

San Angelo ISD Purchasing

Procedures Manual



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Introduction

The Purchasing Department of San Angelo ISD is responsible for the organization and administration of procurement/purchasing for the district in accordance with the authority delegated by the Superintendent, Board of Trustees, and State Purchasing Laws. Our top goals in purchasing: 1) help every employee legally secure the items they need to do their jobs effectively, 2) get the best taxpayer value (which is not just the lowest unit price) for the products and services we purchase, and 3) have an efficient and supportive system for our staff to make the purchases.

It is the responsibility of the SAISD staff to seek purchases from vendors that have been awarded the contracts through the competitive bid/proposal process. Item(s) that are on a bid/proposal but are requisitioned to an unapproved vendor may be denied, or the campus/department may be required to correct the requisition to reflect an approved vendor and correct pricing from that vendor. In the event a proposal does not exist for a particular category, the Purchasing Department will assist in securing the necessary information to develop one.

Bid Laws and Board Policy

Purchasing law can be found in the Texas Education Code Section 44.031. Regulations for purchasing all merchandise and/or services are outlined in the school board policies **CH (Legal), CH (Local), CHF (Legal), and COA (Legal)**. Relevant code and policies are in Appendix 1.

Competitive Procurement Methods

As outlined in TEC 44.031, there are a variety of methods that can be used to procure merchandise and services for the school district. It is the responsibility of the Purchasing Department to identify the appropriate method of procurement for each item. The following table provides a brief explanation of each method.

Purchasing Method	Method Description
Competitive Bidding	Requires that bids be evaluated and awarded based solely upon bid specifications, terms and conditions contained in the request for bids, bid prices offered by suppliers, and pertinent factors affecting contract performance. Forbids negotiation of prices of goods and services after bid opening
Competitive Sealed Proposals	Requires the same terms and conditions as competitive bidding but allows changes in the nature of a proposal and prices after proposal opening.
Request for Proposals	Generates competitive sealed proposals and involves several key elements, including newspaper advertisement, notice to proposers, standard terms and conditions, special terms and conditions, a scope-of-work statement,

	an acknowledgement form/response sheet, a felony conviction notice, and a contract clause.
Interlocal Contract	Provides a mechanism for agreements with other local governments, the state or a state agency to perform governmental functions and services. This provides another method to procure items by using co-op bidding.
Design/Build Contract	Outlines a method of project delivery in which the school district contracts with a single entity for both the design and construction of a project.
Job Order Contracts	Provides for the use of a particular type of contract for jobs (manual labor work) involving minor repairs and alterations.
Construction Management Contracts	Outlines the use of a contract to construct, rehabilitate, alter, or repair facilities using a professional construction manager.
Reverse Auction Procedure	Outlines a bidding process that involves submission of bids by multiple suppliers, unknown to each other, in a manner that allows the suppliers to bid against each other.

Source: Texas Education Agency's (TEA) Financial Accountability System Resource Guide and Legislative Briefing Book.

Advertisement of Bids

State law requires bids worth more than \$50,000 aggregate for the year to be advertised at least once a week for two weeks in a newspaper published in the county in which the district is located. The advertisements are to specify the category of property to be purchased and solicit vendors who are interested in doing business with the district. Local board policy has set the bid threshold at \$50,000.

Bid Process

The bid process is as follows:

- Purchasing Department is made aware of a need to bid a category
- Bid proposal packet is developed and posted on our web site (www.saisd.org/bids)

- The Packet contains the following information:
 - Invitation Letter
 - Special Terms & Conditions

General Terms & Conditions
 Bid/Proposal Submission Forms
 Bid Certification & Felony Conviction Notice

- Advertisement of bid or request for proposal is placed in the newspaper and must run once a week for two consecutive weeks
- Bids/Proposals are opened on specified date/time.
- Bids/Proposals must be evaluated and approved by the Board of Education and/or the Purchasing Department
- Approved vendor list is provided to campuses/departments and posted on the web site with a bid tabulation

Requisition Process

A requisition is the means by which a campus or department of the district requests the Purchasing Department to initiate a purchase order. It is a request generated through the district’s financial software program for the purchase of supplies, services, equipment, etc. Appropriate personnel are trained in the use of the system and staff are always available to help, if needed.

IMPORTANT – Purchases must be made from approved vendors for items/categories that have been bid out or can be found through a board approved purchasing co-op (like Buy Board). The district belongs to multiple co-ops and the complete list is found on the web site.

DUE DILIGENCE AND OBTAINING THE BEST VALUE

Employees are expected to be wise consumers and seek the most cost-effective use of taxpayer dollars. Obtaining goods at a fair and reasonable price is always a top priority, however, best value is not always about the lowest per unit cost. You may consider: quantity and quality of products, availability, delivery methods, ease of ordering (phone, online, fax), past relationships, warranties, local service before and after the purchase.

Use of approved vendors is required. Any individual item or job with a per unit cost of \$3,500.00 or more, requires the attempt to acquire three quotes, if available.

There are a variety of methods departments may use to obtain quotations. Departments must submit and maintain documentation for approval of the requisition.

For items not found in a bid category or through an approved vendor, the following procedures are to be followed (also, see sole source exception).

Purchase Levels	Requirements (If no bid or contract exists)	Approval Requirements
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Greater than \$50,000	Formal Sealed Bid/Proposal by the District	<ul style="list-style-type: none"> • User department/ school approvals • Purchasing Director • Board of Trustees
\$3,500 to \$44,999	Quotations from three vendors	<ul style="list-style-type: none"> • User department/ school approvals • Purchasing Director

Since purchasing laws reflect aggregate district-wide amounts, it is imperative to get Purchasing Department approval before completing the transaction. We are committed to help meet your needs in an efficient, timely, and legal manner.

The district does require staff to secure three quotes from approved vendors for any individual item costing more than \$3,500, if available.

Exceptions to the competitive bidding requirements are contracts for professional services rendered including architect, engineer, real estate fees, attorney fees, and fees for fiscal agents and "sole source" purchases. Sole source purchases allow a district to purchase items that are available from only one source. The criteria for "sole source" purchases include:

- The existence of a patent, copyright, secret process, or monopoly;
- A film, manuscript, or book;
- A utility service i.e. electricity, gas, or water; or
- A replacement part or component for equipment that is specific to a particular piece of equipment and not available from more than one vendor.
- Sole source does not apply to mainframe data-processing equipment and peripheral attachments with a single item purchase price in excess of \$15,000.

The district is responsible for obtaining and retaining documentation from the vendor that clearly states the reasons the purchase must be made on a sole source basis. The district will also require a sole source affidavit from the vendor. The Sole Source Affidavit is found in Attachment 1 of this document. This form must be sent to any vendor qualifying as a sole source provider. This document (or another approved form) must be complete and on hand in the purchasing department before a purchase will be made.

