

*Procurement & E-Commerce
Policies and Procedures Manual*



Procurement & E-Commerce Department

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PROCUREMENT & E-COMMERCE MANUAL

The purpose of the North East Independent School District Procurement & E-Commerce Manual is to provide a useful tool to assist campus level, department level and support services in the procurement of supplies and services in a manner consistent with current federal and state laws and regulations and North East Independent School District policies. The information in this manual will provide a foundation and an understanding of the purchasing process and the parameters in which this process operates. To this end it is the individual responsibility of each employee involved in the procurement of supplies and services to understand the policies upon which these procedures are based and the meaning and intent of the procedures themselves. The Procurement & E-Commerce Manual is divided into the following topics and procedures:

- Procurement & E-Commerce Goals and Objectives
- Purchasing Authority
- Purchasing Statutes, Regulations, and Board Policies
- Procurement & E-Commerce Department Services
- Requisitions, Purchase Orders, and Vendors
- Transfer of Surplus or Obsolete Property
- Board Policies, Purchasing Laws and Requirements

The purchasing process is not intended to restrict purchases or impede the effectiveness of individuals or departments. Rather, the purchasing process is designed to provide a structured, legal, planned, uniform and consistent procurement process which facilitates orders and deliveries of needed supplies and services at the lowest possible cost.

If there are any questions or concerns relative to either the policies or procedures, or the ability of any employee to respond positively and effectively to the requirements of the purchasing process, then it is the responsibility of the employee to bring such matters to the attention of their immediate supervisor or the Procurement & E-Commerce Department.

PROCUREMENT & E-COMMERCE GOALS AND OBJECTIVES

The overall mission of the Procurement & E-Commerce Department is to facilitate and maximize the educational process by procuring goods and services, which meet District specifications, with available fiscal resources at the lowest possible cost. This mission is accomplished through the following goals and objectives:

- A. Provide a procurement process that is responsive to the needs of a dynamic, diverse and complex public education organizational environment. This diverse environment includes instruction and numerous other support services ranging from maintenance service to food service to administrative service.
- B. Maintain compliance with numerous purchasing statutes, policies, legal interpretations and procedures.
- C. Seek to foster both good vendor relations and strong competition balanced by objective purchasing decisions.
- D. Assist the District in withstanding scrutiny by diverse groups including those from the public, the media, state and federal agencies, and auditors through strict adherence to established guidelines and consistency in record keeping, documentation and execution of procedures.
- E. Interpret the many “gray” areas related to purchasing methods and procedures.

PURCHASING AUTHORITY

Purchasing authority is the approval link in the purchasing chain. The purchasing authority hierarchy in school districts is established to ensure responsible and legal procurement of goods and services and management of school district resources. The hierarchy of purchasing authority at North East ISD is as follows:

- Board of Trustees

- Administrative Authority

- Budget Managers

- Purchase Orders

- District Employees

BOARD OF TRUSTEES - The Board of Trustees approves all expenditures of district funds through the budgeting and bid approval process.

ADMINISTRATIVE AUTHORITY - All purchase commitments are made by the Superintendent or designee on a properly drawn and issued purchase order. The Procurement & E-Commerce Department oversees all district purchases and informs the Board of Trustees of all purchases in excess of \$50,000. The Procurement & E-Commerce Department approves or rejects all purchase requisitions and processes approved purchase requisitions into purchase orders.
CHA (LOCAL)

BUDGET MANAGER - Budget Managers are responsible for managing expenditures from their annual budget(s) at the department, campus, or support level. The Budget Manager approves or rejects department, campus or support personnel employee purchase requests and authorizes all purchase requisitions submitted to the Procurement & E-Commerce Department.

PURCHASE ORDERS - Purchasing authority also exists through purchase orders. The purchase order is the document that establishes a contract for goods and/or services between the District and supplying vendors. The purchase order validates district purchases and is a binding commitment to remit payment to the vendor after the item(s) and an invoice are received by the District. The District is not obligated to pay for purchases made without a purchase order. **Department, campus or support service personnel will be held responsible for payment of purchases made without a purchase order. This means that payment for purchases made without a purchase order cannot be paid for with district funds because there is no purchase order to invoice against.** To avoid this situation, always have a purchase order before ordering any product or service.
CHA (LOCAL)

DISTRICT EMPLOYEES - Employees of North East ISD are authorized to make district purchases only if approval has been received from the appropriate Budget Manager and if a purchase order for the item(s) has been processed and signed with an authorized signature.

PURCHASING STATUTES AND REGULATIONS

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

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

The most commonly utilized purchasing methods are described below:

1. **Competitive Bids** - The following types of purchases are subject to competitive bidding and require formal advertising. All competitive bids must be submitted in a sealed envelope or container. Competitive bids cannot be submitted by facsimile.

- A. Personal Property/Services, Construction/Renovation Projects, \$25,000

Purchases of personal property, services, and construction and renovation projects **that will exceed \$25,000 in the aggregate for a twelve month period.**

- B. Federally Funded Child Nutrition Program, \$10,000

Competitive bids are not restricted to the above mentioned types of purchases. The competitive bid process may be utilized at any dollar amount below the above mandated dollar amounts.

2. **Competitive Price Quotes** - \$10,000 - \$25,000

Competitive price quotations may be obtained on purchases of personal property or services costing at least \$10,000 but less than \$25,000 over an aggregate 12-month period and requires formal advertising. Competitive price quotations must be obtained from at least three applicable vendors. Competitive price quotations may be received by facsimile. Because competitive price quotes are subject to audit, quotations must be in writing and be maintained by the school district. It is mandatory that price quotations or competitive bids be used for purchases between \$10,000 and \$25,000.

3. **Price Quotes** - Under \$10,000

The District, at its option, may obtain price quotes for items costing less than \$10,000. This method of purchasing does not require formal advertising. The NEISD Procurement & E-Commerce Department determines if price quotations can be used in lieu of competitive bids or competitive price quotes. Price quotations may be obtained by phone, facsimile, or mail. **In order to ensure competitive pricing, a minimum of three (3) quotes should be obtained for all purchases exceeding \$2,500.** Regardless of what method is used to secure price quotations, written verification of the quoted prices should be retained.

4. **Sole Source** - Selected purchases may be exempt from competitive bidding if they meet established criteria for a sole source purchase. These criteria include:
 1. Identification and confirmation in providing the item or product to be purchased is precluded by the existence of a patent, copyright, secret process or monopoly.
 2. Identification and confirmation that competition in providing the items(s) or product(s) to be purchased is precluded due to the fact that there is only one price due to exclusive marketing or distribution rights.

The District is responsible for obtaining and retaining documentation from the sole source vendor which clearly defines the reasons which qualify the purchase to be made on a sole source basis. **Sole source purchases are rare.**

5. **Emergency Purchases** - If a school building or school equipment is destroyed or severely damaged, and the **school board** determines that the time delay posed by the competitive bidding process would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of such building or equipment may be made without resorting to competitive bidding as otherwise required.

Important Note: Aggregate Purchases

It is important to understand the meaning of the term “**purchases in the aggregate for a 12-month period**” as it relates to competitive bidding and competitive quotes. The term “in the aggregate” is defined as, “the total dollar amount of all purchases of like items or services purchased within a specified time period.” This aggregate dollar amount includes all like purchases to multiple vendors. The specified 12-month period for a school district is generally accepted as September 1 to August 31, however, it can be any 12-month period. North East Independent School District’s fiscal year is July 1 to June 30. Following are examples of aggregate purchases in a 12-month period:

Example 1: Art Supplies

Location	Total
Campus A	1,500
Campus B	950
Campus C	500
Campus D	2,500
Campus E	5,000
Campus F	7,500
Campus G	8,000
Total	\$29,450

Even though the total dollar amount at each campus is less than \$25,000, the total aggregate dollar amount for the school district is more than \$25,000. Because the aggregate dollar amount is more than \$25,000, these items are subject to competitive bidding.

Example 2: Audio Visual Equipment and Supplies

Location	Vendor X	Vendor Y	Vendor Z	Total
Campus A	1,500	900	700	3,100
Campus B	3,000	1,000	1,500	5,500
Campus C	2,300	2,700	1,000	6,000
Campus D	900	3,500	2,000	6,400
Department K	2,000	1,500	4,000	7,500
Total	\$9,700	\$9,600	\$9,200	\$28,500

In this example multiple vendors were used to purchase audio visual equipment and supplies. The total purchases for each campus and department is less than \$10,000. The total dollar amount spent with each vendor is less than \$10,000. However, the aggregate dollar amount spent on audio visual equipment and supplies by the school district is more than \$25,000. Because the aggregate dollar amount is more than \$25,000, these items are subject to competitive bidding. The \$25,000 limit is applied to aggregate purchases of personal property, services, or construction projects, **not to each vendor**.

The following purchasing methods listed below are illegal and should be avoided:

1. **Component Purchases** - purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

Example:	June 1 - Purchase Walk-In Refrigerator Shell	\$10,000
	June 3 - Purchase Walk-In Freezer Shell	\$10,000
	June 5 - Purchase Compressor Equipment	<u>\$ 8,000</u>
	Total	- \$28,000

2. **Separate Purchases** - purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

Example:	July 1 - Purchase Truck	\$12,000
	July 15 - Purchase Van	\$11,500
	August 1 - Purchase Sedan	<u>\$10,500</u>
	Total	- \$34,000

3. **Sequential Purchases** - purchases, made over a period of time, of items that in normal purchasing practices would be purchased in one purchase.

