS, STOCKHOLDERS, SUBCONTRACTORS, OR MEMBERS OF THEIR IMMEDIATE FAMILY, OF THIS COMPANY MEMBERS OF THE BOARD OF TRUSTEES OR AN EMPLOYEE OF THE DISTRICT. IF YES, ATTACH DETAILS.

() YES() NO COMPANY HAS WORKERS COMPENSATION, PERSONAL INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE.

() YES() NO HAVE THE OWNER(S) OR OPERATOR(S) OF THE BUSINESS ENTITY BEEN CONVICTED OF, OR CURRENTLY CHARGED WITH, A FELONY? IF YES, ATTACH A GENERAL DESCRIPTION OF THE CONDUCT RESULTING IN THE CHARGE OR CONVICTION. THIS DOES NOT APPLY TO A PUBLICLY HELD CORPORATION.

() YES() NO UPON REQUEST WILL YOU PROVIDE INFORMATION THAT SHOWS YOUR FINANCIAL AND OTHER RESOURCE CAPABILITIES?

() YES() NO IS COMPANY CERTIFIED AS BEING A MINORITY OR WOMAN OWNED BUSINESS? If yes, ATTACH A COPY OF YOUR CERTIFICATION

TO THE BEST OF MY KNOWLEDGE, I CERTIFY THAT THE INFORMATION ON THIS FORM IS TRUE AND ACCURATE.

SIGNATURE_____

PRINTED NAME_____

OFFICER TITLE_____DATE_____

NOTICE: The District is committed to equitable and competitive access to companies that can fulfill our requirements for products and services used in our business activities. However, submittal of this form to the District is not a guarantee that your company will be selected to participate in our business activities. Additional information may be required if your company is selected to provide goods or services.

(REV 08-14-99)

Proposals

The 74th legislature clearly contemplated that a competitive sealed proposal (RFCSP) and a request for proposal (RFP) to be two distinct purchasing methods, but did not define either method in the statute (Section 44.031). There is some uncertainty about what practical differences exist between these two methods. A RFP is the mechanism for entering the RFCSP process. A RFP is also thought, by some, to be a separate, less-structured purchasing method. Possible differences between an RFP and a RFCSP are (1) that 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 RFCSP solicitation and (2) a RFP may be used where a district's requirements are less narrowly defined.

The Request for Proposals and Competitive Sealed Proposals

- 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

Below is an example of a RFCSP process. It may also be used for a RFP, with appropriate modifications made to accommodate the less structured requirements of that method.

Competitive Sealed Proposals

The use of a RFCSP shall be determined by a responsible purchasing authority who determines that the use of competitive sealed bidding is either not practicable or not advantageous to the district (for construction services use of this method must be determined by the board of trustees before the advertisement for proposals).

Terms and conditions are identical as those for competitive bidding except any reference to bids or proposers should be changed or interpreted as offers or offerors. Additionally,

anything addressing the finality of the offer needs to be disregarded because proposals are negotiable.

*If RFCSP are used for a design/build contract, refer to the design/build section of this handbook.

Components of the Request for Proposals

Notice:	Identical to Competitive Bidding.
Statement of Work	This includes a description of the item or service to be purchased, and is in lieu of the proposal form and specifications of the competitive proposals
Contract Clauses:	Can be substantially identical to the competitive bids, but maybe subject to negotiations.

Evaluative Criteria and Relative Weights (*mandatory for construction services*):

The evaluative criteria and relative weights are as follows:

1. Price (x%);
2. Reputation of the vendor and of the vendor's goods or services (x%);
3. Quality of the vendor's goods or services (x%);
4. Extent to which the goods or services meet the district's needs (x%);
5. The vendor's past relationship with the district (x%);
6. The impact on the ability of the district to comply with laws and rules relating to historically underutilized business (x%);
7. The total long-term cost to the district to acquire the vendor's goods or services (x%); and
8. Other relevant factors specifically listed in the request for proposals (x%).

Negotiation

Negotiation is the most difficult part of the Request for Proposal process, and the most difficult to control. From the beginning of the process through contract award, it must be made clear to vendors and using departments/campuses that designated person(s) may do the negotiation for the district.

Negotiation is subject to the same guidelines as any purchasing action: impartiality and equal opportunity to compete.

As in any purchasing action, record keeping is vital, and accurate records of conversations must be kept in order to prove fairness throughout the negotiating process.

Special requirements apply in connection with negotiating a contract for construction services. Effective September 1, 1999, in connection with any contract for construction services for which request for bids, proposals, or qualifications are published or distributed on or after that date, it is important to note offerors must be notified in writing when negotiations are terminated in order to initiate negotiations with the next best ranked offeror.

Proposal Document Elements

This section includes a brief explanation of each element contained in a proposal document. The following items are necessary in the preparation of a request for proposal.

Note: It is important to note that each element must be appropriately structured to suit the proposed items or services and to identify acceptable ways to customize request for proposal documents. Districts are encouraged to obtain example documents from other districts.

Newspaper Advertisement

Notice to Proposers

Standard Terms and Conditions

Special Terms and Conditions

Scope of Work - general in nature

Scope and Intent

Definitions and Applicable Documents

Requirements - tend to be more open ended than competitive bid

Quality Assurance

Acknowledgment Form/Response Sheet

Felony Conviction Notice

Newspaper Advertisement

Refer to Competitive Bidding Chapter preceding

Sample Wording of RFP and RFCSP Advertisement:

Refer to Competitive Bidding Chapter preceding

Notice to Proposers

Refer to Competitive Bidding Chapter preceding

Public Works Contracts

Refer to Competitive Bidding Chapter preceding

Standard Terms and Conditions

Refer to Competitive Bidding Chapter preceding

Evaluative Criteria and Relative Weights

Refer to Competitive Bidding Chapter preceding

Special Terms and Conditions

Refer to Competitive Bidding Chapter preceding

Sample Specification Format

Refer to Competitive Bidding Chapter preceding

Acknowledgment form/response sheet

Refer to Competitive Bidding Chapter preceding

Felony Conviction Notice

Refer to Competitive Bidding Chapter preceding

Example Request for Proposal

Chapter 7 Example Request for Proposal

SOLICITATION, OFFER, AND AWARD

1. CONTRACT #	2. SOLICITATION NO. Student Athl. Ins. RFP 95-042	3. TYPE OF SOLICITATION Sealed Bid (IFB) X Negotiated (RFP)	4. DATE ISSUED: Jun 19, 1995	5. REQ. #
6. ISSUED BY: EDGEWOOD I. S. D.		7. ADDRESS SOLICITATION RESPONSE TO: DEPARTMENT OF PURCHASING EDGEWOOD INDEPENDENT SCHOOL DISTRICT 5358 W. COMMERCE STREET SAN ANTONIO, TEXAS 78237		

NOTE: In Invitations For Bid, "offer" and "offeror" mean "bid" and "bidder."

SOLICITATION

8. Sealed offers in original and one copy for furnishing the supplies and/or services in the bid form will be received at the place specified in Item 7 until 11:00 a.m. local time,

July 3, 1995

CAUTION: All offers are subject to all terms contained in this solicitation.

9. For information call: a. Name: Ed Richter b. Telephone (No collect calls): (210) 433-2361

OFFER (Must be fully completed by offeror)

10. In compliance with the above, the offeror agrees, if this offer is accepted within 60 calendar days from date of receipt of offers specified above, to furnish any or all items upon which prices are offered and accepted at the price set opposite each item delivered at the designated point(s) specified in the solicitation.
11. DISCOUNT FOR PROMPT PAYMENT: Net 30 days unless a discount is offered. & days.

12. ACKNOWLEDGEMENT OF AMENDMENTS	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
The offeror acknowledges receipt of AMENDMENTS to the SOLICITATION and related documents numbered and dated				

13. Name and Address of Offeror	14. Name and Title of Person Authorized Sign Offer:
Company Name: _____	Print Name: _____
Address: _____	Title: _____
City & State: _____ Zip _____	Signature: _____
Telephone No: _____	Date signed: _____
Fax No: _____	

ACCEPTANCE (To be completed by the District)

15. ACCEPTED AS TO ITEMS NUMBERED:	16. AMOUNT:	17. ACCOUNTING AND APPROPRIATION:
		18. TERM OF THE CONTRACT: Aug 13, 1995 thru Aug 13, 1996
19. PAYMENT WILL BE MADE BY ACCOUNTS PAYABLE: Submit invoices in three (3) copies.		5358 W. COMMERCE STREET San Antonio, TX 78237
20. For the Edgewood I.S.D.: Albert E. Richter, CPPB Purchasing Agent	21. Signature of Purchasing Agent:	22. Date:

IMPORTANT: Award will be made on this form or by other authorized official written notice.

Table of Contents

Section A	Proposal Form
Section B	Scope of Work
Section C	Contract Clauses
Section D	Representations and Certifications
Section E	Instructions for Submission
Section F	Evaluation Factors for Award

Example Proposal Form - RFP

SECTION A

RFP NO.: 95-042PROPOSAL FORMRFPDATE: 07-03-95

The Edgewood Independent School District is soliciting sealed proposals for its Student Athletic, Student Voluntary and Student Catastrophic Insurance requirements for the 95/96 school year. Proposals will be received until the time and date indicated on the Solicitation, Offer and Award page. Offers will be opened and evaluated by a committee consisting of District employees and consultants.

Item

<u>No.</u>	<u>Description</u>	<u>Annual Premium</u>
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1.	Student Athletic Insurance, in accordance	
----	---	--

with the coverages indicated.

	\$_____ /	\$_____
--	-----------	---------

2.	Student Voluntary Insurance.	
----	------------------------------	--

	\$_____ /	\$_____
--	-----------	---------

3.	Student Catastrophic Insurance, in accordance	
----	---	--

with the coverages indicated.

\$_____/ \$_____

NOTE: The District is offered the option of extending the term of the contract for one additional year at the same amount in the proposal.

Yes () No ()

The contract from this solicitation will be awarded to a single contractor, "All or None"

Example Scope of Work - RFP

Section B

Scope of Work

This Is an Excess Plan.

Offeror must have at least an AM Best rating of A.

Student Athletic Insurance will be offered in accordance with the coverages indicated on Page 4a.

Promptness of claims payment is important to the district, and will be one item addressed in reference checks. The district defines prompt payment as payment within three weeks of receipt of all required claims documentation.

The vendors' standard plan for Student Voluntary Insurance will be included.

Student Catastrophic Insurance will be offered in accordance with the coverages indicated on Page 4b.

A history of premium versus claims experience is provided on Page 4c.

Sample contracts will be provided with the offer.

A list of references for whom the offeror is providing similar services will be provided with the offer. A minimum of five references, preferably school districts in the local area, will be provided. References will include the following:

Entity Name	Address	Phone Number	Primary Contact
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Sample Contract Clause - RFP

Section C

Contract Clauses

1. Type and Term of Contract

This is a fixed price, service contract under which the District shall order all of its requirements for the supplies and services described in Section A from the successful proposer for the duration of the contract. The term of this contract shall be for one year, with the term commencing upon award of the contract.

2. Option to Extend

To the extent provided for in the contract, the District, at its sole option, may extend the initial term of this contract for one (1) additional year by giving the Contractor written notice no later than thirty (30) days prior to the expiration of the current term. If the option to renew is exercised, the contract will continue under the same terms and conditions set forth herein. The total duration of this contract, including the exercise of any options under this clause, shall not exceed two years.

3. Invoices & Payments

- a. The Contractor shall submit invoices, in triplicate, on each order after each delivery. Invoices covering more than one purchase order will not be accepted.
- b. Invoices shall be itemized and transportation charges, if allowed by the contract, shall be listed separately.
- c. Invoices shall reflect the Contract Number and the Purchase Order Number.
- d. Taxes must be shown separately on the invoices and excluded from amount due. Do not include federal or state taxes. The District shall furnish tax exemption certificate if requested.
- e. Discounts will be taken from the date of receipt of goods or receipt of invoice, whichever is later. As pertains to this contract, date of payment will be considered the date payment is mailed. If no discount is offered or accepted, payment terms will be net 30 days.

- f. The District's obligation is payable only and solely from funds available for the purpose of this purchase. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to the Contractor by the District.
- g. A copy of the bill of lading and the freight waybill when applicable shall be attached to the invoice.
- h. Payment shall not be due until the above instruments are submitted after delivery and acceptance.
- i. Mail invoice to Accounts Payable Department, Edgewood Independent School District, 5358 W. Commerce Street, San Antonio, Texas 78237.
- j. Suppliers should keep the Accounts Payable Department advised of any changes in their remittance addresses.
- k. If the contractor is unable to deliver in the manner specified in the contract, the District reserves the right to purchase the same or like goods on the open market and charge the difference to the contractor.

