

# PURCHASING MANUAL



NORTHEAST ISD  
8961 TESORO DRIVE  
SAN ANTONIO, TX 78217

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## **PURPOSE OF PURCHASING MANUAL**

The purpose of the North East Independent School District Purchasing 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 Purchasing Manual is divided into the following topics and procedures:

- Purchasing Goals and Objectives
- Purchasing Authority
- Purchasing Statutes, Regulations, and Board Policies
- Purchasing 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 Purchasing Department.

## **PURCHASING GOALS AND OBJECTIVES**

The mission of the Procurement & eCommerce Department is to “Support Student Success and Ensure Fiscal Accountability through Responsible Supply Chain Management.” This mission is accomplished through the following goals and objectives:

- Provide a procurement process that is responsive to the needs of a dynamic, diverse and complex public education organizational environment. This diverse environment includes campuses, departments, support services and administrative services.
- Maintain compliance with numerous purchasing statutes, policies, legal interpretations and procedures.
- Foster positive vendor relations and strong purchasing competition balanced by qualitative and quantitative evaluation criteria to determine best value for the District.

- Assist the District in responding to scrutiny by diverse groups including those from the public, media, federal and state agencies, and auditors through strict adherence to established laws, policies, regulations and guidelines, and consistency in record keeping, documentation and execution of procedures.
- Interpret “gray” areas related to purchasing methods and procedures.

## **PURCHASING AUTHORITY**

Purchasing authority is the process and approval link in the purchasing chain. Purchasing authority hierarchy in school districts is established by Federal, State, local laws and School Board policies and regulations. Purchasing authority is designed to provide checks and balances which help 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
- Procurement & eCommerce Department
- Budget Managers
- District Employees

**BOARD OF TRUSTEES** – The Board of Trustees approves all expenditures of District funds through the budgeting, bid approval processes, and approval of all single purchases of goods and services costing \$50,000 or more. CH (LEGAL)

**ADMINISTRATIVE AUTHORITY** – All purchase commitments are made by the Superintendent or designee in accordance with administrative procedures, including the District’s purchasing procedures and methods. Current approved purchasing methods include purchase orders, purchasing cards, and request for payment (RFP). The Procurement & eCommerce Department oversees all District budgeted purchases and informs the Board of Trustees of all purchases \$50,000 or more. The Procurement & eCommerce Department approves or rejects all purchase requisitions and processes approved requisitions into purchase orders. CH (LOCAL)

**PROCUREMENT & eCOMMERCE DEPARTMENT** – The Superintendent has designated purchasing authority to the Procurement & eCommerce Department to establish procedures for legally procuring goods and services for District use. The Procurement & eCommerce Department reviews and approves all budgeted purchases using current purchasing methods which include purchase orders, purchasing cards and RFPs.

The purchase order is a document that establishes a contract for goods and/or services between the District and supplying vendors. The purchase order validates District purchases, creates an encumbrance of funds, and is a binding commitment to remit payment to the vendor after the ordered item(s) have been delivered and received and an invoice has been submitted.

Purchasing card purchases are only made with vendors approved for purchasing card purchases and must be pre-approved by the Budget Manager. Purchases can be made with a select list of on-line and on-site vendors. Expended budgeted funds are encumbered weekly and District payment is made at the end of the monthly purchasing card cycle.

RFPs are used for various reasons including, but not limited to subscriptions, instructional memberships, dues, registrations, SAF/CAF reimbursement, postage and postal fees, etc. CH (LEGAL), CH (LOCAL)

**BUDGET MANAGERS** – 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 electronic purchase requisitions submitted by the Bookkeeper/Administrative Assistant. It is the responsibility of the Budget Manager and Bookkeeper/Administrative Assistant to maintain signed purchase authorizations and purchase receipts in the District's digital document imaging system for retention and auditing purposes.

**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 an approved purchasing method is used with the appropriate electronic approvals and signatures.

The District is not obligated to pay for purchases made without an approved purchasing method. **Department, campus or support personnel will be held responsible for payment of purchases made without using an approved purchasing method. This means that payment for purchases made without an approved purchasing method cannot be paid for with District funds because there is no purchasing transaction method to invoice against or to charge the purchase.** To avoid this situation, always use an approved purchasing method and get Budget Manager approval prior to procuring any goods or services. CHD (R), CH (LOCAL)

## **PURCHASING REGULATIONS AND BOARD POLICIES**

Texas Education Code 44.031 and Texas Attorney General Opinions establish the minimum requirements for all school district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period. 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.