Example:	September 1 - Paper Towels	\$5,000
	November 15 - Paper Towels	\$7,000
	February 1 - Paper Towels	\$6,000
	April 15 - Paper Towels	\$8,000
	June 1 - Paper Towels	\$5,000
	Total	- <u>\$31,000</u>

Under Section 44.032 of the Texas Education Code an officer, employee, or agent of a school district commits a criminal offense if the person with criminal intent authorizes component, separate, or sequential purchases to avoid the competitive bid requirements of Section 44.031 of the Texas Education Code.

If there are any doubts or questions regarding the legality of a purchase, contact the Procurement & E-Commerce Department for clarification.

PROCUREMENT & E-COMMERCE DEPARTMENT SERVICES

The North East Independent School District utilizes “Centralized Purchasing” in which authority, responsibility, and control of purchasing activities are concentrated in one administrative department, the Procurement & E-Commerce Department. A centralized purchasing function does not erode the principals of site-based management. Purchase requisitions still originate at the department or campus level where needs are identified. The Procurement & E-Commerce Department processes site-based requisitions and develops and implements the internal controls within the purchasing process. In order to maximize the efficiency of the purchasing function and assist District personnel in procuring supplies and services, the Procurement & E-Commerce Department offers the following services:

- Communicate and advise department, campus and support personnel on purchasing procedures.
- Coordinate competitive bidding and quotation processes.
- Coordinate common purchase requirements of departments and campuses.
- Process requisitions from departments and campuses into purchase orders.
- Process, approve and issue all purchase orders and mail vendor copies.
- Review, correct and encumber all purchase orders in accordance with TEA Bulletin 679.
- Reconcile invoice, receiving and purchase order matching exceptions prior to payment.
- Manage cooperative purchasing agreements with City, State and Region XX.
- Establish and maintain vendor files and data bases.
- Provide training for all requisitioners on the Dun & Bradstreet Purchasing System.
- Stock, maintain, deliver and track office, teaching, custodial, audio-visual, physical education and nursing inventory supplies through the General Warehouse.
- Order, receive, stock, maintain, deliver and track maintenance and transportation inventory supplies through the Operations Warehouse.
- Procure materials, equipment and services that meet specifications, in the proper quantities, at the requested times, and at the most competitive price.
- Maintain a positive working relationship with vendors.
- Provide experience and training in purchasing, sourcing, pricing, and vendor relations.
- Maintain a knowledgeable purchasing staff trained to assist departments, campuses and support service personnel with the resolution of purchasing problems in compliance with state and federal laws and local board policies.

- ➔ Provide patrons and the business community with a single central contact within the school district.
- ➔ Offer purchasing training to all District employees involved either directly or indirectly in the purchasing process.
- ➔ Approve and coordinate property transfers within the District.
- ➔ Provide current pricing for items commonly used throughout the District in a published format called Purchasing Tips.
- ➔ Coordinate District airline travel.
- ➔ Coordinate District facility usage requests and reservations.

REQUISITIONS, PURCHASE ORDERS, AND VENDORS

Requisition entry is a function of each campus and department. Requisitions may be submitted to the Central Warehouse for general supplies such as office or custodial supplies, or to the Procurement & E-Commerce Department for purchase order processing. Requisitions to the Procurement & E-Commerce Department and the Central Warehouse are submitted electronically using the District computer network and purchasing system software program. Electronic requisition input and submission training is coordinated and conducted by the Procurement & E-Commerce Department.

Purchase order processing is a function of the Procurement & E-Commerce Department. Requisitions are processed into purchase orders by the Procurement & E-Commerce Department the same day they are entered into the purchasing software system. Purchase orders are printed and mailed the next day.

Vendor selection is a choice made by the originating campus or department within the stipulations of purchasing laws established by the State of Texas and the guidelines established by the District. Vendors must be established on the purchasing software system prior to a requisition being entered from the campus or department. To establish a vendor on the purchasing software system the originating campus or department must submit vendor information to the Procurement & E-Commerce Department. The Procurement & E-Commerce Department will contact the vendor to obtain the required information needed to establish the vendor on the purchasing software system. Once the required information is received, the Procurement & E-Commerce Department will establish the vendor on the purchasing software system and notify the originating campus or department so they may proceed with their requisition.

The originating campus or department is responsible for the receiving function of any ordered items. When an electronic requisition is processed into a purchase order it automatically creates an electronic receiving function. The originating campus or department, once it receives the ordered item(s), must acknowledge receipt of the item(s) on the purchasing software system. Once the receipt information is entered into the purchasing software system, it authorizes payment to the vendor.

If any problems or exceptions are encountered during any of the above processes, contact the Procurement & E-Commerce Department for help as soon as possible.

TRANSFER AND DISPOSAL OF SURPLUS AND OBSOLETE PROPERTY

Transfer or disposal of surplus or obsolete property is a function of the Procurement and E-Commerce Department and is regulated by the Texas Education Code. From time-to-time campuses or departments may find it necessary to transfer surplus property to another campus or department. Also, campuses or departments may find it necessary to dispose of property because it is obsolete or unusable. To transfer or dispose of property, the CRMS Administrator at the originating campus or department may complete the transfer request in CRMS. The Procurement and E-Commerce Department will make a decision on how to and arrange for proper transfer or disposal of any District property. Specific CRMS Instructions may be obtained from the CRMS Manual.

Disposal of surplus or salvage property may be made by any of the following methods that are most advantageous to the District under the circumstances:

- (a) Competitive Bid (Government Code, Title 10, Chapter 2175, §2175.129)
- (b) Direct Sell (Government Code, Title 10, Chapter 2175, §2175.129)
- (c) Auction (Government Code, Title 10, Chapter 2175, §2175.129)
- (d) Internet Auction (Government Code, Title 10, Chapter 2175, §2175.129)
- (e) Trade-In on New Property (Government Code, Title 10, Chapter 2175, §2175.903)
- (f) Destroy as Worthless Salvage (Government Code, Title 10, Chapter 2175, §2175.241)
- (g) Donate to an Assistance Organization (Government Code, Title 10, Chapter 2175, §2175.241)

Education Code, Title 2, Chapter 11, Subchapter B §11.154 (a) - (c)

- (a) The board of trustees of an independent school district may, by resolution, authorize the sale of any property, other than minerals, held in trust for free school purposes.
- (b) The president of the board of trustees shall execute his deed to the purchaser of the property reciting the resolution of the board of trustees authorizing the sale.
- (c) A school district may employ, retain, contract with, or compensate a licensed real estate broker or salesman for assistance in the acquisition or sale of real property.

BOARD POLICIES, PURCHASING LAWS AND REQUIREMENTS

PURCHASING AND ACQUISITION CH (Legal).....	3
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JOB ORDER CONTRACTS CVF (Legal)	3

PURCHASING AND ACQUISITION

CH
(LEGAL)

BOARD AUTHORITY	<p>The Board may adopt rules and procedures for the acquisition of goods and services. <i>Education Code 44.031(d)</i></p>
DELEGATION OF AUTHORITY	<p>The Board may delegate its authority regarding an action authorized or required to be taken by the District by Education Code Chapter 44, Subchapter B, to a designated person, representative, or committee.</p> <p>The Board may not delegate the authority to act regarding an action authorized or required to be taken by the Board by Education Code Chapter 44, Subchapter B.</p> <p><i>Education Code 44.0312</i></p>
INJUNCTION	<p>A court may enjoin performance of a contract made in violation of Education Code Chapter 44, Subchapter B. A county attorney, district attorney, criminal district attorney, citizen of the county in which the District is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this subsection is entitled to reasonable attorney's fees as approved by the court. <i>Education Code 44.032(f)</i></p>
PURCHASES VALUED AT OR ABOVE \$25,000	<p>All District contracts, except contracts for the purchase of produce or vehicle fuel, valued at \$25,000 or more in the aggregate for each 12-month period, shall be made by the method that provides the best value for the District:</p> <ol style="list-style-type: none">1. Competitive bidding.2. Competitive sealed proposals.3. A request for proposals for services other than construction services.4. An interlocal contract.5. The reverse auction procedure as defined by Government Code 2155.062(d).6. The formation of a political subdivision corporation under Local Government Code 304.001. <p><i>Education Code 44.031(a)</i></p> <hr/> <p>Note: Regarding construction of school facilities, see CV generally; CVA for competitive bidding; CVB for competitive sealed proposals; CVC for design/build contracts; CVD, CVE for contracts using a construction manager; and CVF for job order contracts for minor repairs/alterations.</p> <hr/>
FACTORS	<p>In awarding a contract, the District shall consider:</p>

1. Purchase price.
2. The reputation of the vendor and of the vendor's goods and services.
3. The quality of the vendor's goods or services.
4. The extent to which the goods or services meet the District's needs.
5. The vendor's past relationship with the District.
6. The impact on the ability of the District to comply with laws relating to historically underutilized businesses.
7. The total long-term cost to the District to acquire the goods or services.
8. Any other relevant factor specifically listed in the request for bids or proposals.

Education Code 44.031(b)

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

Education Code 44.031(b-1)

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

CONTRACT WITH
PERSON INDEBTED
TO DISTRICT

The Board may, by resolution, establish regulations permitting the District to refuse to enter into a contract or other transaction with a person indebted to the District. The District may refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the District.

The term "person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that seeks to enter into a contract or other transaction with the District requiring Board approval.

