SHINER ISD

PROCUREMENT MANUAL



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INTRODUCTION

This manual sets forth the procurement policies and procedures used by Shiner ISD (the "LEA") to administer federal, state, and local funds. The manual contains the internal controls and grant management standards used by the LEA to ensure that all federal funds are lawfully expended. According to 2 CFR §200.317, non-federal entities (LEAs) will follow §§200.318 General Procurement Standards through 200.326 Contract Provisions when procuring property and services under a federal award.

Statutes containing requirements for competitive purchasing/contracting processes for LEAs are found in the Texas Education Code, Local Government Code, Government Code, Texas Revised Civil Statutes, Texas Attorney General Opinions, federal regulations and other sources. These regulations do not apply to purchases involving student activity funds recorded under an Agency Fund.

This procurement manual was adapted from guidance and excerpts from the Texas Education Agency's "Financial Accountability System Resource Guide (FASRG), Module 5 Purchasing Guide 2019

Although this manual is not all-inclusive and cannot address all situations, it does provide general information to assist with standard procurement operations consistent with federal and state law. Employees of the LEA involved with procurement, new employees as well as incumbent employees, are expected to review this manual to gain familiarity and understanding of the LEA's rules and practices.

According to the Purchasing Module in the FASRG, every local educational agency (LEA), large and small, should have a written manual describing its purchasing policies and procedures. Rules and guidelines for those purchases consistent with relevant statutes, regulations, and board policies are a vital part of the manual.

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

PURCHASING OVERVIEW

According to the Purchasing Module in the FASRG, a major management process supporting financial accountability in Texas public schools is the purchasing function. Purchasing has several links to overall accountability initiatives which include the:

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

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

- The requirement to comply with numerous statutes, policies, legal interpretations, and procedures. The complexity of these requirements demands not only knowledge of purchasing laws and standards but compliance in implementing a purchasing system that also meets user needs.
- The dynamic and diverse nature of the public education organizational environment. School districts are complex organizations with diverse functions. Although instruction is the heart of the organization, numerous other services – ranging from custodial services to food service to tax collection – support the overall educational mission. These distinct organizational units need a procurement process that is responsive to their needs.
- The competition among vendors for school district business. The strong competition among vendors for school district business may create pressure on school district personnel for product selection, bid or proposal awards, and dispute resolution. Most school districts seek to foster both good vendor relations and strong competition but balance them with objective purchasing decisions.
- The consistent oversight by interest groups. School district purchasing is scrutinized by diverse groups including those from the public, the media, state and federal agencies, and auditors. Strict adherence to established guidelines and consistency in record keeping, documentation, and execution of procedures assists the school district in withstanding this scrutiny.
- The many “gray” areas relating to purchasing methods and procedures. Complex and diverse needs create challenges for LEAs to determine the appropriate purchasing methods. Ever-changing legislative, executive, and judicial decisions at both the state and federal levels further complicate the procurement process.

Purchasing Policy

According to the Purchasing Module in the FASRG, the objective of the purchasing policy is to purchase the best products, materials, and services at the lowest practical prices within relevant statutes and policies. Procurement policies must, of course, accommodate the LEA's unique operating environment and needs. While LEA administrators are not authorized to override federal or state law or board policy, they can customize the purchasing function to provide for regulatory compliance while minimizing procedures and related costs.

The purchasing function is the result of conscious process design and is reviewed and challenged periodically. The elements are systematic, comprehensive, and creative. The structure itself, therefore, is not based on historical methods and "the way it's always been done." Instead, it begins with a strategic focus and ends by linking operations, strategy, technology, and human resources district-wide. Development of this structure is an interactive process which is cross-functional in providing a sense of ownership for user/designers.

A good design identifies the best purchasing methods and subsequently employs them throughout the LEA. It correlates the diversity of district operations and the important nature of the services with the timing of service delivery. As an example, planning for and subsequent procurement of instructional materials for both students and teachers is coordinated at the district and campus levels to meet both the school calendar and class schedules.

Accurate record-keeping and documentation is a fundamental element of the procurement process. Precise and systematic record-keeping and records management withstands the constant scrutiny of various interest groups including vendors, the general public, and outside agencies as well as internal groups which are the users or customers of the purchasing system. This records management function supports the LEA's overall information management plan consistent with the Data Collection and Reporting module of TEA's FASRG. The records management system generally provides for:

- Both the flow and retention of forms including requisitions, purchase orders, petty cash and cash reimbursement receipts.
- Full documentation of all competitive procurements with comprehensive competitive procurement files containing specifications, competitive procurement advertisement, pre-competitive procurement conference minutes (as appropriate), competitive procurements submitted, competitive procurement tabulation, board minutes indicating competitive procurement awards (or a similar award notice) and related records.
- Full documentation of procurement procedures utilized to obtain goods and services through competitive sealed proposals, design/build contracts, and other procurement options.

- Documentation of price quotations if there are quotations obtained by LEA staff for local policy compliance.

The records management function may rely on electronic formats including automated systems, flash drives/external hard drives, diskettes, CD-ROM, imaging and microfiche. Alternatively, it may use hard copy or a combination of methods. The LEA selects the methods best suited to its needs.

(CPC LOCAL POLICY)

The Superintendent shall oversee the performance of records management functions prescribed by state and federal law:

Records Administrator, as prescribed by Local Government Code 176.001 and 176.007 [See BBFA and CHE]

Officer for Public Information, as prescribed by Government Code 552.201–.205 [See GBAA]

Public Information Coordinator, as prescribed by Government Code 552.012 [See BBD]

Local Government Records Act

"Local Government Record"

The term "local government record" shall pertain to all items identified as such by the Local Government Records Act.

Records Management Officer

The Superintendent shall serve as and perform the duties of the District's records management officer as prescribed by Local Government Code 203.023, and shall administer the District's records management program pertaining to local government records in compliance with the Local Government Records Act.

Notification

The records management officer shall file his or her name with the Texas State Library and Archives Commission (TSLAC) within 30 days of assuming the position.

Records Control Schedules

The records management officer shall file with the TSLAC a written declaration that the District has adopted records control schedules that comply with records retention schedules issued by the TSLAC as provided by law.

Website Postings

The District's records management program shall address the length of time records will be posted on the District's website when the law does not specify a posting period.

Records Destruction Practices

All local government records shall be considered District property and any unauthorized destruction or removal shall be prohibited. The District shall follow its records control schedules, records management program, and all applicable laws regarding records destruction. However, the District shall preserve records, including electronically stored information, and suspend routine record destruction practices where appropriate and in accordance with procedures developed by the records management officer. Such procedures shall describe the circumstances under which local government records scheduled for destruction must be retained. Notification shall be given to appropriate staff when routine record destruction practices must be suspended and when they may be resumed.

Training

The records management officer shall receive appropriate training regarding the Local Government Records Act and shall ensure that custodians of records, as defined by law, and other applicable District staff are trained on the District's records management program, including this policy and corresponding procedures.

Quality assurance and quality control are reflected in all administrative procedures and extend to areas such as analysis of products provided, review of services and review of vendor performance. Specific areas of quality control may be grouped as:

- Administrative Control activities may include:
    - Independent review of account coding
    - Confirmation of availability of funds
    - Confirmation of utilization of approved vendors
    - Confirmation of legal compliance with bid, proposal and quotation requirements
    - Review of pricing and price extensions

- Product and Services Control activities may include:
    - Product testing
    - Ongoing analysis of product quality and quality of service delivery
    - Product reliability analysis
- Vendor Performance Control activities may include:
    - Review of compliance with contractual terms for prices
    - Analysis of timeliness and accuracy of product delivery
    - Responsiveness to problems

A consistent program for purchasing staff development and training is important to effective purchasing activity. The complexity of the purchasing environment demands that staff members responsible for purchasing goods and services periodically receive training in policy and procedures. Purchasing training includes all levels of employees providing at least basic information about the LEA's purchasing function.

Training is on-going to accommodate:

- Employee advancement and staff turnover that create training needs for employees
- Procedures, processes, functions and support mechanisms that are modified or enhanced
- Purchasing changes that may be mandated by legislative, executive or judicial action

Purchasing Design

According to the Purchasing Module in the FASRG, design and implementation of certain purchasing processes results in more successful LEA operations. Although not all inclusive, these processes include:

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

PURCHASING ETHICS

Purchasing Ethics

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

Numerous problems may be encountered, including:

- Employees, in an effort to get the job done successfully and on time, are tempted to circumvent policies, procedures, and laws, or to make their own liberal "legal" interpretations of existing policies. Such activity, although well intentioned, can cause ethical problems.
- Sequential purchasing of the same items or type of items over the course of twelve months may exceed the federal, state, and/or local competitive quotation and procurement requirements. Although some sequential purchasing is intentional, it usually results from needs that could not be anticipated. It may also result from lack of centralization and/or centralized control of the purchasing function.
- An item (usually equipment) is purchased in component parts. Component purchasing usually is an attempt to circumvent bid or proposal laws or other requirements by buying an item through the issuance of multiple purchase orders for the component parts of the item versus a single purchase order for the entire item. Repeated purchases of additional optional equipment or parts after an initial purchase may create the perception of component purchasing.

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

Fraud, Waste, and Abuse

To ensure the public receives the most value, the LEA strives to ensure its administrative management of public funds is as effective and efficient as possible, with a high standard of accountability to prevent waste, fraud, and abuse.

All trustees, employees, vendors, contractors, consultants, volunteers, and any other parties who are involved in the LEA's financial transactions shall act with integrity and diligence in duties involving the LEA's financial resources.

Fraud and Financial Impropriety

The LEA prohibits fraud and financial impropriety, as defined below, in the actions of its trustees, employees, vendors, contractors, consultants, volunteers and others seeking or maintain a business relationship with the LEA. These persons shall not seek a financial or other advantage, either personally or for the LEA, through bribery, fraud, kickbacks, misapplication of funds, malfeasance, gross mismanagement, or other criminal activities. These persons shall not offer, promise, give, request, agree to receive or accept a bribe for any purpose. Excessive or lavish gifts or hospitality in relation to business transactions or arrangements with granting agencies, contractors, vendors or other parties to contracts might constitute bribery.

Fraud and financial impropriety includes, but is not limited to:

- Forgery or unauthorized alteration of any document or account belonging to the LEA;
- Forgery or unauthorized alteration of a check, bank draft, or any other financial document;
- Misappropriation of funds, securities, supplies, or other LEA assets, including employee time;
- Impropriety in the handling of money or reporting of LEA financial transactions;
- Profiteering as a result of insider knowledge of LEA information or activities;
- Unauthorized disclosure of confidential or proprietary information to outside parties;
- Unauthorized disclosure of investment activities engaged in or contemplated by the LEA;
- Accepting or seeking anything of material value from contractors, vendors, or other persons providing services or materials to the LEA;
- Destroying, removing, or inappropriately using records, furniture, fixtures, or equipment;
- Failure to provide financial records required by state and local entities;
- Failure to disclose conflicts of interest as required by policy; and
- Any other dishonest act regarding the finances of the LEA.

The LEA will take appropriate action to prevent incidents of fraud, malfeasance, misapplication of funds, gross mismanagement, or other criminal activities in all forms, which may be prosecutable. The LEA will disclose in writing to the awarding agency any violation of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.