Purchasing contracts shall be made by the method, of the following methods, that provides the best value for the district:

1. Competitive Bidding
2. Competitive Sealed Proposals
3. Request for Proposals
4. An Interlocal Contract
5. A method provided by Chapter 2269, Government Code, for construction services
  - a. Competitive Bidding
  - b. Competitive Sealed Proposals
  - c. Construction Manager-Agent
  - d. Construction Manager-at-Risk
  - e. Design-Build
  - f. Job Order Contracting
6. Reverse Auction
7. Formation of a Political Subdivision

**Competitive Bids** - All competitive bids must be submitted in a sealed envelope or container. Competitive bids cannot be submitted by facsimile.

The purchase or lease of a school bus or school buses must be submitted to competitive bidding when the contract is valued at \$20,000 or more.

Federally Funded Child Nutrition Program must be submitted to competitive bidding if the contract is valued at \$10,000 or more.

Competitive bids are not restricted to the minimum bid limit of \$50,000. The competitive bid process may be utilized at any dollar amount below \$50,000 except for contract for Professional Services.

#### **Price Quotes** - Under \$50,000

The District, at its option, may obtain price quotes for items costing less than \$50,000. This method of purchasing does not require formal advertising. The NEISD Procurement Department determines if price quotations can be used in lieu of competitive bids. Price quotations may be obtained by phone, facsimile, email or U.S. Mail. Regardless of what method is used to secure price quotations, written verification of the quoted prices must be retained.

**Sole Source** - Selected purchases may be exempt from competitive bidding if they meet established criteria for a sole source purchase. These criteria include:

1. An item is precluded by the existence of a patent, copyright, secret process or monopoly.
2. A film, manuscript, or book
3. A utility service, including electricity, gas, or water
4. A captive replacement part or component for equipment

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

**Sole source purchases are rare.**

#### **Emergency Purchases**

1. If school equipment, a school facility, or a portion of a school facility is destroyed, severely damaged, or experiences a major unforeseen operational or structural failure, and the board of trustees determines that the delay posed by the contract methods required by 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 the district’s fiscal year, however, it can be any 12-month period. Following are examples of aggregate purchases in a 12-month period:



Example 1: Art Supplies

Location	Total
Campus A	8,500
Campus B	12,950
Campus C	10,500
Campus D	2,500
Campus E	5,000
Campus F	7,500
Campus G	8,000
Total	\$54,950

Even though the total dollar amount at each campus is less than \$50,000, the total aggregate dollar amount for the school district is more than \$50,000. Because the aggregate dollar amount is more than \$50,000, these items are subject to competitive bidding.

Example 2: Audio Visual Equipment and Supplies

Location	Vendor X	Vendor Y	Vendor Z	Total
Campus A	5,500	6,900	3,700	16,100
Campus B	3,000	4,000	2,500	9,500
Campus C	2,300	7,700	4,000	14,000
Campus D	5,900	3,500	2,000	11,400
Department K	2,000	2,500	4,000	8,500
Total	\$18,700	\$24,600	\$16,200	<b>\$59,500</b>

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 \$17,000. The total dollar amount spent with each vendor is less than \$25,000. However, the aggregate dollar amount spent on audio visual equipment and supplies by the school district is more than \$50,000. Because the aggregate dollar amount is more than \$50,000, these items are subject to competitive bidding. The \$50,000 limit is applied to each category of 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	\$ 20,000
June 3 - Purchase Walk-In Freezer Shell	\$ 20,000
June 5 - Purchase Compressor Equipment	<u>\$ 15,000</u>
Total -	\$ 55,000

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

Example: Jul 01 - Purchase Truck	\$ 22,000
Jul 15 - Purchase Van	\$ 24,500
Aug 01 - Purchase Sedan	<u>\$ 19,500</u>
Total -	\$ 66,000

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

Example: Sep 01 - Paper Towels	\$ 10,000
Nov 15 - Paper Towels	\$ 11,000
Feb 01 - Paper Towels	\$ 11,500
Apr 15 - Paper Towels	\$ 12,000
Jun 01 - Paper Towels	<u>\$ 11,000</u>
Total -	\$ 55,500

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 & eCommerce Department for clarification.

## **PURCHASING DEPARTMENT SERVICES**

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 & eCommerce Department. A centralized purchasing function does not erode principals of site-based management, but helps Budget Managers make effective and efficient purchasing decisions based on approved bid vendors and pre-negotiated prices. Purchase requisitions still originate at the campus or department level where needs are identified. The Procurement & eCommerce Department processes site-based campus and department requisitions and purchasing card purchases. Procurement also reviews and is the final approver for RFPs.