Education Code 44.044

PURCHASING AND ACQUISITION

CH
(LEGAL)

NOTICE
PUBLICATION

Notice of when and where bids or proposals or the responses to a request for qualifications will be received and opened shall be published in the county where the District's central administrative office is located, once a week for at least two weeks prior to the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is no newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the District's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately. *Education Code 44.031(g)*

PERSONAL
PROPERTY
PURCHASES VALUED
\$10,000 TO \$25,000

When the District seeks to purchase personal property of a value of at least \$10,000 but less than \$25,000, in the aggregate, for a 12-month period, the District may either purchase those items in accordance with Education Code 44.031(a) and (b) described above or follow the vendor list procedures described below. *Education Code 44.033(a)*

NOTICE

For each 12-month period, the District shall publish a notice in two successive issues of any newspaper of general circulation in the county in which the school is located. If there is no newspaper in the county in which the school is located, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the school is located, specifying the categories of personal property to be purchased and soliciting the names, addresses, and telephone numbers of vendors that are interested in supplying any of the categories to the District. *Education Code 44.033(b)*

VENDOR LIST

For each category, the District shall create a vendor list consisting of each vendor that responds to the published notice and any additional vendors the District elects to include. Before the District makes a purchase from a category of personal property, it must obtain written or telephone price quotations from at least three vendors from the list for that category. If fewer than three vendors are on the list, the District shall contact each vendor. Whenever possible, telephone quotes should be confirmed in writing by mail or facsimile. The bidding records shall be retained with the District's competitive bid records and are subject to audit. Purchases shall be made from the lowest responsible bidder, except as provided by Education Code 44.033(f). *Education Code 44.033(b), (c)*

LOCATION OF
BIDDER

In awarding a contract by competitive sealed bid under Education Code 44.033, a district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder's principal place of business in the manner pro-

PURCHASING AND ACQUISITION

CH
(LEGAL)

vided by Local Government Code 271.9051. This section does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153. *Education Code 44.033(f)*

PRODUCE OR FUEL
PURCHASES

When the District purchases produce or fuel valued at \$10,000 or more in the aggregate, for a 12-month period, the District must either purchase those items in accordance with Education Code 44.031(a) and (b) described above or follow the vendor list procedures described immediately above. *Education Code 44.033(a), (d)*

PROFESSIONAL
SERVICES

The purchasing requirements of Education Code 44.031 do not apply to a contract for professional services rendered, including the services of an architect, attorney, or fiscal agent.

The District may 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 methods provided by Education Code 44.031.

Education Code 44.031(f)

Competitive bids shall not be solicited for professional services of any licensed or registered certified public accountant, architect, landscape architect, land surveyor, physician, optometrist, professional engineer, state-certified or state-licensed real estate appraiser, or registered nurse. Contracts for these professional services shall be made on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price. *Gov't Code 2254.002, 2254.003(a)*

An interlocal contract between the District and a purchasing cooperative may not be used to purchase engineering or architectural services. *Gov't Code 791.011(h)*

[See also CV]

EMERGENCY DAMAGE
OR DESTRUCTION

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

PURCHASING AND ACQUISITION

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COMPUTERS	The District may acquire computers and computer-related equipment, including computer software, through the Department of Information Resources (DIR) under contracts with the DIR in accordance with Government Code Chapter 2054 or 2157. <i>Education Code 44.031(i)</i>
AUTOMATED INFORMATION SYSTEM	The District may purchase an automated information system using the purchasing method described by Government Code 2157.068 for commodity items or a purchasing method designated by the comptroller to obtain the best value for the state, including a request for offers method. A district that purchases an item using a method listed above satisfies any state law requiring the district to seek competitive bids for the purchase of the item. <i>Gov't Code 2157.006</i>
AUTOMATED EXTERNAL DEFIBRILLATORS	A school that purchases or leases an automated external defibrillator, as defined by Health and Safety Code 779.001, shall ensure that the defibrillator meets standards established by the federal Food and Drug Administration. <i>Education Code 44.047</i>
SOLE SOURCE	<p>Compliance with Education Code 44.031 is not required for purchases that are available from only one source, including:</p> <ol style="list-style-type: none">1. An item for which competition is precluded because of a patent, copyright, secret process, or monopoly.2. A film, manuscript, or book.3. A utility service, including electricity, gas, or water.4. A captive replacement part or component for equipment. <p>The sole source exception shall not apply to mainframe data processing equipment and peripheral attachments with a single-item purchase price in excess of \$15,000.</p> <p><i>Education Code 44.031(j), (k)</i></p>
IMPERMISSIBLE PRACTICES	<p>A Trustee, employee, or agent shall not, with criminal negligence, make or authorize separate, sequential, or component purchases to avoid the purchasing requirements set out in Education Code 44.031. An officer or employee shall not knowingly violate Education Code 44.031 in any other manner.</p> <p>“Component purchases” means purchases of the component parts of an item that in normal purchasing practices would be made in one purchase. “Separate purchases” means purchases, made separately, of items that in normal purchasing practices would be made in one purchase. “Sequential purchases” means purchases, over a period, of items that in normal purchasing practices would be made in one purchase.</p>

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

Education Code 44.032

INSURANCE

A contract for the purchase of insurance is a contract for the purchase of personal property and shall be made in accordance with Education Code 44.031 or 44.033. *Education Code 44.031, 44.033; Atty. Gen. Op. DM-347 (1995)*

MULTIYEAR
CONTRACTS

The District may execute an insurance contract for a period longer than 12 months, if the contract contains either or both of the provisions described at COMMITMENT OF CURRENT REVENUE, below. If the District executes a multiyear insurance contract, it need not advertise for insurance vendors until the 12-month period during which the District will be executing a new insurance contract. *Atty. Gen. Op. DM-418 (1996)*

COMPETITIVE
BIDDING

If the District receives two or more bids from responsible bidders that are identical, in nature and amount, as the lowest and best bids, it shall select only one bidder from the identical bids.

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

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

Local Gov't Code 271.901

REVERSE AUCTION

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

Reverse auction procedure means:

PURCHASING AND ACQUISITION

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

Gov't Code 2155.062(d)

OUT-OF-STATE
BIDDERS

The Board shall not award a contract for general construction, improvements, services, or public works projects or for purchase of supplies, materials, or equipment to a bidder whose principal place of business is not in this state, unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located. *Gov't Code 2252.001, 2252.002*

This requirement shall not apply to a contract involving federal funds. The District shall rely on information published by the comptroller in evaluating the bids of a nonresident bidder. *Gov't Code 2252.003, 2252.004*

INTERLOCAL
AGREEMENTS

To increase efficiency and effectiveness, the District may contract or agree with other local governments and with state agencies, including the comptroller, to perform some of its purchasing functions. *Gov't Code 791.001, 791.011, 791.025*

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

An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract. The contract may be renewed annually.

Gov't Code 791.011(d)-(f)

The District may agree with another local government, including a nonprofit corporation that is created and operated to provide one or more governmental functions and services, or with the state or a

PURCHASING AND ACQUISITION

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state agency, including the comptroller, to purchase goods and services reasonably required for the installation, operation, or maintenance of the goods. Such an agreement may not, however, apply to services provided by firefighters, police officers, or emergency medical personnel.

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

Gov't Code 791.025(b), (c); Atty. Gen. Op. JC-37 (1999)

STATE PURCHASING
PROGRAM

Purchasing services performed for the District by the comptroller shall include:

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

The comptroller may charge the District its actual costs in providing purchasing services.

Local Gov't Code 271.082

DISTRICT
REQUIREMENTS

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

1. Designate an official to act for the District in all matters relating to the program, including the purchase of items from the vendor under any contract.
2. Direct the decisions of its representative.
3. Be responsible for:
 - a. Submitting requisitions to the commission under contract(s) and for payment directly to the vendor; and
 - b. Electronically sending purchase orders directly to vendors, or complying with procedures governing a reverse

auction purchase, and electronically sending the BPC reports on actual purchases.

4. Be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.

A purchase made through participation in this program meets any state requirement to seek competitive bids for the purchase of the item.

ELECTRONIC
MARKETPLACE

If the District has the ability to electronically send purchase orders and information, it may participate in the Department of Information Resources' electronic procurement system, as described in Government Code Chapter 2177.

Local Gov't Code 271.083

MULTIPLE AWARD
CONTRACT
SCHEDULE

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

The District may purchase goods or services directly from a vendor under a contract listed on a schedule. An authorized purchase satisfies any requirement of state law relating to competitive bids or proposals and satisfies any applicable requirements of Government Code 2157.

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

Gov't Code 2155, Subch. 1

COOPERATIVE
PURCHASING
PROGRAM

The District may participate in a cooperative purchasing program with another local government or a local cooperative organization. If the District does so, it may sign an agreement with another participating local government or a local cooperative stating that the District will:

1. Designate a person to act on behalf of the District in all matters relating to the program.
2. Make payments to another participating local government or local cooperative organization or directly under a contract, as provided in the agreement.
3. Be responsible for the vendor's compliance.

If the District participates in a cooperative purchasing program, it satisfies any law requiring it to seek competitive bids.

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

PURCHASING AND ACQUISITION

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(LEGAL)

CONTRACT-RELATED FEE	<p>A district that enters into a purchasing contract valued at \$25,000 or more under Education Code 44.031(a)(5) (interlocal contract), under Subchapter F, Chapter 271, Local Government Code (cooperative purchasing program), or under any other cooperative purchasing program authorized for school districts by law shall document any contract-related fee, including any management fee, and the purpose of each fee under the contract.</p> <p>The amount, purpose, and disposition of any fee described above must be presented in a written report and submitted annually in an open meeting of the Board. The written report must appear as an agenda item. The Commissioner of Education may audit the written report.</p> <p><i>Education Code 44.0331</i></p>
STATE COUNCIL ON COMPETITIVE GOVERNMENT	<p>As approved by the State Council on Competitive Government, the District may voluntarily participate in a contract awarded by the council or a state agency under Government Code 2162. A district that purchases goods or services under this type of contract is considered to have satisfied any state law requiring competitive purchasing. <i>Gov't Code 2162.102(d)</i></p>
COMMITMENT OF CURRENT REVENUE	<p>A contract for the acquisition, including lease, of real or personal property is a commitment of the District's current revenue only, provided the contract contains either or both of the following provisions:</p> <ol style="list-style-type: none">1. Retains to the Board the continuing right to terminate the contract at the expiration of each budget period during the term of the contract.2. Is conditioned on a best efforts attempt by the Board to obtain and appropriate funds for payment of the contract. <p><i>Local Gov't Code 271.903</i></p>
ENERGY OR WATER CONSERVATION MEASURES	<p>The District may contract for energy or water conservation measures. Such a contract shall be let according to the procedures established for professional services by Government Code 2254.004.</p> <p>The Board shall establish a goal to reduce the District's annual electric consumption by five percent each year for six years, beginning September 1, 2007.</p> <p><i>Education Code 44.901</i> [See policy CL for legal requirements pertaining to such contracts]</p>
RECYCLED PRODUCTS	<p>The District shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. The District shall regularly review and</p>

revise its purchasing procedures and specifications for purchase of goods, supplies, equipment, and materials in order to:

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

The District may seek an exemption from compliance if it has a population of less than 5,000 within its geographic boundaries and demonstrates to the Water Commission that compliance would work a hardship on the District.