4. Contractual Relationship

Nothing herein shall be construed as creating the relationship of employer or employee between the District and the Contractor or between the District and the Contractor's employees. The District shall not be subject to any obligations or liabilities of the Contractor or his employees, incurred in the performance of the contract unless otherwise herein authorized. The Contractor is an independent Contractor and nothing contained herein shall constitute or designate the Contractor or any of his employees as employees of the District. Neither the Contractor nor his employees shall be entitled to any of the benefits established for District employees, nor be covered by the District's Workers' Compensation Program.

5. Gratuities

The District may, by written notice to the Contractor, cancel this contract without liability to Contractor if it is determined by the District that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Edgewood Independent School District with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event this contract is canceled by the District pursuant to this provision, the District shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

15. Advertising

Contractor shall not advertise or publish, without the District's prior consent, the fact that the District has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

17. Venue

Both parties agree that venue for any litigation arising from this contract shall lie in San Antonio, Bexar County, Texas.

28. No Warranty by the District Against Infringements

As part of this contract for sale Contractor agrees to ascertain whether goods manufactured in accordance with the specifications attached to this contract will give rise to the rightful claim of any third person by way of infringement or the like. The District makes no warranty that the production of goods according to the specification will not give rise to such a claim and in no event shall the District be liable to the Contractor for indemnification in the event that Contractor is sued on the grounds of infringement or the like. If Contractor is of the opinion that an infringement or the like will result, he will notify the District to this effect in writing within two weeks after the signing of this contract. If the District does not receive notice and is subsequently held liable for the infringement or the like, the Contractor will save the District harmless (if the Contractor in good faith ascertains that production of goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that the District will pay the Contractor the reasonable cost of his search as to infringements).

30. Availability of Funds

The award of this contract is dependent on the availability of funding. In the event funds do not become available, the contract may be terminated, or the scope amended. A 30-day written notice will be given to the vendor, and there shall be no penalty or removal charges incurred by the District.

31. Compliance with Equal Employment Opportunity Regulations

Edgewood I.S.D. requires compliance with executive order 11246, entitled Equal Employment Opportunity, as amended by executive order 11375, and as supplemented in Department of Labor regulations (41 CRF Part 60).

32. Prohibition Against Personal Interest in Contracts

Any board member which has any substantial interest, either direct or indirect, in any business entity seeking to contract with the district, shall, before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any participation in the matter. This is not required if the vote or decision will not have any special effect on the

Sample Representations and Certifications (Excerpts)

Section D

Representations and Certifications

- Proposals shall be signed by a responsible officer of the company. Failure to sign the proposal form may be basis for rejecting the proposal. By signing the Solicitation, Offer, and Award form, the proposer certifies the accuracy of the following statements.

Please check the following blanks which apply to your company:

_____ Ownership of firm (51% or more)
 _____ Black _____ Female _____ Non-minority
 _____ other minority (specify) _____

_____ Handicapped owned

_____ Small Business (Less than \$1,000,000 annual receipts or 100 employees.)

_____ certified by the State of Texas as a Historically Underutilized Business (HUB).

The Edgewood Independent School District does not currently maintain set-asides or give preference to HUB proposals. The above information is solicited for the purpose of statistical tracking only.

- The proposer, by checking the applicable box, represents that:
 It operates as () a corporation incorporated under the laws of the State of _____, () an individual, () a partnership, () a non-profit organization, or () a joint venture; or
 If the proposer is a foreign entity, it operates as () an individual, () a partnership, () a non-profit organization, () a joint venture, or () a corporation, registered for business in _____ (Country).
 The State of Texas does not employ a resident preference; however, it does employ a reciprocity rule. Proposers whose principal place of business is located in a state which gives preference to resident proposers are subject to the same restrictions when submitting a proposal with an entity of the State of Texas.

4. By submitting this proposal, the proposer:
 - a) represents that to the best of its knowledge the proposer is not indebted to the Edgewood Independent School District. Indebtedness to the District shall be basis for non-award and/or cancellation of any award;
 - b) certifies that it does not and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap, political belief or affiliation, and that it will abide by the Equal Employment Opportunity requirements of the State of Texas and the Edgewood Independent School District.
 - c) acknowledges that it has read, understands, and agrees to the requirements of the specifications and all other provisions of this solicitation.
 - d) certifies that it has not colluded or attempted to collude with other vendors or merchants in the trade to fix or hold prices above the level attained through a free and competitive market.
 - e) certifies that the owner operator has not been convicted of a felony, except as indicated on a separate attachment to this proposal, in accordance with Sec 44.034, Texas Education Code.

Sample Instructions for the Submission of Offers

Section E

Instructions for Submission of Offers

1. Sealed proposals will be received by the Edgewood I.S.D. until the date and time specified on the Solicitation, Offer, and Award form, and then publicly opened and read. All proposals must be sealed and received, prior to this time, at the Department of Purchasing, Edgewood Independent School District, 5358 W. Commerce Street, First Floor, 36th and W. Commerce Streets, San Antonio, Texas. Proposals must be submitted on the forms provided, or the district may reject the proposal. Telegraphic or facsimile proposals cannot be accepted since the sealed proposal requirement cannot be satisfied with these means.

3. Labeling of Proposals:

The envelope containing the proposals must be addressed as follows:

Purchasing Agent

Edgewood Independent School District

5358 W. Commerce Street

San Antonio, Texas 78237

Due - 10:00 A.M., Monday, July 3, 1995

Proposal No. 95-042 - Student Athletic Insurance

4. The Purchasing Department may open unlabeled submittals to properly identify them. Proposers are therefore advised to correctly label their submittals in order to protect the integrity of their sealed proposals and to fully avail themselves of the sealed proposal process.
5. Proposer accepts all responsibility for forwarding the proposal to the address above within the specified time or it will be returned unopened. If the envelope does not reflect a return address, it will be opened for the sole purpose of obtaining the return address.
6. Time and Place of Proposal Opening:

- Proposals will be opened and read in the District Conference Room, Second Floor, District Headquarters, immediately following the date and time specified on the Solicitation, Offer, and Award form. However, proposers/proposers are cautioned that proposals must be received in the Purchasing Department, in accordance with paragraph 2, above, prior to this time. It is the sole responsibility of the proposer to ensure his proposal is received in the Purchasing Department. No excuses are acceptable, and the determination of the Purchasing Agent is final.
9. All amendments shall be acknowledged on the Solicitation, Offer, and Award form (Item No. 12); failure to do so may cause the proposals to be rejected. No verbal or informal amendment to this solicitation shall be binding on the Edgewood I.S.D. Any changes to the solicitation will be made by Amendment, delivered to all parties which the District shows as having received a copy of the solicitation. No change to the solicitation will be made except by formal written amendment signed by the Purchasing Agent or his designated representative.
 11. The District reserves the right to accept or reject any or all proposals, to waive all technicalities, and to accept the proposal or proposals that are determined to be the most favorable to the District.
 14. For proposal purposes, prices must exclude all Federal, State, and City taxes.
 20. This solicitation does not commit the Edgewood I.S.D. to pay any costs incurred in preparing and submitting the proposal or to contract for the services specified.
 23. Ongoing documentation by using department(s) regarding a company's past performance may be used in determining the proposer's responsibility for award purposes of this and future awards.
 24. For further information concerning this Invitation for Proposals, contact Mr. Ed Richter, Purchasing Department, telephone no. (210) 433-2361; fax no. (210) 433-9821.
 26. Any questions concerning proposal results should be directed to the District Purchasing Department.

Sample Evaluation Factors for Award

Section F

Evaluation Factors for Award

1. All offers are subject to the terms of this solicitation.
2. Offers will be evaluated based on the following:
 - a) Comparability of proposed Student Athletic coverage with that listed on page 4a.
 - b) Price.
 - c) Comparability of proposed Student Catastrophic coverage with that listed on page 4b.
 - d) Reference checks.
 - e) AM Best Rating higher than A.
3. Prompt payment discounts will be considered when determining the lowest offer, providing the District is allowed at least ten (10) days in which to take advantage of the discounts.

Interlocal Agreements

An interlocal agreement is one of the nine procurement methods allowed under Section 44.031, Texas Education Code. The following is an example of items that can be included in an interlocal agreement. Districts should consult with legal counsel when entering into any interlocal agreements.

Anywhere Independent School District

Cooperative Purchasing Program

Inter-Agency Agreement

200X-0X

Contract

This Agreement is entered into by and between the Agencies shown below as contracting parties for the period of September 1, 200X, through August 31, 200X.

Contracting Parties

	-	
Local Education Agency (Purchasing Cooperative)		County-District Number

	-	
Anywhere Independent School District		County-District Number

This Inter-Agency Agreement is effective _____ and shall be automatically renewed unless either party gives sixty (60) days prior written notice of non-renewal. This

Agreement may be terminated without cause by either party upon (60) days prior written notice, or may also be determined for cause at anytime upon written notice stating the reason for and effective date of such terminations and after giving the affected party a thirty (30) day period to cure any breach.

Statement of Services to Be Performed

Anywhere Independent School District will organize and administer a cooperative purchasing program. Authority for such services is granted by Chapter 791 of the Texas Government Code. The goal of the cooperative is to obtain substantial savings on specific items for member districts through volume purchasing.

Role of the Purchasing Cooperative:

1. Provide for the organizational and administrative structure of the program.
2. Provide staff time necessary for efficient operation of the program.
3. Initiate and implement activities related to the bidding and vendors selection process
4. Provide the list of commodity items to participating member districts for purposes of obtaining quantity requests.
5. Receive quantity requests from districts and prepare appropriate tally of quantities.
6. Provide member districts with procedures for ordering, delivery, and billing.
7. Bill each district at the rate of X% of its total amount purchased for the costs of program administration.
8. The Purchasing Cooperative will not be responsible for product warranties, product qualities, failure to deliver by vendors, or failure of payment to vendors by member districts.

Role of the Member Local Education Agency:

1. Commit to participate in the program by an authorized signature in the appropriate space below.
2. Designate a contact person for the cooperative.

3. Provide a quantity request for each of the items desired and commit to purchase all items and quantities selected (quantities selected to be within a range of 10%, plus or minus of the original quantities specified) if such items become a part of the official order list following the bidding process when it is in the best interest of the member entity.
4. Prepare purchase orders issued to the appropriate vendor from the official award list provided by the purchasing cooperative.
5. Accept shipments of products ordered from vendors in accordance with standard purchasing procedures.
6. Pay vendors in a timely manner for all goods and services received.
7. Pay the purchasing cooperative the amount of X% of the district's total amount purchased through this program.

General Provisions:

The Parties agree to comply fully with all applicable federal, state, and local statutes, ordinances, rules, and regulations in connection with the programs contemplated under this Agreement. This Agreement is subject to all applicable present and future valid laws governing such programs.

This Agreement shall be governed by the law of the State of Texas and venue shall be in the county in which the administrative offices of Anywhere Independent School District are located, which is Anywhere County, Texas.

This Agreement contains the entire agreement of the Parties hereto with respect to the matters covered by its terms, and it may not be modified in any manner without the express written consent of the Parties.

If any term(s) or provision(s) of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.

The Parties to this Agreement expressly acknowledge and agree that all monies paid pursuant to this Agreement shall be paid from budgeted available funds for the current fiscal year of each such entity.

Before any Party may resort to litigation, any claims, disputes or other matters in question between the Parties to this Agreement shall be submitted to nonbinding mediation.

No Party to this Agreement waives or relinquishes any immunity or defense on behalf of themselves, their directors, officers, employees, and agents as a result of its execution of this Agreement and performance of the functions and obligations described herein.

Authorization:

The Purchasing Cooperative and Anywhere Independent School District's authorized representatives enter into the above described agreement for the September 1 through August 31, 199X, time period.

<u>Local Education Agency</u>	<u>Anywhere Independent School District</u>
School District Administrator	Purchasing Cooperative
By _____	By _____
Authorized Signature	Authorized Signature
_____	_____
Title	Title
_____	_____
Date _____	Date _____
Contact Person _____	Contact Person _____

NOTE: Please return this signed agreement to NAME at the Anywhere Independent School District, ADDRESS, CITY, Texas ZIP no later than January 11, 199X.

Construction Manager-At-Risk Contracts

Under Section 44.031 of the Texas Education Code, school districts are authorized to use the construction manager-at-risk method for contracting for the construction, rehabilitation, alteration, or repair of facilities. The procedures for selection of a construction manager-at-risk and the scope of work covered by such a contract are substantially different from those for a construction manager-agent. Section 44.038 of the Education Code details the procedures for a school district's use of the construction manager at risk contracting method.