Requisitions should include the following items:

- Description of the item to be purchased (be specific)
For example:
 - 1) File cabinets: color, number of drawers, letter or legal, with or without lock, lateral or regular, catalog number/model number
 - 2) Chairs: color, shell or two-piece, height of chair, catalog/model number

- 3) Desk: single or double pedestal, color of wood/metal and top, catalog/model number
- 4) Office equipment: description of equipment, brand, model number
- Catalog or item number
- Quantity needed (unit of measure)
- Vendor (from the district's approved vendor list)
- Bid number (if applicable)
- Unit cost and total cost
- Budget code charged
- Date required
- Designate if order is to be faxed (include fax number), Emailed (Include email address), or mailed. Any requisitions without this information will be mailed.
- Notations of "Prepayment Required" – send necessary documentation (registration forms, membership application, magazine subscription) to Purchasing with the requisition number on it. Note - very few items are approved for prepayment
- Special handling instructions

Requisitions having incomplete information could be delayed until the information is provided.

Approvals

Level 2 approval – Campus/Department

- Requisitions are entered at the campus/department level and submitted to the principal/department head or designee. No further action can be taken without approval at this level.
- Vendors are verified as approved for the items ordered.
- REMEMBER - Purchases may be made only from approved vendors. A vendor in the eFinancePlus vendor listing does not necessarily mean it is an approved vendor.

Level 1 approval -- Purchasing Department

- Print approval report for Purchasing
- Approve/deny requisitions as indicated by Purchasing on report and notify campuses/departments of corrections needed (i.e.: budget code corrections, price corrections, shipping code errors, notations needed in text box).
- Technology Director must approve those requisitions for technology software and equipment with account codes 6395XXXX, 6396XXXX, and 6398XXXX.

Requisitions are converted to purchase orders after level 1 approval. Our goal is to provide a 24-hour turnaround on all properly executed purchase requests.

Some Companies Do Not Deliver

Use the following procedures:

- Enter your requisition for the merchandise to be purchased.
- The Ship Code should be the campus/department code or "888" for direct pick-up
- Make a note in the text box "Send White Copy of the purchase order to _____ (person's name) for direct pick up from vendor."
- The requisition will be converted to a purchase order after all levels of approvals have been completed and the vendor copy of the purchase order (white copy) will be sent to the person indicated in the text box to make the purchase.
- The vendor copy of the purchase order should be left with the vendor when the purchase has been made.

Ordering on Approval

This should be done through the requisition/purchase order process only.

- Make a note in the text box "Ordering on Approval"
- If you return the item, do so in such a way (return receipt, insured, etc.) that the merchandise can be tracked. If you are to receive a full credit (including shipping/handling charges), notify purchasing that the item is being returned and the purchase order needs to be canceled.

When a vendor calls requesting you to preview an item, the following is required:

- Obtain a name, telephone number, and fax number for the vendor calling. Do not verbally authorize the vendor to send the product. This constitutes expenditures without a purchase order, and it will become the responsibility of the authorizing person to pay for the item.
- Process a requisition with all the required information concerning the preview item. Make a note in the text box stating "for preview and possible purchase." Indicate on the requisition the number of days given by the vendor to preview the item. Vendor must be on the approved vendor list.

Purchasing at a Conference/Convention

Prior to departing for the conference/convention, enter a requisition to the company/companies from which you may wish to order. In the description portion of the requisition, make the notation "Order not to exceed or Do not exceed" and put the amount in the proper location on the requisition. Obtain the proper campus/department approval. The requisition will be reviewed for the following information before approval at level 1 and conversion to a purchase order:

- Is the vendor an SAISD approved vendor?
- Does the Purchasing Department have a proposal for this category of items being requisitioned?
- What is the dollar amount being requisitioned?

NOTE: If a SAISD employee obligates funds at a conference or convention without a purchase order, the burden for payment is with the individual. There was not a contract between the district and the vendor. Reimbursement purchases made will not be granted.

Procurement Cards

Procurement cards are currently used for purchases from SAM's, and HEB through their corporate cards. SAISD has a Master Card that may be used in accordance with the Procurement Card training manual for travel and travel related purchases as well as other approved items. The regular requisition process must be followed to secure the use of these cards. In addition to a PO, the user must have attended a short training session explaining rules and procedures for using the cards. All cards are issued from the purchasing department and must be returned within 48 hours from the date it is used, or from the return of a trip.

Purchase Orders

Purchase orders are a formal order for goods, materials, and/or services from a vendor. A purchase order, once approved, is a binding commitment for the district to remit payment to the vendor after the district receives the item(s) and an invoice.

A purchase order is also an important document to the Accounting Department. The purchase order is used in the accounts payable process as it documents that an order has been received and accepted by the user so that payment can be made to the vendor.

District employees shall not contact vendors to place orders without a purchase order. This could result in payment for the merchandise by the individual when the items are invoiced. A purchase order is the contract that the district will use to remit payment to a vendor.

Purchase orders are printed, separated, and distributed as follows:

- **Vendor's Copy** (white) – mailed, faxed, or taken to company for purchase
- **Warrant Copy** (yellow) – sent to Accounting Department
- **Requestor Copy** (blue) – sent to campus/department for files
- **Reference Copy** (green) – Purchasing Department file copy
- **Inventory Copy** (goldenrod) – Fixed Asset Clerk receives these for inventory confirmation
- Receiving must be done in eFinancePlus by the campus/department receiving the order

You are allowed to purchase only the items listed on the initial request. Substitutions may be made only with prior approval from Purchasing.

PO Supplements

Send ALL supplements for purchase orders to Purchasing. This could include items such as registration forms, specific order forms, book lists, etc. that need to accompany your purchase order.

Supplements to be sent to the vendor with the PO should be sent to the Purchasing Department.

Supplements that are to be sent with a check and PO to the vendor (i.e. registration forms, membership forms, subscriptions, travel information) should be sent to the Accounting Department with the requisition number noted on the supplement.

Emergency Purchase Orders

Emergency purchase orders will only be processed with prior permission of the Director of Purchasing or the Superintendent. We will work to eliminate this process.

Cancellation or Changes to Purchase Orders

Any request to modify or cancel a purchase order must be made in writing (memorandum or e-mail) to the Purchasing Department. A purchase order cannot be canceled unilaterally. The company must be contacted and must agree to the cancellation or modification of an existing purchase order.

If both parties agree, the Purchasing Department will cancel the purchase order or make the necessary modifications to the purchase order.

Frequently Asked Questions

How long does it take to issue a purchase order?