Health and Safety Code 361.426

AGRICULTURAL
PRODUCTS

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

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

VEGETATION FOR
LANDSCAPING

If cost is equal and the quality is not inferior, the District shall give preference to Texas vegetation when it purchases vegetation for landscaping purposes.

Education Code 44.042

BUS PURCHASE OR
LEASE

Each contract proposed for the purchase or lease of one or more school buses, including a lease with an option to purchase, shall be submitted to competitive bidding when the contract is valued at \$20,000 or more. *Education Code 44.031(l)* [See CNB]

CRIMINAL HISTORY

Before entering into a contract with the District, a person or business must give notice to the District if the person or an owner or operator of the business has been convicted of a felony. The District may terminate a contract with a person or business if the District determines that the person or business failed to give such notice or misrepresented the conduct resulting in the conviction. The

District must compensate the person for services performed before the contract terminated. *Education Code 44.034*

EMPLOYED
BEFORE
JANUARY 1, 2008

An entity that contracts with the District to provide services shall obtain from any law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), all criminal history record information that relates to an employee of the entity who is employed before January 1, 2008, and who is not subject to a national criminal history record information review under Education Code 22.0834(b) [see DBAA] if:

1. The employee has continuing duties related to the contracted services; and
2. The employee has direct contact with students.

The entity shall certify to the District that it received all of the criminal history record information required above.

The District may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person described above.

Education Code 22.0834(g)-(i)

EMPLOYMENT
OFFERED ON OR
AFTER JANUARY 1,
2008

A person who, on or after January 1, 2008, is offered employment by an entity that contracts with the District must submit to a national criminal history record information review if:

1. The employee or applicant has or will have continuing duties related to the contracted services; and
2. The employee or applicant has or will have direct contact with students.

The person must submit to the review before being employed or serving in a capacity described above.

An entity contracting with the District shall obtain all criminal history record information that relates to a person described above through the criminal history clearinghouse as provided by Government Code 411.0845. The entity shall certify to the District that the entity has received all criminal history record information relating to the person.

The District may obtain the criminal history record information of a person to whom this section applies through the criminal history clearinghouse as provided by Government Code 411.0845.

Education Code 22.0834(a)-(e)

PURCHASING AND ACQUISITION

CH
(LEGAL)

- EMERGENCY In the event of an emergency, the District may allow a person to whom Education Code 22.0834(a) or (g) applies to enter District property if the person is accompanied by a District employee. The District may adopt rules regarding an emergency situation. *Education Code 22.0834(f)*
- RIGHT TO WORK While engaged in procuring goods and services or awarding a contract, the District:
1. May not consider whether a vendor is a member of or has another relationship with any organization; and
 2. Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.
- Education Code 44.043*
- LOBBYING
RESTRICTION:
TOBACCO EDUCATION
GRANT FUNDS The District may not spend grant funds it receives from the Permanent Fund for Tobacco Education and Enforcement to pay:
1. Lobbying expenses incurred by the District;
 2. A person or entity that is required under Government Code Chapter 305 to register as a lobbyist with the Texas Ethics Commission.
 3. Any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity of a registered lobbyist (as described in item 2);
 4. A person or entity who has been hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, ordinances, or other government policies.
- Gov't Code 403.1067*

PURCHASING AND ACQUISITION

CH
(LOCAL)

PURCHASING AUTHORITY	The Board delegates to the Superintendent or designee the authority to make budgeted purchases for goods or services. However, any single, budgeted purchase of goods or services that costs \$50,000 or more, regardless of whether the goods or services are competitively purchased, shall require Board approval before a transaction may take place.
PURCHASING METHOD	The Board delegates to the Superintendent or designee the authority to determine the method of purchasing in accordance with CH (LEGAL).
COMPETITIVE BIDDING	<p>If competitive bidding is chosen as the purchasing method, the Superintendent or designee shall prepare bid specifications. All bids shall be submitted in sealed envelopes, plainly marked with the name of the bidder and the time of opening. All bidders shall be invited to attend the bid opening. Any bid may be withdrawn prior to the scheduled time for opening. Bids received after the specified time shall not be considered.</p> <p>The District may reject any and all bids.</p>
COMPETITIVE SEALED PROPOSALS	<p>If competitive sealed proposals are chosen as the purchasing method, the Superintendent or designee shall prepare the request for proposals and/or specifications for items to be purchased. All proposals shall be submitted in sealed envelopes, plainly marked with the name of the proposer and the date scheduled for receipt of proposals. Proposals received after the specified time shall not be considered. Proposals shall be opened at a time specified by the District. Proposals may be withdrawn prior to the formal scheduled time for receipt of proposals. Changes in the content of a proposal, and in prices, may be negotiated after proposals are opened.</p> <p>The District may reject any and all proposals.</p>
RESPONSIBILITY FOR DEBTS	The Board shall assume responsibility for debts incurred in the name of the District so long as those debts are for purchases made in accordance with adopted Board policy and current administrative procedures. The Board shall not be responsible for debts incurred by persons or organizations not directly under Board control; persons making unauthorized purchases shall assume full responsibility for all such debts.
PURCHASE COMMITMENTS	All purchase commitments shall be made by the Superintendent or designee using a District-authorized procurement encumbrance or payment method, in accordance with administrative procedures.
PERSONAL PURCHASES	District employees shall not be permitted to purchase supplies or equipment for personal use through the District's business office.

PURCHASING AND ACQUISITION
REAL PROPERTY AND IMPROVEMENTS

CHG
(LEGAL)

CASH PURCHASES
WITH AVAILABLE
FUNDS

The requirements of the Public Property Finance Act (Local Government Code 271.001 and following) do not apply to cash purchases of real property made with moneys from available funds. *Bandera v. Hamilton, 2 S.W.3d 367 (Tex. App.—San Antonio 1999)*

DEFINITIONS

For purposes of this policy, “contract” means an agreement entered under the authority of the Public Property Finance Act, but does not mean a contract solely for the construction of improvements to real property. “Improvements” means a permanent building, structure, fixture, or fence that is erected on or affixed to land, but does not include a transportable building or structure whether or not it is affixed to land. “Real property” means land, improvement, or an estate or interest in real property, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation in real property. *Local Gov’t Code 271.003(2), (10), (11)*

PROPOSED
CONTRACT

The Board may execute, perform, and make payments under a contract for the use or purchase or other acquisition of real property or an improvement to real property. If the Board proposes to enter into such a contract, it shall publish notice of that intent not less than 60 days before the date set to approve execution of the contract. Publication shall be in a newspaper of general circulation in the District. The notice must summarize the major provisions of the proposed contract. The notice shall estimate the construction and other costs, but the Board shall not publish the first advertisement for bids for construction of improvements until 60 days after publication of the notice of intent. *Local Gov’t Code 271.004(a)*

PETITION AND
REFERENDUM

Within 60 days of the date of publication of notice of intent, a written petition signed by a least five percent of the registered voters of the District may be filed with the Board, requesting the Board to order a referendum on the question of whether the contract should be approved. If a petition is filed, the Board may not approve the contract or publish the first advertisement for bids for construction of improvements unless the question is approved by a majority of the votes received in a referendum ordered and held on the question. The referendum shall be held in accordance with the applicable provisions of the Election Code, except that it is not required to be held on a uniform election date. *Local Gov’t Code 271.004(b), (c)*

SUBMISSION TO
ATTORNEY GENERAL

A lease-purchase contract entered into for the use, purchase, or other acquisition of real property or an improvement to real property and the records relating to its execution shall be submitted to the attorney general for examination as to their validity. If the attorney general finds that the contract has been authorized in accordance with the law, the attorney general shall approve them,

PURCHASING AND ACQUISITION
REAL PROPERTY AND IMPROVEMENTS

CHG
(LEGAL)

and the comptroller of public accounts shall register them. Following approval and registration, the contract is incontestable and is a binding obligation according to its terms. *Local Gov't Code 271.004(g)-(i)*

DISTRICT OBLIGATION A contract under this provision is a special obligation of the District if ad valorem taxes are not pledged to the payment of the contract. If the contract provides that payments by the District are to be made from maintenance taxes previously approved by voters of the District and are subject to annual appropriation or are paid from a source other than ad valorem taxes, the payments under the contract shall not be considered indebtedness under Tax Code 26.04(c). All or part of the District's obligation may be evidenced by one or more promissory notes. *Local Gov't Code 271.004 (d)-(f)*

STATE ASSISTANCE—
INSTRUCTIONAL
FACILITIES The District may receive financial assistance from the state when the District lease-purchases an instructional facility under the terms set out in Chapter 46, Education Code, and Commissioner's rules implementing that chapter. *Education Code 46.004; 19 TAC 61.1032*

EMINENT DOMAIN The District may, by the exercise of the right of eminent domain, acquire title to real property for the purpose of securing sites on which to construct school buildings or for any other purpose necessary for the District. *Education Code 11.155*

SCHOOL PROPERTIES DISPOSAL

CI
(LEGAL)

All rights and titles to District property, whether real or personal, shall be vested in the Board and its successors in office.