A construction manager-at-risk is intended to assume the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price in the same manner as a general contractor; but also provides consultation to the school district during and after the design of the facility. The school district must, before or concurrently with selecting a construction manager-at-risk, select or designate an architect or engineer who will be responsible for the preparation of the design and construction documents for the project. In accordance with Section 44.038, Texas Education Code, the district's engineer, architect, or construction manager-agent for a project must not serve, alone or in combination with another, as the construction manager-at-risk. This architect or engineer, who will have full responsibility for compliance with the applicable statutes governing the practice of engineering and architecture as applicable, if not a full-time employee of the school district, must be selected on the basis of demonstrated competence and qualifications utilizing the one- or two-step process set forth in Section 2254.004 of the Texas Government Code.

In selecting the construction manager-at-risk, the school district is required to utilize either a one-step or two-step process. The school district must, in a two-step process, prepare a Request For Qualifications ("RFQ") or a Request for Competitive Sealed Proposals ("RFCSP") in a one-step process, that includes the following:

- general information on the project site,
- project scope,
- schedule,
- selection criteria,
- estimated budget,
- the time and place for receipt of proposals or qualifications as applicable,

- proposed fee and price for general conditions (only if one-step process used), and
- any other information that may assist the district in its selection.

The RFQ or RFCSP may require offerors to submit information regarding the construction manager's proposed fee and the price for fulfilling the general conditions. The selection criteria for evaluating the proposals and selecting the best offeror must be stated in the RFQ or RFCSP. The selection criteria may include the following:

- proposed fee and price for general conditions (only if a one-step process is used),
- the offeror's experience,
- past performance,
- safety record,
- proposed personnel and methodology, and
- any other factors demonstrating the capability of the construction manager (these factors need to be specified).

Pursuant to the requirements of Education Code Section 44.031(g), the school district is required to publicly advertise the time by when and place where the proposals for construction manager-at-risk services will be received. This public notice must be published in the county in which the school district's central administrative office is located, once a week for at least two weeks before the deadline for receipt of proposals.

After the deadline for receipt of proposals has expired, the school district is required to publicly open and read aloud the names of the offerors and the prices, if any, for each proposal. The school district is then required to evaluate and rank each proposal submitted based upon the selection criteria set forth in the RFQ or RFCSP. This evaluation and ranking by the school district must be completed within forty-five days after the date of the opening of proposals. The school district must then select the offeror that offers the best value to the school district based upon the ranking evaluation performed pursuant to the selection criteria published in the RFQ. If the school district is unable to negotiate a contract agreement with the selected offeror, the school district must with written notice terminate further discussions and then proceed to the next offeror in the order of the selection ranking until a contract agreement is reached or all proposals are rejected. The school district may utilize certain forms of pricing (fixed contract amount or guaranteed maximum price), subject of course to the Constitutional limitation of contracting for no more than the amount of available funds.

Section 44.038(b) of the Education Code provides the construction manager-at-risk assumes the contractual risk for completion and delivery of the completed facility at the contracted price in the same manner as a general contractor. However, the construction

manager-at-risk is initially responsible for self performing only the general conditions and any minor work that may be included in the general conditions for the project. The “general conditions” for the project are defined in Section 44.0315(6) of the Education Code to mean on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials.

Section 44.038(h) of the Education Code requires the construction manager-at-risk to publicly advertise and solicit either competitive bids or competitive sealed proposals from trade contractors or subcontractors for the performance of all major elements of the work on the project other than the general conditions. The construction manager-at-risk is permitted to seek to perform portions of the work required to be publicly advertised. If the construction manager-at-risk submits its own bid or proposal for any of these portions of the work, it must do so in the same manner as all other trade contractors or subcontractors competing for such work. The school district has the final determination as to whether the construction manager-at-risk’s bid or proposal provides the best value for the school district.

It is important to note that Section 44.038(i) specifically requires the construction manager-at-risk and the school district or its designated representative to review contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager at-risk, engineer, architect, or district. Another requirement placed upon the construction manager-at-risk and the school district is that all bids or proposals shall be made public after the award of the contract or within seven days after the date of final selection, whichever is later.

If during the course of receiving, reviewing and evaluating the bids or proposals, the construction manager-at-risk recommends to the school district a bid or proposal from a trade contractor or subcontractor, but the school district requires another bid or proposal to be accepted, then the school district is obligated to compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and/or risk that the construction manager-at-risk may incur because of the school district’s requirement that another bid or proposal (other than the one recommended) be accepted.

The construction manager-at-risk may not perform the inspection and testing services for the project. The school district is required to provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility. These inspection and testing services are to be obtained by the school district in accordance with the two-step process for obtaining architectural or engineering services as set forth in Section 2254.004 of the Texas Government Code.

Construction management-at-risk contracts will require performance and payment bonds in accordance with Section 2253.021 of the Texas Government Code. These requirements are

covered in Section 44.038(1) of the Texas Education Code. (Credit provided to the Association General Contractors)

Design/Build Contracts

Design-Build is one of the nine procurement methods allowed under Section 44.031, Texas Education Code. The recommended guidelines for design-build contracts are reproduced with permission from The Association of General Contractors of America. Districts may contact the local chapter of AGC for a copy of the following design-build example documents:

<u>AGC Document</u>	<u>Title</u>
400	Preliminary Design-Build Agreement Between Owner and Design-Builder
410	Standard Form of Design-Build Agreement and General Conditions Between Owner and Design-Builder (Where the Basis of Payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price Option)
415	Standard Form of Design-Build Agreement and General Conditions Between Owner and Design-Builder (Where the Basis of Payment is a Lump Sum Based on an Owner's Program Including Schematic Design Documents)
420	Standard Form of Agreement Between Design-Builder and Architect/Engineer For Design-Build Projects
421	Design-Builder's Statement of Qualifications for a Specific Project
450	Standard Form of Agreement Between Design-Builder and Subcontractor (Where the Design-Builder Assumes the Risk of Owner Payment)
455	Standard Form of Agreement Between Design-Builder and Subcontractor (Where the Design-Builder and Subcontractor Share the Risk of Owner Payment)
460	Standard Form of Agreement Between Design-Builder and Design-Build Subcontractor (Where the Subcontractor Provides a Guaranteed Maximum Price and Where the Design-Builder Assumes the Risk of Owner Payment)

465 Standard Form of Agreement Between Design-Builder and Design-Build Subcontractor (Where the Subcontractor Provides a Guaranteed Maximum Price and Where the Design-Builder and the Subcontractor Share the Risk of Owner Payment)

The traditional method for contracting for the construction of public works in Texas has been to have separate contracts for the design and construction of the public work. Under the design contract, detailed design and construction drawings and specifications are prepared by the design professional and then these documents are used as the basis for using competitive bidding to award the separate construction contract to a single prime contractor or multiple prime contractors. Under the design-build method of contracting, the public owner awards a single contract to the design-builder to design and construct the public work. The design-build team usually consists of a contractor, architect, and/or engineer. The design-build team contracts directly with the trades/subcontractors and the architect or engineer and assumes complete responsibility for both the design and construction of the project. The architect and/or engineer members of the design-build team are the architect/engineer of record for the project.

Until recently, public owners in Texas were not permitted to utilize the design-build approach for construction of public works. In the last decade, the Texas Legislature has granted some limited authority to various governmental entities to deviate from the traditional method of awarding separate contracts for the design and construction of a public project. In 1995, with the passage of SB 1, the Texas Legislature granted public school districts broad authority to use the design-build method of contracting for construction of school projects valued at \$25,000 or more. Unfortunately, SB 1 provided little guidance to school districts on what procedures to follow when utilizing the design-build method of contracting. The 1997 Texas Legislature, with the passage of SB 583, and the 1999 Legislative Session, with SB 669, established detailed procedures for school districts to follow in awarding design-build contracts for construction of school projects.

Section 44.036 of the Texas Education Code sets forth the requirements that must be satisfied by school districts when awarding design-build contracts for facilities. A “design-build contract” is defined in Section 44.036 to mean a single contract with a design-build firm (a partnership, corporation, or other legal entity or team that includes an engineer or architect and builder qualified to engage in building construction in Texas) for the design and construction of a facility (real property, including buildings and associated structures and improved or unimproved land). School districts may use the design-build method of contracting for the construction, rehabilitation, alteration, or repair of a facility. In using the design-build contract method, the contracting school district and the design-build firm must follow the procedures set forth in Subsections (c) - (j).

The school district is required to utilize an engineer or architect to act as its designated representative throughout the various steps of awarding and administering a design-build contract. If the school district does not have an engineer or architect as a full-time employee, then any engineer or architect selected by the school district to act as its designated representative must be selected on the basis of demonstrated competence and qualifications in accordance with the provisions of the Professional Services Procurement Act set forth in Chapter 2254 of the Texas Government Code.

In addition to the “turnkey” nature of the contract awarded under the design-build method, perhaps the most attractive feature of this project delivery method is the speed with which a school construction project may be delivered. The schedule for a design-build project is essentially a non-linear two-phase process that facilitates an early construction start of many elements of the work on the project. Because the school district and the design-build firm must work very closely together, an essential requirement for this contracting method is a great deal of trust in each other. Other advantages and disadvantages of the design-build method that should be considered when a school district is evaluating the design-build method as the potential delivery method for a project are the following:

Advantages:

- A non-adversarial relationship between the contractor and the architect/engineer who both work in a team relationship;
- Early start of some elements of work before design is complete can reduce the project schedule;
- Allows the owner to have better cost control during the design process and result in a final design that assures project delivery within budget constraints from the outset;
- A single point of responsibility for both design and construction should substantially reduce or eliminate claims and disputes for the owner.

Potential Disadvantages:

- A possible loss of the check and balance that separate contracts with the contractor and the architect/engineer normally provide;

- A potential adversarial relationship between the school district and the design-build firm regarding the scope and costs;
- The roles of the contractor and architect/engineer are no longer clearly defined.

After it has been determined by the school district that the design-build contract will provide the best value for a school project, the school district must utilize a process consisting of two phases for the selection of a design-build firm. Initially, the school district must prepare a Request For Qualifications (“RFQ”) that includes general information on the project site, project scope, budget, special systems, selection criteria, and any other information that would assist potential design-build firms in submitting proposals for the project. The RFQ must be publicly advertised. Section 44.031(g) requires notice of the time by when and place where the responses to a RFQ will be received to be published in the county in which the school district’s central administrative office is located, once a week for at least two weeks before the deadline for receiving responses to the RFQ.

The two-phase process for evaluating and selecting a design-build firm is as follows:

1. Phase One: The school district is required to solicit and evaluate information from each of the offerors regarding the following:
 - the offeror’s experience;
 - the offeror’s technical competence;
 - the offeror’s capability to perform;
 - the past performance of the offeror’s team and members of the team; and
 - other appropriate factors submitted by the team or firm in response to the RFQ.

Each offeror must certify to the school district that each engineer or architect that is a member of its team was selected based on demonstrated competence and qualifications. The school district is not permitted to solicit cost-related or price-related information for evaluation purposes in the initial responses to the RFQ.

After the school district has evaluated the initial information submitted in response to the RFQ, the school district shall qualify a maximum of five potential offerors to

submit additional information regarding technical proposals, implementation, and costing methodologies in response to a formal request for qualifications (“RFQ”) based upon a design criteria package prepared by the school district. The “design criteria package” is a set of documents that provides sufficient information to permit a design-build firm to prepare a response to a school district’s RFQ and must specify the criteria the school district considers necessary to describe the project and may include, as appropriate, the following information:

- the legal description of the site;
- survey information concerning the site;
- interior space requirements;
- special material requirements;
- material quality standards;
- conceptual criteria for the project;
- special equipment requirements;
- cost or budget estimates;
- time schedules;
- quality assurance and quality control requirements;
- site development requirements;
- applicable codes and ordinances;
- provisions for utilities;
- parking requirements; and
- any other applicable requirements.

2. Phase Two: After the school district requests additional information from qualified potential offerors identified in Phase One, the school district is required to evaluate the proposals submitted by such offerors on the basis of demonstrated competence and qualifications, taking into consideration the following factors:
 - the safety and long-term durability of the project;
 - the feasibility of implementing the project as proposed;
 - the ability of the offeror to meet schedules;
 - the costing methodology of the offeror; or
 - any other appropriate factors.

The district shall rank each proposal submitted on the basis of the criteria and on its ranking evaluations. The district shall first attempt to negotiate with the selected offeror a contract. 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 negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end. A school district may not require offerors to submit detailed engineering or architectural designs as a part of their proposal. The school district is required to select the design-build firm that submits the proposal offering the best value for the school district.