Procurement & eCommerce develops and implements purchasing processes and internal controls to maximize the efficiency and effectiveness of the procurement function. To assist campuses, departments and departments in procuring goods and services Procurement & eCommerce provides the following services:

- ❖ Assist campuses and departments in identifying best value sourcing, pricing and acquisition methods for goods and services through procurement knowledge, experience and responsible supply chain management processes
- ❖ Procure goods and services through legal procurement methods that meet specifications, in needed quantities, at the needed time, at the most competitive price
- ❖ Communicate, train and advise campus, department and support personnel on purchasing laws and procedures
- ❖ Employ a knowledgeable procurement staff trained to assist campuses, departments and support personnel with the resolution of procurement issues
- ❖ Maintain a positive working relationship with vendors
- ❖ Provide training for all requisitioners and approvers on the District finance system
- ❖ Assist campuses/departments with entering purchase orders and receiving on purchase orders when campus/department personnel are not available

- ❖ Coordinate competitive bidding and quotation process
- ❖ Assist departments in obtaining quotes and placing orders for vehicles
- ❖ Process campus and department purchase requisitions into purchase orders
- ❖ Approve and issue all purchase orders
- ❖ Close purchase order encumbrances through on-line PO Action form
- ❖ Process purchase order matched exceptions for cost or quantity after invoices are entered by Accounts Payable
- ❖ Approve PCard vendors and maintain Preferred Supplier List (PSL) for each purchasing card
- ❖ Review daily transactions and reconcile PCard purchases monthly
- ❖ Review and approve requests for vendor setup through District's on-line AP Vendor Request form
- ❖ Coordinate tracking, verifying and transferring District salvageable and obsolete assets using the District's Controlled Resource Management System (CRMS) software
- ❖ Dispose salvageable and obsolete assets through legal methods including live auctions, on-line auctions and direct sell store
- ❖ Identify and verify document types and corresponding retention schedules for various District records
- ❖ Store, retrieve and destroy district records using manual and electronic document management technologies
- ❖ Purchase, track, maintain and dispose of State adopted and District approved textbooks and curriculum assets
- ❖ Coordinate requests and reservations for use of District facilities
- ❖ Operate full service print shop for mass produced documents and specialty items
- ❖ Provide maintenance and repair service for District copier fleet
- ❖ Review and approve Independent Contracts
- ❖ Coordinate District travel including airlines, vehicles and hotels
- ❖ Maintain lists of current pricing for items commonly used throughout the District, bid award vendors and purchasing cooperatives on the Procurement intranet webpage under Purchasing Tips
- ❖ Order, receive, stock, maintain, deliver and track inventory supplies housed and managed in the General, Operations and Copier/Telecommunications Warehouses Purchasing Tips.

## **REQUISITIONS & 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 Purchasing Department for purchase order processing. Requisitions to the Central Warehouse are submitted through the District mail service using paper forms. (See examples in back of manual) Requisitions to the Purchasing Department 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 Purchasing Department.

**Purchase order processing** is a function of the Purchasing Department. Requisitions are processed into purchase orders by the Purchasing 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 Purchasing Department. The Purchasing 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 Purchasing 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 Purchasing Department for help as soon as possible.

## **TRANSFER & DISPOSAL OF OBSOLETE PROPERTY**

Transfer or disposal of surplus or obsolete property is a function of the Purchasing 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, it is necessary for the originating campus or department to complete a District "Property Transfer Or Disposal Form." (See example) This form is then sent to the Purchasing Department for processing. The Purchasing Department, based on the information provided on the property transfer form, will make a decision on how to properly transfer or dispose of any District property.

The following laws and regulations pertain to the proper disposal of surplus or salvage property.

### ***Education Code, Title 2, Chapter 23, Subchapter B §23.30 (a) - (e)***

- (a) The board of trustees of any 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 such reciting therein the resolution of the board of trustees authorizing the sale.
- (c) The proceeds of such sale shall be used for the purchase of more convenient and more desirable school property or for the construction or repairing of school buildings or deposited to the credit of the local maintenance fund of the district.
- (d) Any and all sales of school houses, buildings or lands heretofore made by any independent school district in substantial compliance with the provisions of this section, after same has been authorized by the trustees of the independent school district, shall not be invalid by reason of any lack of authority to make and enter into such sales.
- (e) 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.

***Revised Civil Statutes, Title 20, Art. 601b, Article 9, Sections 9.01. - 9.15.***

#### Disposition of Surplus or Salvage Property *Sec. 9.04.*

- (a) All state agencies that determine they have surplus or salvage property shall inform the commission of the kind, number, location, condition, original cost or value, and date of acquisition of the property.
- (b) When a state agency reports to the commission that it has surplus or salvage equipment or material, the commission shall inform other state agencies, political subdivisions, and assistance organizations of the existence, kind, number, location, and condition of the equipment or material.
- (c) During the 35-day period following the date of the notice under Subsection (b) of this section, a state agency or political subdivision may negotiate directly with the reporting state agency for a transfer of the property at a mutually agreed upon value, if a transfer is made to a state agency, the participating agencies shall report the transaction to the comptroller and the commission. The comptroller shall debit and credit the proper appropriations and the commission shall adjust the state inventory records if inventoried property is transferred. During the 35-day period, priority shall be given to transfer to a state agency, under rules adopted by the commission.