Reporting Fraud or Financial Impropriety

Any person who suspects fraud or financial impropriety, or suspects that an illegal or unethical act has occurred, shall report the suspicions immediately to any supervisor, the Superintendent or designee, the Board President, or local law enforcement. The LEA will not retaliate against any person who, in good faith, has reported what they believe to be illegal acts by LEA employees, officers, or agents, or of other individuals or entities with whom the LEA has a business relationship, on the basis of a reasonable belief that the practice is in violation of law or clear mandate of public policy.

CAA (Local)

All Trustees, employees, vendors, contractors, agents, consultants, volunteers, and any other parties who are involved in the District's financial transactions shall act with integrity and diligence in duties involving the District's fiscal resources.
Note: See the following policies and/or administrative regulations regarding conflicts of interest, ethics, and financial oversight:
Code of ethics:
for Board members—BBF
for employees—DH
Financial conflicts of interest:
for public officials—BBFA
for all employees—DBD
for vendors—CHE
Compliance with state and federal grant and award requirements: CB, CBB
Financial conflicts and gifts and gratuities regarding federal funds: CB, CBB
Systems for monitoring the District's investment program: CDA
Budget planning and evaluation: CE
Compliance with accounting regulations: CFC
Activity fund management: CFD
Criminal history record information for employees: DBAA, DC
Disciplinary action for fraud by employees: DCD, DCE, and DF series
Fraud and Financial Impropriety
The District prohibits fraud and financial impropriety, as defined below, in the actions of its Trustees, employees, vendors, contractors, agents, consultants, volunteers, and others seeking or maintaining a business relationship with the District.
Definition
Fraud and financial impropriety shall include but not be limited to:
Forgery or unauthorized alteration of any document or account belonging to the District.
Forgery or unauthorized alteration of a check, bank draft, or any other financial document.
Misappropriation of funds, securities, supplies, or other District assets, including employee time.

Impropriety in the handling of money or reporting of District financial transactions.
Profiteering as a result of insider knowledge of District information or activities.
Unauthorized disclosure of confidential or proprietary information to outside parties.
Unauthorized disclosure of investment activities engaged in or contemplated by the District.
Accepting or seeking anything of material value from contractors, vendors, or other persons providing services or materials to the District, except as otherwise permitted by law or District policy. [See CB, DBD]
Inappropriately destroying, removing, or using records, furniture, fixtures, or equipment.
Failure to provide financial records required by federal, state, or local entities.
Failure to disclose conflicts of interest as required by law or District policy.
Any other dishonest act regarding the finances of the District.
Failure to comply with requirements imposed by law, the awarding agency, or a pass-through entity for state and federal awards.

Financial Controls and Oversight

Each employee who supervises or prepares District financial reports or transactions shall set an example of honest and ethical behavior and shall actively monitor his or her area of responsibility for fraud and financial impropriety.

Fraud Prevention

The Superintendent or designee shall maintain a system of internal controls to deter and monitor for fraud or financial impropriety in the District.

Reports

Any person who suspects fraud or financial impropriety in the District shall report the suspicions immediately to a person with authority to investigate the suspicions, including any supervisor, the Superintendent or designee, the Board President, or local law enforcement.

Reports of suspected fraud or financial impropriety shall be treated as confidential to the extent permitted by law. Limited disclosure may be necessary to complete a full investigation or to comply with law. All employees involved in an investigation shall be advised to keep information about the investigation confidential.

Protection from Retaliation

Neither the Board nor any District employee shall unlawfully retaliate against a person who in good faith reports perceived fraud or financial impropriety. [See DG]

Fraud Investigations

In coordination with legal counsel and other internal or external departments or agencies, as appropriate, the Superintendent, Board President, or a designee shall promptly investigate reports of potential fraud or financial impropriety.

Response

If an investigation substantiates a report of fraud or financial impropriety, the Superintendent or designee shall promptly inform the Board of the report, the investigation, and any responsive action taken or recommended by the administration.

If an employee is found to have committed fraud or financial impropriety, the Superintendent or designee shall take or recommend appropriate disciplinary action, which may include termination of employment. If a contractor or vendor is found to have committed fraud or financial impropriety, the District shall take appropriate action, which may include cancellation of the District's relationship with the contractor or vendor.

When circumstances warrant, the Board, Superintendent, or designee may refer matters to appropriate law enforcement or regulatory authorities. In cases involving monetary loss to the District, the District may seek to recover lost or misappropriated funds.
The final disposition of the matter and any decision to file a criminal complaint or to refer the matter to the appropriate law enforcement or regulatory agency for independent investigation shall be made in consultation with legal counsel.
Federal Awards Disclosure
The District shall disclose, in a timely manner in writing to the federal awarding agency or pass-through entity, all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting a federal grant award. [See CBB]
Analysis of Fraud
After any investigation substantiates a report of fraud or financial impropriety, the Superintendent or designee shall analyze conditions or factors that may have contributed to the fraudulent or improper activity. The Superintendent or designee shall ensure that appropriate administrative procedures are developed and implemented to prevent future misconduct. These measures shall be presented to the Board for review.

Purchasing Code of Ethics

Statement of Purchasing Policy

Public employment is a public trust. It is the policy of this LEA to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by this LEA.

Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

LEA employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of this LEA's procurement organization.

To achieve the purpose of this policy, it is essential that those doing business with this LEA also observe the ethical standards prescribed in this manual.

General Ethical Standards

- Personal Gain. It shall be a breach of ethics to attempt to realize personal gain through public employment with the LEA by any conduct inconsistent with the proper discharge of the employee's duties.
- Influence. It shall be a breach of ethics to attempt to influence any public employee of the LEA to breach the standards of ethical conduct set forth in this code.
- Conflicts of Interest. It shall be a breach of ethics for any employee of the LEA to participate directly or indirectly in procurement when the employee knows that:
    - The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
    - A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; and
    - Any other person, business or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment involved in the procurement.
- Gratuities. It shall be a breach of ethics to offer, give or agree to give any employee or former employee of the LEA, or for any employee or former employee of the LEA to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefore pending before this local government.
- Kickbacks. It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for the LEA, or any person associated therewith, as an inducement for the award of a subcontract or order.
- Contract Clause. The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation therefore.
- Confidential Information. It shall be a breach of ethics for any employee or former employee of the LEA knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

Conflict of Interest Requirements

Agent. "Agent" means a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person. The term includes an employee. Local Government Code, §176.001(1), amended by the 84th Legislature.

Business Entity. "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law. Local Government Code, §171.001(2).

Business Relationship. "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on: (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity (includes LEA) or an agency of a federal, state, or local governmental entity (includes LEA); (B) a transaction conducted at a price and subject to terms available to the public; or (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency. Local Government Code, §176.001(1-a).

Conflict of Interest. A "conflict of interest" is a situation where the personal interests of a contractor, public official or classified employee are, or appear to be, at odds with the best interests of the jurisdiction. TEA's Financial Accountability System Resource Guide (FASRG) Module 5 Purchasing.

Contract. "Contract" means a written agreement for the sale or purchase of real property, goods, or services. Local Government Code, §176.001(1-d).

Financial or Other Interest. Any person or company that does business with the LEA is considered either financial or other interest.

Immediate Family. Refer to Local Government Code, §573 for examples of degrees of relationships. http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.573.htm.

Family Member. "Family member" means a person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code. Local Government Code, §176.001(2), amended by the 84th Legislature.

Family Relationship. "Family relationship" means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms

are defined by Subchapter B, Chapter 573, Government Code. Local Government Code, §176.001(2-a), amended by the 84th Legislature.

Gift. "Gift" means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient. Local Government Code, §176.001(2-b), amended by the 84th Legislature.

Goods. "Goods" means personal property. Local Government Code, §176.001(2-c), amended by the 84th Legislature.

Local Government Officer. "Local government officer" means (A) a member of the governing body of a local governmental entity (includes LEA); (B) a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity (includes LEA); or (C) an agent of a local governmental entity (includes LEA) who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. Local Government Code, §176.001(4), amended by the 84th Legislature.

Local Public Official. "Local public official" means a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), etc. who exercises responsibilities beyond those that are advisory in nature. Local Government Code, §171.001(1). For charter schools, according to TEC §12.1054, a member of a governing body of a charter holder, a member of the governing body of an open-enrollment charter school, or an officer of an open-enrollment charter school is considered to be a local public official for purposes of Local Government Code §171.

Nominal Value. The following list can be used as guidance regarding nominal vs. excessive:

- Promotional items that apply to any supply order;
- Promotional items and door prizes that anyone would receive at a conference or event (not singled out for this particular LEA or person);
- Meals when meeting to discuss LEA business, not to exceed $50.00;
- Holiday gifts not to exceed $50.00

Officer. See definition for "Local Government Officer."

Partner. Business Partner

Records Administrator. "Records Administrator" means the director, county clerk, municipal secretary, superintendent, or other person responsible for maintaining the records of the local governmental entity (includes LEA) or another person designated by the local governmental

entity (includes LEA) to maintain statements and questionnaires under Local Government Code §176, and perform related functions. Local Government Code §176.001(5). The LEA has designated Superintendent as the records administrator for Conflict of Interest Disclosure statements.

Substantial Financial Interest in a Business Entity. According to Local Government Code §171.002, (a) A person has a substantial interest in a business entity if: (1) the person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or $15,000 or more of the fair market value of the business entity; or (2) funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year. (b) A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of $2,500 or more. (c) A local public official is considered to have a substantial interest if a person related to the official in the first degree by consanguinity (blood) or affinity (marriage) has a substantial interest. [Charter Schools: Additionally, according to TEC §12.1054(a)(1), a member of the governing body of a charter holder or a member of the governing body or officer of an open-enrollment charter school is considered to have a substantial interest in a business entity if a person related to the member or officer in the third degree by consanguinity or affinity, has a substantial interest in the business entity under Local Government Code §171.002.]

Vendor. "Vendor" means a person who enters or seeks to enter into a contract with an LEA. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries. Local Government Code, §176.001(7), amended by the 84th Legislature.

Standards of Conduct (Conflicts of Interest)

In accordance with 2 CFR §200.318(c)(1), the LEA maintains standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts associated with federally funded transactions.

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by 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 firm considered for a contract.

The officers, employees, and agents of the LEA may neither solicit nor accept gifts, gratuities, favors, services, benefits, or anything of monetary value from contractors or parties to

subcontracts that could reasonably be construed to influence the person's discharge of assigned duties and responsibilities, unless the financial interest is not substantial or the gift is an unsolicited item of nominal value given, for example, for the purpose of advertising, ceremonial occasions or official events.

In addition to the standards of conduct listed above for federal awards, standards of conduct are applicable for all funds in accordance with TEA's Financial Accountability System Resource Guide (FASRG) Module 5 Purchasing: LEA officials and employees cannot accept anything of value from a vendor, such as personal gifts or gratuities, which may be construed to have been given to influence the purchasing process. Although such practices may be legitimate and generally accepted in the private sector, giving and receiving gifts in the public sector may constitute a violation of law.

No LEA employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal, state, or other award if he or she has a real or apparent conflict of interest. If required by the terms and agreements of a Grant Award Notice and/or the awarding agency, the LEA will disclose in writing any potential conflict of interest to the awarding agency in accordance with the awarding agency's policies. Furthermore, applicable LEA officials and employees will abide by the LEA's Purchasing Code of Ethics.