The Board may, in an appropriate manner, dispose of property that is no longer necessary for District operations.

Education Code 11.151(c) [See also CDB(LEGAL)]

SCHOOL PROPERTIES DISPOSAL

CI
(LOCAL)

PERSONAL
PROPERTY

District personal property may be disposed of when the property becomes obsolete, irreparable, or of no use to the District. The Superintendent or designee shall be responsible for the disposal of any equipment so designated in the following manner:

1. Public auction or sealed bids.
2. Salvage for parts.
3. Trade for equipment or services.
4. Sell for scrap.
5. Destroy .

Equipment purchased for externally funded programs shall be disposed of in keeping with prescribed guidelines for such programs. Items obtained as federal surplus shall be handled in accordance with federal regulations.

Monies collected from the sale of obsolete materials, equipment, and supplies shall be deposited to either the general fund or the proprietary fund.

FACILITIES CONSTRUCTION

CV
(LEGAL)

BOARD AUTHORITY	The Board may adopt rules and procedures for the acquisition of goods and services. <i>Education Code 44.031(d)</i>
DELEGATION OF AUTHORITY	<p>The Board may delegate its authority regarding an action authorized or required to be taken by the District by Education Code Chapter 44, Subchapter B to a designated person, representative, or committee.</p> <p>The Board may not delegate the authority to act regarding an action authorized or required to be taken by the Board by Education Code Chapter 44, Subchapter B.</p> <p>In procuring construction services, the District 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 District fails to provide that notice, a ranking, selection, or evaluation of bids, proposals, or qualifications for construction services other than by the Board in an open public meeting is advisory only.</p> <p><i>Education Code 44.0312</i></p>
INJUNCTION	A court may enjoin performance of a contract made in violation of Education Code Chapter 44, Subchapter B. A county attorney, district attorney, criminal district attorney, citizen of the county in which the District is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this subsection is entitled to reasonable attorney's fees as approved by the court. <i>Education Code 44.032(f)</i>
IMPERMISSIBLE PRACTICES	A trustee, employee, or agent of the District who knowingly or with criminal negligence violates the purchasing laws is subject to criminal penalties. <i>Education Code 44.032</i> [See CH]
CONTRACTS VALUED AT OR ABOVE \$25,000	<p>All District contracts valued at \$25,000 or more in the aggregate for each 12-month period shall be made by the method that provides the best value for the District [see also CH]:</p> <ol style="list-style-type: none">1. Competitive bidding. [See CVA]2. Competitive sealed proposals. [See CVB]3. An interlocal contract.4. A design/build contract. [See CVC]5. A contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager. [See CVD, CVE]6. A job order contract for the minor construction, repair, rehabilitation, or alteration of a facility. [See CVF]

7. The reverse auction procedure as defined by Government Code 2155.062(d). [See CH]

Education Code 44.031(a)

[For information on contract-related fees, see CH]

SELECTING A CONTRACTING METHOD	When the District is considering awarding a construction contract using a method specified by Education Code 44.031(a), the Board shall, before advertising, determine which purchasing method provides the best value for the District. <i>Education Code 44.035(a)</i>
PUBLIC NOTICE	Notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened shall be published in the county in which the District's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the District's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately. <i>Education Code 44.031(g)</i>
CONTRACT SELECTION CRITERIA	The District shall base its selection among offerors on criteria authorized in Education Code 44.031(b). [See CH] The District shall publish in the request for bids, proposals, or qualifications the criteria that will be used to evaluate the offerors and the relative weights given to the criteria. <i>Education Code 44.035(b)</i>
MAKING EVALUATIONS PUBLIC	The District shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded. <i>Education Code 44.035(c)</i>
ATTORNEY FEES	A governmental contract for general construction, an improvement, a service, or a public works project may not provide for the award of attorney's fees to the District in a dispute in which the District prevails unless the contract provides for the award of attorney's fees to each other party to the contract if that party prevails in the dispute. <i>Gov't Code 2252.904</i>
IMPACT FEES	The District is not required to pay impact fees imposed under Local Government Code Chapter 395 unless the Board consents to the payment of the fees by entering a contract with the political subdivision that imposes the fees. The contract may contain terms the Board considers advisable to provide for the payment of the fees. <i>Local Gov't Code 395.022</i>

FACILITIES CONSTRUCTION

CV
(LEGAL)

PROFESSIONAL
SERVICES

The purchasing requirements of Education Code 44.031 do not apply to a contract for professional services rendered, including the services of an architect, attorney, or fiscal agents. The District may 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 methods provided by Education Code 44.031. *Education Code 44.031(f)*

Competitive bids shall not be solicited for professional services of any licensed or registered certified public accountant, architect, landscape architect, land surveyor, physician, optometrist, professional engineer, state-certified or state-licensed real estate appraiser, or registered nurse. Contracts for these professional services shall be made on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price. *Gov't Code 2254.002, 2254.003(a)* [See PROCURING ARCHITECTURAL, ENGINEERING, AND LAND-SURVEYING SERVICES, below]

An interlocal contract between the District and a purchasing cooperative may not be used to purchase engineering or architectural services. *Gov't Code 791.011(h)*

EMERGENCY DAMAGE
OR DESTRUCTION

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

CRIMINAL HISTORY

Before entering into a contract with the District, a person or business must give notice to the District if the person or an owner or operator of the business has been convicted of a felony. The District may terminate a contract with a person or business if the District determines that the person or business failed to give such notice or misrepresented the conduct resulting in the conviction. The District must compensate the person for services performed before the contract terminated. *Education Code 44.034*

RIGHT TO WORK

While engaged in awarding a contract or overseeing procurement or construction for a public work or public improvement, the District:

1. May not consider whether a vendor is a member of or has another relationship with any organization; and

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

Education Code 44.043

REGISTERED
ARCHITECT

An architect registered in accordance with Occupations Code, Title 6, Chapter 1051, shall prepare architectural plans and specifications for:

1. A new building constructed and owned by the District that will be used for education, assembly, or office occupancy when the total projected construction costs at the commencement of construction exceed \$100,000.
2. Any alteration or addition to an existing building owned by the District that is, or will be, used for education, assembly, or office occupancy when the total projected construction costs of alteration or addition at the commencement of construction exceed \$50,000 and the alteration or addition requires the removal, relocation, or addition of any walls or partitions or the alteration or addition of an exit.

The District may comply with this requirement by choosing a registered architect or a registered professional engineer as the prime design professional for a building construction, alteration, or addition project.

Occupations Code 1051.703; 22 TAC 1.212

REGISTERED
ENGINEER

Electrical or mechanical engineering plans, specifications, and estimates for a District construction project whose contemplated cost at completion is more than \$8,000 and that involves public health, welfare, or safety must be prepared by a registered professional engineer, and the engineering construction executed under the supervision of such an engineer. *Occupations Code 1001.053; Atty. Gen. Op. C-791 (1966)*

The District is not required to secure the services of a registered professional engineer to prepare plans for or supervise a construction project that does not involve electrical or mechanical engineering and for which the contemplated cost does not exceed \$20,000. *Occupations Code 1001.053*

PROCURING
ARCHITECTURAL,
ENGINEERING, AND
LAND-SURVEYING
SERVICES

In procuring architectural, engineering, or land-surveying services, the District shall [see PROFESSIONAL SERVICES above]:

1. First select the most highly qualified provider on the basis of demonstrated competence and qualifications; and

2. Then attempt to negotiate a contract with that provider at a fair and reasonable price.

If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land-surveying services, the District shall formally end negotiations with that provider, select the next most highly qualified provider, and attempt to negotiate a contract with that provider at a fair and reasonable price. The District shall continue this process until a contract is entered into.

Gov't Code 2254.004

ACCESSIBILITY

Each facility or part of a facility constructed by, on behalf of, or for the use of the District shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities. Alterations of facilities that affect or could affect their usability shall, to the maximum extent feasible, be altered in such manner that the altered portion is readily accessible to and usable by individuals with disabilities.

28 CFR 35.151, 34 CFR 104.23

PAYMENT AND
PERFORMANCE
BONDS

When the Board makes a public work contract for constructing, altering, or repairing a public building or carrying out or completing any public work, it shall require the contractor, before beginning the work, to execute payment and/or performance bonds as specified below. The bonds shall be executed by a corporate surety in accordance with Insurance Code 7.19-1. The bond shall be payable to the Board and in a form approved by the Board. *Gov't Code 2253.021(a), (d), (e)*

For a contract in excess of \$100,000, a performance bond shall be executed in the amount of the contract conditioned on the faithful performance of the work according to the plans, specifications, and contract documents. The bond is solely for the protection of the District. *Gov't Code 2253.021(b)*

For a contract in excess of \$25,000, a payment bond shall be executed in the amount of the contract solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material. *Gov't Code 2253.021(c)*

FAILURE TO OBTAIN
PAYMENT BOND

If the Board fails to obtain a payment bond covering a contract in excess of \$25,000 from the prime contractor, it is subject to the same liability as a surety would be, and a payment bond beneficiary is entitled to a lien on money due to the prime contractor in the same manner and to the same extent as if the contract were sub-

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ject to Subchapter J, Chapter 53, Property Code. *Gov't Code 2253.027*

NO BOND FOR
DESIGN SERVICES
ONLY

A payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract that includes design services only. *Education Code 44.036(j)* [See CVC for more information on design/build contracts, including bond amounts]

BOND FOR
INSURED LOSS

The Board shall ensure that an insurance company that is fulfilling its obligation under a contract of insurance by arranging for the replacement of a loss, rather than by making a cash payment directly to the governmental entity, furnishes or has furnished by a contractor:

1. A performance bond for the benefit of the District, as described above; and
2. A payment bond, as described above. If the payment bond is not furnished, the District is subject to the same liability that a surety would have if the surety had issued the payment bond and the District had required the bond to be provided.