After the school district has selected the successful design-build firm pursuant to the two phase process outlined above, then the engineers or architects of that design-build firm will complete the design for the school project, submitting all of the design elements to the school district's engineer or architect for review and determination of scope compliance before or concurrent with construction. Section 44.036, Texas Education Code, is very clear that the design-build firm must utilize an engineer and/or an architect, to the extent applicable or necessary, to ensure compliance with the engineering design requirements and all other applicable requirements of the statutes governing the practice of engineering (Chapter 1001, Occupations Code) and architecture (Chapter 1051, Occupations Code) in Texas.

The school district may not allow the design-build firm to perform inspection and testing services in connection with the construction being performed under the design-build contract. Instead, the school district must provide or contract for, independently of the design-build firm, the inspection services, the testing of construction materials engineering, and the verification of testing services necessary for acceptance of the facility by the school district. These inspection and testing services are required to be obtained in accordance with the provisions of the Professional Services Procurement Act, set forth in Section 2254.004 of the Texas Government Code.

The design-build firm will be required to furnish payment and performance bonds for the project, consistent with the requirements of Chapter 2253 of the Texas Government Code. However, Section 44.036(j) of the Education Code clearly states that a payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract that includes design services only. This provision does not affect the school district's ability to seek recovery under the contract from the design-build firm for errors, omissions, or defects in the design services. The bonds are to be delivered in the amount of contract amount or guaranteed maximum price if known at the time a design-build contract is executed. The bonds are to be in the amount of the project budget if the contract amount or guaranteed maximum price has not been determined when the design-build contract is executed. The bonds are to be delivered within 10 days after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the district to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Finally, at the conclusion of construction of the project, the design-build firm is required to supply a signed and sealed set of construction documents for the project to the school district. This set of construction documents will serve as the "record set of construction documents" for the school district, setting forth the final design of the project.

Job Order Contracts for Facilities Repair

The 1997 amendments to the Texas Education Code include the addition of a new Section 44.041 that adds a procurement method not previously authorized. This is the concept of a “job order” contract. The types of contracts that qualify for award under this procurement method are those:

- That call for the minor construction, repair, rehabilitation or alteration of a facility; and
- Where the work called for by the contract is of a recurring nature, but delivery times and quantities are indefinite; and
- The job orders are awarded substantially on the basis of prescribed and prepriced tasks.

There are many types of work that could qualify for award under a job order contract. Some examples are ceiling tile replacement, repainting, sidewalk or parking lot repairs, roof repairs, and floor covering replacement.

Under Section 44.041(c) of the Education Code, a school district must advertise for, receive and publicly open sealed proposals for job order contracts based on time and material rates for the various types and classifications of work included in the request for competitive sealed proposals. If the district fails to advertise a term for the contract, the base term may not exceed two years and is not renewable without further advertisement and solicitation of proposals. The school district should specify in its request for proposal the period it wishes offerors to use in their proposals.

The school district’s selection criteria must be stated in the request for sealed proposals. The selection criteria may include the offeror’s experience, past performance, safety record, proposed personnel and methodology and other appropriate factors that the school district determines will demonstrate the capability of the contractor to perform the work covered by the request for sealed proposals.

Section 44.041(d) of the Education Code specifically authorizes the school district to require offerors to submit additional information besides rates, including but not necessarily limited to, experience, past performance and proposed personnel and methodology.

Notice of time by when and the place where the proposals will be received must be published in the county in which the school district’s central administrative office is located once a week for at least two weeks before the deadline for receiving the proposals.

Proposals are to be received, publicly opened, and the names of the offerors and read aloud.

A school district may discuss proposals with the offerors after the proposals have been opened to allow for clarification and changes, but the school district is to take adequate precautions to ensure that information (other than that which was read aloud) from competing proposals is not disclosed to other offerors in this process.

The school district may award job order contracts to one or more contractors based on the selection criteria in the request for sealed proposals. The school district is not required to award a contract to whoever submits the lowest rates.

Under a job order contract, specific work projects are authorized by the execution of an order signed by the school district's representative and the contractor. That order may be a fixed price, lump sum contract based substantially on contractual unit pricing applied to estimated quantities or may be a unit price order based on the quantities and line items delivered. If the amount or estimated amount of the job order is in excess of \$25,000, then the contractor must post a payment bond on the job order. If the amount or estimated amount of the job order is \$100,000 or more, a performance bond must also be posted by the contractor. Bonds may only be required on each specific job order as such orders are executed by the school district and contractor -- not on the overall job order contract that is awarded pursuant to the request for competitive sealed proposals. However, contractors that prefer to bond for the entire amount may do so.

If engineering or architectural services are required, they are to be selected on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code.

(Credit provided to the Association General Contractors)

Competitive Quotations

Purchases of Personal Property \$10,000 - \$25,000 - Repealed

HB 987, 81st Regular Legislative session, repealed TEC 44.033, which required price quotes for purchases of personal property between \$10,000 and \$25,000 in the aggregate for a 12-month period. This bill became effective June 19, 2009. –Prior to that date, the rules were as follows. For each 12-month period, the district shall publish a notice in two successive issues of any newspaper of general circulation in the county in which the school is located. If there is no newspaper in the county in which the school is located, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the school is located, specifying the categories of personal property to be purchased under this section and soliciting the names, addresses, and telephone numbers of vendors that are interested in supplying any of the categories to the district. For each category, the district shall create a vendor list consisting of each vendor that responds to the published notice and any additional vendors the district elects to include.

Optional use of quotes

Optionally, a district may obtain price quotes for items costing less than \$50,000 in the aggregate in order to stimulate competition and attempt to receive the most favorable pricing. The district’s purchasing procedures should clearly define the lower figure for which quotes are required and obtain and retain written verification of the prices quoted.

Sample Wording of Competitive Quote Advertisement:

“NOTICE TO VENDORS

Competitive quotes will be obtained by Local ISD for the 19XX-XX school year for purchases in the following categories:

- Art Supplies
- Nursing Supplies
- Science Supplies
- Produce
- Motor Fuel

Submit in writing by October 10, 199X the name, address and phone/fax number(s) of person(s) authorized by your company to provide competitive price quotations to: Local Independent School District Distribution Center, 1234 Happy Street, Happy, Texas 77064-9990 or PO Box 692003, Happy, TX 77999-2003. For more information call (555) 555-5555.”

Sample Product Information Sheet

Sample Product Information Sheet

Anywhere Independent School District

Product Information Sheet

for Purchases Between \$10,000 AND \$25,000

Date: _____

Department: _____

Request: _____

Product/Part Needed For: _____

Product/Part Description Including Brand Name, Model, and Quantity: _____

1. Company Called: _____

Phone Number: _____

Price (To Include Delivery, Trade-ins, Etc.) \$_____

Written Quote Received: Yes_____ No_____

Availability And Terms: _____

2. Company Called: _____

Phone Number: _____

Price (To Include Delivery, Trade-ins, Etc.) \$_____

Written Quote Received: Yes_____ No_____

Availability And Terms:

3. Company Called: _____

Phone Number: _____

Price (To Include Delivery, Trade-ins, Etc.) \$_____

Written Quote Received: Yes_____ No_____

Availability And Terms: _____

Summary of Other State Bidder Preference Laws

The Comptroller (formerly the Texas Building and Procurement Commission or General Services Commission) now publishes this list of other state bidder preference laws in accordance with Government Code Section 2252.003, which requires the publication of a list of states which have laws or regulations regarding the award of contracts for general construction, improvements, services, or public works projects or purchases of supplies, materials, or equipment to nonresident bidders, together with a citation to and summary of the most recent law or regulation of each state relating to the evaluation of bids from and award of contracts to nonresident bidders.

[Summary of Other State Bidder Preference Laws](#)

There is also a publication regarding [reciprocity](#) under Manuals and Reference Guides on the Comptroller website.

Texas Education Code

Chapter 44, Subchapter B provides basic statutes for school district purchases.

CHAPTER 44. FISCAL MANAGEMENT

§ 44.031. Purchasing Contracts

See amendment to Section 44.031 by HB 987, enacted by the 81st Legislature

§ 44.0311. Applicability to Junior College Districts

See amendment to Section 44.0311 by HB 962, enacted by the 81st Legislature

§ 44.0312. Delegation

See amendment to Section 44.0312 by HB 4102, enacted by the 81st Legislature

§ 44.0313. Procedures for Electronic Bids or Proposals

See addition of Section 44.0313 by HB 987, enacted by the 81st Legislature

§ 44.0315. Definitions

§ 44.032. Enforcement of Purchase Procedures: Criminal Penalties; Removal; Ineligibility

§ 44.033. Purchases of Personal Property Valued Between \$10,000 and \$25,000

See repeal of Section 44.033 by HB 987, enacted by the 81st Legislature

§44.0331. Management Fees under Certain Cooperative Purchasing Contracts

§ 44.034. Notification of Criminal History of Contractor

§ 44.035. Evaluation of Bids and Proposals for Construction Services

§ 44.036. Design-Build Contracts for Facilities

§ 44.037. Contracts for Facilities: Construction Manager-Agent

§ 44.038. Contracts for Facilities: Construction Manager-At-Risk

[§ 44.039. Selecting Contractor for Construction Services Through Competitive Sealed Proposals](#)

[§ 44.040. Selecting Contractor for Construction Services Through Competitive Bidding](#)

[§ 44.041. Job Order Contracts for Facilities Construction or Repair](#)

[§ 44.042. Preference to Texas and United States Products](#)

[§ 44.043. Right to Work](#)

[§ 44.044. Contract with Person Indebted to School District](#)

[§ 44.047. Purchase or Lease of Automated External Defibrillator](#)

[§ 44.051. Interference With Operation of Foundation School Program](#)

[§ 44.052. Failure to Comply With Budget Requirements; Penalty](#)

[§ 44.053. Failure of Municipal Officer to Make Treasurer's Report; Penalty](#)

[§ 44.054. Failure to Transfer Students and Funds](#)

[§ 44.901. Energy Conservation Measures](#)

[See amendment to Section 44.901 by SB 300, enacted by the 81st Legislature](#)

[§ 44.902. Goal to Reduce Consumption of Electric Energy](#)

[See amendment to Section 44.902 by SB 300, enacted by the 81st Legislature](#)

[§ 44.903. Energy-Efficient Light Bulbs in Instructional Facilities](#)

[§ 44.908. Expenditure of Local Funds](#)

[See addition of Section 44.908 by HB 3646, enacted by the 81st Legislature](#)

CHAPTER 130. JUNIOR COLLEGE DISTRICTS

[§ 130.010. Purchasing Contracts](#)

[§ 130.0101. Acquisition of Library Materials](#)

[See amendment to Section 130.0101 by HB 962, enacted by the 81st Legislature](#)

Texas Local Government Code

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[§ 176.002. Applicability to Certain Vendors and Other Persons](#)

[§ 176.003. Conflicts Disclosure Statement Required](#)

[§ 176.004. Contents of Disclosure Statement](#)

[§ 176.005. Application to Certain Employees](#)

[§ 176.006. Disclosure Requirements for Vendors and Other Persons; Questionnaire](#)

[See amendment to Section 176.006 by SB 1969, enacted by the 81st Legislature](#)

[§ 176.007. List of Government Officers](#)

[§ 176.008. Electronic Filing](#)

[§ 176.009. Posting on Internet](#)

[§ 176.010. Requirements Cumulative](#)

[§ 176.011. Maintenance of Records](#)

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**CHAPTER 271. PURCHASING AND
CONTRACTING AUTHORITY OF
MUNICIPALITIES, COUNTIES, AND
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[See amendment to Section 271.024 by HB 987, enacted by the 81st Legislature](#)

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**COMPTROLLER (FORMERLY TEXAS BUILDING
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GENERAL SERVICES COMMISSION) –
STATE COOPERATION IN LOCAL
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[§ 271.082. Purchasing Program](#)

[§ 271.083. Local Government Participation](#)

[See amendment to Section 271.083 by HB 1705, enacted by the 81st Legislature](#)

COOPERATIVE PURCHASING PROGRAM

[§ 271.101. Definitions](#)

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[SECTION 497.026. PRICES](#)

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[SECTION 497.029. NEW ARTICLES AND PRODUCTS](#)

[SECTION 497.030. GENERAL SERVICES COMMISSION REPORTS](#)

Government Code

Interlocal Cooperation Contracts

[§ 791.001. Purpose](#)

[§ 791.002. Short Title](#)

[§ 791.003. Definitions](#)

[§ 791.004. Interlocal Contract; Dual Office Holding](#)

[§ 791.005. Effect of Chapter](#)

[§ 791.006. Liability in Fire Protection Contract](#)

[§ 791.011. Contracting Authority; Terms](#)

[§ 791.012. Law Applicable to Contracting Parties](#)

[§ 791.013. Contract Supervision and Administration](#)

[§ 791.014. Approval Requirement for Counties](#)

[§ 791.015. Submission of Disputes to Alternative Dispute Resolution Procedures](#)

[§ 791.025. Contracts for Purchases](#)

[§ 791.026. Contracts for Water Supply and Wastewater Treatment Facilities](#)

[§ 791.027. Emergency Assistance](#)

[§ 791.028. Contracts for Joint Payment of Road Construction and Improvements](#)

[§ 791.029. Contracts for Regional Records Centers](#)

E-business

[§ 2054.060. Digital Signature](#)

Reverse Auction Procedure

[§ 2155.062. Purchase Methods](#)

Catalog Purchases

[See repeal of Subchapter B Catalog Purchase Method Sections 2157.061 – 2157.067, Government Code, by Section 16 of HB 2918 enacted by the 80th Legislature](#)

Prompt Payment Act

[CHAPTER 2251. PAYMENT FOR GOODS AND SERVICES](#)

Government Contracts

[CHAPTER 2252. CONTRACTS WITH GOVERNMENTAL ENTITY](#)

Performance and Payment Bonds

[CHAPTER 2253. PUBLIC WORK PERFORMANCE AND PAYMENT BONDS](#)

Professional and Consulting Services

[CHAPTER 2254. PROFESSIONAL AND CONSULTING SERVICES](#)

Prevailing Wage Rates

[CHAPTER 2258. PREVAILING WAGE RATES](#)

Occupations Code

Architects

[Chapter 1051. Architects](#)

Engineering

[Chapter 1001. Engineers](#)

Business & Commerce Code

These statutes contain the basic provisions regarding contracts for the sale of goods.