Disclosure of Conflict of Interest

The LEA will follow the requirements of Local Government Code Chapter 176 and Local Government Code Chapter 171 regarding conflict of interest statements and reporting. The LEA will also refer to the Texas Ethics Commission website for additional information and sample forms.

Board Member:

According to TEA's Financial Accountability System Resource Guide (FASRG) Module 5 Purchasing, if a board member or member of their immediate family has a financial interest in a business entity(s), they are required to disclose this relationship through the execution of an affidavit, submitted to the Superintendent of Schools. Local Government Codes §171 and §176 provide information regarding disclosure requirements.

Local Government Officer:

A local government officer of an LEA, according to Local Government Code Chapter 176.003, amended by the 84th Legislature, shall file a conflicts disclosure statement with respect to a vendor if: (1) the vendor enters into a contract with the LEA or the LEA is considering entering into a contract with the vendor; and (2) the vendor (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that

exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that: (i) a contract between the LEA and vendor has been executed; or (ii) the LEA is considering entering into a contract with the vendor; (B) has given to the local government officer of family member of the office one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that: (i) a contract between the LEA and vendor has been executed; or (ii) the LEA is considering entering into a contract with the vendor; or (C) has a family relationship with the local government officer. A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is a political contribution as defined by Title 15, Election Code; or food accepted as a guest; or the LEA or vendor is an administrative agency created under Section 791.013, Government Code.

When applicable to file the conflicts disclosure statement, the local government officer will submit the conflicts disclosure statement to the LEA's designated records administrator no later than 5 pm on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement. The LEA refers to Local Government Code §176.003(e), as amended by the 84th Legislature, for requirements of the contents of the conflicts disclosure statement.

Vendor:

A vendor, according to Local Government Code §176.006, as amended by the 84th Legislature, shall file a completed conflict of interest questionnaire if the vendor has a business relationship with an LEA and: (1) has an employment or other business relationship with a local government officer of that LEA, or a family member of the officer, described in Local Government Code §176.003(a)(2)(A), as amended by the 84th Legislature; (2) has given a local government officer of that LEA, or a family member of the officer, one or more gifts with the aggregate value specified by Local Government Code §176.003(a)(2)(B), as amended by the 84th Legislature, excluding any gift described by Local Government Code §176.003(a-1), as amended by the 84th Legislature; or (3) has a family relationship with a local government officer of that LEA.

The vendor's completed conflict of interest questionnaire must be filed with the LEA's designated records administrator not later than the seventh business day after the later of: (1) the date that the vendor: (A) begins discussions or negotiations to enter into a contract with the LEA; or (B) submits to the LEA an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the LEA; or (2) the date the vendor becomes aware: (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described in Local Government Code §176.003(a)(2)(A), as amended by the 84th Legislature; or (B) that the vendor has given one or more gifts described by Local Government Code §176.003(a)(2)(B), as amended by the 84th Legislature; or (C) of a family relationship with a local government officer. The LEA refers to

Local Government Code §176.006(c), as amended by the 84th Legislature, for requirements of the contents of the conflicts disclosure statement.

Additionally, according to Local Government Code §176.006(d), as amended by the 84th Legislature, the vendor shall file an updated completed questionnaire with the LEA's designated records administrator not later than the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in the questionnaire incomplete or inaccurate.

Employee:

The employee shall disclose in writing to the Superintendent a personal financial interest, a business interest, or any other obligation or relationship that in any way creates a real or potential conflict of interest with the proper discharge of assigned duties and responsibilities or that creates a potential conflict of interest with the best interest of the LEA. In the case that the individual receiving the report is also involved in the potential conflict, the disclosure should be submitted to the School Board President.

The disclosure is then forwarded to the LEA's designated records administrator.

Conflict of Interest Reported to USDE and/or TEA

According to 2 CFR §200.112, the LEA must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity (TEA) in accordance with applicable federal awarding agency policy. The LEA's Conflict of Interest policy will align with the USDE's Conflict of Interest policy once it has been released**.**

The LEA will use the Conflict of Interest Disclosure form obtained from the TEA website at http://tea.texas.gov/index2.aspx?id=25769821440, to disclose any potential conflict of interest concerning the expenditure of *federal or state grant funds*. The Superintendent or his designee is responsible for submitting the Conflict of Interest Disclosure form.

Removal from the Procurement Transaction and/or Abstinence from Voting

According to TEA's Financial Accountability System Resource Guide (FASRG), Module 5 Purchasing, Board members should abstain from voting on award of contracts to businesses in which they or their immediate family members have a financial interest and recorded in the official minutes of the board meeting.

LEA employees, officers, and agents should recuse themselves from the procurement transaction if there is a real or potential conflict of interest.

Organizational Conflicts 2 CFR §200.318(c)(2)

If the LEA has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the LEA must include written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. 2 C.F.R §200.318(c)(2).

(This is currently not applicable to the LEA.)

Disciplinary Actions

Penalties, sanctions, or other disciplinary actions for violations of standards of conduct will be in accordance and to the extent permitted under state and local law. **Penalties for violations of purchasing laws and ethics may include criminal prosecution and loss of employment opportunities.**

The LEA will follow the enforcement requirements of Local Government Code Chapter 176, as amended by the 84th Legislature, for local government officers and vendors who violate the standards of conduct and conflict of interest requirements. This enforcement can be found at https://statutes.capitol.texas.gov/Docs/LG/htm/LG.176.htm

All district employees are "public servants" and therefore subject to Title VIII of the Penal Code, regarding offenses against public administration, including restrictions on the acceptance of illegal gifts, honoraria and expenses, and abuse of office. *Penal Code 1.07(a)(41), Title VIII* [See DBD and BBFA]

Enforcement of Purchase Procedures According to Texas Education Code 44.032

According to TEC 44.032, an officer, employee, or agent of an LEA commits an offense if the person, with criminal negligence, makes or authorizes separate, sequential, or component purchases to avoid the requirements of TEC 44.031(a) or (b). An offense under TEC 44.032(b) is a Class B misdemeanor and is an offense involving moral turpitude.

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

An officer or employee of an LEA commits an offense if the officer or employee knowingly violates TEC 44.031, other than by conduct described in TEC 44.032(b) and (c). An offense under TEC 44.032(d) is a Class C misdemeanor.

The final conviction of a person other than a trustee of an LEA for an offense under TEC 44.032(b) or (c) results in the immediate removal from office or employment of that person. Additional information concerning a trustee who is convicted of an offense under TEC 44.032(b) or (c) may be found at TEC 44.032(e).

Mandatory Disclosure of Violations of Federal Criminal Law

According to 2 CFR §200.113, the LEA must disclose, in a timely manner, in writing to the federal awarding agency or pass-through entity (TEA), all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.

The LEA will use the Mandatory Disclosure form obtained from the TEA website at http://tea.texas.gov/index2.aspx?id=25769821440, to disclose any violation of federal criminal law, including fraud, bribery, or gratuity violations potentially affecting a *federal or state award*. The Special Programs Director is responsible for submitting the Mandatory Disclosure form. The disclosure will occur within 30 days after the Superintendent is notified of the violation.

The LEA will follow any forthcoming USDE or TEA guidance concerning the mandatory disclosure.

PROCUREMENT STANDARDS

General Procurement Standards

In accordance with 2 CFR §200.318, the LEA must use its own documented procurement procedures which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law and the standards identified in §resolve dis:

- The LEA must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. 2 CFR §200.318(b). Refer to pages [45 & 49] for the procedures.
- The LEA maintains written standards of conduct covering conflicts of interest and standards of conduct. 2 CFR §200.318(c)(1). Refer to pages [8 & 12] regarding purchasing ethics and conflict of interest.

- If the LEA has a parent, affiliate, or subsidiary organization that is not a state or local government, the LEA must also maintain written standards of conduct covering organizational conflicts of interest. 2 CFR §200.318(c)(2).
- The LEA's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. 2 CFR §200.318(d). The Department Heads/Principals/Business Manager are responsible for conducting this analysis.
- To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the federal government, the LEA is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. 2 CFR §200.318(e).
- The LEA is encouraged to use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. 2 CFR §200.318(f). The Special Programs Director/Curriculum Director/Business Manager are responsible for determining the feasibility of such.
- The LEA must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. 2 CFR §200.318(h)..
- The LEA must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. 2 CFR §200.318(i).
- The LEA may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to the LEA is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the LEA awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. 2 CFR §200.318(i)(1-2). The Special Programs Director/Curriculum Director/Business Manager are responsible for this determination and oversight.

- The LEA alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the LEA of any contractual responsibilities under its contracts. 2 CFR §200.318(k).

Competition

In accordance with 2 CFR §200.319, Competition:

(a) All federally funded procurement transactions must be conducted in a manner providing full and open competition, consistent with the standards of 2 CFR §200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

Some of the situations considered to be restrictive of competition include, but are not limited to:

1) Placing unreasonable requirements on firms in order for them to qualify to do business;
2) Requiring unnecessary experience and excessive bonding;
3) Noncompetitive pricing practices between firms or between affiliated companies;
4) Noncompetitive contracts to consultants that are on retainer contracts;
5) Organizational conflicts of interest;
6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
7) Any arbitrary action in the procurement process.

(b) The LEA must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in 2 CFR §200.319 preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The LEA must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

1) Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
2) Identify all requirements which the officers must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The LEA must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the LEA must not preclude potential bidders from qualifying during the solicitation period.

Board Policies may be found on the District website at: www.Shinerisd.net

PROCUREMENT METHODS

This section describes the various procurement options based on federal and state laws and regulations. **When federal, state, or local purchasing structures conflict, the *most restrictive method must be followed.***

An LEA may design purchasing structures with requirements more restrictive than those mandated by the federal government or the state. However, locally-defined purchasing structures regarding procurement procedures, price quotes, purchase orders, emergency purchases, and blanket purchase orders must not be less restrictive.

The type of procurement method required to be used by the LEA depends on the cost of the purchase.

Micro-Purchases - $10,000 and below – Federal Law

In accordance with 2 CFR §200.320(a), micro-purchases may be awarded without soliciting competitive quotations if the LEA considers the price to be reasonable. To the extent practicable, the LEA must distribute micro-purchases equitably among qualified suppliers.

Procurement by micro-purchase is defined in 2 CFR §200.67 as the acquisition of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 and is currently set at $10,000. This threshold is periodically adjusted for inflation. *On June 20, 2018, the OMB Memo raised the threshold for micro-purchases under federal financial assistance awards from $3,500 to $10,000 and raised the threshold for simplified acquisitions from $150,000 to $250,000.*

Micro-purchase procedures comprise a subset of the LEA's small purchase procedures. The LEA uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost.

When purchases are needed to purchase items used routinely, the employee should complete a purchase order and are encouraged to purchase locally, or with companies that are included in our vendor system or to use a member purchasing cooperative.

The District will on occasion, need to make a purchase that is not feasible to travel to make the purchase such as food, items for emergencies or various classroom supplies, in this case, the District will purchase from the local stores as needed.

Price Quotes - (Optional) – Less than $50,000 - State Law

According to the Purchasing Module in the FASRG, to obtain the most competitive price, an LEA *at its option* may obtain price quotes for items costing less than $50,000. The LEA's purchasing procedures should clearly define the lower figure for which quotes are required and obtain and retain written verification of the prices quoted. Unlike the mandatory competitive procurement required by TEC 44 for purchases over $50,000, if an item costs less than $50,000, an LEA may utilize price quotations to stimulate competition and to attempt to receive the most favorable pricing.