Our goal is to provide a 24-hour turnaround on all properly requested orders. If research is required, the turnaround time will be extended.

What copy of the purchase order do I receive?

The campus or department will receive the blue copy of the purchase order. Since all the merchandise is delivered directly to the campus (i.e.: subscriptions) or it is a direct pick-up purchase order, the campus or department is responsible for receiving the shipment directly into eFinancePlus.

May I place an order from the copy returned to me?

No. This could result in a duplication of shipments. The vendor copy (white copy) is mailed to the vendor unless special instructions are noted in the text box.

Could I possibly purchase the items I require and be reimbursed?

Anyone obligating the district's funds without a purchase order will be responsible for paying the vendor. Reimbursement requires prior approval.

May I ask a vendor to hold an item for me in anticipation of a forthcoming purchase order?

Only the purchase order has the authority to obligate the district's funds.

Is it possible to purchase an item without a purchase order?

No. All items must be purchased by an approved purchase order. Anyone obligating the district's funds without a purchase order will be responsible for paying the vendor.

May I preview films, books, or other curriculum materials and then decide to purchase the item?

All preview materials, films, books, and curriculum materials, require a purchase requisition and purchase order prior to receiving the items.

Is it possible to purchase goods from an alternate source, other than the vendor awarded the bid/proposal?

If the awarded vendor (from bid/proposal) sells the item required, the district must purchase it from that vendor or from an approved coop. If the district does not purchase the item from this vendor, the district could be liable for the Breach of Contract.

What does "f.o.b." mean?

This term is an acronym for "free on board" which designates the point at which charges for freight begin. FOB destination indicates that the charges begin at the destination; thus there are no charges to the recipient (district). FOB shipping point indicates the charges begin at the point of shipment; thus charges are borne by the recipient (district). The FOB point also indicates the point at which the district assumes responsibility for the goods/merchandise. If the shipment is FOB destination, the responsibility remains with the vendor/supplier until the merchandise reaches the district. SAISD prefers that FOB destination be used on all orders.

How do I indicate on the requisition that delivery by a specific date is critical?

Indicate it on the requisition by putting a note in the text box. If the specified date is mandatory, clearly state it in the notation. This message will print on the purchase order when it is printed.

Is a requisition also a purchase order that can be sent to the vendor?

No. Requisitions are internal (campus/department generated) and should not be sent to a vendor. The Purchasing Department has the sole authority to issue purchase orders.

May I share bid/quote information with the vendors?

Bid/quotes must not be shared until after an award, and then only by the Purchasing Department.

What is personal property?

The term "personal property" includes related classes or types of items or consumable supplies, such as athletic supplies, automotive supplies, office supplies, cafeteria commodities, books,

instructional supplies, insurance, and so forth. This does not include services purchased for construction, legal advice, real estate, etc.

Are brand names allowed in specifications?

Specifications may include brand names. All efforts should be made to describe in a practical or economical manner the item being purchased. The brand names may be used if followed by "or equal." Brand names may not be included in order to prevent certain vendors from responding.

If a brand name 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 evaluated.

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

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". 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.

Can a vendor offer me a gift?

School district officials and employees cannot accept anything of value (\$25 or more) from a vendor, such as personal gifts or gratuities, which may be construed to have been given to influence the purchasing process. This includes, but is not limited to meals, trips, tickets for entertainment, or gifts of any value. This is a violation of the law. If you must ask yourself if this is acceptable, then you probably need to refuse the "gift".

NOTE: "Gift to 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

APPENDIX A

Texas Education Code

Sec. 44.031. PURCHASING CONTRACTS

(a) Except as provided by this subchapter, all school district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value for the district:

- (1) competitive bidding for services other than construction services;
- (2) competitive sealed proposals for services other than construction services;
- (3) a request for proposals, for services other than construction services;
- (4) an interlocal contract;
- (5) a method provided by Chapter 2269, Government Code, for construction services;
- (6) the reverse auction procedure as defined by Section [2155.062\(d\)](#), Government Code; or
- (7) the formation of a political subdivision corporation under Section [304.001](#), Local Government Code.

(b) Except as provided by this subchapter, in determining to whom to award a contract, the district shall consider:

- (1) the purchase price;
- (2) the reputation of the vendor and of the vendor's goods or services;
- (3) the quality of the vendor's goods or services;
- (4) the extent to which the goods or services meet the district's needs;
- (5) the vendor's past relationship with the district;
- (6) the impact on the ability of the district to comply with 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) for a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner:
 - (A) has its principal place of business in this state; or
 - (B) employs at least 500 persons in this state; and
- (9) any other relevant factor specifically listed in the request for bids or proposals.

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

(c) The state auditor may audit purchases of goods or services by the district.

(d) The board of trustees of the district may adopt rules and procedures for the acquisition of goods or services.

(e) To the extent of any conflict, this subchapter prevails over any other law relating to the purchasing of goods and services except a law relating to contracting with historically underutilized businesses.

(f) This section does not apply to a contract for professional services rendered, including services of an architect, attorney, certified public accountant, engineer, or fiscal agent. A school district may, at its option, contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Section [2254.003](#), Government Code, in lieu of the methods provided by this section.

(g) Notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened shall be published in the county in which the district's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the district's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately.

(h) If school equipment, a school facility, or a portion of a school facility is destroyed, severely damaged, or experiences a major unforeseen operational or structural failure, and the board of trustees determines that the delay posed by the contract methods required by this section would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment, school facility, or portion of the school facility may be made by a method other than the methods required by this section.

(i) A school district may acquire computers and computer-related equipment, including computer software, through the Department of Information Resources under contracts entered into in accordance with Chapter 2054 or 2157, Government Code. Before issuing an invitation for bids, the department shall consult with the agency concerning the computer and computer-related equipment needs of school districts. To the extent possible the resulting contract shall provide for such needs.

(j) Without complying with Subsection (a), a school district may purchase an item that is available from only one source, including:

- (1) an item for which competition is precluded because of the existence of a patent, copyright, secret process, or monopoly;
- (2) a film, manuscript, or book;
- (3) a utility service, including electricity, gas, or water; and
- (4) a captive replacement part or component for equipment.

(k) The exceptions provided by Subsection (j) do not apply to mainframe data-processing equipment and peripheral attachments with a single-item purchase price in excess of \$15,000.

(l) Each contract proposed to be made by a school district for the purchase or lease of one or more school buses, including a lease with an option to purchase, must be submitted to competitive bidding when the contract is valued at \$20,000 or more.

Sec. 44.032. ENFORCEMENT OF PURCHASE PROCEDURES: CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY

(a) In this section:

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

(b) An officer, employee, or agent of a school district commits an offense if the person with criminal negligence makes or authorizes separate, sequential, or component purchases to avoid

the requirements of Section 44.031(a) or (b). An offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude.