These bonds shall be furnished before the contractor begins work. It is an implied obligation under a contract of insurance for the insurance company to furnish these bonds.

EXCEPTION TO
BOND
REQUIREMENT

The requirement that the District secure a performance or payment bond from an insurance company, above, does not apply when a surety company is complying with an obligation under a bond that had been issued for the benefit of the District.

Gov't Code 2253.022

OUT-OF-STATE
BIDDERS

The Board shall not award a contract for general construction, improvements, services, or public works projects or for purchase of supplies, materials, or equipment to a bidder whose principal place of business is not in this state, unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located. *Gov't Code 2252.001, 2252.002*

This requirement shall not apply to a contract involving federal funds. The District shall rely on information published by the comptroller in evaluating the bids of a nonresident bidder. *Gov't Code 2252.003, 2252.004*

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PREVAILING WAGE ON
PUBLIC WORKS

A worker, laborer, or mechanic employed on a public work, exclusive of maintenance work, by or on behalf of the District shall be paid not less than the general prevailing rate of per diem wages. The general prevailing rate of per diem wages is the rate of per diem wages for work of a similar character in the locality in which the work is performed, and also includes the rate of per diem wages for legal holiday and overtime work. A worker is employed on a public work if the worker is employed by a contractor or subcontractor in the execution of a contract for public work with the District. *Gov't Code 2258.001, 2258.021*

The Board shall determine, as a sum certain, the general prevailing rate of per diem wages in the District for each craft or type of worker needed to execute the contract and also for legal holiday and overtime work. To ascertain the general prevailing rate of per diem wages, the Board shall either conduct a survey of the wages received by classes of workers, laborers, and mechanics employed on projects of a character similar to the contract work in the District or adopt the prevailing wage rate as determined by the U.S. Department of Labor. The Board shall specify the prevailing rate of per diem wages in the call for bids and in the contract itself. The Board's determination of the general prevailing rates of per diem wages shall be final. *Gov't Code 2258.001, 2258.022*

ENFORCEMENT

The Board, and an agent or officer of the Board, shall receive complaints regarding violations of the prevailing wage requirements of Chapter 2258, and withhold money from the contractor as required by statute. Upon receipt of a complaint, the Board shall determine, before the 31st day after the date the information is received, whether good cause exists to believe that a contractor or subcontractor has failed to pay the prevailing wage and shall provide written notice of its determination to the contractor or subcontractor and any affected laborer, worker, or mechanic of its initial determination. *Gov't Code 2258.051, 2258.052*

RETAINAGE AND
REIMBURSEMENT

The Board shall retain any amounts due under the contract pending a final determination of the violation. Upon a final determination that violations have occurred, the Board shall use those retained amounts to pay the laborer, worker, or mechanic the difference between the amount the worker received in wages and the amount the worker would have received at the prevailing rate of per diem wages provided in the arbitrator's award. The Board may adopt rules, orders, or ordinances relating to the manner in which the reimbursement is made. *Gov't Code 2258.052(d), 2258.056*

PENALTY FOR
NONCOMPLIANCE

The contractor to whom the contract is awarded or any subcontractors of the contractor shall pay not less than the specified rates to

all laborers, workers, and mechanics employed in the execution of the contract. A contractor or subcontractor who fails to pay the specified rates as required shall pay to the District \$60 for each worker, laborer, or mechanic employed for each calendar day or part of a calendar day the worker is paid less than the wage rates specified in the contract. The Board must specify this penalty in the contract. If the District does not determine the prevailing wage rates and specify them in the contract, the contractor or subcontractor may not be fined. The Board shall use any penalty money collected to offset the costs incurred in administering Government Code Chapter 2258. *Gov't Code 2258.023*

REQUIRED WORKERS'
COMPENSATION
COVERAGE

When the District enters into a building or construction contract on a project, it shall fulfill the following requirements regarding required workers' compensation coverages. A project includes the provision of all services related to a building or construction contract for the District. The District shall:

1. Include in the bid specifications all the duties and responsibilities of contractors pertaining to required workers' compensation coverages. [See CV(EXHIBIT)]
2. As part of the contract, using the language required by 28 TAC 110.110(c)(7), require the contractor to perform the duties and responsibilities pertaining to required workers' compensation coverages. [See CV(EXHIBIT)]
3. Obtain from the contractor a certificate of coverage for each person providing services on the project, prior to that person's beginning work on the project. This provision includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracts directly with the contractor and regardless of whether that person has employees. This includes, but is not limited to, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity furnishing persons to perform services on the contract. Services include, but are not limited to, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to a project. Services do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
4. Obtain from the contractor a new certificate of coverage showing extension of coverage:

- a. Before the end of the coverage period, if the contractor's current certificate shows that the coverage period ends during the duration of the project; and
 - b. No later than seven days after the expiration of the coverage for each other person providing services on the project whose current certificate shows that the coverage period ends during the duration of the project.
5. Retain certificates of coverage on file for the duration of the project and for three years thereafter.
 6. Provide a copy of the certificate of coverage to the Texas Department of Insurance upon request and to any person entitled to a copy by law.
 7. Use the prescribed language for bid specifications and contracts without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation. [See CV(EXHIBIT) for prescribed language]

Labor Code 406.096; 28 TAC 110.110(a)(7)(8), (c)

EXCEPTION

This coverage requirement does not apply to sole proprietors or partners of a covered business entity or corporate officers, if the sole proprietor, partner or officer is explicitly excluded from the coverage of their business entity through an endorsement to the insurance policy or certificate of authority to self insure. *Labor Code 406.097; 28 TAC 110.110(i)*

REQUIRED WORKERS' COMPENSATION COVERAGES
28 TAC 110.110(c)(7), adopted to implement Texas Labor Code 406.096

The District shall use the following language for bid specifications and contracts for building or construction, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation.

A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project is required for the duration of the project.

Duration of the project includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in Texas Labor Code 406.096) include all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the project.

Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. Services do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all employees of the contractor providing services on the project for the duration of the project.

The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

1. A certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

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CV
(EXHIBIT)

2. No later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

The contractor shall post on each project site a notice, in the text, form, and manner prescribed by the TDI, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

1. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all of its employees providing services on the project for the duration of the project;
2. Provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project for the duration of the project;
3. Provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
4. Obtain from each other person with whom it contracts, and provide to the contractor:
 - a. A certificate of coverage, prior to the other person beginning work on the project; and
 - b. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
5. Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
6. Notify the governmental entity in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
7. Contractually require each person with whom it contracts to perform as required by items 1–6, with the certificates of coverage to be provided to the person for whom they are providing services.

By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the TDI's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The contractor's failure to comply with any of these provisions is a breach of contract by the contractor that entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996.

28 TAC 110.110(i)

FACILITIES CONSTRUCTION
COMPETITIVE BIDDING

CVA
(LEGAL)

SELECTING
CONTRACTOR
THROUGH
COMPETITIVE
BIDDING

Except to the extent prohibited by other law and to the extent consistent with Education Code Chapter 44, Subchapter B, the District may use competitive bidding to select a contractor to perform construction, rehabilitation, alteration, or repair services for a facility. *Education Code 44.040(a)*

The competitive bidding process is governed by the process outlined below. The District must comply with applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)], which include the following steps:

1. SELECTING A CONTRACTING METHOD;
2. Giving PUBLIC NOTICE of the project;
3. Publishing CONTRACT SELECTION CRITERIA; and
4. MAKING EVALUATIONS PUBLIC after the contract is awarded.

Education Code 44.040(a)

Note: Terms in all capital letters, above, point to margin notes in the referenced policy.

OPENING BIDS

Bids shall be opened only by the Board at a public meeting or by an officer or employee of the District at or in an office of the District. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. *Local Gov't Code 271.026; Education Code 44.040(b)*

The Board shall have the right to reject any and all bids. *Local Gov't Code 271.027(a); Education Code 44.040(b)*

SAFETY RECORD

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

1. Adopted a written definition and criteria for accurately determining the safety record of the bidder.
2. Given notice in the bid specifications that the safety record of a bidder may be considered in determining the bidder's responsibility.
3. Ascertained that such determination is not arbitrary and capricious.

Local Gov't Code 271.0275; Education Code 44.040(b)

FACILITIES CONSTRUCTION
COMPETITIVE BIDDING

CVA
(LEGAL)

ENGINEER OR
ARCHITECT
RESPONSIBILITY

The District shall select or designate an engineer or architect to prepare construction documents for the project. The selected or designated engineer or architect has full responsibility for complying with Chapter 1001 and Chapter 1051 of the Occupations Code, as applicable. *Education Code 44.040(c)*

AWARD OF
CONTRACT

The District shall award a competitively bid contract at the bid amount to the bidder offering the best value to the District according to selection criteria that were established by the District. The selection criteria may include factors listed in Education Code 44.031(b). *Education Code 44.040(d)* [See CH]

CONFLICT OF LAWS

To the extent of any conflict, Education Code Chapter 44, Subchapter B prevails over Local Government Code Chapter 271, Subchapter B. Except as provided in this policy, Local Government Code Chapter 271, Subchapter B does not apply to a competitive bidding process under Education Code Chapter 44. *Local Gov't Code 271.023; Education Code 44.040(b)*

FACILITIES CONSTRUCTION
COMPETITIVE BIDDING

CVA
(LOCAL)

SPECIFICATIONS	The Superintendent or designee shall ensure that detailed specifications are prepared for any construction project for which competitive bids are sought.
BID PROCESS	All bids shall be submitted in sealed envelopes, plainly marked with the name of the bid and the time of the bid opening. Bids shall be opened at the time specified. All interested parties shall be invited to attend the bid opening. Any bid may be withdrawn prior to the scheduled time for opening. Bids received after the specified time shall not be considered.
SAFETY RECORD	If the District considers the safety record of bidders in determining to whom to award a contract, the safety record shall be defined as a bidder's OSHA (Occupational Safety and Health Administration) inspection logs for the last three years, a loss analysis from the bidder's insurance carrier, and a loss history covering all lines of insurance coverage carried by the bidder.