This LEA does not opt to obtain price quotes for purchases under $50,000.

Purchases Valued at $50,000* or More in the Aggregate** - State Law

In accordance with TEC 44.031(a), all LEA 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 LEA:

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 (purchasing cooperative);
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 ("Reverse Auction Procedure" means: (a) 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 (b) 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 supplies, anonymous to each other, submit bids to provide the designated goods or services.); or
7) The formation of a political subdivision corporation under Section 304.001, Local Government Code ("Political Subdivision" means a county, municipality, school district, hospital district, or any other political subdivision receiving electric service from an entity that has implemented customer choice as defined in Section 31.002 Utilities Code.).

*** This state law is only applicable for purchases from $50,000 to $249,999**. **Once a purchase reaches $250,000, the federal requirements that restrict the procurement method to sealed bids or competitive proposals take effect.**

*****Competitive Procurement Categories***

*The FASRG provides a partial, non-inclusive list of related categories to be used as a guide to determine requirements under the Texas Education Code District purchasing law. If anticipated aggregate purchases in each category during a twelve-month period equal or exceed $50,000, the purchasing methods described in TEC 44.031(a) are required.

Competitive procurement categories, which will vary for individual LEAs, are determined by grouping related items that have a common purpose or function in district operations. LEAs will add to the list as aggregate dollars of contracts exceed the threshold amount.

Competitive Bidding

According to the Purchasing Module in the FASRG, competitive bidding is a formal process that may also be referred to as competitive sealed bidding, sealed bidding or formal bidding. It is an option available to LEAs for the procurement of goods and services. The purpose of competitive bidding is to stimulate competition and obtain the lowest practical price for the work, service, and/or item(s) needed. The competitive bidding process requires that bids be evaluated and

awards made based solely upon bid specifications, terms and conditions contained in the request for bids document, and according to the bid prices offered by vendors and pertinent factors that may affect contract performance.

In accordance with TEC 44.0351(c), an LEA shall award a competitively bid contract at the bid amount to the bidder offering the best value. In determining the best value for the LEA, the LEA is not restricted to considering price alone but may consider any other factors stated in the selection criteria, which includes the factors listed in TEC 44.031(b).

Competitive Sealed Proposals/Request for Proposals

According to the Purchasing Module in the FASRG, the competitive sealed proposal process is an alternative to competitive bidding. The terms and conditions of competitive sealed proposals are identical to those for competitive bidding except that an important difference between competitive sealed proposals and competitive sealed bidding relates to the finality of initial offers. Under competitive sealed proposals, changes in the nature of a proposal, and in prices, may be negotiated after proposals are opened. In contrast, changes in the price of goods and services are not negotiable in the competitive bidding process. The competitive sealed proposal process provides for full competition among proposals and allows for negotiation with the proposer(s) to obtain the best services at the best price.

Competitive proposal procedures are recommended where other procurement procedures are not required according to state or federal rules, laws or regulations, in order to stimulate competitive prices for services.

A Request for Proposals (RFP) is a part of the competitive sealed proposal process.

Interlocal Contract/Cooperative Purchasing

According to the Purchasing Module in the FASRG, an LEA can contract or agree with another local government, including a nonprofit corporation that is created and operated to provide one or more governmental functions and services, or with the state or a state agency, including the Comptroller, to purchase goods and any services reasonably required for the installation, operation, or maintenance of the goods.

Benefits of cooperative purchasing may be realized by LEAs of all sizes and can include:

- Cost savings on products or services. A cooperative purchasing arrangement can increase the buying power of a single LEA with volume discounts.
- Savings on administrative costs. A cooperative arrangement can reduce administrative costs relating to performing the purchasing function. Cost savings can include major areas such as salaries and benefits, supplies, office equipment and contracted services. A cooperative can result in the elimination of redundant costs which may be associated with

individual LEAs performing their own purchasing functions. Although purchasing cooperatives may charge annual fees for overhead costs, many LEAs can realize savings on both products and administration.

- Accessibility to more products and services. A cooperative may provide LEAs the opportunity to buy a greater variety of products and services. The LEA chooses what is best for its needs at lower costs.

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

In accordance with Government Code 791.011(d), requirements for interlocal contracts include:

- Authorization by the governing body of each party to the contract
- Statement of the purpose, terms, rights, and duties of the contracting parties
- Specification that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party

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

An LEA that enters into a purchasing contract valued at $25,000 or more under certain cooperative purchasing contracts must document any contract-related fees, including management fees, and the purpose of each fee. The amount, purpose, and disposition of any fee must be presented in a written report annually as an agenda item in an open meeting of the board of trustees. TEC 44.0331.

An LEA may participate in multiple cooperatives. The LEA's board simply adopts resolutions authorizing participation.

The LEA utilizes several purchasing cooperatives to facilitate purchases for maximum efficiency in a small school setting.

Certain Exceptions to State Procurement Methods of TEC 44.031(a)

Computers and Computer-Related Equipment

In accordance with TEC 44.031(i), an LEA may acquire computers and computer-related equipment, including computer software, through the Department of Information Resources under contracts entered into in accordance with Government Code Chapter 2054 or 2157.

Emergencies or Catastrophes

If school equipment, 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 in TEC 44.031(a) 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 TEC 44.031(a).

Preference to Texas and United States Products*

"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.

TEC 44.042 requires an LEA that purchases agricultural products to give preference to those produced, processed, or grown in Texas if the cost to the LEA 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 LEA shall give preference to agricultural products produced, processed, or grown in other states of the United States over foreign products if the cost to the LEA is equal and the quality is equal. Additionally, an LEA that purchases vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation if the cost to the LEA is equal and the quality is not inferior.

*Please see the federal requirements of 2 CFR §200.319 that prohibit geographical preferences in most instances.

Professional Services Contracts

In accordance with TEC 44.031(f), the procurement methods listed in TEC 44.031(a) do not apply to a contract for professional services rendered, including services of an architect, attorney, certified public accountant, engineer, or fiscal agent. An LEA *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, in lieu of the procurement methods provided in TEC 44.031(a).

In accordance with Government Code 2254.003, a governmental entity *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: (1) on the basis of demonstrated competence and qualifications to perform the services; and (2) for a fair and reasonable price.

When procuring the services of an architect, engineer, or surveyor, the LEA complies with the requirements of Government Code 2254.004.

Federally-Funded Professional Service Contracts

The competitive procurement procedures described in TEC 44.031(a)(2)-(9), are for certain procurement situations as an alternative to the competitive bidding procedures of TEC 44.031(a)(1).

Government Code Chapter 2254.003 *prohibits* competitive bidding for certain types of professional services, including engineering, land surveying, architectural, accounting and certain other services." Competitive proposal procedures are recommended where other procurement procedures are not required according to state or federal rules, laws or regulations, to stimulate competitive prices for services.

School Bus Purchase or Lease

Each contract proposed to be made by an LEA 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. TEC 44.031(l).

Procurement by Small Purchase Procedures – Less than $250,000* – Federal Law (Texas is more restrictive, limiting to $50,000 for ISD'S when using Federal Funds)

In accordance with 2 CFR §200.320(b), small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold.

Simplified Acquisition Threshold is defined in 2 CFR §200.88 as the dollar amount below which a non-Federal entity (includes LEA) may purchase property or services using small purchase methods. The Simplified Acquisition Threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 and in accordance with 41 USC 1908. Currently, the Simplified Acquisition Threshold is $250,000, but this threshold is periodically adjusted for inflation.

LEAs adopt small purchase procedures in order to expedite the purchase of items costing less than the Simplified Acquisition Threshold.

If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

***The state's rules related to purchases $50,000 and above are more restrictive. Therefore, this federal method of small purchase is applicable only for purchases between $9,999 and $49,999. Then, at $50,000, the state rules are more restrictive and must be followed up to $250,000, when the federal law for sealed bids and competitive proposals becomes more restrictive.**

Procurement by Sealed Bids (Formal Advertising) - $250,000 and above – Federal Law

In accordance with 2 CFR §200.320(c), bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in 2 CFR §200.320(c)(1) apply:

(1) In order for sealed bidding to be feasible, the following conditions should be present:
    (i) A complete, adequate, and realistic specification or purchase description is available;
    (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
    (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:
    (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publically advertised;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the terms or services in order for the bidder to properly respond;
(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
(v) Any or all bids may be rejected if there is a sound documented reason.

Once a purchase reaches $250,000, the federal law is more restrictive than the state law described in TEC 44.031 and the seven methods that were available with the state law are reduced to two methods. The LEA now only has two methods: Competitive Sealed Bids or Competitive Proposals.

Please refer to the Contract Cost or Price Analysis section of this manual, which is required of all procurement actions in excess of the Simplified Acquisition Threshold.

Procurement by Competitive Proposals - $250,000 and above – Federal Law

In accordance with 2 CFR §200.320(d), the technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
(2) Proposals must be solicited from an adequate number of qualified sources;
(3) The LEA must have a written method of conducting technical evaluations of the proposals received and for selecting recipients;
(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
(5) The LEA may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E

professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

Once a purchase reaches $250,000, the federal law is more restrictive than the state law described in TEC 44.031 and the seven methods that were available with the state law are reduced to two methods. The LEA now only has two methods: Competitive Sealed Bids or Competitive Proposals.

For competitive proposals, EDGAR requires recipients to have a written method for conducting technical evaluations of the proposals received and for selecting recipients. The factors considered in the evaluation are price, vendor experience, longevity, location and distance to LEA. This evaluation is gathered by the Business Manager/Department Heads/Superintendent which perform the evaluation. At least three evaluations should be performed, in a 30-day timeframe for conducting any evaluations and the selection of a vendor, the school board will be the final decision maker.

Please refer to the Contract Cost or Price Analysis section of this manual on page [47], which is required of all procurement actions in excess of the Simplified Acquisition Threshold.

Procurement by Noncompetitive Proposals - Sole Source – Federal and State Law

Federal Law

In accordance with 2 CFR §200.320(f), procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;
(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
(3) The federal awarding agency (USDE) or pass-through entity (TEA) expressly authorizes noncompetitive proposals in response to a written request from the LEA; or
(4) After solicitation of a number of sources, competition is determined inadequate.

State Law

In accordance with TEC 44.031(j), selected purchases may be exempt from competitive procurement if they meet established criteria for a sole source purchase (the item is only available from one source):

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

In accordance with TEC 44.031(k), sole source does not apply to mainframe data-processing equipment and peripheral attachments with a single item purchase price in excess of $15,000.

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

If the LEA chooses to request authorization from TEA to use the noncompetitive proposal method for a certain purchase, it will submit the required TEA form accessed on the TEA website.

Department Heads/Business Manager/Superintendent will ensure adequate documentation is maintained that shows how the decision to use this method of procurement was reached, including the uniqueness of the services or goods sought, the scarcity of providers, and the specific expertise and experience of the vendor selected.

An online search for providers or a letter from the vendor stating they are the only source available is not sufficient. A claim of sole source may qualify for noncompetitive proposal if the material is copyrighted or an upgrade to an item previously purchased from the provider is being purchased. However, the best practice is to first use the competitive proposal process and only when the results are inadequate to then proceed to noncompetitive proposal.