TITLE 1. UNIFORM COMMERCIAL CODE

CHAPTER 1. GENERAL PROVISIONS

CHAPTER 2. SALES

CHAPTER 2A. LEASES

CHAPTER 3. NEGOTIABLE INSTRUMENTS

CHAPTER 4. BANK DEPOSITS AND COLLECTIONS

CHAPTER 4A. FUNDS TRANSFERS

CHAPTER 5. LETTERS OF CREDIT

CHAPTER 7. DOCUMENTS OF TITLE

CHAPTER 8. INVESTMENT SECURITIES

CHAPTER 9. SECURED TRANSACTIONS

CHAPTER 11. EFFECTIVE DATE AND TRANSITION PROVISIONS—1973
AMENDMENTS

TITLE 2. COMPETITION AND TRADE PRACTICES

CHAPTER 15. MONOPOLIES, TRUSTS AND CONSPIRACIES IN RESTRAINT OF
TRADE

CHAPTER 16. TRADEMARKS

CHAPTER 17. DECEPTIVE TRADE PRACTICES

CHAPTER 20. REGULATION OF CONSUMER CREDIT REPORTING AGENCIES

**TITLE 3. INSOLVENCY, FRAUDULENT
TRANSFERS, AND FRAUD**

CHAPTER 23. ASSIGNMENTS FOR THE BENEFIT OF CREDITORS

CHAPTER 24. UNIFORM FRAUDULENT TRANSFER ACT

CHAPTER 26. STATUTE OF FRAUDS

CHAPTER 27. FRAUD

**TITLE 4. MISCELLANEOUS COMMERCIAL
PROVISIONS**

CHAPTER 35. MISCELLANEOUS

TITLE 5. REGULATION OF BUSINESS AND SERVICES

TITLE 6. SALE OR TRANSFER OF GOODS

TITLE 7. RECEIPTS, DOCUMENTS OF TITLE, AND OTHER INSTRUMENTS

TITLE 8. SECURITY INSTRUMENTS

TITLE 9. APPLICABILITY OF LAW TO COMMERCIAL TRANSACTIONS

TITLE 10. USE OF TELECOMMUNICATIONS

TITLE 11. PERSONAL IDENTITY INFORMATION

TITLE 12. RIGHTS AND DUTIES OF CONSUMERS AND MERCHANTS

TITLE 13. CONTESTS AND OTHER PROMOTIONS

TITLE 14. RECORDINGS

TITLE 15. CURRENCY AND TRADE

TITLE 99. MISCELLANEOUS COMMERCIAL PROVISIONS

Labor Code

TITLE 5. WORKERS COMPENSATION

[Texas Workers' Compensation Rule 110.110 \(d\)\(7\)](#) (Tx Administrative Code Title 28 Chapter 110) states that a contractor shall post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage.

The Texas Department of Insurance, [Division of Workers' Compensation](#) can be contacted at 800-372-7713 to receive information on the legal requirement for coverage, to verify whether an employer has provided the required coverage, or to report an employer's failure to provide coverage.

[Workers Compensation Resources](#) for Employers and Employees can be located on the Texas Department of Insurance website.

Texas Attorney General Opinions

Click on the above title to go to the Attorney General's **index to opinions**.

To review whether an opinion has been overruled, modified, affirmed, or withdrawn, please click on this link in the middle of the main opinion page: [Opinions: Overruled, Modified, Affirmed, Withdrawn](#).

There is also a subject index on the right side of the web page titled, [Cumulative Subject Index](#). The items related to ISDs can be found under [Schools and School Districts](#).

[Purchase of Personal Injury Insurance Protection H-602 \(1975\)](#)

H-602 is only available in a PDF file format.

[Principal Place of Business/Bid Preference Law JM-696 \(1987\)](#)

[Public Works/Bid Preference Law JM-712 \(1987\)](#)

[Work Performed by Subcontractors JM-881 \(1988\)](#)

[Spot Purchases JM-1254 \(1990\)](#)

[Advertisement for Bids DM-4 \(1991\)](#)

[Management Service Contracts/Food Service DM-14 \(1991\)](#)

[Rider 30 General Appropriations Bills DM-93 \(1992\)](#)

[Favored Treatment to Bidders DM-113 \(1992\)](#)

[Workers Compensation Insurance DM-300 \(1994\)](#)

[Payment Bond on Public Work Contract LO 95-006 \(1995\)](#)

[State Catalog Purchasing DM-350 \(1995\)](#)

Note: Catalog purchasing as provided by Subchapter B, [Chapter 2157, Government Code](#), was eliminated as one of the purchasing methods allowed for school contracts over \$25000, effective September 1, 2007.

[Purchase of Insurance-Reconsideration DM-418 \(1996\)](#)

Includes discussion of professional services

[Contracting for Design/Build Services JC-0037 \(1999\)](#)

Includes discussion of professional services

[Contracting for Insurance with a Broker of Record
JC-0205 \(2000\)](#)

[What Constitutes a Newspaper JC-0223 \(2000\)](#)

[Guaranteed Program Management Services JC-0224
\(2000\)](#)

[Federal Cooperative Purchase Program JC-0230
\(2000\)](#)

[Discussion of Proposed Contract in Executive
Session JC-0233 \(2000\)](#)

[Area that Constitutes a School District JC-0253
\(2000\)](#)

[Enforcement of Professional Services Procurement
Act JC-0266 \(2000\)](#)

[Attendance at a Mandatory Prebid Conference JC-
0319 \(2000\)](#)

[Documenting Receipt of Documents JC-0323 \(2000\)](#)

[Requirement to Fairly Treat Vendors Offering
Competitive Proposals JC-0326 \(2000\)](#)

[Whether a Contractual Requirement that a
Superintendent of Schools Attend Executive
Sessions of Meetings of her Board of Trustees
Violates the Open Meetings Act JC-0375
\(2001\)](#)

[Whether a Teacher Who Retires from Employment with a School District and Later Wishes to Return to Full-time Employment as a Certified Teacher with the School District, Qualifies for the Continuous-Employment Exception to the Statutory Prohibition on Nepotistic Hiring by a School District JC-0442 \(2001\)](#)

[School District Not Obligated to Fund Construction of JJAEP Facilities JC-0459 \(2002\)](#)

[No Participation in Political Subdivision Corporation to Aggregate Purchases of Electricity JC-0492 \(2002\)](#)

[Whether the Wealth-Reduction Provisions of Chapter 41 of the Texas Education Code apply to That Portion of Local Property Tax Revenues Attributable to a School District's Tax Rate in Excess of \\$1.50 per \\$100 Valuation GA-0009 \(2003\)](#)

[Whether Certain Statutory Provisions Relating to Revocation of Retirement Benefits and Immunity from Liability Apply to a Retired Teacher Employed on a Temporary Basis by a Third Party that Provides Contractual Staff Services to a School District GA-0018 \(2003\)](#)

[School District not a Business Entity under Local Government Code Chapter 171; City Council Member who is School Employee Not Barred from Discussion/Voting GA-0031 \(2003\)](#)

[Payment of Legal Fees to Non-Prevailing Party is Gift of Public Funds & Prohibited GA-0062 \(2003\)](#)

[Payment of Medical Expenses Related to Student Injury At School; Gift of Public Funds Test GA-0076 \(2003\)](#)

[Whether a School District's Contract for "a Comprehensive Energy Management Consultation" is an Energy Savings Performance Contract under Education Code Section 44.901 GA-0100 \(2003\)](#)

[Test for Reimbursement of Officer/Employee for Legal Expenses GA-0104 \(2003\)](#)

[Applying the Anti-Nepotism Laws, Government Code Chapter 573, to an Independent School District GA-0123 \(2003\)](#)

[Whether a School District May Honor the Current Employment Contract of a Superintendent's Relative whose Original Hiring Violated Chapter 573 of the Government Code GA-0177 \(2004\)](#)

[Whether a Public School Teacher may be Awarded Compensation under the Statutory Advanced Placement Incentive Program GA-0204 \(2004\)](#)

[Whether Payment for Accumulated Vacation Time, Paid as Salary under an Employment Contract, Is Creditable Compensation for Purposes of Determining Teacher Retirement System Benefits GA-0300 \(2005\)](#)

[Whether an Individual May Simultaneously Serve as a Trustee of the New Caney Independent School District and Director of the East Montgomery County Improvement District GA-0307 \(2005\)](#)

[Whether an Independent School District May Enter Into a 50-Year Lease with a Private Entity to Use and Improve the Entity's Land for School Purposes in Exchange for \\$1.00 Per Year and the Agreement to Lease Excess School District Land to the Private Entity for 50 Years GA-0321 \(2005\)](#)

[Whether a School District that Contracts with a Tax Appraisal District to Collect School District Taxes may Offer Taxpayers an Early Payment Discount GA-0373 \(2005\)](#)

[Whether Chambers County has Authority to Contract with a Bank to Invest and Manage Its Permanent School Fund GA-0388 \(2005\)](#)

[Whether a Municipal Chief of Police may Simultaneously Serve as a Trustee of an Independent School District Located Within the Geographical Boundaries of the Municipality GA-0393 \(2006\)](#)

[Whether a Substitute Teacher May Receive Compensation for Serving as a Member of a City Council GA-0394 \(2006\)](#)

[Whether Article VII, Section 6b of the Texas Constitution Permits a Commissioners Court to Distribute County Permanent School Fund Reductions to a School District Based on Students Attending School in the District who have Transferred from Another School District in the County GA-0405 \(2006\)](#)

[Funds Set Aside for Purchase of School Textbooks May Not Be Used to Purchase Computer Hardware GA-0444 \(2006\)](#)

[Conflict of Interest Disclosure Requirements for Local Government Officers and Persons Who Contract with Local Governmental Entities GA-0446 \(2006\)](#)

[Whether a Member of a School District Board of Trustees May Simultaneously Serve as County Clerk of the County in which the School District is Located GA-0468 \(2006\)](#)

[Lease-purchase Contracts under Public Property Finance Act, Applicable Procurement Procedures GA-0494 \(2006\)](#)

[Effect of Education Code Section 11.168 and District's Authority to Build or Pay for Infrastructure for New Schools GA-0496 \(2006\)](#)

[Authority to Delegate Food Products and Supplies Purchases to a Food Service Management Company GA-0500 \(2007\)](#)

[Whether an open-enrollment charter school is authorized to operate a commissioned police force GA-0532 \(2007\)](#)

[Whether the Trustees of an Independent School District Must Change the Terms of Office of Trustees from Three to Four Years to Comply with a Statute Requiring School Districts to Conduct Joint Elections with Other Political Subdivisions GA-0535 \(2007\)](#)

[Method of Calculating Deduction under Section 403.302\(d\)\(4\), Government Code, of the Total Taxable Value of School District Property Located in a Tax Increment Reinvestment Zone GA-0549 \(2007\)](#)

[Whether the State Board of Education May Adopt a Procedural Rule that Requires a Vote of Greater than a Majority of the Number of Members of the Board Fixed by Statute, i.e., a Supermajority GA-0554 \(2007\)](#)

[Whether a Home-Rule Municipality May Lease or Sell a Portion of an Existing City Park to a School District GA-0558 \(2007\)](#)

[School District Responsibilities under Section 25.0951\(a\) of the Texas Education Code GA-0574 \(2007\)](#)