#### Alternative Disposition of Surplus or Salvage Property

*Sec. 9.05.* If surplus or salvage property of a state agency is not disposed of under the provisions of Section 9.04 of this article, the commission shall sell the property by competitive bid or auction or delegate to the state agency having possession of the property the authority to sell the property on a competitive bid basis. The commission or agency shall collect a fee from the purchaser. The commission shall set the fee in an amount to recover the costs associated with the sale of the property, but the amount may not be less than two percent nor more than 12 percent of the proceeds from the sale of the property.

#### Destruction of Surplus or Salvage Property

*Sec. 9.06.* If the commission cannot sell or dispose of any property reported to it as surplus or salvage it may order the property destroyed as worthless salvage and report the destruction to the declaring

agency. The destruction of salvage shall authorize the commission to remove reported property from the state inventory if on the state inventory. Authorization by the commission to delete salvage items not its own from the state inventory shall not be required. It is not the intention of this section to alter, enlarge, or amend the law providing for the deletion from inventory upon the authorization of the auditor of property that is missing from any agency.

#### Maximum Return from Disposition of Surplus or Salvage Property

*Sec. 9.07.* The commission shall at all times try to realize the maximum return to the state in the sale and disposal of surplus and salvage property. It shall maintain a list of prospective buyers of surplus and salvage property and it may in all cases reject any or all offers if it finds rejection to be in the best interests of the state. It shall cooperate with all state agencies in a continuing program of surplus and salvage property evaluation to minimize losses from accumulations and it shall cooperate at all times with the auditor in surplus and salvage property analysis.

#### Property Used as Trade-in

*Sec. 9.12* A state agency may offer surplus or salvage property as a trade-in on new property of the same general type when such exchange is in the best interests of the state.

Please contact the Purchasing Department for help or guidance with property transfers.

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# **PURCHASING BOARD POLICIES**

**NORTH EAST ISD  
015910**

**PURCHASING:  
CH(LOCAL)**

## **PURCHASING AND ACQUISITION**

### **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**

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

The District may reject any and all bids.

### **COMPETITIVE SEALED PROPOSALS**

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 in accordance with administrative regulations, and the submission of any electronic proposals shall also be in accordance with Board-adopted rules. Proposals received after the specified time shall not be considered. Proposals shall be opened at the time specified, and all proposers shall be invited to attend the proposal opening. Proposals may be withdrawn prior to the scheduled time of opening. Changes in the content of a proposal, and in prices, may be negotiated after proposals are opened.

The District may reject any and all proposals.

### **ELECTRONIC BIDS OR PROPOSALS**

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

## **RESPONSIBILITY FOR DEBTS**

The Board shall assume responsibility for debts incurred in the name of the District so long as those debts are for purchases made in accordance with the adopted budget, state law, Board policy, and the District's purchasing procedures. [See CE] The Board shall not be responsible for debts incurred by persons or organizations not directly under Board control. Persons making unauthorized purchases shall assume full responsibility for all such debts.

## **PURCHASE COMMITMENTS**

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

## **PERSONAL PURCHASES**

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

**DATE ISSUED: 1/4/2015**

**UPDATE 101**

**CH(LOCAL)-A**

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## **NORTH EAST ISD**

**015910**

**PURCHASING:  
CH(LEGAL)**

# **PURCHASING AND ACQUISITION**

## **BOARD AUTHORITY**

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

## **DELEGATION OF AUTHORITY**

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

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

## **DISASTER EXCEPTION**

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

*Education Code 44.0312*

## **PURCHASES VALUED AT OR ABOVE \$50,000**

All district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period, shall be made by the method that provides the best value for a district:

1. Competitive bidding for services other than construction services.
2. Competitive sealed proposals for services other than construction services.
3. A request for proposals for services other than construction services.
4. An interlocal contract.
5. 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.

*Education Code 44.031(a)*

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**Note:** Regarding construction of school facilities, see CV generally; CVA for competitive bidding; CVB for competitive sealed proposals; CVC and CVD for contracts using a construction manager; CVE for design/build contracts; and CVF for job order contracts for minor repairs/alterations.

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## **FACTORS**

In awarding a contract, a district shall consider:

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. For a contract that is not for goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state.
9. Any other relevant factor specifically listed in the request for bids or proposals.