(c) An officer, employee, or agent of a school district commits an offense if the person with criminal negligence violates Section 44.031(a) or (b) other than by conduct described by Subsection (b). An offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude.

(d) An officer or employee of a school district commits an offense if the officer or employee knowingly violates Section 44.031, other than by conduct described by Subsection (b) or (c). An offense under this subsection is a Class C misdemeanor.

(e) The final conviction of a person other than a trustee of a school district for an offense under Subsection (b) or (c) results in the immediate removal from office or employment of that person

(f) A court may enjoin performance of a contract made in violation of this subchapter. A county attorney, a district attorney, a criminal district attorney, a citizen of the county in which the school district is located, or any interested party may bring an action for an injunction.

Sec. 44.0331. MANAGEMENT FEES UNDER CERTAIN COOPERATIVE PURCHASING CONTRACTS

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

(b) The amount, purpose, and disposition of any fee described by Subsection (a) must be presented in a written report and submitted annually in an open meeting of the board of trustees of the school district. The written report must appear as an agenda item.

(c) The commissioner may audit the written report described by Subsection (b).

Sec. 44.034. NOTIFICATION OF CRIMINAL HISTORY OF CONTRACTOR

(a) 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.

(b) 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.

(c) This section does not apply to a publicly held corporation.

Sec. 44.0351. COMPETITIVE BIDDING

(a) Except to the extent prohibited by other law and to the extent consistent with this subchapter, a school district may use competitive bidding to select a vendor as authorized by Section [44.031\(a\)\(1\)](#).

(b) Except as provided by this subsection, Subchapter B, Chapter 271, Local Government Code, does not apply to a competitive bidding process under this subchapter. Sections [271.026](#), [271.027\(a\)](#), and [271.0275](#), Local Government Code, apply to a competitive bidding process under this subchapter.

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

Sec. 44.0352. COMPETITIVE SEALED PROPOSALS

(a) In selecting a vendor through competitive sealed proposals as authorized by Section [44.031\(a\)\(2\)](#), a school district shall follow the procedures prescribed by this section.

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

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

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

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

Board Policy CH (Legal)

Board Authority

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

Delegation of Authority

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

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

Disaster Delegation

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

Education Code 44.0312

Purchases Valued at or Above \$50,000

Methods

Except as provided by Education Code Chapter 44, Subchapter B, all district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period, shall be made by the method, of the following methods, that provides the best value for a district:

1. Competitive bidding for services other than construction services.
2. Competitive sealed proposals for services other than construction services.
3. A request for proposals for services other than construction services.
4. An interlocal contract.
5. A method provided by Government Code Chapter 2269 for construction services [see CV series];
6. The reverse auction procedure as defined by Government Code 2155.062(d).
7. The formation of a political subdivision corporation under Local Government Code 304.001 (purchase of electricity).

Education Code 44.031(a)

Exceptions

Emergency Damage or Destruction

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

Sole Source

Without complying with Education Code 44.031(a) above, a district may purchase an item that is available from only one source, including:

1. An item for which competition is precluded because of the existence of a patent, copyright, secret process, or monopoly.
2. A film, manuscript, or book.
3. A utility service, including electricity, gas, or water.

4. A captive replacement part or component for equipment.

The exceptions above do not apply to mainframe data-processing equipment and peripheral attachments with a single-item purchase price in excess of \$15,000.

Education Code 44.031(j)–(k)

Competitive Bidding

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

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

Except as provided below, Local Government Code Chapter 271, Subchapter B (Competitive Bidding on Certain Public Works Contracts) does not apply to a competitive bidding process under this policy.

Local Government Code Sections 271.026 (Opening of Bids), 271.027(a) (Award of Contract), and 271.0275 (Safety Record of Bidder Considered) apply to a competitive bidding process under Education Code Chapter 44, Subchapter B. [See CVA for these requirements.]

Education Code 44.0351

[For information on additional competitive procedures under the Public Property Finance Act, see CHH.]

Competitive Sealed Proposals

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

Request for Proposals

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

Opening Proposals

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

Selection

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

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

Education Code 44.0352

Interlocal Contracts

"Interlocal contract" means a contract or agreement made under Government Code Chapter 791 (Interlocal Cooperation Act). A district may contract or agree with another local government or a federally recognized Indian tribe, as listed by the U.S. secretary of the interior under 25 U.S.C. 479a-1, whose reservation is located within the boundaries of this state to perform governmental functions and services in accordance with Government Code Chapter 791. A district may agree with another local government and with the state or a state agency, including the comptroller, to purchase goods and services. *Gov't Code 791.003(2), .011(a), .025(a)*

An interlocal contract must:

1. Be authorized by the governing body of each party to the contract;
2. State the purpose, terms, rights, and duties of the contracting parties; and
3. Specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract. An interlocal contract may be renewed. Notwithstanding item 2 above, an interlocal contract may have a specified term of years.

Gov't Code 791.011(d)–(f), (i)

A district may agree with another local government, including a nonprofit corporation that is created and operated to provide one or more governmental functions and services, or with the state or a state agency, including the comptroller, to purchase goods and any services reasonably required for the installation, operation, or maintenance of the goods. This provision does not apply to services provided by firefighters, police officers, or emergency medical personnel. *Gov't Code 791.025(b)*

A district that purchases goods and services under Government Code 791.025 satisfies the requirement to seek competitive bids for the purchase of the goods and services. *Gov't Code 791.025(c); Atty. Gen. Op. JC-37 (1999)*

Reverse Auction

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

"Reverse auction procedure" means:

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

Gov't Code 2155.062(d)

Site-Based Purchasing

If a purchase is made at the campus level in a district with a student enrollment of 180,000 or more that has formally adopted a site-based decision-making plan under Education Code Subchapter F, Chapter 11 [see BQ series], that delegates purchasing decisions to the campus level, Education Code 44.031 applies only to the campus and does not require the district to aggregate and jointly award purchasing contracts. A district that adopts site-based purchasing under this provision shall adopt a policy to ensure that campus purchases achieve the best value to the district and are not intended or used to avoid the requirement that a district aggregate purchases under Education Code 44.031(a). *Education Code 44.031(m)*

Contract Selection Factors

Except as provided by Education Code Chapter 44, Subchapter B, in determining to whom to award a contract, the district shall consider:

1. The purchase price.
2. The reputation of the vendor and of the vendor's goods or services.
3. The quality of the vendor's goods or services.
4. The extent to which the goods or services meet the district's needs.
5. The vendor's past relationship with the district.
6. The impact on the ability of the district to comply with 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. For a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state.
9. Any other relevant factor specifically listed in the request for bids or proposals.