THE PURCHASING PROCESS

The purchasing process section of this manual describes the actual process for goods and services procurement, including vendor selection and relations, requisition process, purchase orders, receiving/distribution, and control environment.

Delegation

In accordance with TEC 44.0312, the LEA's board of trustees may, as appropriate, delegate its procurement authority under TEC 44 to a designated person, representative, or committee. In procuring construction services, the LEA shall provide notice of the delegation and the limits of the delegation in the request for bids, proposals, or qualifications or in an addendum to the request. If the LEA fails to provide that notice, a ranking, selection, or evaluation of bids, proposals, or qualifications for construction services other than by the board of trustees in an open public meeting is advisory only.

The board may not delegate the authority to act regarding a procurement action authorized or required by TEC 44 to be taken by the board of trustees of a school district.

In the event of a catastrophe, emergency, or natural disaster affecting the LEA, the board of trustees may delegate to the superintendent or designated person the authority to contract for the replacement, construction, or repair of school equipment or facilities under TEC 44 if emergency replacement, construction, or repair is necessary for the health and safety of LEA students and staff.

Competitive Procurement Process

According to the Purchasing Module in the FASRG, the following processes are essential for effective competitive bidding:

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

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

In accordance with TEC 44.031(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 LEA'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 LEA'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.

Competitive Bids Process

According to the Purchasing Module in the FASRG, the bid process is structured and incorporated into LEA purchasing procedures and involves:

- Development of clear specifications
- Advertising for competitive bids
- Responding to vendor questions
- Procedures for opening and tabulating the bids
- Analysis of the bids to ensure compliance with requirements
- Recommending the vendor(s) for bid award
- Award of the bid by the board

A request for bids contains the following elements:

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

Local Government Code 271 in Relation to TEC 44

In accordance with TEC 44.0351, Subchapter B, Chapter 271, Local Government Code does not apply to a competitive bidding process under TEC 44, with the exceptions of Sections 271.026, 271.027(a), and 271.0275 Local Government Code:

- Section 271.026. Opening of Bids. (a) Bids may be opened only by the governing body of the governmental entity at a public meeting or by an officer or employee of the governmental entity at or in an office of the governmental entity. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. (b) This subchapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.
- Section 271.02. 7 Award of Contract. (a) The governmental entity is entitled to reject any and all bids.
- Section 271.0275. Safety Record of Bidder Considered. In determining who is a responsible bidder, the governmental entity may take into account the safety record of the bidder, firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such a firm, corporation, partnership, or institution if: (1) the governing body of the governmental entity has adopted a written definition and criteria for accurately determining the safety record of a bidder; (2) the governing body has given notice to prospective bidders in the bid specification that the safety record of a bidder may be considered in determining the responsibility of the bidder; and (3) the determinations are not arbitrary and capricious.

Electronic Bids or Proposals

According to the Purchasing Module in the FASRG, an LEA may receive bids or proposals through electronic transmission if the LEA's board of trustees adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time. An electronic bid or proposal is not required to be sealed, but if the governing statutes or rules require paper bids or proposals to be sealed, the same requirements would apply to an electronic process. TEC 44.0313

Competitive Sealed Proposals/Request for Proposals Process

According to the Purchasing Module in the FASRG, in selecting a vendor through competitive sealed proposals, the LEA shall prepare a request for competitive sealed proposals that includes information that vendors may require to respond to the request. The LEA shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

The RFP (Request for Proposal) is the mechanism that generates the receipt of competitive sealed proposals and should contain several key elements:

- Determination by board of trustees that this method will provide the best value for the LEA must be done first, if a construction contract
- Newspaper advertisement

- Notice to proposers
- Standard terms and conditions
- Special terms and conditions
- Scope of work (scope and intent; definitions and applicable documents; requirements; quality assurance)
- Acknowledgement form/response sheet
- Felony conviction notice
- Contract clause

The LEA 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 LEA shall evaluate and rank each proposal submitted in relation to the published selection criteria.

The LEA shall select the offeror that offers the best valued for the LEA based on the published selection criteria and on its ranking evaluation. The LEA shall first attempt to negotiate a contract with the selected offeror. The LEA may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the LEA is unable to negotiate a satisfactory contract with the selected offeror, the LEA 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.

An RFP may also be used as a procurement option to generate a non-sealed competitive proposal, but only for services other than construction services. In this instance, an LEA may open the proposal upon receipt and begin the negotiation process for the offered goods/services.

In determining the best value for the LEA, the LEA is not restricted to considering price alone but may consider any other factors stated in the selection criteria. TEC 4.0352.

Change Orders Process

According to the Purchasing Module in the FASRG, if a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the LEA may approve change orders making the changes.

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

The LEA may grant general authority to an administrative official to approve the change orders. The Superintendent is authorized to approve change orders.

A contract with an original contract price of $1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than $1 million increases the contract amount to $1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price. TEC 44.0411.

Interlocal Contract/Cooperative Purchasing Agreement Process

According to the Purchasing Module in the FASRG, operating characteristics of cooperative purchasing agreements vary widely. In some cases, the lead agency in the cooperative, having received and combined orders from participating LEAs, purchases in bulk and stores purchases in a centralized warehouse. This lead agency then serves as the member districts' principal "vendor" and distributes goods as they are ordered and subsequently invoices the LEA. It may offer a catalog of centralized warehouse merchandise. Distribution may be either direct delivery to the LEA or by pick-up at the cooperatives' central warehouse.

Other operating arrangements may allow each LEA to order directly from approved vendors at bulk prices negotiated by the cooperative. A third arrangement may have a lead agency serving as a warehousing site for other LEAs with each LEA responsible for pick-up of goods and products.

The LEA considers the following areas when determining whether to join a cooperative:

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

Centralized Purchasing

According to the Purchasing Module in the FASRG, centralized purchasing is the act of combining related items/commodities of various departments to coordinate purchases and obtain better prices. Centralized purchasing enables an LEA to coordinate purchases when two or more campuses or departments have common requirements for supplies and equipment.

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

- Combining on purchase order forms the individual purchase requirements of two or more teachers, departments, or campuses; and
- Arranging for favorable purchase terms, for example discount from retail or catalog prices, for items to be purchased "as needed" by individual employees (minimizes cash flow and warehouse storage requirements associated with large single order quantities).
- Ensuring LEA compliance with state laws and local policies concerning purchasing.

VENDOR SELECTION AND RELATIONS

A good purchasing system establishes standards for both LEA personnel and vendors.

Vendor Communications

According to the Purchasing Module in the FASRG, establishment of certain district-wide procedures regarding vendor contact is important to an effective purchasing design. Such policies and procedures may include requiring appointments with vendors be scheduled through the department responsible for purchasing or that a representative of the department responsible for purchasing (i.e., purchasing agent or equivalent) attends all meetings with vendors.

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

Vendor List

According to the Purchasing Module in the FASRG, the LEA compiles and maintains an approved vendor list. This list includes the names and addresses of various vendors and the products and services they offer. Vendors are encouraged to submit their names for inclusion on the list and are asked to complete an application form. Soliciting and including as many vendors as possible results in a complete and functional list of vendors with whom the LEA conducts business.

The business department maintains the vendor list, analyzing and updating it on a periodic basis.

Vendor Award Determination Criteria

According to the Texas Education Code (TEC) 44.031(b), the LEA will consider all of the following when determining to whom to award a contract:

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 LEA's needs;
5) The vendor's past relationship with the LEA;
6) The impact on the ability of the LEA to comply with laws and rules relating to historically underutilized businesses;
7) The total long-term cost to the LEA 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. Factors the LEA may consider under this criteria includes:

- Vendor response time
- Compatibility of goods/products purchased with those already in use in the LEA

Also, refer to page [38], regarding the consideration of the bidder's safety record.

Under TEC 44.035, the LEA must publish in the request for bids, proposals, or qualifications for construction services, the criteria that will be used to evaluate the offerors and relative weights given to the criteria.

Under 2 CFR §200.319(c)(2), in all solicitations, the LEA identifies all factors to be used in evaluating bids or proposals.

Right to Work

In accordance with TEC 44.043, whenever an LEA is engaged in (1) procuring goods or services; (2) awarding a contract; or (3) overseeing procurement or construction for a public work or public improvement, the LEA may not consider whether a vendor is a member of or has another relationship with any organization; and shall ensure 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.

Contract with Person Indebted to the LEA

In accordance with TEC 44.044, the LEA's board of trustees by resolution may establish regulations permitting the LEA to refuse to enter into a contract or other transaction with a person indebted to the LEA. The LEA may, accordingly, refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the LEA.

In this context, "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 LEA requiring approval by the board.

Debarment and Suspension

In accordance with 2 CFR §200.212, the LEA awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The LEA may not subcontract with or award subgrants to any person or company who is debarred or suspended. The Business Manager is required to check for excluded parties at the System for Award Management website before any procurement transaction. This list is located at: http://www.sam.gov/.

Vendor Gifts and Relations

LEA officials and employees cannot accept anything of value from a vendor, such as personal gifts or gratuities, which may be construed to have been given to influence the purchasing process.

Vendor's Notification of Criminal History of Contractor

In accordance with TEC 44.034, a person or business entity that enters into a contract with an LEA must give advance notice to the LEA if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.

The LEA may terminate a contract with a person or business entity if the LEA determines that the person or business entity failed to give notice as required by TEC 44.034(a) or

misrepresented the conduct resulting in the conviction. The LEA must compensated the person or business entity for services performed before the termination of the contract.

The requirements of TEC 44.034 do not apply to a publicly held corporation.

Vendor Performance Evaluation

According to the Purchasing Module in the FASRG, a system for the evaluation of vendors and their performance is important to support an effective purchasing function. Factors considered by the LEA for inclusion in the evaluation are:

- Timeliness of deliveries
- Service availability
- Completeness and accuracy of order
- Quality of products or services received

The Department Head/Special Programs Director performs vendor performance evaluation.

Whenever problems are encountered with a vendor (i.e., a vendor fails to deliver certain items or delivery does not meet specifications), it is important to document the problem, noting the date and an accurate description of the problem. This information is provided to the Special Programs Director and the business office.

The vendor is contacted by telephone or email by the [position/department] and informed of the problem and told specifically how the LEA wants the problem corrected. The LEA keeps a record of all such communication, including the dates and what was discussed. If the problem is not resolved or continues, the vendor is notified in writing, stating the problem, the corrective action required, and that the vendor's failure to correct the problem will be considered a breach of contract and could result in the cancellation of the contract. If significant problems are encountered with the vendor, the LEA consults with legal counsel concerning the removal of the vendor from the approved vendor list and discontinuing any business with the vendor. The Superintendent is responsible for consulting legal counsel. The business office is responsible for removing the vendor from the vendor list, and notifying LEA staff of the removal of the vendor from the list.

This record of information about vendor performance is important in the evaluation of the vendor. All records of information, communication with the vendor, and evaluation of the vendor are maintained by the business office.

The LEA strives to develop an open and professional relationship with each vendor while still maintaining total independence and objectivity.

Protest Procedures to Resolve Dispute

The LEA maintains protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency.