FACILITIES CONSTRUCTION
COMPETITIVE SEALED PROPOSALS

CVB
(LEGAL)

If the District uses the competitive sealed proposals method as described in this policy, it must comply with applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)], which include the following steps:

1. SELECTING A CONTRACTING METHOD;
2. Giving PUBLIC NOTICE of the project;
3. Publishing CONTRACT SELECTION CRITERIA; and
4. MAKING EVALUATIONS PUBLIC after the contract is awarded.

Note: Terms in all capital letters, above, point to margin notes in the referenced policy.

SELECTING
CONTRACTOR
THROUGH SEALED
PROPOSALS

In selecting a contractor for construction, rehabilitation, alteration, or repair services for a facility through competitive sealed proposals, the District shall follow the procedures below:

ARCHITECT /
ENGINEER

1. The District shall select or designate an engineer or architect to prepare construction documents for the project. The selected or designated engineer or architect has full responsibility for complying with Occupations Code Title 6, Chapter 1001, or Occupations Code Title 6, Chapter 1051, as applicable. If the engineer or architect is not a full-time employee of the District, the District shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Government Code 2254.004. [See CV]

INSPECTION,
TESTING, AND
VERIFICATION

2. The District shall provide or contract for, independently of the contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the District. The District shall select those services for which it contracts in accordance with Government Code 2254.004 and shall identify them in the request for proposals. [See CV]

REQUEST FOR
PROPOSALS

3. The District shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria, estimated budget, project scope, schedule, and other information that contractors may require to respond to the request. The District shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

Education Code 44.039

FACILITIES CONSTRUCTION
COMPETITIVE SEALED PROPOSALS

CVB
(LEGAL)

If there is no newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the District's central administrative office is located. *Education Code 44.031(g)*

OPENING
PROPOSALS

4. The District shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Within 45 days after the date of opening the proposals, the District shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

SELECTION

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

BEST VALUE
DETERMINATION

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

Education Code 44.039

FACILITIES CONSTRUCTION
DESIGN-BUILD CONTRACTS

CVC
(LEGAL)

DESIGN-BUILD
CONTRACT

The District may use the design-build method for the construction, rehabilitation, alteration, or repair of a facility. In using this method, the District must comply with applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)] which include the following steps:

1. SELECTING A CONTRACTING METHOD;
2. Giving PUBLIC NOTICE of the project;
3. Publishing CONTRACT SELECTION CRITERIA; and
4. MAKING EVALUATIONS PUBLIC after the contract is awarded.

Note: Terms in all capital letters, above, point to margin notes in the referenced policy.

When entering into a contract for the services of a design-build firm, the contracting district and the design-build firm shall follow the procedures below:

ARCHITECT /
ENGINEER

1. The District shall designate an engineer or architect independent of the design-build firm to act as its representative for the duration of the work on the facility. If the District's engineer or architect is not a full-time employee of the District, any engineer or architect designated shall be selected on the basis of demonstrated competence and qualifications in accordance with Government Code 2254.004. [See CV]

REQUEST FOR
QUALIFICATIONS

2. The District shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. The District shall also prepare the design criteria package that includes more detailed information on the project as described in Education Code 44.036(a)(3). If the preparation of the design criteria package requires engineering within the meaning of Occupations Code Title 6, Chapter 1001, or the practice of architecture within the meaning of Occupations Code Title 6, Chapter 1051, those services shall be provided in accordance with the applicable law.

EVALUATION

3. The District shall evaluate statements of qualifications and select a design-build firm in two phases:

PHASE ONE:
QUALIFICATION

- a. In phase one, the District shall prepare a request for qualifications and evaluate each offeror's experience,

technical competence, capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each offeror shall certify to the District that each engineer or architect who is a member of its team was selected based on demonstrated competence and qualifications, in the manner provided by Government Code 2254.004. The District shall qualify a maximum of five offerors to submit additional information and, if the District chooses, to interview for final selection.

PHASE TWO:
PROPOSALS

- b. In phase two, the District shall evaluate the information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview. The District may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, costing methodology, or other factors as appropriate. The District may not require offerors to submit detailed engineering or architectural designs as part of the proposal.

The District shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications. The District shall select the design-build firm that submits the proposal offering the best value for the District on the basis of the published selection criteria and on its ranking evaluations.

The District shall first attempt to negotiate a contract with the selected offeror. If the District is unable to negotiate a satisfactory contract with the selected offeror, the District shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

DESIGN

4. Following selection of a design-build firm, the firm's engineers or architects shall complete the design, submitting all design elements for review and determination of scope compliance to the District or the District's engineer or architect before or concurrently with construction.

FACILITIES CONSTRUCTION
DESIGN-BUILD CONTRACTS

CVC
(LEGAL)

5. An engineer shall have responsibility for compliance with the engineering design requirements and all other applicable requirements of Occupations Code Title 6, Chapter 1001. An architect shall have responsibility for compliance with the requirements of Occupations Code Title 6, Chapter 1051.

INSPECTION,
TESTING, AND
VERIFICATION
TESTING SERVICES

The District shall provide or contract for, independently of the design-build firm, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the District. The District shall select those services for which it contracts in accordance with Government Code 2254.004. [See CV]

COMPLETION OF
PROJECT

The design-build firm shall supply a signed and sealed set of construction documents for the project to the District at the conclusion of construction.

PAYMENT OR
PERFORMANCE BOND

A payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract that includes design services only. [See CV for more information on payment and performance bonds]

AMOUNT

If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the District must each be in an amount equal to the project budget, as specified in the design criteria package. The design-build firm shall deliver the bonds not later than the tenth day after the date the design-build firm executes the contract, unless the design-build firm furnishes a bid bond or other financial security acceptable to the District to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Education Code 44.036

DEFINITION

A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that provides consultation to the District regarding construction, rehabilitation, alteration, or repair of the facility. The District using the construction manager-agent method may, under the contract between the District and the construction manager-agent, require the construction manager-agent to provide administrative personnel, equipment necessary to perform duties under this section, and on-site management and other services specified in the contract. A construction manager-agent represents the District in a fiduciary capacity.

The District may use the construction manager-agent method for the construction, rehabilitation, alteration, or repair of a facility. In using this method, the District must comply with applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)], which include the following steps:

1. SELECTING A CONTRACTING METHOD;
2. Giving PUBLIC NOTICE of the project;
3. Publishing CONTRACT SELECTION CRITERIA; and
4. MAKING EVALUATIONS PUBLIC after the contract is awarded.

Note: Terms in all capital letters, above, point to margin notes in the referenced policy.

In entering into a contract for the services of a construction manager-agent, the District shall follow the procedures below:

ARCHITECT /
ENGINEER

1. The District shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with Occupations Code Title 6, Chapters 1001 or 1051, as applicable. If the engineer or architect is not a full-time employee of the District, the District shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Government Code 2254.004. [See CV]

The District's engineer or architect may not serve, alone or in combination with another person, as the construction manager-agent unless the engineer or architect is hired to serve as the construction manager-agent under a separate or concurrent procurement conducted in accordance with Education Code Chapter 44, Subchapter B. The District's engineer or architect is not prohibited by this policy from providing customary construction-phase services under the engineer's or

FACILITIES CONSTRUCTION
CONSTRUCTION MANAGER-AGENT

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architect's original professional service agreement in accordance with applicable licensing laws.

SELECTION OF
CONSTRUCTION
MANAGER-AGENT

2. The District shall select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner as provided for the selection of engineers or architects under Government Code 2254.004. [See CV]

TESTING,
INSPECTION, AND
VERIFICATION
SERVICES

3. The District or the construction manager-agent shall procure in accordance with Government Code 2254.004 all of the testing of construction materials engineering, the inspection services, and the verification testing services necessary for acceptance of the facility by the District.

OTHER
CONTRACTORS

4. The District shall procure, in accordance with applicable law and in any manner authorized by Education Code Chapter 44, a general contractor, trade contractors, or subcontractors who will serve as the prime contractor for their specific portion of the work.

Education Code 44.037

FACILITIES CONSTRUCTION
CONSTRUCTION MANAGER-AT-RISK

CVE
(LEGAL)

DEFINITION

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

The District may use the construction manager-at-risk method for the construction, rehabilitation, alteration, or repair of a facility. In using this method, the District must comply with applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)], which include the following steps:

1. SELECTING A CONTRACTING METHOD;
2. Giving PUBLIC NOTICE of the project;
3. Publishing CONTRACT SELECTION CRITERIA; and
4. MAKING EVALUATIONS PUBLIC after the contract is awarded.

Note: Terms in all capital letters, above, point to margin notes in the referenced policy.