Education Code 44.031(b)

In awarding a contract by competitive sealed bid under Education Code 44.031, a district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder's principal place of business in the manner provided by Local Government Code 271.9051. This provision does not apply to the purchase of

telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153. *Education Code 44.031(b-1)*

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

Preferences

Agricultural Products

A district that purchases agricultural products shall give preference to those produced, processed, or grown in Texas if the cost to the district is equal and the quality is equal. If agricultural products produced, processed, or grown in Texas are not equal in cost and quality to other products, the district shall give preference to agricultural products produced, processed, or grown in other states of the United States, if the cost and quality of the U.S. and foreign products are equal.

"Agricultural products" includes textiles and other similar products.

"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.

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

Vegetation for Landscaping

A district that purchases vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation if the cost to the district is equal and the quality is equal.

Education Code 44.042

[For legal requirements applicable to school nutrition procurement, including produce and agricultural products, with federal funds, see COA.]

Recycled Products

A district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality and the average price of the product is not more than ten percent greater than the price of comparable nonrecycled products. Preferences will be applied in accordance with state procurement statutes and rules. 30 TAC 328.203

Subchapter K of 30 Administrative Code (Governmental Entity Recycling and Purchasing of Recycled Materials) does not apply to a district with a student enrollment of less than 10,000 students. 30 TAC 328.204(a)

A district regularly shall review and revise its procurement procedures and specifications for the purchase of goods, supplies, equipment, and materials in order to:

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

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

Health and Safety Code 361.426(b)–(c)

Bidder's Place of Business

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

Notice Publication

Notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened shall be published in the county in which the district's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which a district's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately. *Education Code 44.031(g)*

Electronic Bids or Proposals

A district may receive bids or proposals under Education Code Chapter 44 through electronic transmission if the board adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

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

Education Code 44.0313

Right to Work

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

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

Education Code 44.043

Contract with Person Indebted to District

The board by resolution may establish regulations permitting the district to refuse to enter into a contract or other transaction with a person indebted to the district. It is not a violation of Education Code Chapter 44, Subchapter B (Purchases; Contracts) for a district, under regulations adopted under this provision, to refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the district.

"Person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the district requiring approval by the board.

Education Code 44.044

Out-of-State Bidders

A district may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located, or the state in which a majority of the manufacturing relating to the contract will be performed. *Gov't Code 2252.002*

This requirement does not apply to a contract involving federal funds. A district shall use the information published by the comptroller under Government Code 2252.003 (Publication of Other State's Laws on Contracts) to evaluate the bid of a nonresident bidder. A district may rely on information published under Government Code 2252.003 to meet the requirements of Government Code 2252.002. *Gov't Code 2252.003-.004*

"Governmental contract" means a contract awarded by a governmental entity, including a public school district, for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment.

"Resident bidder" refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

Gov't Code 2252.001

Professional Services

Education Code 44.031 does not apply to a contract for professional services rendered, including the services of an architect, attorney, certified public accountant, engineer, or fiscal

agent. A district may, at its option, contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Government Code 2254.003 (Professional Services Procurement Act) (see below), in lieu of the methods provided by Education Code 44.031. *Education Code 44.031(f)*

Professional Services Procurement Act

Selection

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

Definition

"Professional services" means services:

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

Gov't Code 2254.002

[For specific information on procuring architectural or engineering services, see CV. For information on procuring services of physicians, optometrists, and registered nurses under certain circumstances, see Government Code 2254.008.]

Contingent Fee Contract for Legal Services

"Contingent fee contract" means a contract for legal services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained. The term includes an amendment to a contract for legal services described by this provision if the amendment changes the scope of representation or may result in the filing of an action or the amending of a petition in an existing action. *Gov't Code 2254.101(2)*

Government Code Chapter 2254, Subchapter C provides the manner in which and the situations under which a district may compensate a public contractor under a contingent fee for legal services. That subchapter does not apply to a contract for legal services:

1. Provided to a district under Government Code Chapter 403, Subchapter M; or
2. Entered into by a district for the collection of an obligation, as defined by Government Code 2107.001, that is delinquent [see CCGA(LEGAL) regarding delinquent tax collection] or for services under Government Code 1201.027 [see CCA(LEGAL) regarding issuance of public

securities], except that Government Code sections 2254.1032, 2254.1034, 2254.1036, and 2254.1037 do apply to the contract.

Gov't Code 2254.102

A district may select an attorney or law firm to award a contingent fee contract only in accordance with Government Code 2254.003(a) (Professional Services Procurement Act) [see Selection, above] and Government Code 2254.1032.

In procuring legal services under a contingent fee contract, a district shall:

1. Select a well-qualified attorney or law firm on the basis of demonstrated competence, qualifications, and experience in the requested services; and
2. Attempt to negotiate a contract with that attorney or law firm for a fair and reasonable price.

Gov't Code 2254.1032

Specific Purchases

Computers

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

Automated Information System

A district may purchase an automated information system using the purchasing method described by Government Code 2157.068 for commodity items or a purchasing method designated by the comptroller to obtain the best value for the state, including a request for offers method. A district that purchases an item using a method described above satisfies any state law requiring the district to seek competitive bids for the purchase of the item. *Gov't Code 2157.006; 34 TAC 20.222* [See 1 Administrative Code Chapter 212 for rules related to purchases of commodity items.]

Automated External Defibrillators

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

Insurance

A contract for the purchase of insurance is not a contract for professional services. A district must award such a contract using one of the methods in Education Code 44.031. *Atty. Gen. Op. DM-418 (1996)*

Multiyear Contracts

A district may execute an insurance contract for a period longer than 12 months, if the contract complies with Local Government Code 271.903(a) [see Commitment of Current Revenue, below]. If a district executes a multiyear insurance contract, it need not advertise for insurance vendors until the 12-month period during which the district will be executing a new insurance contract. *Atty. Gen. Op. DM-418 (1996)*

Other Purchasing Methods

State Purchasing Program

The comptroller shall establish a program by which the comptroller performs purchasing services for local governments. The services must include:

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

The comptroller may charge a participating local government an amount not to exceed the actual costs incurred by the comptroller in providing purchasing services to the local government under the program.

Local Gov't Code 271.082

District Participation

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

1. Designate an official to act for the district in all matters relating to the program, including the purchase of items from the vendor under any contract, and that the board will direct the decisions of the representative;
2. Be responsible for:
 - a. Submitting requisitions to the comptroller under any contract; or
 - b. Electronically sending purchase orders directly to vendors, or complying with procedures governing a reverse auction purchase, and electronically sending to the comptroller reports on actual purchases made under this provision that provide the information and are sent at the times required by the comptroller;
3. Be responsible for making payment directly to the vendor;
4. Be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.