Protest procedures must be in accordance with state and local law. Issues that should be addressed include, but are not limited to, how potential vendors receive notice of ability to protest, what position/office receives the protest; what position/office reviews the protest; whether a report of the review is provided to the complainant; and timeframes for both making the protest and reviewing the protest. The position/office that reviews the protest should be different than the one that awarded the contract. See Board Policy located at: www.Shinerisd.org

CONTRACTS

Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

In accordance with 2 CFR §200.321:

(a) The LEA must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
(b) Affirmative steps must include:
    (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
    (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
    (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
    (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
    (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
    (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) above.

Contract Cost or Price Analysis

In accordance with 2 CFR §200.323:

(a) The LEA must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications. Currently, the Simplified Acquisition Threshold is $250,000.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the LEA must make independent estimates **before** receiving bids or proposals.

(b) The LEA must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the LEA under the Cost Principles of 2 CFR Part 200, Subpart E. The LEA may reference its own cost principles that comply with the federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

Contract Provisions

EDGAR Requirements

In accordance with 2 CFR §200.326, all federally-funded contracts must contain the applicable provisions described in Appendix II to 2 CFR Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards:

(A) Contracts for more than the Simplified Acquisition Threshold currently set at $250,000 must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the LEA, including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b).

(D) Davis-Bacon Act. When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by LEAs must include a provision for compliance with the Davis-Bacon Act.

(E) Contract Work Hours and Safety Standards Act. Where applicable, all contracts awarded by the LEA in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 USC 3702 and 3704.

(F) Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of "funding agreement" under 37 CFR §401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement" must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(G) Clean Air Act and the Federal Water Pollution Control Act. Contracts and subgrants of amounts in excess of $250,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act.

(H) Debarment and Suspension. A contract award must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM).

(I) Byrd Anti-Lobbying Amendment. Contractors that apply or bid for an award exceeding $100,000 must file the required certification.

(J) Procurement of Recovered Materials described in 2 CFR §200.322.

TEA Best Practices for Federally-Funded Contracts

The Texas Education Agency (TEA) requires all contracts be effective only during the period of availability of funds identified in the Notice of Grant Award (NOGA).

A letter of intent to contract with a third party may be signed prior to the issuance of a NOGA. (a) The letter of intent should contain a provision that the future contract is contingent upon receipt of the specific NOGA. The contract should contain the following provisions: (a) The contract is only effective upon receipt by the subgrantee of the NOGA from the awarding agency. (b) The contract period is aligned to the grant period of availability as stated on the NOGA from the awarding agency (period of availability). (c) All services will be completed during the effective dates of the contract. (d) All services will be invoiced monthly after services are received (rather than paid lump sum at the beginning of the period of availability before services are rendered) and paid upon verification of receipt of services. (e) The regulations for

procurement in 2 CFR §§200.318-323 are followed in issuing the contract. (f) All professional services provided under the contract will follow the provisions of 2 CFR §200.459 Professional service costs. (g) The contract identifies the funding sources that will be charged for the services provided, including the specific amount and/or percentage of the total contract amount to be charged to each funding source. (h) The contract identifies and lists only reasonable, necessary, and allocable services to be provided during the period of availability of the funding sources listed in the contract. (i) The administrative costs charged to the grant in the contract must comply with any limitations for administrative costs for funding sources (if applicable). (j) The contract specifies that the invoice provided by the contractor will include the list of services provided, dates of services, and location(s) where services were provided during the billing period.

Contract Administration

The LEA maintains the following oversights to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

All contracts and service agreements, etc. must be signed by the Superintendent or designee. Only the Superintendent or designee is authorized to sign a contract or agreement on behalf of the LEA. Contracts that exceed $50,000 shall be approved by the Superintendent and the School Board.

The business office maintains a copy of the signed contract, agreement, or purchase order for services performed and the rationale or procedure for selecting a particular vendor.
Contracts or agreements in excess of $10,000 describe conditions under which the contract may be terminated for cause or for convenience by the LEA, including the manner by which it will be effected and the basis for settlement. Appendix II to 2 CFR Part 200.

Contracts for more than the simplified acquisition threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Appendix II to 2 CFR Part 200.

If the contract is to develop materials, concepts, or products, the agreement or contract contains provisions that protect and retain ownership of such materials, concepts, or products by TEA, the State of Texas, and the federal government, as applicable (including copyright, patent, trademark).

The Special Programs Director maintains evidence that awards were made only to contractors or consultants possessing the ability to perform successfully under the terms and conditions of the proposed contract or procurement.

The business office maintains evidence that consultants were selected based on demonstrated competence, qualifications, experience, and reasonableness of costs and that consideration was given to contractor integrity, compliance with public policy, past performance, and financial and technical resources.

No contracts are entered into with employees of the LEA.

The business office maintains evidence that an employee did not participate in selection or award of a contract if a conflict of interest was involved.

Rental of Facilities: The business office and Band Director/Athletic Director will coordinate the rental of LEA facilities. A Rental Agreement is required for all rentals of facilities by outside organizations. All contracts will include security deposits (unless waived), charges for facility usage, custodial services, and other related charges, if applicable. The Superintendent or his designee are authorized to waive security deposits.

Procedures for Submitting a Consultant Service Contract:

A. Submit the Consultant Service Contract to the Special Programs Director/Curriculum Coordinator for review.

B. Obtain the following documents from the consultant and submit with the purchase order to the business department: A completed W-9 Form; A Felony Conviction Form; A Criminal Check Authorization and Fingerprinting Form, if the consultant will work directly with students; A Conflict of Interest Questionnaire; Documentation of insurance, such as general liability, workers compensation, and auto liability, if applicable.

C. Follow the procedures for Suspension and Debarment Verification for transactions supported with Federal funds outlined in this manual, as applicable.

The employees will ensure that contractors, consultants, service providers, and vendors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Prior to disbursement of funds to a contractor, consultant, service provider, or vendor, documentation must be provided to the LEA to support the goods or services rendered.

Documentation includes, but is not limited to: Description of the goods or services rendered; Dates; Rate; Total Hours, if applicable; Number of students served or names of students served, if applicable.

When procuring contracted services with Federal funds, the LEA will ensure that every purchase order or contract includes language to ensure services align with allowable use of grant funds, if applicable.

Accountability:

The LEA ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

a) The LEA obtains written contracts or purchase orders.

b) Contracts for services include a description of the services to be performed, the date(s) the services will be performed, the location(s) of where the services will be performed, the number or type of beneficiaries to be served, if applicable, and when payment(s) will be made, specifying verification before payment. The terms of the contract will include language that assures the activities performed by the contractor are allowable activities according to the Federal program, if applicable.

c) Purchase orders for goods include a description of the goods to be delivered, the date(s) the goods will be delivered, the location(s) of where the goods will be delivered, and when payment(s) will be made, specifying verification before payment.

d) Invoices match the contracts or purchase orders, including a description of services performed by the contractor or goods delivered by the vendor, the date(s) services were performed or goods delivered, the location(s) where the services were performed or goods were delivered, and if applicable, the number of beneficiaries served and identifying information of the beneficiaries who were served.

e) The employee verifies that the services were performed or the goods were received before issuing payment. The business office verifies that the contractor or vendor met all of its responsibilities under the contract or purchase order before approving payment. Invoices that merely state "for services rendered" will not be approved for payment. Invoices for services provided to students must indicate which student(s) was served and under which program.

The business office and/or Department Head maintains records on services performed – date of service, purpose of service – ensuring that services were consistent and satisfactory as described in the signed contract or purchase order.

The business office maintains evidence that payment was made only after the service was performed or goods received, and not before. Advance payment to contractors is prohibited.

PETTY CASH

According to the Purchasing Module in the FASRG, a petty cash fund may be used to reimburse employees for small expenditures for LEA supplies or services and to make small district purchases. Such a fund can save time, paperwork, and associated administrative costs. Authorization to purchase from this source should be clearly defined in district or campus procedures and the dollar amount for each purchase should be limited (usually between $50-$100). Purchases made with petty cash may occur at both the campus and departmental level. It

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

The LEA authorizes the use of Petty Cash for change funds only.

CREDIT, DEBIT, GIFT, & PROCUREMENT CARDS

Procurement Cards

According to the Purchasing Module in the FASRG, purchasing cards (p-cards) can provide efficiency, transparency, and security when utilized correctly. As the volume of transactions increases, more transactions can be processed without the addition of staff to handle labor-intensive purchase order processes and employees can focus on doing the job at hand rather than the paperwork (requesting, approving, logging, and ordering). The software tools provided allow supervisors to review details on vendors, timing of purchases, and the actual amount spent. Purchasing staff can focus their attention on the larger dollar, infrequent purchases and their compliance requirements.

In order to avoid fraud and waste, purchasing cards must be controlled closely. The superintendent, business manager, human resources director, and procurement director must work together to set and enforce policies and procedures. It should be clear that misuse and abuse will not be tolerated. Two ways of demonstrating this are including the use of the card as a factor in performance appraisals and employing a 3-strikes-you're-out feature, where an employee who misused the card or couldn't provide receipts would have card privileges revoked or terminated. Reviewers should be held to the same standards as cardholders. The same set of rules should be applied to all card users, although spending limits may vary.

Segregation of Duties

- The same employee should not buy, receive, approve, and reconcile card purchases

Credit and Debit Cards

The LEA does authorize the use of credit cards or debit cards for purchases with federal, state or local funds.

Gift Cards

The LEA does not authorize the use of gift cards for purchases with state or local funds. Gift cards are not authorized for purchases with Federal grant funds because they do not provide adequate accountability for ensuring allowable use of funds.

Purchase or Credit/Debit Card Rebates or Discounts

If the purchase card or credit/debit card provides rebates or discounts back to the LEA, each federal award for which the card was used must receive a proportional credit. The District does not use cards that create rebate or discounts.

I. Use of School Credit Cards (For Local, Federal and Grant Funds)

Shiner ISD has Wal-Mart and Sam's credit cards. Credit cards are kept in the checkout folder in locked safe in the central office. Credit Cards are checked out to employees for items purchased from vendors where Shiner ISD does not have an account set up. The following procedures must be followed when issued a school credit card. When a credit card is checked out to an employee they must follow these procedures:

1.) Provide a copy of approved purchase order to central office.
2.) Check out card from central office. At that time the employee is made aware of the usage terms and their signature indicates agreement to terms.
3.) Card must be checked in the next day or the first day back from trip with all original receipts attached.

Credit card statements are received in the business office each month. Each charge on the statement must have a purchase order encumbered in the TXEIS System. If a purchase order is not on file, we will call the campus secretaries and see if a check request has been issued at the campus level through the activity fund. If for some reason an employee fails to turn in a receipt, it will be the employee's responsibility to cover the charge.

REQUISITIONS

According to the Purchasing Module in the FASRG, a requisition is an internal document by which a campus or department of the LEA requests the purchasing department to initiate a purchase order. It is a request generated manually or electronically (through use of automated systems) for the purchase of supplies, services, equipment, etc.

Approval of Requisitions

According to the Purchasing Module in the FASRG, requisitions should be initiated by those having proper authority, as defined by the LEA. Requisitions initiated by instructional, maintenance, and support personnel should then be approved by the appropriate person, either

the principal, department head or superintendent. Requisitions which require expenditures from the Special Revenue Fund should be approved by the program administrator.

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

Requisition Format

According to the Purchasing Module in the FASRG, requisitions should include certain items:

- A description of items to be purchased
- The quantity needed
- A suggested vendor (should be from the LEA's approved vendor list, if applicable)
- The code of the account to be charged

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

The District utilizes the TxEIS software system as their purchasing module.