In entering into a contract for the services of a construction manager-at-risk, the District shall follow the procedures prescribed below:

ARCHITECT /
ENGINEER

1. The District shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with Occupations Code Title 6, Chapters 1001 or 1051, as applicable. If the engineer or architect is not a full-time employee of the District, the District shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Government Code 2254.004. [See CV]

The District's engineer, architect, or construction manager-agent for a project may not serve, alone or in combination with another, as the construction manager-at-risk unless the engineer or architect is hired to serve as the construction manager-at-risk under a separate or concurrent procurement conducted in accordance with Education Code Chapter 44, Subchapter B, which does not prohibit the engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.

FACILITIES CONSTRUCTION
CONSTRUCTION MANAGER-AT-RISK

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(LEGAL)

INSPECTION,
TESTING,
VERIFICATION
SERVICES

2. The District shall provide for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the District. The District shall select those services for which it contracts in accordance with Government Code 2254.004. [See CV]
3. The District shall select the construction manager-at-risk in either a one-step or two-step process.
 - a. The District shall prepare a request for proposals in the case of a one-step process, or a request for qualifications in the case of a two-step process. The request shall include general information on the project site, project scope, schedule, selection criteria, estimated budget, and the time and place for receipt of proposals or qualifications, as applicable; a statement as to whether the selection process is a one-step or two-step process; and other information that may assist the District in its selection of a construction manager-at-risk.
 - b. The District shall state the selection criteria in the request for proposals or qualifications, as applicable. The selection criteria may include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk.
 - c. If a one-step process is used, the District may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions. If a two-step process is used, the District may not request fees or prices in step one. In step two, the District may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions.

OPENING AND
EVALUATING
PROPOSALS

4. At each step, the District shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, the District shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened. Within 45 days after the date of opening the proposals, the District shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

FACILITIES CONSTRUCTION
CONSTRUCTION MANAGER-AT-RISK

CVE
(LEGAL)

SELECTION

5. The District shall select the offeror that submits the proposal that offers the best value for the District based on the published selection criteria and on its ranking evaluation. The District shall first attempt to negotiate a contract with the selected offeror. If the District is unable to negotiate a satisfactory contract with the selected offeror, the District shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

TRADE
CONTRACTORS /
SUBCONTRACTORS

6. A construction manager-at-risk shall publicly advertise, in accordance with Education Code Section 44.031(g) [see CV], and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions. A construction manager-at-risk may seek to perform portions of the work itself if:
 - a. The construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors; and
 - b. If the District determines that the construction manager-at-risk's bid or proposal provides the best value for the District.

TRADE CONTRACTOR
OR SUBCONTRACTOR
BIDS OR PROPOSALS

7. The construction manager-at-risk and the District or its representative shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, engineer, architect, or District. All bids or proposals shall be made public after the award of the contract or within seven days after the date of final selection of bids or proposals, whichever is later.
8. If the construction manager-at-risk reviews, evaluates, and recommends to the District a bid or proposal from a trade contractor or subcontractor, but the District requires another bid or proposal to be accepted, the District shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk may incur because of the District's requirement that another bid or proposal be accepted.
9. If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after

FACILITIES CONSTRUCTION
CONSTRUCTION MANAGER-AT-RISK

CVE
(LEGAL)

being selected in accordance with this section, the construction manager-at-risk may, without advertising, fulfill the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

PAYMENT AND
PERFORMANCE BOND
AMOUNTS

10. If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the District must each be in an amount equal to the project budget, as specified in the request for qualifications. The construction manager shall deliver the bonds not later than the tenth day after the date the construction manager executes the contract, unless the construction manager furnishes a bid bond or other financial security acceptable to the District to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established. [See CV for more information on payment and performance bonds.]

Education Code 44.038

If the District uses the job order contracts method as described in this policy, it must comply with the applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)], which include the following steps:

1. SELECTING A CONTRACTING METHOD;
2. Giving PUBLIC NOTICE of the project;
3. Publishing CONTRACT SELECTION CRITERIA; and
4. MAKING EVALUATIONS PUBLIC after the contract is awarded.

Note: Terms in all capital letters, above, point to margin notes in the referenced policy.

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

ESTABLISHING UNIT
PRICES

The District may establish contractual unit prices for a job order contract by:

1. Specifying one or more published construction unit price books and the applicable divisions or line items; or
2. Providing a list of work items and requiring the offerors to bid or propose one or more coefficients or multipliers to be applied to the price book or work items as the price proposal.

TERM OF CONTRACT

The base term of a job order contract is for the period, and with any renewal option, that the District sets forth in the request for proposals. If the District fails to advertise that term, the base term may not exceed two years and is not renewable without further advertisement and solicitation of proposals.

ARCHITECT OR
ENGINEER

If job order contracts or orders issued under the contract require engineering or architectural services that are subject to Occupations Code Title 6, Chapters 1001 or 1051, the District shall select or designate an architect or engineer to prepare the construction documents for the facility. If the architect or engineer is not a full-time employee of the District, the District shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Government Code 2254.004. [See CV]

ADVERTISING AND
OPENING PROPOSALS

The District shall advertise for [see CV], receive, and publicly open sealed proposals for job order contracts. The District may require

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offerors to submit additional information besides rates, including experience, past performance, and proposed personnel and methodology. *Education Code 44.041(c), (d)*

AWARDING
CONTRACTS

The District may award job order contracts to one or more job order contractors in connection with each solicitation of bids or proposals.

An order for a job or project under the job order contract must be signed by the District's representative and the contractor. The order may be a fixed-price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities or may be a unit price order based on the quantities and line items delivered.

BONDS

The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order. [See CV for more information on payment and performance bonds]

Education Code 44.041

CONTRACT AND INSURANCE REQUIREMENTS

Contracted projects of any size should be adequately insured. The amount and type of insurance required depends principally on the hazards involved. However, the cost of the job limits the insurance which can reasonably be required. While the large contractors usually already have coverage which meets the District's desired minimum requirements, the smaller ones frequently do not. To require them to purchase it and to secure acceptable certificates would in many cases cost the District more than the risk justifies. Consequently, risks have been divided into four classes.

Contractors will not be allowed on the job site until evidence of the required insurance is provided. All performance bonds and certificates of insurance should be checked before the contractor is awarded a contract.

CLASSES OF RISK

CLASS A - Jobs with minimum hazards and low revenue.

"Minimum Hazard" means general work not involving work more than six feet above ground or floor level, and not requiring the use of any heavy equipment, etc.

- Examples:
- Business Machine Repairs
 - Locksmith
 - Technicians working for major manufacturers
 - Consulting Engineers and Architects on District premises or job site
 - Venetian Blind and Shade Service
 - Phone Installation

Contract Requirements: None
Insurance Requirements:

- Workers Compensation - Statutory Limits
- Employers Liability - \$100,000 @ accident
- \$100,000 policy limit
- \$100,000 @ employee

- General Liability
- Bodily Injury & - \$300,000 combine single limits
- Property Damage - \$600,000 aggregate

- Automobile Liability
- Bodily Injury - \$100,000 @ person/\$300,000 @ accident
- Property Damage - \$100,000

CLASS B - Jobs with moderate hazards, but low revenue.

Examples: Refrigeration Repairs
Construction Jobs under \$5,000
Air Conditioning Maintenance
Concrete Work under \$5,000
Electrical Work

Contract Requirements: Hold-Harmless Agreement
Insurance Requirements:

Workers Compensation - Statutory Limits
Employers Liability - \$500,000 @ accident
\$500,000 policy limit
\$500,000 @ employee

General Liability
Bodily Injury & - \$500,000 combine single limits
Property Damage \$1,000,000 aggregate

Automobile Liability
Bodily Injury - \$250,000 @ person/\$500,000 @ accident
Property Damage - \$250,000

CLASS C - Normal Limits, jobs with moderate hazards and moderate size.

Examples: Construction Jobs above \$5,000
Boiler Maintenance Contractor
Hood and Duct Cleaning
Garbage Hauling
Excavation type work, i.e. back hoe digging
Roof Repairs
Specialty Work - gutters, down spouts, etc.
Food Delivery - large truck delivery

Contract Requirements: Hold Harmless Agreement
Contractual Coverage
Waiver of Subrogation
Explosion, Collapse and Underground Coverage
Products and Completed Operations Coverage

Insurance Requirements:

Workers Compensation - Statutory Limits
Employers Liability - \$500,000 @ accident
\$500,000 policy limit
\$500,000 @ employee

- General Liability
 - Bodily Injury & Property Damage - \$500,000 combine single limits
\$1,000,000 aggregate
- Automobile Liability
 - Bodily Injury - \$250,000 @ person/\$500,000 @ accident
 - Property Damage - \$250,000
- Umbrella Policy - \$1,000,000 @ occurrence/\$1,000,000 aggregate

CLASS D - High Limits, large construction jobs above \$500,000; playground construction.

Contract Requirements: Hold Harmless Agreement
 Contractual Coverage
 Explosion, Collapse and Underground Coverage
 Products and Completed Operations Coverage
 Waiver of Subrogation
 Owners and Contractors Protective Policy (required on either new construction or on construction in excess of \$500,000).

Insurance Requirements:

District named as additional insured on coverages.

- Workers Compensation - Statutory Limits
- Employers Liability - \$500,000 @ accident
\$500,000 policy limit
\$500,000 @ employee
- General Liability
 - Bodily Injury & Property Damage - \$1,000,000 combine single limits
\$2,000,000 aggregate
- Automobile Liability
 - Bodily Injury - \$250,000 @ person/\$500,000 @ accident
 - Property Damage - \$250,000
- Umbrella Policy - \$5,000,000 @ occurrence/\$5,000,000 aggregate
- All Builders Risk - Limit based on value of project
- Performance Bond - Equal to value of project
- Employee Dishonesty Bond - Required on any individual handling money or securities that is not an employee of the District