A district that purchases an item under a state contract or under a reverse auction procedure, sponsored by the comptroller satisfies any state law requiring the district to seek competitive bids for the purchase of the item.

Local Gov't Code 271.083

Multiple Award Contract Schedule

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

A district may purchase goods or services directly from a vendor under a contract listed on a schedule developed under Government Code Chapter 2155, Subchapter I. A district contracting for the purchase of an automated information system under a contract listed on a schedule shall comply with Government Code 2157.068(e-1) (Purchase of Information Technology Commodity Items) [see Automated Information System, above]. A purchase authorized by this provision satisfies any requirement of state law relating to competitive bids or proposals.

The price listed for a good or service under a multiple award contract is a maximum price. A district may negotiate a lower price for goods or services under a contract listed on a schedule developed under Government Code Chapter 2155, Subchapter I.

Gov't Code 2155.504

Cooperative Purchasing Program

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

1. Designate a person to act under the direction of, or on behalf of, the district in all matters relating to the program;
2. Make payments to another participating local government or local cooperative organization or directly to a vendor under a contract made under these provisions, as provided in the agreement between the participating local governments or between a local government and a local cooperative organization; and
3. Be responsible for the vendor's compliance relating to the quality of items and terms of delivery, to the extent provided in the agreement between the participating local governments or between a local government and a local cooperative organization.

A district that purchases goods or services under these provisions satisfies any state law requiring the district to seek competitive bids for the purchase of the goods or services.

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

Cooperative Purchasing Contract Fees

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

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

Education Code 44.0331

Commitment of Current Revenue

If a contract for the acquisition, including lease, of real or personal property retains to the board the continuing right to terminate at the expiration of each budget period during the term of the contract, is conditioned on a best efforts attempt by the board to obtain and appropriate funds for payment of the contract, or contains both the continuing right to terminate and the best efforts conditions, the contract is a commitment of a district's current revenue only. *Local Gov't Code 271.903*

Change Orders

For provisions regarding change orders, see CV.

Criminal Offenses

An officer, employee, or agent of a district commits an offense if the person with criminal negligence makes or authorizes separate, sequential, or component purchases to avoid the requirements of Education Code 44.031(a) or (b). An offense under this provision is a Class B misdemeanor and is an offense involving moral turpitude.

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

Education Code 44.032(a)–(b)

An officer, employee, or agent of a district commits an offense if the person with criminal negligence violates Education Code 44.031(a) or (b) other than by conduct described by Education Code 44.032(b). An offense under this provision is a Class B misdemeanor and is an offense involving moral turpitude. *Education Code 44.032(c)*

An officer or employee of a district commits an offense if the officer or employee knowingly violates Education Code 44.031, other than by conduct described by Education Code 44.032(b) or (c). An offense under this provision is a Class C misdemeanor. *Education Code 44.032(d)*

Removal from Office

The final conviction of a person other than a trustee of a district for an offense under Education Code 44.032(b) or (c) above results in the immediate removal from office or employment of that person. A trustee who is convicted of an offense under Education Code 44.032 is considered to have committed official misconduct for purposes of Local Government Code Chapter 87, and is subject to removal as provided by that chapter and Texas Constitution Article V, Section 24. For four years after the date of the final conviction, the removed person is ineligible to be a candidate for or to be appointed or elected to a public office

in Texas, is ineligible to be employed by or act as an agent for the state or a political subdivision of the state, and is ineligible to receive any compensation through a contract with the state or a political subdivision of the state. *Education Code 44.032(e)*

Injunction

A court may enjoin performance of a contract made in violation of Education Code Chapter 44, Subchapter B. A county attorney, district attorney, criminal district attorney, citizen of the county in which the district is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this provision is entitled to reasonable attorney's fees as approved by the court. *Education Code 44.032(f)*

SAN ANGELO ISD
CH(LEGAL)-P
UPDATE 121
DATE ISSUED: 5/30/2023

BOARD POLICY CH (LOCAL)

Purchasing Authority

The Board delegates to the Superintendent the authority to make budgeted purchases for goods or services. However, any single, budgeted purchase of goods or services that costs \$50,000 or more, regardless of whether the goods or services are competitively purchased, shall require Board approval before a transaction may take place, except as otherwise provided in this policy.

The Superintendent shall not be required to obtain Board approval for the following types of budgeted purchases, regardless of cost, but shall subsequently report them to the Board:

- 1.A purchase made pursuant to a Board-approved interlocal contract, in accordance with law;
- 2.A purchase made through a cooperative purchasing program or state purchasing program that satisfies the District's obligation for competitive purchasing [see CH(LEGAL)];
- 3.A continuing or periodic purchase under a Board-approved bid or contract; or
- 4.A purchase of produce or fuel.

Exception for Emergency Contracts

In the event of a catastrophe, emergency, or natural disaster affecting the District, the Board delegates to the Superintendent the authority to contract for the replacement, construction, or repair of school equipment or facilities in accordance with law, if emergency replacement, construction, or repair is necessary for the health and safety of District students and staff. The Superintendent shall report to the Board at the next regular meeting any contract made under this authority. [See Disaster Exception, CH(LEGAL)]

The delegation regarding emergency contracts does not waive competitive purchasing requirements under Education Code Chapter 44. Only the Board is authorized to waive

competitive purchasing requirements under limited circumstances in accordance with Education Code 44.031(h). [See Emergency Damage or Destruction, CH(LEGAL)]

Purchasing Procedures

The Superintendent shall develop purchasing procedures to implement the requirements of state and federal law. [See also CB, CBB, CH(LEGAL), and COA]

Purchasing Method

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

Competitive Bidding

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

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

Competitive Sealed Proposals

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

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

Electronic Bids or Proposals

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

Responsibility for Debts

The Board shall assume responsibility for debts incurred in the name of the District so long as those debts are for purchases made in accordance with the adopted budget, state law, Board policy, and the District's purchasing procedures. [See CE] The Board shall not be

responsible for debts incurred by persons or organizations not directly under Board control. Persons making unauthorized purchases shall assume full responsibility for all such debts.

Purchase Commitments

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

Personal Purchases

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

SAN ANGELO ISD
CH(LOCAL)-X
LDU 2024.02
DATE ISSUED: 4/1/2024

BOARD POLICY CHF (Legal)

Payment Due

Except as provided below, a payment by a district under a contract executed on or after September 1, 1987, is overdue on the 31st day after the later of:

1. The date the district receives the goods under the contract;
2. The date the performance of the service under the contract is completed; or
3. The date the district receives an invoice for the goods or services.