[Operation of Texas Education Code Section 11.168 Prohibiting Certain School District Agreements GA-0596 \(2008\)](#)

[Whether Senate Bill 1161 \(2007\) and House Bill 2884 \(2007\), both of which amended Education Code section 25.0951, can be harmonized GA-0607 \(2008\)](#)

[Whether a proposed rule of the State Board for Educator Certification that relates to certification eligibility of persons with criminal convictions is "preempted" by section 21.060 of the Education Code GA-0614 \(2008\)](#)

[Whether a county and school districts in the county may jointly develop or sell rights to the natural resources located on county school lands GA-0616 \(2008\)](#)

Whether an educational institution violates article 6228a-5, section 9(a)(4)-(7) of the Texas Revised Civil Statutes if the institution contracts with a third-party administrator that is owned by or otherwise affiliated with a company that sells qualified 403(b) investment products to the institution's employees GA-0633 (2008)

Whether impact fees may be imposed upon school district property under chapter 395 of the Local Government Code, and whether certain exactions constitute "impact fees" GA-0637 (2008)

Proper formula under section 21.402, Education Code, for determining the required contributions by a school district to the Teacher Retirement System for compensation that exceeds the statutory minimum GA-0641 (2008)

Authority of the board of trustees of the Dallas Independent School District to change the length of its members' terms after December 31, 2007 GA-0712 (2009)

Whether the State of Texas may permit unauthorized aliens to receive the benefit of in-state tuition at Texas state colleges and universities GA-0732 (2009)

Whether an individual may simultaneously serve as a member of a school district board of trustees and as a principal of a disciplinary alternative program that serves several school districts GA-0738 (2009)

[Whether a school district may expend district funds to pay a civil penalty imposed by a municipality GA-0747 \(2009\)](#)

[Application of Education Code section 11.063 to former school district trustee placed in his district by a school staffing company GA-0749 \(2009\)](#)

Glossary of Terms

This glossary has been reproduced, in most part, from the Council of State Governments publication, *State and Local Governmental Purchasing*. Also, reproduction of the *Model Purchasing Manual from the State Comptroller's Office*. The reader is urged to read, periodically, the Uniform Commercial Code found in each of the statutes of the fifty states bearing in mind the courts have shown little sympathy for those in the market place who plead ignorance of the Code.

ACKNOWLEDGMENT - A form used by a vendor to advise a purchaser that an order has been received, and usually implying acceptance.

ACQUISITION PRICE - See "Initial Price."

ACT OF GOD - A contingency or occurrence that cannot be avoided by human power; a cause of damage which is irresistible (e.g., hurricane, flood, lightening) and not attributable to negligence.

ADMINISTRATIVE LAW - A rule or regulation having the force and effect of promulgated (usually in accordance with an Administrative Procedure Act) by an agency to implement, interpret or make statute/ordinance law specific. See "Regulation," "Rule."

ADVERTISING - A form of public notice of an intended purchase. See "Legal Notice."

ADVICE OF SHIPMENT - A notice to a purchaser advising shipment has gone forward and usually containing details of packing, routing, etc.

AGENCY - (1) An administrative division of a government. (2) A relationship between two parties by which one, the agent, is authorized to perform or transact certain business for the other, the principal; also, the office of the agent.

AGENT - A person authorized by a superior, i.e., principal, to act for him. In public purchasing, this designation is usually incorporated into statute/ordinance law. See "Purchasing Agent."

AGREEMENT - See "Contract," "Purchase Order," and the Uniform Commercial Code.

ALL-OR-NONE BID - A bid submitted for a number of different items, services, etc., in which the bidder states he will not accept a partial award, but will accept only an award for all the items, services, etc., included in the Invitation for Bids. Such bids are acceptable only if provided for in the Invitation, or if the bidder quoted an individual price for each of the items, services, etc., as listed, and is the low bidder on each item.

ALTERNATE BID - (1) A response to a call for alternative bids. See "alternative Bid, Call For." (2) A bid submitted in knowing variance from the specifications, terms, conditions, or provisions of the solicitation. Such a bid is acceptable only when the variance is deemed to be immaterial.

ALTERNATE BID, CALL FOR - An Invitation for Bids for a need that can be filled by items of varying materials, dimension, styles, or other characteristics; bidders are invited to submit one or more bids as specified, but only one award will be made based on an assessment of what is most advantageous for the government, taking price and other factors into consideration.

ALTERNATE PROPOSAL, CALL FOR - A request for Proposals in which offerors are encouraged to exercise ingenuity and innovation in proposing how the need of the jurisdiction may be met.

ANTITRUST LEGISLATION - Laws that attempt to prevent or eliminate monopolies or oligopolies and to prevent noncompetitive practices.

APPROPRIATION - Legislative authorization to expend public funds for a specific purpose. Money set apart for a specific use.

APPROVED BRANDS LIST - See "Qualified Products List."

ARBITRARY, CAPRICIOUS, OR FRAUDULENT ACTION - Action by whim or caprice (or in case of fraud, in reasoned action); ungoverned action; the only grounds for a court to overrule or remand an administrative decision or ministerial action of a public purchaser.

ARBITRATION - A process by which a dispute between two contending parties is presented to one or more disinterested parties for a decision. Resolution of a disagreement by such a process.

ARCHITECT-Engineer and Land Surveying Services - Those professional services within the scope of the practice of architecture, professional engineering or land surveying as defined by the laws [of the jurisdiction].

ARRIVAL NOTICE - A notice sent by a carrier to a consignee advising of the arrival of a shipment.

AS IS - A term indicating that goods offered for sale are without warranty or guarantee, and that the purchaser takes the goods at his own risk without recourse against the seller for the condition or performance of the goods.

ASSIGNMENT - (1) Legal transfer of a claim, right, interest or property. (2) Subcontracting. See "Subcontractor."

AUTHORIZED PRICE LIST - A price list of the products and/or services covered in a contract which contains minimum essential information needed by users for placing orders.

AWARD - The acceptance of a bid or proposal; the presentation of a purchase agreement or contract to a bidder.

BACK-DOOR SELLING - Direct, undue marketing effort to induce preference on the part of program managers or using agencies for a particular product, service, or seller with intent to constrain competition.

BACK ORDER - That portion of an order which a vendor does not deliver at the scheduled time and has re-entered for shipment at a later date.

BEST INTERESTS OF THE (STATE, COUNTY, MUNICIPALITY) - The rationale granting a purchasing official discretion in taking action most advantageous to the jurisdiction when it is impossible to delineate adequately a specific response by law or regulation. Case law affirms this discretion. See "Arbitrary, Capricious, Fraudulent Action."

BID - The executed document submitted by a Bidder in response to an Invitation for Bids, a Request for Quotation or a multi-step bidding procedure.

BID-Award File - A file divided into commodity and item sections listing those solicited for individual bids, what each response was, and other information. The bid-award file is used to compare past bids for award patterns that might reveal collusive agreements or to make other comparisons of data.

BID BOND - An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if his bid is accepted, fails to accept the contract as bid. See "Bid Deposit," "Bid Security."

BID DEPOSIT - A sum of money or check deposited with and as instructed by the prospective purchaser to guarantee the bidder (depositor) will, if selected, accept the contract in accordance with the bid. If the bidder does not accept the contract, he forfeits the amount of the deposit. See "Bid Bond," "Bid Security." See also "Forfeiture of Deposit of Bond."

BID OPENING - The formal process through which bids are opened and the contents revealed for the first time to the jurisdiction, other bidders and usually, to the public. See "Public Bid Opening."

BID SAMPLE - A sample required of a bidder for examination, comparison, testing, and evaluation by the prospective purchaser.

BID SECURITY - A guarantee, in the form of a bond or deposit, that the bidder, if awarded a contract, will accept the contract as bid, otherwise the bidder (in the case of a

deposit) or his/her guarantor (in the case of a bond) will be liable for the amount of the bond or deposit. See "Bid Bond," "Bid Deposit."

BIDDER - Any person submitting a competitive bid in response to a solicitation. See "Bid," "Proposal," "Proposer."

BIDDERS LIST - A list maintained by the purchasing office setting out the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can be solicited. See "Pre-Qualification of Bidder," "Qualified Bidder."

BILL - A list of charges or costs presented by a vendor to a purchaser, usually enumerating the items furnished, their unit and total costs, and a statement of the terms of sale: an invoice.

BILL OF MATERIALS - A list specifying the quantity and character of materials and parts required to produce or assemble a stated quantity of a particular product.

BLANKET ORDER - An arrangement under which a purchaser contracts with a vendor to provide the purchaser's requirements for an item or a service, on an as-required and often over-the-counter basis. Properly prepared, such an arrangement sets a limit on the period of time it is valid and the maximum amount of money which may be spent at one time or within a specified period. See "Open-end Contract," "Price Agreement," "Requirements Contract."

BLANKET PURCHASE - See "Blanket Order."

BLIND TRUST - An independently managed trust in which the beneficiary has no management rights and in which the beneficiary is not given notice of alteration in, or other dispositions of, the property subject to the trust.

BOILER PLATE - Colloquial designation for standard terms and conditions, usually preprinted, incorporated in an Invitation for Bids, Request for Proposals, or a contract or purchase order. See "General Provisions."

BONA FIDE - In good faith.

BRAND NAME - A product which serves to identify a product of a particular manufacturer. A trade name.

BRAND NAME OR EQUAL SPECIFICATION - A specification that cites brand names, model numbers, or other identifications as representing quality and performance called for, and inviting bids on comparable items or products of any manufacturer.

BRAND NAME SPECIFICATION - A specification that cites the brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others.

BREACH OF CONTRACT - A failure without legal excuse to perform any promise which forms a whole or part of a contract. See "Forfeiture of Deposit or Bond."

BREACH OF WARRANTY - Infraction of an express or implied agreement as to the title, quality, content, or condition of a thing sold.

BULK PURCHASING - Purchasing in large quantities to seek a lower price per unit; volume purchasing.

BUSINESS - Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

BUY AMERICAN - A policy, usually expressed in law, requiring purchase of American-made products, products with a substantial percentage of American-made components, or extending a percentage price advantage to American-made products. See "Preference."

BUYER - An industrial purchasing designation connoting limited scope and authority as a purchaser. Commonly but improperly used in public purchase.

BUYER'S MARKET - Market conditions in which goods can easily be secured and economic forces of business end to cause goods to be priced at the purchaser's estimate of value.

CALENDAR DAY - Every day shown on the calendar, Saturdays, Sundays, and holidays included.

CASH DISCOUNT - A discount from the purchase price allowed by the seller to the purchaser when payment is made within a designated period. A cash discount should not be considered as a factor for an award since it is predicated on future and uncertain action.

CASH ON DELIVERY (COD) - Payment due and payable upon delivery of goods.

CATALOG - A listing of item identifications arranged systematically.

CAVEAT EMPTOR - "Let the buyer beware." A maxim stating the buyer should be careful in making a purchase because the burden of defective goods rests with him. In contravention, the seller can be held responsible for certain defects by means of suitable specifications, warranties, and contractual terms and conditions.

CAVEAT VENDITOR - "Let the seller beware." A maxim relating to situations where the vendor bears the responsibility for defects in the goods he sells.

CENTRAL PURCHASING AUTHORITY - The administrative unit with the authority, responsibility, and control of purchasing activities.

CENTRALIZED PURCHASING - A system of purchasing in which authority, responsibility, and control of activities is concentrated in one administrative unit.

CERTIFICATE OF COMPLIANCE - A supplier's certification that the supplies or services in question meet certain specified requirements.

CERTIFICATE OF NON-Collusion - A statement signed by a bidder and submitted with his bid affirming that his bid is made freely, independently and without consultation with any other bidder.

CHANGE ORDER - A written order signed by the Procurement Officer, directing the contractor to make changes which the Changes clause of the contract authorizes the Procurement Officer to order without consent of the contractor.

CLAIM - The aggregate of the operative facts which serve as a basis for a demand for payment, reimbursement, or compensation for injury or damage under law or contract; the assertion of such a demand.

CODE OF ETHICS - Written guidelines within which judgments and considerations of professional ethics and behavior should be made for all elected, appointed and classified employees of a jurisdiction.

COLLUSION - A secret agreement or cooperation between two or more persons to accomplish a fraudulent, deceitful, or unlawful purpose.

COLLUSIVE BIDDING - The response to bid invitations by two or more vendors who have secretly agreed to circumvent laws and rules regarding independent and competitive bidding.

COMBINATION SPECIFICATIONS - Contain elements of both design and performance specifications. Some features of each are included to allow a vendor to use ingenuity to meet the performance needs of the government and also to require certain necessary design characteristics. This is probably the most common type of specification.