### *Education Code 44.031(b)*

In awarding a contract by competitive sealed bid under Education Code 44.031, a district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder's principal place of business in the manner provided by Local Government Code 271.9051. This 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 a district in its decision to award a contract. *R.G.V. Vending v. Weslaco Indep. Sch. Dist.*, 995 S.W.2d 897 (Tex. App.—Corpus Christi 1999, no pet.).

## **OUT-OF-STATE BIDDERS**

A board shall not award a contract for services 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 greater of 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, or a state in which a majority of the manufacturing relating to the contract will be performed. *Gov't Code 2252.001–.002*

This requirement shall not apply to a contract involving federal funds. A district shall rely on information published by the comptroller in evaluating the bids of a nonresident bidder. *Gov't Code 2252.003–.004*

## **DISCLOSURE OF INTERESTED PARTIES**

A district may not enter into a contract that requires an action or vote of the board before the contract may be signed, or has a value of at least \$1 million, with a business entity unless the business entity submits a disclosure of interested parties to the district at the time the business entity submits the signed contract to the district. [See BBFA]

“Business entity” means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.

“Interested party” means a person who has a controlling interest in a business entity with whom a district contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity.

The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission that includes a list of each interested party for the contract of which the contracting business entity is aware; and the signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.

Not later than the 30th day after the date the district receives a required disclosure of interested parties the district shall submit a copy of the disclosure to the Texas Ethics Commission.

*Gov’t Code 2252.908*

## **CONTRACT WITH PERSON INDEBTED TO DISTRICT**

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

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 a district requiring board approval.

*Education Code 44.044*

## **NOTICE OF 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 a 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 a district’s central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately. *Education Code 44.031(g)*

## **ELECTRONIC BIDS OR PROPOSALS**

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

An electronic bid or proposal is not required to be sealed. A provision of Education Code Chapter 44 that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission in accordance with the rules adopted by the board. Education Code 44.0313

## **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, certified public accountant, engineer, or fiscal agent.

A 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, .003(a)*

An interlocal contract between a 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 a 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)*

## **COMPUTERS**

A 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. *Education Code 44.031(i)*

## **AUTOMATED INFORMATION SYSTEM**

A district may purchase an automated information system using the purchasing method described by Government Code 2157.068 for commodity items or a purchasing method designated by the comptroller to obtain the best value for the state, including a request for offers method. A district that purchases an item using a method listed above satisfies any state law requiring the district to seek competitive bids for the purchase of the item. *Gov't Code 2157.006; 34 TAC 20.391*

## **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. *Education Code 44.047*

## **SOLE SOURCE**

Compliance with Education Code 44.031 is not required for purchases that are available from only one source, including:

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.

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.

*Education Code 44.031(j)–(k)*

## **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. *Education Code 44.031; Atty. Gen. Op. DM-347 (1995)*

## **MULTIYEAR CONTRACTS**

A 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 a district executes a multiyear insurance contract, it need not advertise for insurance vendors until the 12-month period during which the district will be executing a new insurance contract. *Atty. Gen. Op. DM-418 (1996)*

## **COMPETITIVE BIDDING**

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

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

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

*Education Code 44.0351*

## **OPENING BIDS**

Bids may be opened only by a board at a public meeting or by an officer or employee of a district at or in an office of the district. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. *Local Gov't Code 271.026*

A board shall have the right to reject any and all bids. *Local Gov't Code 271.027(a)*

## **SAFETY RECORD**

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

1. The board has adopted a written definition and criteria for accurately determining the safety record of the bidder.
2. The board has given notice in the bid specifications that the safety record of a bidder may be considered in determining the bidder's responsibility.
3. The determinations are not arbitrary and capricious.

*Local Gov't Code 271.0275*

## **IDENTICAL BIDS**

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

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

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

*Local Gov't Code 271.901*

## **COMPETITIVE SEALED PROPOSALS**

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

## **REQUEST FOR PROPOSALS**

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

## **OPENING PROPOSALS**

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

## **SELECTION**

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

## **BEST VALUE DETERMINATION**

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

*Education Code 44.0352*

## **INTERLOCAL AGREEMENTS**

To increase efficiency and effectiveness, a district may contract or agree with other local governments and with state agencies, including the comptroller, to perform some of its purchasing functions. *Gov't Code 791.001, .011, .025*

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

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

*Gov't Code 791.011(d)–(f), (i)*

A district may agree with another local government, including a nonprofit corporation that is created and operated to provide one or more governmental functions and services, or with the state or a state agency, including the comptroller, to purchase goods and 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)*

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

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

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

*Gov't Code 791.011(j)*

## **STATE PURCHASING PROGRAM**

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

1. The extension of state contract prices to a district when the comptroller considers it feasible.

2. Solicitation of bids on items desired by a district if the solicitation is considered feasible by the comptroller and is desired by the district.
  3. Provision of information and technical assistance to a district about the purchasing program.
- The comptroller may charge a district its actual costs in providing purchasing services.