Exception

A payment under a contract executed on or after September 1, 1993, owed by a district whose board meets only once a month or less frequently is overdue on the 46th day after the later event described above. The renewal, amendment, or extension of a contract executed on or before September 1, 1993, is considered to be the execution of a new contract.

Gov't Code 2251.021

Interest

A payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of one percent and the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

Interest on an overdue payment stops accruing on the date a district or vendor mails or electronically transmits the payment.

The unpaid balance of a partial payment made within the prescribed period accrues interest, unless the balance is in dispute.

Gov't Code 2251.025, .029

A district shall:

1. Compute interest imposed on the district.
2. Pay the interest at the time payment is made on the principal.
3. Submit the interest payment with the net amount due for the goods or service.

A district may not:

1. Require a vendor to petition, bill, or wait an additional day to receive the interest due.
2. Require a vendor or subcontractor to agree to waive the vendor's or subcontractor's right to interest as a condition of the contract.

Gov't Code 2251.027

Early Payment Discount

A district should take advantage of an offer for an early payment discount. A district may not take an early payment discount unless the district makes a full payment within the discount period. If a district takes an early payment discount later, the unpaid balance accrues interest beginning on the date the discount offer expires. *Gov't Code 2251.030*

Exceptions

These provisions do not apply to a payment made by a district, vendor, or subcontractor if:

1. There is a bona fide dispute between the district and a vendor, contractor, subcontractor, or supplier about the goods delivered or the service performed that causes the payment to be late;
2. There is a bona fide dispute between a vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the services performed that causes the payment to be late;
3. The terms of a federal contract, grant, regulation, or statute prevent the district from making a timely payment with federal funds; or
4. The invoice is not mailed to the person to whom it is addressed in strict accordance with any instruction on the purchase order relating to the payment.

Gov't Code 2251.002

Disputed Payment

A district shall notify a vendor of an error or disputed amount in an invoice submitted for payment by the vendor not later than the 21st day after the date the district receives the invoice, and shall include in such notice a detailed statement of the amount of the invoice which is disputed. If a dispute is resolved in favor of the vendor, the vendor is entitled to receive interest on the unpaid balance beginning on the date that the payment for the invoice is overdue. If a dispute is resolved in favor of the district, the vendor shall submit a corrected invoice that must

be paid in accordance with Government Code 2251.021 [see Payment Due above]. The unpaid balance accrues interest if the corrected invoice is not paid by the appropriate date. The district may withhold from payments required no more than 110 percent of the disputed amount. *Gov't Code 2251.042*

Vendor Remedy for Nonpayment

A vendor may suspend performance required under a contract with a district if the district does not pay the vendor an undisputed amount within the time limits provided above, and the vendor gives the district written notice informing the district that payment has not been received and stating the intent of the vendor to suspend performance for nonpayment.

The vendor may not suspend performance before the tenth day after the date the vendor gives this notice.

A vendor who suspends performance is not:

1. Required to supply further labor, services, or materials until the vendor is paid the amount provided for under Government Code Chapter 2251, plus costs for demobilization and remobilization; or
2. Responsible for damages resulting from suspending work if the district with which the vendor has the contract has not notified the vendor in writing before performance is suspended that payment has been made or that a bona fide dispute for payment exists.

A notification that a bona fide dispute for payment exists must include a list of the specific reasons for nonpayment. If a reason specified is that labor, services, or materials provided by the vendor or the vendor's subcontractor are not provided in compliance with the contract, the vendor is entitled to a reasonable opportunity to cure the noncompliance of the listed items, or offer a reasonable amount to compensate for listed items for which noncompliance cannot be promptly cured.

Gov't Code 2251.051

SAN ANGELO ISD
CHF(LEGAL)-P
UPDATE 118
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Board Policy COA (Legal)

Definitions

For purposes of this policy, "2 C.F.R. Part 200" means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by the Office of Management and Budget (OMB). The part reference covers applicable: Acronyms and Definitions (Subpart A), General Provisions (Subpart B), Post Federal Award Requirements (Subpart D), Cost Principles (Subpart E), and Audit Requirements (Subpart F). [Note: Pre-Federal Award Requirements and Contents of Federal Awards (Subpart C) does not apply to the National School Lunch Program]. *7 C.F.R. 210.2, 220.2*

School Food Authority

"School food authority" (SFA) means the governing body that is responsible for the administration of one or more schools and has the legal authority to operate the program therein or be otherwise approved by the USDA Food and Nutrition Service (FNS) to operate the program.

Program

"Program" means the National School Lunch Program (NSLP) and the Commodity School Program or the School Breakfast Program (SBP), as applicable.

Nonprofit School Food Service

"Nonprofit School Food Service" means all food service operations conducted by the SFA principally for the benefit of school children, all the revenue from which is used solely for the operation or improvement of such food services.

Nonprofit School Food Service Account

"Nonprofit School Food Service Account" means the restricted account in which all the revenue from all food service operations conducted by the SFA principally for the benefit of school children is retained and used only for the operation or improvement of the nonprofit school food service.

Cost Reimbursable Contract

"Cost reimbursable contract" means a contract that provides for payment of incurred costs to the extent prescribed in the contract, with or without a fixed fee.

7 C.F.R. 210.2, 220.2

Administration

The SFA shall be responsible for the administration of the program in schools. *7 C.F.R. 210.3*

Nonprofit School Food Service

National School Lunch Program

The SFA shall maintain a nonprofit school food service. Revenues received by the nonprofit school food service are to be used only for the operation or improvement of such food service, except that such revenues shall not be used to purchase land or buildings, unless otherwise approved by FNS, or to construct buildings. Expenditures of nonprofit school food service revenues shall be in accordance with the financial management system established by the TDA under *7 C.F.R. 210.19(a)*. *7 C.F.R. 210.14(a)*

School Breakfast Program

Pursuant to required written agreements, the SFA shall, with respect to participating schools under its jurisdiction maintain a nonprofit school food service. In accordance with the financial management system established under *7 C.F.R. 220.13(i)*, use all revenues received by such

food service only for the operation or improvement of that food service. Revenues received by the nonprofit school food service shall not be used to purchase land or buildings or to construct buildings. 7 C.F.R. 220.7(e)(1)(i)–(iii)

Food Service Management Companies

An SFA may contract with a food service management company to manage its food service operation in one or more of its schools. However, no school or SFA may contract with a food service management company to operate an a la carte food service unless the company agrees to offer free, reduced price and paid reimbursable lunches to all eligible children. Any SFA that employs a food service management company in the operation of its nonprofit school food service shall comply with the requirements of 7 C.F.R. 210.16 (NSLP) or 7 C.F.R. 220.7(d) (SBP). 7 C.F.R. 210.16, 220.7

Note:For more information on contracts regarding consultants, food service management companies (FSMC), and vended meals, see TDA's [...](#) Section 18, *Food Service Contracts*.