COMMERCIAL LAW - The branch of law that designates the rules that determine the rights and duties of persons engaged in trade and commerce.

COMMODITY - An article of trade, a movable article of value, something that is bought or sold; any movable or tangible thing that is produced or used as the subject of barter or sale.

COMPETITION - The process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery and/or service.

COMPETITIVE BIDDING - The submissions of prices by individuals or firms competing for a contract, privilege, or right to supply merchandise or services.

COMPETITIVE NEGOTIATION - A method for contracting for goods and services, whereby proposals are solicited from qualified suppliers, following submission of which changes in proposals and prices by allowed, and the offer deemed by the awarding authority to be most advantageous in terms of criteria as designated in the Request for Proposals is accepted; a negotiated procurement.

COMPETITIVE QUOTATIONS - The customary, and usually prescribed, method for making purchases involving dollar amounts less than that for which competitive sealed bidding is required. Such competition is often called for by law, with the transactions designated as "informal bidding," or "small purchases."⁹

COMPETITIVE SEALED PROPOSALS - A term used by the ABA Model Procurement Code for competitive negotiation as a source selection.

CONFIDENTIAL INFORMATION - (1) Any information which is available to an employee only because of the employee's status as a public employee and is not a matter of public knowledge or available on request. (2) Information, such as trade secrets and test data, which may be kept confidential in the purchasing process.

CONFIRMING ORDER - A de facto purchase order issued to a vendor listing goods or services procured verbally and/or outside established purchasing procedures. Since a confirming order precludes competition it may be illegal under certain laws/ordinances.

CONFLICT OF INTEREST - A situation where the personal interests of a contractor, public official or classified employee are, or appear to be, at odds with the best interests of the jurisdiction.

CONSIDERATION - Acts, promises, or things of value exchanged by two parties that validates a contract between them.

CONSPICUOUSLY - Written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate should have noticed.

CONSTRUCTION (WORK) - The process of building, altering or repairing a public structure or building, or other improvements to any public real property. It does not include routine operation, routine repair or routine maintenance of existing structures, buildings or real property. A project usually requiring the professional services of an architect or engineer.

CONTINGENCY - A possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminate at the present time.

CONTRACT - (1) A deliberate verbal or written agreement between two or more competent persons to perform or not to perform a specific act or acts. Also, an "Agreement." (2) All types of [government] agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction.

CONTRACT ADMINISTRATION - The management of various facts of contracts to assure that the contractor's total performance is in accordance with the contractual commitments and obligations to the purchaser are fulfilled. In governments, this management may include responsibility delegated by the central purchasing authority to using agencies.

CONTRACT MODIFICATION - Any written alteration to specifications, delivery point, rate of delivery, period of performance, price, quality, or other provisions of any contract accomplished by mutual action of the parties to the contract.

CONTRACT RECORD - A record providing particulars regarding the orders or releases placed for delivery of goods against a contract so the volume of contract purchases can be determined.

CONTRACT RELEASE ORDER - A purchase document or order issued by a Using Agency consistent with the prices, terms and conditions established by a contract issued by the Central Purchasing Authority.

CONTRACTOR - Any person having a contract with a governmental body.

CONTRACTUAL SERVICES - Services furnished under a contract in which the nature and basis for charges and other pertinent contractual terms and conditions are defined.

CONVENIENCE TERMINATION CLAUSE - A contract clause which permits the government to terminate, at its own discretion, the performance of work in whole or in part, and to make settlement of the vendor's claims in accordance with appropriate regulations and applicable contractual conditions.

COOPERATIVE PURCHASING - (1) The combining of requirements of two or more political entities to obtain the advantages of volume purchases, reduction in administrative expenses, or other public benefits. (2) Procurement conducted by, or on behalf of, more than one Public Procurement Unit, or by a Public Procurement Unit with an External Procurement Activity.

COPYRIGHT - A grant made by a government to a writer/artist which recognizes sole authorship/creation of a work and protects the creator's interest(s) therein. U.S. Copyright case law on computer programs remains unclear.

CORRUPT COMBINATION, COLLUSION OR CONSPIRACY IN RESTRAINT OF TRADE - Terms referring to an agreement between two or more businesses to stifle,

control, or otherwise inhibit free competition in violation of state and/or federal antitrust laws or regulations.

COST PRINCIPLES - Under regulations, the principles used to determine the allowability of incurred costs for the purpose of reimbursement under contract provisions.

COST-Reimbursement Contract - A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions (of the purchasing law), and a fee, if any.

DAMAGES - Compensation, usually in money, for injury to goods, persons, or property.

DATA - Recorded information, regardless of form or characteristic.

DEBARMENT - A shutting out or exclusion (through due process) for cause, as a bidder from a list of qualified prospective bidders.

DEBT - Any obligation to pay money. Ordinarily the term debt means a sum of money due by reason of a contract expressed or implied. Broadly, the word may include obligations other than to pay money, such as the duty to render services or deliver goods.

DECENTRALIZED PURCHASING - A system of purchasing in which there is a (varying) degree of delegation of authority, responsibility, and control of purchasing activities to the several Using Agencies. Delegation does not relieve the Central Purchasing Authority from accountability.

DEFAULT - Failure by a party to a contract to comply with contractual requirements; contractor failure to perform.

DEFECT - A non-conformance of an item with specified requirements.

DELIVERY SCHEDULE - The required or agreed time, or rate, of delivery of goods or services.

DELIVERY TERMS - Conditions in a contract relating to freight charges, place of delivery, time of delivery, or method of transportation.

DESCRIPTIVE LITERATURE - Information, such as illustrations, charts, drawings, and technical data which shows the characteristics or construction of a particular product or explains its operations, furnished by a bidder as part of his bid to describe the items he offers. The term refers only to information required to evaluate a product, and need not include other information such as that related to the qualifications of a bidder or operating or maintaining equipment.

DESIGN-BUILD - The district and the design/build contractor enter into a specific contract wherein the contractor undertakes the responsibility to provide for the design and construction of the project in conformance with basic requirements which have been set forth by the district. The contract may be lump sum, cost plus a fee or guaranteed maximum, lease or lease-purchase. The contract is generally entered into after project definition but before substantial design work has been done.

DESIGN SPECIFICATIONS - A type or manner of writing a purchase description characterized by detail as to how the product is to be manufactured or work is to be performed; generic specification. Appropriate for a unique product or custom work.

DESIGNATION OF SPECIAL PURPOSE - A term referring to special use for which no items of the kind needed are regularly produced (e.g., sewing machines for teaching blind people to sew), and purchase is accomplished through an Invitation for Bids using a broad specification for a standard market item with a description of the special purpose for which the item will be used together with a questionnaire asking what modifications bidders will make to their standard product to meet the particular need.

DESIGNEE - A duly authorized representative of a person holding a superior position.

DETERMINATION - A decision made by a public official or employee which shall be in writing and based on written findings.

DIRECT OR INDIRECT PARTICIPATION - Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

DIRECTIVES - Laws, rules and regulations, policy and procedures which affect the conduct of a contract and are cited by reference in the solicitation for the guidance of bidder/offerors.

DISADVANTAGED BUSINESS - A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantage.

DISCOUNT - An allowance or deduction from a normal or list price extended by a seller to a buyer to make the net price more competitive.

DISCOUNT SCHEDULE - A list of discounts applying to varying quantities of goods, or applicable to differing classifications of purchasers.

DISPOSITION - Transferring, trading-in, selling, or destroying goods that are excess, surplus or scrap.

DISPUTE - A difference between a contractor and a jurisdiction over performance or other elements of a contract calling for appropriate administrative action with the intent of achieving a remedial result.

ECONOMIC ORDER QUANTITY (EOQ) - The stock level reorder point based on costs of acquisition, storage, handling, and inventory investment to determine the most cost effective time and quantity to reorder.

EMERGENCY PURCHASE - A purchase made without following normal purchasing procedures in order to obtain goods or services to meet an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

EMPLOYEE - An individual drawing a salary from a governmental body, whether elected or not, and any uncompensated individual performing personal services for any governmental body.

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM - A plan to include minority groups or other disadvantaged persons in the work force of businesses affected by the plan.

EQUAL, OR EQUAL - A phrase used to indicate the acceptability of products of similar or superior function, purpose, design, and/or performance.

EQUIPMENT - Personal property of a durable nature which retains its identity throughout its useful life.

ESCALATION CLAUSE - See "Price Adjustment Provision."

ESTABLISHED CATALOGUE PRICE - The price included in a catalogue, price schedule or other form that: (a) is regularly maintained by a manufacturer or contractor; (b) is either published or otherwise available for inspection by customers; and (c) states prices at which sales are currently or were last made to a significant number of any category of buyers, or to the general buying public, for the supplies or services involved.

ETHICS - See "Code of Ethics," "Purchasing Ethics."

EVALUATION COMMITTEE - A committee which advises and assists the purchasing office in evaluation and award, usually employed in high tech and purchase of services transactions.

EVALUATION OF BID - The process of examining a bid after opening to determine the bidder's responsibility, responsiveness to requirements, and to ascertain other characteristics of the bid that relate to determination of the successful bidder.

FIDELITY BOND - A bond which secures an employer up to an amount stated in the bond for losses caused by dishonesty or infidelity on the part of the employee.

FIRM BID - A bid that binds the bidder until a stipulated time of expiration.

FISCAL YEAR - A period of 12 consecutive months selected as a basis for annual financial reporting, planning, or budgeting.

FIXED PRICE CONTRACT - A contract which provides for a firm price, subject to any contractual conditions allowing price adjustment, under which the contractor bears the full responsibility for profit or loss.

FIXED PRICE CONTRACT WITH ECONOMIC PRICE ADJUSTMENT - A contract which provides (usually after an initial period) for price increase/decrease based upon an objective price index incorporated into the contract.

FIXED PRICE SALE - An offering at a price established by the seller and not subject to negotiation.

FORMAL ADVERTISING - The placement of a notice in a newspaper or other publication according to legal requirement to inform the public that the government is requesting bids on a specific purchase it intends to make.

FORMAL BID OR OFFER - A bid which must be submitted in a sealed envelope and in conformance with a prescribed format, to be opened at a specified time.

FORWARD PURCHASING - The purchasing of quantities exceeding immediate needs, e.g., in anticipation of a price increase or future shortage.

FORWARD SUPPLY CONTRACT - A contract for future supply of definite quantities of materials or services over a fixed period. Quantity specified may be obtained by "draw-off orders," or be delivered at a fixed and predetermined rate set out in the contract.

GRATUITY - A payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

IDENTICAL BID - A bid that is the same in all salient respects with another bid.

INELIGIBLE BIDDER - A supplier or prospective supplier who, by reason of financial instability, unsatisfactory reputation, poor history of performance, or other deficiency, does not meet the qualifications for placement on the bidder list or for award; also non-responsible bidder.

INFORMAL BID - An unsealed competitive offer conveyed by letter, telephone, telegram, or other means and under conditions different from those required for formal bidding.

INITIAL PRICE - Outlay of money necessary to buy something. Initial price is a proper determinant for award only when the products or services offered, and to be furnished, are essentially identical irrespective of which bidder or offeror receives the award.

INSPECTION - Critical examination and/or testing of items to determine whether they have been received in the proper quantity and condition and conform to the applicable specifications.

INVITATION FOR BIDS (IFB) - (1) The solicitation document used for competitive sealed bidding, the customary method used by state and local governments for the purchase of equipment, materials, supplies, and construction. (2) All documents, whether attached or incorporated by reference, utilized for soliciting bids.

LATE BID PROPOSAL - A bid or proposal received at the place specified in the solicitation after the time designated for all bids or proposals to be received.

LATENT DEFECT - A defect not apparent by ordinary and reasonable inspection at time of receipt or beginning use of a product.

LEASE-Purchase Agreement - A lease contract containing a purchase option in which the lessee's periodic payments or parts thereof may be applied to serve both as the rental obligation and as installments for acquiring ownership of the property upon lessee exercising the purchase option; a conditional sales contract.

LEGAL NOTICE - Notice of a proposed purchase as required by law. Depending upon the legal requirement, notice may be satisfied by posting an announcement of the purchase in a public place, notification of the appropriate bidders from the bidders list, formal advertisement in a newspaper or newspapers, or a combination of these methods.

LIFE-Cycle Costing - A procurement technique which takes into account demonstrable and documented operating, maintenance, the cost of money, and other costs of ownership and usage, and resale or residual value in addition to acquisition price in making an award on low total cost.

LINE ITEM - A procurement item specified in an invitation for bids for which the bidder is asked to tender an individual price and which, under the terms of the invitation, is usually susceptible to a separate contract award.

LOCAL PURCHASE - A purchase made directly by an agency, apart from the central purchasing office, for its own use or for the use of another agency logistically supported by it.