Flow of Requisitions

According to the Purchasing Module in the FASRG, requisitions are received by the LEA's central purchasing department or department responsible for this function. In smaller LEAs, requisitions may be received by the business office or by the superintendent. When received, the requisition should be reviewed for the following:

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

The request is then assigned a purchase order number, vendor number (if applicable), purchase order date, and a cancellation date. The LEA should ensure that the appropriate competitive purchasing method is determined and performed before the requisition is approved for processing.

After approval by the designated authority, a purchase order is issued to the vendor.

ENCUMBRANCES

Encumbrances are funds that have been reserved when a purchase requisition is finalized and encumbered. When a requisition is processed, funds are placed aside for that transaction and are no longer available for use in other transactions to prevent the possibility of budget overspending. Encumbrances are used as a general planning tool, to predict cash outflow, and to avoid overspending. The amount of the encumbrance will not be included in the actual funds balances since payment has not been generated. Once payment is made, the encumbrance will be reversed and the funds will appear under the actual funds balance rather than the encumbrance balance.

The business office utilizes the TxEIS Purchasing module to generate obligation, encumbrance, and expenditure information on a as needed basis to monitor and review budget performance.

Purchase Orders

Definition of a Purchase Order

A purchase order is an instrument used to encumber funds (setting aside funds in advance for the payment of goods and services when received or rendered). Texas Education Agency Bulletin 679, ACT 302 requires that an encumbering accounting system be in place.

According to the Financial Accountability System Resource Guide, a purchase order serves as a formal order for goods, materials, and/or services from a vendor. A purchase order, once approved, is a binding commitment for an LEA to remit payment to the vendor after the item(s) and an invoice are received.

A purchase order is a purchaser's document to formalize a purchase transaction with a vendor. The purchase order should contain statements as to the quantity, description, and price of the goods or services orders; applicable terms as to payment; discounts; date of performance; transportation arrangements; and other factors or suitable references pertinent to the purchase and its execution by the vendor. Acceptance of a purchase order constitutes a contract.

Use of Purchase Orders

A purchase order, after the final approval process, is a binding commitment for the LEA to remit payment to the vendor after the LEA receives the item(s). A purchase order is also an important accounting document. It should contain information on the expenditure to be made and the account code to be charged. Once issued, the purchase order encumbers funds, which serves as an expenditure control mechanism. Finally, the purchase order is utilized in the accounts payable process as it documents that an order has been placed and is acceptable by the user; the user can make payment to the vendor upon verified and documented receipt of the goods/services.

Prior to the purchase of goods or services, a properly prepared and submitted purchase order shall be required.

Reimbursements for goods/services purchased personally will be reimbursed only if an approved purchase order is in place prior to the purchase of the goods and does not exceed the amount of the purchase order (shipping costs should be included in the purchase order). No changes, substitutions, or increases in funds may be made without approval from the Business Office/ Superintendent.

All LEA personnel are required to follow the following guidelines for any purchase, regardless of fund source. In addition, Federal Program personnel will adhere to the applicable statute, regulations, and other grant requirements when making purchases. Employees who violate the LEA's purchasing procedures shall be held personally liable for the debt incurred.

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

Items requiring purchase orders/ check request forms include, but are not necessarily limited to, the following:

a) Capital Outlay/Fixed Assets (Equipment, furniture, etc.);

b) Travel Expenses for Outside Consultants;

c) Travel by Employees (Hotel, airfare, rental car expenditures require purchase orders; Mileage, parking, meals, and other approved incidentals may be reimbursed without a purchase order, by utilizing the Check Request form. (Exception: Emergency Only);

d) Registration fees for conferences;

e) Instructional Materials (Exception: Situations which would render the purchase order procedure impractical);

f) Office Supplies not stocked.

g) Professional and Contracted Services (Exception: Equipment Repair).

All purchase orders require approval with a requisition, using the LEA's established requisition system. No confirmation ("after-the-fact") purchase orders will be allowed without justification and approval by the Superintendent.

Requisitions:

According to the TEA Financial Accountability System Resource Guide (FASRG), a requisition is an internal document by which a campus or department of the LEA requests the purchasing department to initiate a purchase order. It is a request generated manually or electronically (through the use of automated systems) for the purchase of supplies, services, equipment, etc. The requisition should be in a standard format so that the information can be readily identified and transferred to a purchase order. If proper control procedures are used, the requisition and the purchase order can be combined on one form.

The District Purchase Order or Check Request Form should always include, at a minimum, the following:

a) A description of the item(s) to be purchased (The description should be complete enough for anyone to understand the item(s) being purchased);

b) The quantity needed/requested;

c) The proposal number, if applicable;

d) A suggested vendor (Use the LEA's approved vendor list which includes any vendor on the Region III ESC list or the Texas Buy Board, making sure a bid vendor is used, if applicable);

e) The code of the account to be charged;

f) Pricing, if known;

g) Requests for requisitions for Federal Grant funds must include justification back-up from the Campus/District Needs Assessment and Improvement Plan, where applicable; A separate Purchase Order Form is available when using grant funds.

h) Proper original signatures, dated.

Purchase Orders/ Check Request Forms:

The purchase order or check request is the written evidence of orders placed as a result of properly initiated and approved purchase requisitions.

The purchase order should always include, at a minimum, the following:

a) Vendor name and address;

b) Description of goods or services, including pertinent factors, such as size, color selection, etc.;

c) Quantity of goods;

d) Price (per unit and in total);

e) Account codes;

f) Payment terms;

g) Discounts, if any;

h) Transportation (shipping) arrangements;

i) Other pertinent factors, such as delivery destination;

j) Cancellation terms.

Final Approval

Final approval of the purchase order is provided by the Superintendent. The purchase order is mailed or faxed to vendors by the business office personnel. A copy of the purchase order is sent to the campus. The business office personnel encumbers funds from the proper account.

During review and approval of requisitions and purchase orders, special attention should be given to the account coding. If there are not sufficient funds in the account the expenditure is to be coded to, the business office personnel will request either a budget amendment or budget transfer. Expenditures that are not correctly coded will be returned to the department, causing delays in the expenditure process.

For control purposes, the business office maintains a record of all purchase orders issued. The log includes the date of submission, purchase order number, vendor name, and campus/department name.

Blanket (Open) Purchase Orders

According to the TEA Financial Accountability System Resource Guide (FASRG), a blanket purchase order is issued to a pre-approved vendor authorizing purchases from that vendor over a period of time. Blanket purchase orders are valuable because they allow the purchase of items quickly, may eliminate numerous individual purchase orders for small dollar-value items, and usually reduce paperwork and related processing costs. However, blanket purchase orders must follow certain criteria: pre-qualification of vendors, limitation on the maximum amount for purchases, a specific time frame for purchases covered by the blanket purchase order, and identification of authorized purchasers. Blanket purchase orders are issued so that supplies, materials, or services are available “as needed” by user departments.

The business office personnel is responsible for the pre-qualification of vendors and ensures that the number of vendors to whom blanket purchase orders are issued is limited.

Those who may make purchases under blanket purchase orders are limited to the following positions:

Administrator

Superintendent

Business Office Personnel

Department Heads

All blanket (open) purchase orders are generated with a broad description and closed prior to year-end. All receipts must be received 15 calendar days prior to the budget end date to process payment.

Cancellation of Purchase Orders

In the event it is necessary to cancel a purchase order, the campus administrator notifies the business office so the encumbrance can be liquidated and the vendor can be contacted.

Encumbrances

Encumbrances are funds that have been reserved when a purchase requisition is finalized and encumbered. When a requisition is processed, funds are placed aside for that transaction and are no longer available for use in other transactions to prevent the possibility of budget overspending. Encumbrances are used as a general planning tool, to predict cash outflow, and to avoid overspending. The amount of the encumbrance will not be included in the actual funds balances since payment has not been generated. Once payment is made, the encumbrance will be reversed and the funds will appear under the actual funds balance rather than the encumbrance balance.

The business office personnel utilizes the current finance system to generate obligation, encumbrance, and expenditure information on a monthly basis to monitor and review budget performance.

Invoices

Vendors are required to submit all invoices to the business office. If an invoice is received at the campus or department, the campus administrator will forward to the business office.

Texas law requires that all invoices be paid to vendors within thirty (30) calendar days of receipt of the goods/services. If the LEA fails to pay promptly, the vendor can assess penalty interest charges. All invoices must be submitted to the business office within 7 business days of receipt to ensure prompt payment to the vendor. If a school employee neglects to submit an invoice on a timely basis, he/she may be held personally liable for the penalty interest charges.

Invoices for goods must contain a clear description of the merchandise. Invoices for contracted

services must include documentation containing dates, hours, students served, if applicable, and services provided, along with the total amount due for services rendered. A statement on the invoice "for services rendered" will not be accepted in lieu of a detailed description of the services performed. Invoices are signed by the appropriate administrator or designee.

Emergency Purchases

According to the Purchasing Module in the FASRG, two types of emergency purchases are made in LEAs. One type results from an eminent threat to the health, safety, or welfare of students. Such purchases must comply with state law and may be made only after a formal board action declaring an emergency and authorizing the purchase. An example of an emergency purchase of this type is the authorization to repair a school after a fire or a natural disaster.

Emergency purchases exceeding the dollar amount triggering competitive procurement requirements shall be made in conformance with TEC 44.031(h).

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

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

Purchasing Deadlines

In an effort to maximize the use of budgeted funds during the current fiscal year and meet the needs of the intended beneficiaries, the purchasing deadline for supplies and equipment shall be July 15, unless the specific State or Federal grant specifies an earlier date.

Summer needs for staff development and summer school should be anticipated and ordered prior to May 31.

Purchasing documents for services and travel should be as soon as possibly available.

At times, the purchasing deadlines for State or Federal grants may be earlier than the deadlines stated above due to grant ending dates.

Required Documentation for Purchases

Third-party documentation is required to support disbursement of funds.

Documentation includes, but is not limited to:

- Purchase Orders;
- Purchase Acquisitions;
- Invoices;
- Original Receipts;
- Packing Slips

The LEA will maintain records sufficient to detail the significant history of procurement with Federal funds.

In addition to the documentation listed above, these records will include, but are not necessarily limited to, the following:

a) Rationale for the method of procurement;

b) Selection of contract type;

c) Contractor selection or rejection; and

d) The basis for the contract price.

Registration Fees

Registration fees are only processed and paid by purchase order or check request. Registration is paid in advance of the conference, and is sent directly to the conference vendor. No payments are made to employees for reimbursement of registration fees unless prior approval was given by the superintendent.

The requisition/purchase order for registration must include the date of the event and the number/names of attendees. A copy of the approved travel must accompany the requisition/purchase order before any payments will be made.

If registration fees are paid with Federal funds, the fee must only be paid during the grant year in which the event occurs.

Sales Tax Exemption Form

The Sales Tax Exemption Form shall be used for school-related purchases only. Misuse of the exemption form for personal purchases constitutes a misdemeanor.

Copies of the exemption form may be obtained from the business office. Taxes, which should have been exempt, will be unauthorized for reimbursement if the exemption form was not presented to the vendor at the time of the purchase.

Subscriptions and Memberships

All costs for membership in business, technical, and professional organizations and subscription costs for business, professional and technical periodicals paid from Federal funds are purchased in the name of the organization, rather than the individual(s).