*Local Gov't Code 271.082*

## **DISTRICT REQUIREMENTS**

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

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 comptroller 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.

*Local Gov't Code 271.083*

## **MULTIPLE AWARD CONTRACT SCHEDULE**

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

A 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. A district may negotiate a lower price for goods or services under a contract listed on a schedule.

*Gov't Code 2155, Subch. I*

## **COOPERATIVE PURCHASING PROGRAM**

A district may participate in a cooperative purchasing program with another local government of this state or another state or with a local cooperative organization of this state or another state. If a 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 a 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)*

### **CONTRACT-RELATED FEE**

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

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

*Education Code 44.0331*

### **STATE COUNCIL ON COMPETITIVE GOVERNMENT**

As approved by the State Council on Competitive Government, a 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. *Gov't Code 2162.102(d)*

### **REVERSE AUCTION**

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

Reverse auction procedure means:

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

*Gov't Code 2155.062(d)*

### **COMMITMENT OF CURRENT REVENUE**

A contract for the acquisition, including lease, of real or personal property is a commitment of a district's current revenue only, provided the contract contains either or both of the following provisions:

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.

*Local Gov't Code 271.903*

## **CHANGE ORDERS**

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

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

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

*Education Code 44.0411*

## **ENERGY OR WATER CONSERVATION MEASURES**

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

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

*Education Code 44.901–.902* [See policy CL for legal requirements pertaining to such contracts and plans.]

## **RECYCLED PRODUCTS**

A district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. A district shall regularly review and 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.

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

*Health and Safety Code 361.426*

## **AGRICULTURAL PRODUCTS**

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

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

## **VEGETATION FOR LANDSCAPING**

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

*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]

## **RIGHT TO WORK**

While engaged in procuring goods and services or awarding a contract, a district:

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

*Education Code 44.043*

## **LOBBYING RESTRICTION: TOBACCO EDUCATION GRANT FUNDS**

A 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); or
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*

## **CRIMINAL HISTORY**

For provisions pertaining to criminal history record information on contractors, see CJA(LEGAL).

## **IMPERMISSIBLE PRACTICES**

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

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

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

*Education Code 44.032*

## **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 a 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. *Education Code 44.032(f)*

**DATE ISSUED: 11/2/2015**

**UPDATE 103**

**CH(LEGAL)-P**

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## **FACILITIES CONSTRUCTION**

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**Note:** For information on procuring goods and services under Education Code Chapter 44, see CH(LEGAL).

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### **BOARD AUTHORITY**

A district may adopt rules as necessary to implement Government Code Chapter 2269. *Gov't Code 2269.051*

### **DELEGATION OF AUTHORITY**

The board may delegate its authority under Government Code Chapter 2269 regarding an action authorized or required by Chapter 2269 to a designated representative, committee, or other person.

The board shall provide notice of the delegation, the limits of the delegation, and the name or title of each designated person by rule or in the request for bids, proposals, or qualifications or in an addendum to the request.

*Gov't Code 2269.053*

### **CONTRACTS VALUED AT OR ABOVE \$50,000**

All district contracts valued at \$50,000 or more in the aggregate for each 12-month period shall be made by the method that provides the best value for a district [see also CH]:

1. An interlocal contract. [See CH]
2. Competitive bidding. [See CVA]
3. Competitive sealed proposals. [See CVB]
4. Construction manager-agent method. [See CVC]
5. Construction manager-at-risk method. [See CVD]
6. Design-build method. [See CVE]
7. Job order contract. [See CVF]
8. The reverse auction procedure as defined by Government Code 2155.062(d). [See CH]

*Education Code 44.031(a); Gov't Code Ch. 2269*

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

### **SELECTING A CONTRACTING METHOD**

A board that considers a construction contract using a method authorized by Government Code Chapter 2269 other than competitive bidding must, before advertising, determine which method provides the best value for the district. *Gov't Code 2269.056(a)*

## **EMERGENCY DAMAGE OR DESTRUCTION**

f 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 a 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)*

## **CONTRACTS REQUIRING A BOND**

A reverse auction procedure, whether the same or similar to that described by Government Code 2155.062, may not be used to obtain services related to a public work contract for which a bond is required under Government Code 2253.021 [see PAYMENT AND PERFORMANCE BONDS, below]. *Gov't Code 2253.021(h)*

## **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 a district's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which a district's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately. *Education Code 44.031(g); Gov't Code 2269.052(a)–(b)*

## **CONTRACT SELECTION CRITERIA**

In determining the award of a contract, the district shall consider and apply:

1. Any existing laws, including any criteria, related to historically underutilized businesses; and
2. Any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses.