LOWEST (RESPONSIVE AND) RESPONSIBLE BIDDER - Originally, the bidder submitting the lowest initial price and capable of performing the proposed contract. Under

modern purchasing concepts, often construed as generally the same as the "lowest responsive and responsible bidder," or the bidder who submits the "lowest and best bid," or the "most advantageous bid, price, and other factors considered." For clarity and accuracy, the recommended provision for determining award is the "responsive and responsible bidder whose bid is most economical for the purpose intended, according to criteria set forth in the solicitation."

MANUFACTURER - One who (1) controls the design and production of an item, or (2) produces an item from crude or fabricated materials, or (3) assembles materials or components, with or without modification, into more complex items.

MISREPRESENTATION - A manifestation by words or other conduct that, under the circumstances, amounts to an assertion not in accordance with the facts.

MISTAKE (IN BID) - A miscalculation in composing a bid resulting in an incorrect price or other term, especially in affecting the bidder's eligibility to be awarded a contract.

MULTIPLE AWARD - The award of contracts to two or more bidders for the same or essentially similar items. Appropriate only in situations where the award of a single contract would be impossible or impractical and awards are limited to the least number of suppliers necessary for a workable contract.

MULTI-STEP COMPETITIVE BIDDING - A competitive process calling for separate submissions of a technical proposal (which may be negotiated) as the first step or steps of the process followed by a call for non-negotiable competitive price bid as the final step.

NONRESPONSIVE BID - A bid that does not conform to the essential requirements of the invitation for Bids; nonconforming bid; unresponsive bid.

OFFER - the act of one person that gives another person the legal power to create a contract to which both of them are parties; to perform such an act.

OPEN-ACCOUNT PURCHASE - A purchase made by a buyer who has established credit with the seller. Payment terms are usually stated to require payment of invoice on or before a specific date or dates; also, to require payment of invoice in full, or less a certain percentage for prompt payment. Such terms are agreed upon between buyer and seller prior to or at the time of establishing the account.

OPEN-END CONTRACT - A contract in which quantity, duration, or both are not specified.

OPEN-MARKET PURCHASE - A purchase made other than under a schedule or term contract, or made by negotiation following rejection of all bids when satisfactory bids cannot be obtained.

OPTION - The right, acquired for consideration, to buy or sell something at fixed price within a specified time.

OPTION TO RENEW - A contract clause that allows a party to elect to re-institute the contract for an additional term; in public contracting, where competitive bidding is a required exercise of the option must rest solely with the purchaser.

PERFORMANCE BOND - A contract of guaranty executed subsequent to award by a successful bidder to protect the government from loss due to contractor inability to complete the contract as agreed.

PERFORMANCE RECORD - Record to indicate a supplier's ability to keep delivery promises and reliability, together with consistency of quality and performance of the products and services furnished.

PERFORMANCE SPECIFICATIONS - Where the goods and/or services are described in terms of required performance. They may include such details as required power, strength of material, test methods and standards of acceptability and recommended practices.

PRE-Bid Conference - A meeting scheduled in a solicitation for the purpose of providing clarification as needed. Substantive questions raised at a pre-bid conference are answered in writing and may modify the solicitation. In some jurisdictions, the conference may be mandatory at the discretion of the Purchasing Manager.

PREFERENCE - An advantage in consideration for award of a contract granted to a bidder by reason of the bidder's residence, business location, origin of product offered, business classification (e.g., small business), or other reason; generally inconsistent with impartiality in awarding public contracts.

PRICE COMPETITION - The basis for awarding a contract solely on the consideration of price as submitted on competitive bids or as negotiated under competitive proposals.

PRICE FIXING - Agreements between competitors to sell at the same price, to adopt formulas or the computation of selling prices, to maintain specified discounts, to maintain predetermined price differentials between different quantities, types, or sizes of products, or other means of setting prices charged to purchasers.

PRICE PROTECTION - An understanding or agreement between a purchaser and seller, or extended by a seller to a purchaser, to maintain a price against increase, or to grant the purchaser any reduction in price the vendor may establish on the goods in question, prior to shipment of the purchaser's order.

PROCUREMENT - The procedures for obtaining goods or services, including all activities from the planning steps and preparation and processing of a requisition, through receipt and acceptance of delivery and processing of a final invoice for payment. The acts of preparing

specifications, evaluating bids or proposals, making awards, and administering contracts are involved; in some contexts property management is implied.

PROFESSIONAL SERVICES - Infrequent, technical, and/or unique functions performed by independent contractors whose occupation is the rendering of such services. While not limited to licentiates, the services are considered "professional," and the contract may run to partnerships, firms, or corporations as well as individuals. Examples of professional services include medicine and the medical arts, architectural and engineering services, management and systems consultation, research, and the performing arts.

PROPOSAL - The executed document submitted by an offeror in response to a Request for Proposal [and the basis for subsequent negotiation].

PROPOSAL EVALUATION CRITERIA - Factors, usually weighted, relating to management capability, technical capability, manner of meeting performance requirements, price and other importance considerations used to evaluate which proposer in a competitive negotiation has made the most advantageous offer.

PUBLIC BID OPENING - The process of opening and reading bids, conducted at the time and place specified in the Invitation for Bids and/or the advertisement, and in the presence of anyone who wishes to attend.

PURCHASE ORDER - A purchaser's document to formalize a purchase transaction with a vendor. The purchase order should contain statements as to the quantity, description, and price of the goods or services orders; applicable terms as to payment; discounts, date of performance, and transportation; and other factors or suitable references pertinent to the purchase and its execution by the vendor. Acceptance of a purchase order constitutes a contract.

PURCHASE REQUEST - (1) Information transmitted by a using agency requesting the central purchasing office to effect a contract for a particular need or group of needs. The request may include, but is not limited to, a performance or technical description of the requested item, delivery schedule, transportation mode, criteria for evaluation, suggested sources of supply, and information related to the making of any written determination required by policy or procedure. (2) That document whereby a Using Agency requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery, criteria for evaluation, suggested sources.

PURCHASING AGENT - An administrator vested by law to review appropriateness of purchase requests, prepare solicitations, obtain bids or proposals, evaluate and award. However, in some jurisdictions this administrator is the Secretary of Administration, Secretary of General Services, or similar appointee who, while vested by law with the responsibility/accountability for the purchasing program, delegates the operational responsibility/authority to a designee.

PURCHASING CYCLE - The full cycle of activities carried out by a purchasing department in the acquisition of goods and services.

PURCHASING ETHICS - Moral Concepts And Practices Based On The Principle That The public interest is paramount, applicable to the personnel of the purchasing department and all other persons involved in the purchasing process, particularly with respect to the expenditure of government funds and relationships between public employees and sellers.

QUALIFIED BIDDER - A bidder determined by the government to meet standards of business competence, reputation, financial ability, and product quality for placement on a list of prospective bidders.

QUALIFIED PRODUCTS LIST - A specification developed by evaluating brands and models of various manufacturers of an item and listing those determined to be acceptable as eligible to be offered on the next invitation for bids; on approved brands list.

QUALITY ASSURANCE - A planned and systematic series of actions designed to provide adequate confidence that a product purchased or to be purchased will perform satisfactorily in service.

QUALITY CONTROL - Practices and procedures necessary to ensure appropriate quality and performance of goods produced or received.

QUOTATION - A statement of price, terms of sale, and description of goods or services offered by a prospective seller to a prospective purchaser, usually for purchases below the amount requiring formal bidding; the stating of the current price of a commodity, or the price so stated.

REORDERING LEVEL - The stock level at which a requisition for the replenishment of the stock should be initiated.

REQUEST FOR INFORMATION (RFI) - The document used in informal, uncompetitive solicitation of information, data, comments, or reactions from possible suppliers preceding the issuance of a Request for Proposals or a multi-step bidding procedure.

REQUEST FOR PROPOSAL (RFP) - (1) All documents, whether attached or incorporated by reference, utilized for soliciting (competitive) proposals. The RFP procedure permits negotiation of proposals and prices as distinguished from competitive bidding and an Invitation for Bids. (2) The solicitation document used in the competitive negotiation process. The procedure allows changes to be made after proposals are opened and contemplates that the nature of the proposals and/or prices offered will be negotiated prior to award.

REQUISITION - An internal document by which a using agency requests the purchasing department to initiate procurement. May also be a form used for obtaining supplies from a storeroom or warehouse.

RESPONSIBLE BIDDER OR OFFERER - A person who has the capability in all respects to perform in full the contract requirements, and the integrity and reliability which will assure good faith performance.

RESPONSIVE BIDDER - (1) a person who has submitted a bid which conforms in all material respects to the Invitation for Bids. (2) One whose bid conforms in all material respects to the terms and conditions, the specifications and other requirements of the IFB.

SCHEDULE PURCHASE - a purchase for which a bid opening date is prescheduled, such as quarterly, so that using agencies' requirements for the period covered by the ensuing contract can be consolidated for volume purchasing under one Invitation for Bids.

SEALED BID - A bid which has been submitted in a sealed envelope to prevent its contents being revealed or know before the deadline for the submission of all bids: usually required by law or rule on major procurements, to enhance fair competition.

SHIPPING LIST - A memorandum listing all items included in one shipment or shipped at one time.

SOLE-SOURCE PROCUREMENT - An award for a commodity or service to the only know capable supplier, occasioned by the unique nature of the requirement, the supplier, or market conditions. (Senate Bill Number 623)

SPECIFICATION - A description of what the purchaser seeks to buy, and consequently, what bidder must be responsive to in order to be considered for award of a contract. A specification may be a description of the physical or functional characteristics, or the nature of, a supply of service. It may include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery. A purchase description.

SPOT PURCHASE - A one time purchase occasioned by a small requirement, an unusual circumstance, or to take advantage of a favorable market condition.

STANDARD - A characteristic or set of characteristics for an item that, for reasons of performance level, compatibility or interchangeability with other products, etc., is generally accepted by producers and by users of the item as a required characteristic of all items for the designed purpose.

STANDARD SPECIFICATION - A specification established through a prescribed process and used for all or most purchases of the item involved.

STANDARDIZATION (OF SPECIFICATIONS) - The process of examining characteristics and need for items of similar end usage and developing a single specification that will satisfy the need for most or all purchases for that purpose.

SUBCONTRACTOR - Any person undertaking part of the work under the terms of the contract, by virtue of an agreement with the contractor, who, prior to such undertaking, receives the written consent of the surety and approval of the jurisdiction.

SUPPLIES - (1) Customarily, items that are consumed or expended in the course of being used, as distinguished from equipment and materials; but in some purchasing terminology, all items except construction and services. (2) All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

TABULATION OF BIDS - A recording of bidders and abstract of their bids listing items offered, prices, deliveries, etc., in response to a specific solicitation, made for purposes of comparison and recordkeeping; an abstract.

TERMS AND CONDITIONS - A general reference applied to the provisions under which bids must be submitted and which are applicable to most purchase contracts.

TERMS OF PAYMENT - Purchase transactions require payment for the goods or services received, and with exception of an unusual exchange or barter agreement there are three basic payment terms: cash, open account, and secured account.

TESTING - Determination of the physical, chemical, or performance characteristics of items. Testing may be conducted in connection with developing specifications and standards, making comparative evaluations of products offered on bids, and ascertaining compliance with specifications before or after a contract award.

TITLE - The means whereby a person's ownership of property is established.

TOTAL SUPPLY - A concept of purchasing with the objective of advanced planning which provides for the broadest scope of purchasing and purchasing-related activities to reduce costs, improve effectiveness, and increase operational efficiency. Total supply is concerned not only with acquisition, but with requirements planning, logistics, and property management.

UNIFORM COMMERCIAL CODE - Uniform statute law adopted by states for consistency and modernity in law governing commercial transactions.

UNSUCCESSFUL BIDDER OR OFFEROR - One whose bid proposal is not accepted and award is made to another.

VENDOR FILE - The accumulated record maintained by the central purchasing authority of information relevant to a bidder's or contractor's business relationship with the jurisdiction, including application for inclusion on the bidders list, record of performance

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List of Acronyms

- ADA – Average Daily Attendance
- A/E – Architect and Engineering Services
- AGC – Association of General Contractors of America
- CFR – Code of Federal Regulations
- CPM – Critical Path Method
- DIR – Texas Department of Information Resources
- MSDS – Material Safety Data Sheets
- OEM – Original equipment manufacturer parts
- OMB – Office of Management and Budget
- OPIS – Oil Pricing Information Services
- OSHA – Occupational Safety and Health Act
- RFCSP – Request for Competitive Sealed Proposal
- RFP – Request for Proposals
- RFQ – Request for Qualifications
- TEC – Texas Education Code
- TXCC – Texas Workers' Compensation Commission

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