Vendors

Purchases from vendors that operate on a cash basis (do not accept purchase orders) will be used in extenuating circumstances only. The LEA participates in several cooperative purchasing programs. A list of these programs is available from the business office. Priority should be given to these vendors since the goods and/or services have been subjected to the rigor of a competitive bid process.

RECEIVING AND DISTRIBUTING PURCHASES

According to the Purchasing Module in the FASRG, carefully checking deliveries and making sure that those needing the delivered goods and services actually receive them as ordered is part of the purchasing process. Centralized receiving, which is recommended, and decentralized receiving departments and campuses are both used; however, their missions are the same.

The Receiving Function

According to the Purchasing Module in the FASRG, purchases may be received by a central receiving department or at campuses in a decentralized plan.

Centralized Receiving

According to the Purchasing Module in the FASRG, central receiving may consist of more than one warehouse (i.e., food service, maintenance, instructional supplies, athletic supplies, etc.) and provides more control. Having only one centralized receiving point ensures that merchandise received agrees with merchandise ordered. Also, it provides for inventorying and tagging fixed

assets upon receipt before distribution to campuses or departments. In certain instances, however, it may be in the best interest of the LEA for the vendor to deliver items directly to a campus or department (known as "drop shipped"). The LEA should, therefore, establish and adhere to procedures for handling alternative delivery locations, ensuring that proper approvals are obtained for items which are drop shipped.

Decentralized Receiving

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

Shiner ISD is a centralized receiving District.

Receiving Report

According to the Purchasing Module in the FASRG, a receiving report should be prepared for all merchandise that is received by the LEA. The receiving report may be either a part of the purchase order (i.e., a receiving copy) or a separate report. Upon receipt of merchandise ordered, receiving personnel compare items received to the purchase order. Receiving personnel must have access to the specifications of the purchase prior to delivery to check for deficiencies in the order. All exceptions are noted on the receiving report which is then dated, signed and returned to the accounting department to be reconciled to the invoice. Damaged merchandise also should be noted on the receiving report. The department responsible for purchasing is also responsible for contacting the vendor regarding any deficiencies.

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

The District accepts the invoice with approval from the purchaser, attached to a purchase order as proof of receiving.

Quality Assurance

According to the Purchasing Module in the FASRG, appropriate steps should be taken to assure the quality of merchandise received. The first step is to examine the merchandise for obvious defects or damages. All defects and damage should be documented on the receiving report and reported to the department responsible for purchasing who should then contact the vendor.

Other more formal methods may be used to test the quality of merchandise, especially in larger LEAs. It may be more cost-efficient to perform inspection and testing only on purchases of larger dollar amounts. It is important that LEA personnel who are responsible for receiving and inspecting items are trained in testing procedures. Alternatively, product testing may be an interactive process involving user departments.

Distribution

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

CONTROL ENVIRONMENT

According to the Purchasing Module in the FASRG, an LEA needs a strong control environment in which to perform the purchasing function. The procurement manual is the primary tool for establishing a strong control environment, and it should be strictly adhered to by employees of the LEA. If a situation occurs which is not addressed in the procurement manual, it should be referred to the department responsible for purchasing to determine the proper course of action. If it is likely that this situation may reoccur, it should be considered for inclusion in the procurement manual.

One of the most important components of an effective purchasing system is a good organization that is staffed with well-trained people. Roles and related responsibilities must be clearly defined and be adapted to meet the unique operating environment of the LEA. The organizational unit responsible for purchasing should strive toward enhancing efficiency and competency through training for both purchasing staff and users.

User Interface

According to the Purchasing Module in the FASRG, most important to the central purchasing function are the users. The foundation of purchasing is the identification of the needs of the users. To be successful, the needs of the users must be met satisfactorily. If the purchasing process is not responsive or slow to respond, the user may attempt to obtain goods and services using alternative methods which may violate purchasing policies.

The key to the success of the purchasing system is a free flow of information between the purchasing department and the users. The central purchasing department should attempt to obtain feedback from the user community. Also, users must be provided with information to properly administer their functions. For example, a short instruction sheet can provide the user with information on how to complete a requisition form. Coordination and cooperation must be developed to unite the technical expertise of purchasing and the needs of the users to effectively meet the educational objectives of the LEA.

Purchasing Functions and Roles

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

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

- The organization and administration of procurement/purchasing as determined by the superintendent and the board.
- The acquisition of goods and services requested, consistent with state and federal law, board of education policies, and sound business practices.
- The distribution of goods and services to users in a timely and responsive manner with assurance that quality standards have been met.

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

- A *purchasing supervisor/purchasing assistant* assists by:
    - Managing assigned activities within the purchasing department

    - Preparing competitive procurement specifications
    - Evaluating competitive procurement tabulations
    - Maintaining vendor list
    - Supervising the processing of purchase orders for approval by the purchasing director
    - Evaluating the performance of vendors
    - Assisting users
    - Supervising buyers

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

Department Heads have the authority to initiate purchases. They may delegate purchasing authority to responsible individuals within their department, subject to the Principal's approval. All purchase orders are approved by the supervisor, accounts payable department, and the business manager or designee if the business manager is not available and tehn final approval by the Superintendent.

Centralized vs. Decentralized Purchasing

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

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

Decentralized Purchasing

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

Centralized Purchasing

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

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

- Receives and coordinates purchasing requisitions/purchase orders from campuses or departments
- Communicates with vendors regarding prices and terms of purchases
- Processes and approves all purchase orders
- Issues purchase orders to vendors
- Receives purchases at central warehouse locations
- Coordinates competitive procurement processes
- Distributes goods based on purchase requirements

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

The area in which internal controls are improved most is in the purchase approval process. In centralized purchasing, every purchase within the LEA is reviewed by the centralized purchasing department to prevent violations of state and federal law and local school board policies. A

centralized purchasing function with varying levels of authority and a receipt and distribution process provides another strong internal control.

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

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

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

Shiner ISD is centralized.

Training and Staff Development

According to the Purchasing Module in the FASRG, an LEA should provide for purchasing training and staff development. This training should extend beyond the professional staff to include other staff who are often involved either directly or indirectly in the purchasing process.

Training should be ongoing. Individuals within the department responsible for purchasing, such as the buyers and clerks, should receive ongoing instruction about changes in relevant statutes and purchasing practices. Campus principals and other departmental staff should also receive ongoing training, to accommodate changes in staffing. Training should consist of updating staff on recent developments in purchasing, including changes in purchasing statutes and regulations, and changes in the purchasing policies and procedures. Training and staff development may be provided by either external or internal resources. Throughout the training and staff development, a common basis of purchasing theory should be established and reinforced – ensuring that the principles and standards of good public purchasing are applied consistently.

The Administrators set and review all professional development and training.

Control Environment

According to the Purchasing Module in the FASRG, expenditure of public money requires a strong control environment. The following items should be present in the purchasing control environment:

- *Approval of purchase requisitions at the campus and departmental levels.* The campus principal or department head should review for need and approve purchase requisitions before they are submitted to the centralized purchasing department for processing.
- *Approval of purchase orders.* The purchasing director or other designated official should review for compliance before approving purchase orders for issuance to vendors. If a purchase is to be federally funded, approval should first be obtained from a special programs administrator, to ensure allowable use of funds.
- *Supervision of purchasing process.* Vigilance in the supervision of the entire purchasing function on a daily basis is essential.
- *Segregation of duties among purchasing and accounting personnel.* The purchasing director, along with the finance director, and ultimately the superintendent, are responsible to ensure that duties among purchasing and accounting personnel are properly segregated (to the degree possible) to provide a checks-and-balances environment.
- *Maintenance of purchasing files and records.* The purchasing clerks should be trained and supervised so that purchasing files and records are complete and maintained in an orderly fashion for the period required by law.
- *Control over incoming merchandise.* Receiving personnel (either centralized or decentralized) should be trained and monitored to ensure that the proper procedures are followed with incoming merchandise (i.e., the counting and inspection of merchandise received, and the completion of receiving reports).
- *Verification of invoices with purchase orders and receiving reports.* Although receiving personnel are responsible for the initials verification of invoices, accounting personnel verify that the invoice, the purchase order, and the receiving report match before presenting the invoice for approval for payment.
- *Verification of delivery.* The requesting campus or department is responsible for ensuring that the order is in agreement with its original purchase order.
- *Internal review of the purchasing process.* An internal review of the purchasing process should be performed periodically. This review usually is made by the LEA's internal audit department and ensures that purchasing policies and procedures are being followed by LEA personnel.

Procurement Records

In accordance with 2 CFR §200.318(h)(i), the LEA must maintain records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, the basis for the contract price (including a cost or price analysis), and verification that the contractor is not suspended or debarred.

Please refer to the LEA's Financial/Administrative Procedures Manual for more information on the LEA's record policies.

Procurement Review by USDE or TEA

In accordance with 2 CFR §200.324, the LEA must make available, upon request of the Federal awarding agency or pass-through entity (TEA):

- Technical specifications on proposed procurements
- Procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates

LEGAL AUTHORITIES AND HELPFUL RESOURCES

The following documents contain relevant grants management requirements. Staff should be familiar with these materials and consult them when making decisions related to the federal grant.

- Education Department General Administrative Regulations (EDGAR)
  - http://www2.ed.gov/policy/fund/reg/edgarReg/edgar.html

- Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 200)
  - http://www.ecfr.gov/cgi-bin/text-idx?SID=ccccf77e01c9e6d4b3a377815f411704&node=pt2.1.200&rgn=div5

- USDE's Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 3474)
  - http://www.ecfr.gov/cgi-bin/text-idx?SID=ccccf77e01c9e6d4b3a377815f411704&tpl=/ecfrbrowse/Title02/2cfr3474_main_02.tpl

- Federal program statutes, regulations, and guidance
  - http://www.ed.gov/

- State regulations, rules, and policies

- TEA's Financial Accountability System Resource Guide (FASRG), Module 5 Purchasing Guide
  - **https://tea.texas.gov/finance-and-grants/financial-accountability/financial-accountability-system-resource-guide**
- TEA's New EDGAR Regulations Frequently Asked Questions
  - **http://tea.texas.gov/Finance_and_Grants/Grants/Administering_a_Grant/The_New_EDGAR/**

- LEA regulations, rules, and policies
  - **https://pol.tasb.org/home/index/801** - SISD Board Policy

SHINER ISD
Procurement Manual
2020-2021

I hereby acknowledge receipt of a copy of the **Shiner ISD Procurement Manual**. I agree to read the manual and abide by the standards, policies, and procedures defined or referenced in this document.

Employees have the option of receiving the manual in electronic format or hard copy.
The manual can be electronically access at *http://www.shinerisd.net*
Please indicate your choice by checking the appropriate box below:

- ❒ I choose to receive the Procurement Manual in electronic format and accept responsibility for accessing it according to the instructions provided.

- ❒ I choose to receive a hard copy of the Procurement Manual.

The information in this manual is subject to change. I understand that changes in district policies may supersede, modify, or render obsolete the information summarized in this book. As the district provides updated policy information, I accept responsibility for reading and abiding by the changes.

I also accept responsibility for contacting my supervisor or the Central Office if I have questions or concerns or need further explanation.

Name _____

Campus/Department _____

_____ _____
Signature Date

Please sign and date this receipt and forward it to the Central Office.