In determining the award of a contract, the district may consider:

1. Price.
2. The offeror's experience and reputation.
3. The quality of the offeror's goods or services.
4. The impact on the ability of the district to comply with rules relating to historically underutilized businesses.
5. The offeror's safety record.
6. The offeror's proposed personnel.
7. Whether the offeror's financial capability is appropriate to the size and scope of the project.
8. Any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

## **OUT-OF-STATE BIDDERS**

A 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 greater of 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 or a state in which a majority of the manufacturing relating to the contract will be performed.

*Gov't Code 2252.001–.002*

This requirement shall not apply to a contract involving federal funds. A district shall rely on information published by the comptroller in evaluating the bids of a nonresident bidder. *Gov't Code 2252.003–.004*

## **PUBLISHING CRITERIA**

A district shall publish in the request for proposals or qualifications the criteria that will be used to evaluate the offerors and the applicable weighted value for each criterion. *Gov't Code 2269.056(b)*

## **SUBMISSION**

A person who submits a bid, proposal, or qualification to a governmental entity shall seal it before delivery. *Gov't Code 2269.059*

## **SELECTION**

A district shall base its selection among offerors on applicable criteria listed for the particular method used. *Gov't Code 2269.056(b)*

## **MAKING EVALUATIONS PUBLIC**

A 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. *Gov't Code 2269.056(c), .105*

## **CHANGE OF ORDERS**

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

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

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

*Education Code 44.0411*

## **INSPECTION, VERIFICATION AND TESTING**

Independently of the contractor, construction manager-at-risk, or design-build firm, a district shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the district. The district shall select the services for which it contracts in accordance with Government Code 2254.004. *Gov't Code 2269.058*

## **IMPACT FEES**

A 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. *Local Gov't Code 395.022*

## **ENERGY SAVINGS PERFORMANCE CONTRACTS**

The contracting and delivery procedures for construction projects described at Government Code Chapter 2269 do not apply to energy savings performance contracts described at Education Code 44.901. *Education Code 44.901(j)* [See CL]

## **PROFESSIONAL SERVICES ARCHITECTS AND ENGINEERS**

An architect or engineer required to be selected or designated under Government Code Chapter 2269 has full responsibility for complying with Occupations Code Chapter 1051 or 1001, as applicable.

If the selected or designated 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 PROCURING PROFESSIONAL SERVICES, below].

*Gov't Code 2269.057*

## **REGISTERED ARCHITECT**

An architectural plan or specification for any of the following may be prepared only by an architect registered in accordance with Occupations Code, Title 6, Chapter 1051:

1. A new building constructed and owned by a 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 a 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.

This section does not prohibit a district from choosing a registered architect or a registered professional engineer as the prime design professional for a building construction, alteration, or addition project. Designation as the prime design professional does not expand, limit, or otherwise alter the scope of a design professional's practice nor does it allow a design professional to prepare an architectural plan or specification described above.

*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)*

A 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*

## **CERTIFICATION FOR PURCHASES THROUGH PURCHASING COOPERATIVES**

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

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

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

*Gov’t Code 791.011(j)*

## **PROCURING 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. A 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 architect, landscape architect, land surveyor, professional engineer, or state-certified or state-licensed real estate appraiser. 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, .003(a)*

In procuring architectural, engineering, or land-surveying services, a district shall:

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, a 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. A district shall continue this process until the parties enter into a contract.

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

## **CONTRACTS FOR ENGINEERING OR ARCHITECTURAL SERVICES – INDEMNIFICATION**

A covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which the district is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must indemnify or hold harmless the district against liability for damage, other than liability for damage to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the indemnitor or the indemnitor's agent, consultant under contract, or another entity over which the indemnitor exercises control.

## **DUTY TO DEFEND**

Except as provided below, a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which the district is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must defend a party, including a third party, against a claim based wholly or partly on the negligence of, fault of, or breach of contract by the district, the district's agent, the district's employee, or other entity, excluding the engineer or architect or that person's agent, employee, or subconsultant, over which the district exercises control. A covenant or promise may provide for the reimbursement of the district's reasonable attorney's fees in proportion to the engineer's or architect's liability.

## **DISTRICT AS ADDITIONAL INSURED**

The district may require in a contract for engineering or architectural services that the engineer or architect name the district as an additional insured under the engineer's or architect's general liability insurance policy and provide any defense provided by the policy.