USDA Procurement Requirements

The SFA shall comply with requirements of 7 C.F.R. Part 210 (NSLP), Part 220 (SBP), and 2 C.F.R. Part 200, Subpart D and USDA implementing regulations 2 C.F.R. Part 400 and Part 415, as applicable, which implement the applicable requirements, concerning procurement of all goods and services with nonprofit school food service account funds. 7 C.F.R. 210.21(a), 220.16(a)

District Procurement Procedures

An SFA may use its own procurement procedures which reflect applicable state and local laws and regulations, provided that procurements made with nonprofit school food service account funds adhere to the standards set forth in 7 C.F.R. Part 210 and in 2 C.F.R. Part 200, Subpart D, as applicable. SFA procedures must include a written code of standards of conduct meeting the minimum standards of 2 C.F.R. 200.318, as applicable. [See CBB]

Pre-issuance Review

TDA may impose a pre-issuance review requirement on an SFA's proposed procurement. The SFA must make available, upon request by TDA, its procurement documents, including but not limited to solicitation documents, specifications, evaluation criteria, procurement procedures, proposed contracts and contract terms. The SFA shall comply with TDA requests for changes to procurement procedures and solicitation and contract documents to ensure that, to TDA's satisfaction, such procedures and documents reflect applicable procurement and contract requirements and the requirements of 7 C.F.R. Part 210.

Prohibited Expenditures—Noncompliant Procurement

No expenditure may be made from the nonprofit school food service account for any cost resulting from a procurement failing to meet the requirements of 7 C.F.R. Part 210 (NSLP) or Part 220 (SBP).

7 C.F.R. 210.21(c), 220.16(c)

Conflicts of Interest

A district must disclose in writing any potential conflicts of interest to the USDA awarding agency or pass-through entity (e.g., TDA).

The district must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees in the selection, award and administration of federal awards. No employee, officer or agent may participate in the selection, award, or administration of a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a non-federal entity considered for a federal award. The district may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the district.

2 C.F.R. 400.2

Cost Reimbursable Contracts

The SFA must include the provisions specified in 7 C.F.R. 210.21(f)(1) (NSLP) or 220.16(e)(1) (SBP) in all cost reimbursable contracts, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts.

Prohibited Expenditures—Noncompliant Contract

No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost reimbursable contract that fails to include the requirements of 7 C.F.R. 210.21 (NSLP) or 220.16 (SBP), nor may any expenditure be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of the contractor's actual, net allowable costs.

7 C.F.R. 210.21(f), 220.16(e)

Buy American

Domestic Commodity or Product

"Domestic commodity or product" means an agricultural commodity that is produced in the United States, and a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

Requirement

The USDA shall require that an SFA purchase, to the maximum extent practicable, domestic commodities or products.

7 C.F.R. 210.21(d), 220.16(d)

Optional Geographic Preference

An SFA participating in the program may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When utilizing the geographic preference to procure such products, the SFA making the purchase has the discretion to determine the local area to which the geographic preference option will be applied.

For the purpose of applying the optional geographic procurement preference, "unprocessed locally grown or locally raised agricultural products" means only those agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques shall not be considered as changing an agricultural product into a product of a different kind or character: cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons), vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package); the addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk.

7 C.F.R. 210.21(g), 220.16(f)

Sale of Milk

An SFA participating in the program, or a person approved by a school participating in the program, must not directly or indirectly restrict the sale or marketing of fluid milk (as described in 7 C.F.R. 210.10(d)(4)) at any time or in any place on school premises or at any school-sponsored event. *7 C.F.R. 210.21(e)*

Dairy Products

A district may not purchase milk, cream, butter, cheese, or a product consisting largely of one or more of those items that has been imported from outside the United States. This provision does not apply to the purchase of milk powder if domestic milk powder is not readily available in the normal course of business. *Health & Safety Code 435.021*

Imported Beef

A district may not purchase beef or a product consisting substantially of beef that has been imported from outside the United States. *Agriculture Code 150.012*

SAN ANGELO ISD
COA(LEGAL)-P
UPDATE 116
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Board Policy COA (Legal)

Procurement

The Superintendent shall oversee the use of federal child nutrition funds to procure appropriate goods and services necessary for providing food service to students and shall develop and enforce financial management systems, internal control procedures, procurement procedures, and other administrative procedures as needed to comply with all state and federal requirements for use of these funds.

[See CO(LEGAL) and COA(LEGAL)]

Geographic Preference

The Board delegates to the Superintendent the authority to determine whether the District will apply a geographic preference when procuring unprocessed, locally grown or locally raised agricultural products and to:

1. Specify the types of products for which any geographic preference will be applied; and
2. Define the geographic area to be preferred for each applicable product.

SAN ANGELO ISD
COA(LOCAL)-A
UPDATE 113
DATE ISSUED: 5/24/2019

SOLE SOURCE AFFIDAVIT

San Angelo Independent School District

Before me, the undersigned official, on this day, personally appeared, _____,
*a person known to me to be the person whose signature appears below, who after being duly sworn upon his/her
oath deposed and said:*

1. My name is _____; I am over the age of 18, have never been convicted of a felony and am
competent to make this affidavit.

2. I am an authorized representative of the following company or firm:

3. The above named company or firm is the sole source of the following item(s) and no other company or firm in
the United States of America sells or distributes the products listed below:

4. Competition in providing the above named item(s) or product(s) is precluded by the existence of a patent,
copyright, secret process, or monopoly. Please indicate the status below:

5. There is/are no other like item(s) or product(s) available for purchase that would serve the same purpose or
function and there is only one price for the above named item(s) or product(s) because of exclusive distribution or
marketing rights.

SUBSCRIBED AND SWORN to before me on this _____ day of _____, 2_____.

Notary Public Signature

(Seal)

Print Name

My Commission Expires

Company: _____

Address: _____

City, State, Zip Code: _____

Telephone Number: () _____ **Fax Number:** () _____

Contact Person: _____

REQUEST FOR QUOTATION

To: _____

FAX Number: _____

From: **Jason Henry**, Purchasing Director

Date: _____

Subject: **Request for Quotation**

Number of Pages: _____

Please provide a unit price quotation for the items listed and return by facsimile or e-mail to (325)947-3837 or Jason.henry@saisd.org.

Thank you.

Item #	Qty.	Description	Unit Price

SAN ANGELO INDEPENDENT SCHOOL DISTRICT
PURCHASING DEPARTMENT
1621 UNIVERSITY
SAN ANGELO, TX 76904
325.947.3759
FAX: 325.947.3837

Jason.henry@saisd.org