## **STANDARD OF CARE**

A contract for engineering or architectural services to which a governmental agency is a party must require a licensed engineer or registered architect to perform services:

1. With the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license; and
2. As expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

In a contract for engineering or architectural services to which the district is a party, a provision establishing a different standard of care than a standard described above is void and unenforceable. If a contract contains a void and unenforceable provision, the standard of care described above applies.

*Local Gov't Code 271.904*

## **RIGHT TO WORK**

While engaged in procuring goods or services, awarding a contract, or overseeing procurement or construction for a public work or public improvement under Government Code Chapter 2269, a district:

1. May not consider whether a person 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 an organization.

*Gov't Code 2269.054*

## **ACCESSIBILITY**

Each facility or part of a facility constructed by, on behalf of, or for the use of a 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 C.F.R. 35.151, 34 C.F.R. 104.23

## **PAYMENT AND PERFORMANCE BONDS**

When a 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 a 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 a 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 subject to Subchapter J, Chapter 53, Property Code. *Gov't Code 2253.027*

## **NO BOND FOR DESIGN SERVICES**

A payment or performance bond is not required and may not provide coverage for the design portion of the design-build contract with the design-build firm. *Gov't Code 2269.311(a)* [See CVE for more information on design/build contracts, including bond amounts.]

## **BOND FOR INSURED LOSS**

A 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 a district, as described above; and

2. A payment bond, as described above. If the payment bond is not furnished, a 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 a 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*

### **PREVAILING WAGE ON PUBLIC WORKS**

A worker, laborer, or mechanic employed on a public work, exclusive of maintenance work, by or on behalf of a 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 a district. *Gov't Code 2258.001, .021*

A board shall determine, as a sum certain, the general prevailing rate of per diem wages in a 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, a 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 a district or adopt the prevailing wage rate as determined by the U.S. Department of Labor. A board shall specify the prevailing rate of per diem wages in the call for bids and in the contract itself. A board's determination of the general prevailing rates of per diem wages shall be final. *Gov't Code 2258.001, .022*

### **ENFORCEMENT**

A 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, a 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-.052*

### **RETAINAGE AND REIMBURSEMENT**

A board shall retain any amounts due under the contract pending a final determination of the violation. Upon a final determination that violations have occurred, a 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. A board may adopt rules, orders, or ordinances relating to the manner in which the reimbursement is made. *Gov't Code 2258.052(d), .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 a 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. A board must specify this penalty in the contract. If a district does not determine the prevailing wage rates and specify them in the contract, the contractor or subcontractor may not be fined. A 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 a 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 a district. A 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 Administrative Code 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)*

## **CRIMINAL HISTORY**

For provisions pertaining to criminal history record information on contractors, see CJA(LEGAL).

## **IMPERMISSIBLE PRACTICES**

A board member, employee, or agent of a district who knowingly or with criminal negligence violates the purchasing laws found in Education Code Chapter 44 as described at Education Code 44.032 is subject to criminal penalties. *Education Code 44.032* [See CH]

## **ENFORCEMENT ACTIONS**

Government Code Chapter 2269 may be enforced through an action for declaratory or injunctive relief filed not later than the tenth day after the date on which the contract is awarded. *Gov't Code 2269.452*

## **DEFECTS IN INSTRUCTIONAL FACILITIES**

A district that brings an action for recovery of damages for the defective design, construction, renovation, or improvement of an instructional facility financed by bonds for which the district receives state assistance under Education Code Chapter 46, Subchapter A (Instructional Facilities Allotment) shall provide the Commissioner with written notice of the action. The Commissioner may join in the action on behalf of the state to protect the state's share.

The district shall use the net proceeds from the action to repair the defect or to replace the facility. Education Code 46.008 applies to the repair.

The state's share is state property. The school district shall send to the comptroller any portion of the state's share not used by the school district to repair the defect or to replace the facility. Education Code 42.258 applies to the state's share.

### **“NET PROCEEDS”**

Net proceeds” means the difference between the amount recovered by or on behalf of a school district in an action, by settlement or otherwise, and the legal fees and litigation costs incurred by the district in prosecuting the action.

### **“STATE'S SHARE”**

“State's share” means an amount equal to the district's net proceeds from the recovery multiplied by a percentage determined by dividing the amount of state assistance under Education Code Chapter 46, Subchapter A used to pay the principal of and interest on bonds issued in connection with the instructional facility that is the subject of the action by the total amount of principal and interest paid on the bonds as of the date of the judgment or settlement.

*Education Code 46.0111*

## **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 a 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. *Gov't Code 2252.904*

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## **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 & 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

**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