

PURCHASING AND ACQUISITION

CH  
(LOCAL)

**PURCHASING AUTHORITY** The Board delegates to the Superintendent or designee the authority to make budgeted purchases for goods or services. However, any single, budgeted purchase of goods or services that costs \$10,000 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 submitted in sealed envelopes, plainly marked with the name of the bidder and the time of opening. All bidders shall be invited to attend the bid opening. Any bid may be withdrawn prior to the scheduled time for opening. Bids received after the specified time shall not be considered.

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 submitted in sealed envelopes, plainly marked with the name of the proposer and the time of opening. 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 Proposals may be withdrawn prior to the scheduled time of opening.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.

**RESPONSIBILITY FOR DEBTS** The Board shall assume responsibility for debts incurred in the name of the District so long as those debts are for purchases made in accordance with adopted Board policy and current administrative procedures. The Board shall not be responsible for debts incurred by persons or organizations not directly under Board control. Persons making unauthorized purchases shall assume full responsibility for all such debts.

**PURCHASE COMMITMENTS** All purchase commitments shall be made by the Superintendent or designee on a properly drawn and issued purchase order, in accordance with administrative procedures.

**PERSONAL PURCHASES** District employees shall not be permitted to purchase supplies or equipment for personal use through the District's business office.

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

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

*Education Code 44.031(b)*

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

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

CONTRACT WITH  
PERSON INDEBTED  
TO DISTRICT

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

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

*Education Code 44.044*

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NOTICE  
PUBLICATION

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

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

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

NOTICE

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

VENDOR LIST

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

LOCATION OF  
BIDDER

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

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

PRODUCE OR FUEL  
PURCHASES

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

PROFESSIONAL  
SERVICES

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

The District may contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Government Code 2254.003, in lieu of the methods provided by Education Code 44.031.

*Education Code 44.031(f)*

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

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

[See also CV]

EMERGENCY DAMAGE  
OR DESTRUCTION

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

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COMPUTERS

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

AUTOMATED  
INFORMATION  
SYSTEM

The District may purchase an automated information system using the purchasing method described by Government Code 2157.068 for commodity items or a purchasing method designated by the comptroller to obtain the best value for the state, including a request for offers method. A district that purchases an item using a method listed above satisfies any state law requiring the district to seek competitive bids for the purchase of the item. *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)*

IMPERMISSIBLE  
PRACTICES

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

“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.

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

*Education Code 44.032*

INSURANCE

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

MULTIYEAR  
CONTRACTS

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

COMPETITIVE  
BIDDING

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

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

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

*Local Gov't Code 271.901*

REVERSE AUCTION

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

Reverse auction procedure means:

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

*Gov't Code 2155.062(d)*

OUT-OF-STATE  
BIDDERS

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

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

INTERLOCAL  
AGREEMENTS

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

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

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

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

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



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

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

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

STATE PURCHASING  
PROGRAM

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

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

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

*Local Gov't Code 271.082*

DISTRICT  
REQUIREMENTS

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

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

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

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

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

ELECTRONIC  
MARKETPLACE

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

*Local Gov't Code 271.083*

MULTIPLE AWARD  
CONTRACT  
SCHEDULE

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

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

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

*Gov't Code 2155, Subch. 1*

COOPERATIVE  
PURCHASING  
PROGRAM

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

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

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

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

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CONTRACT-RELATED  
FEE

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

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

*Education Code 44.0331*

STATE COUNCIL ON  
COMPETITIVE  
GOVERNMENT

As approved by the State Council on Competitive Government, the District may voluntarily participate in a contract awarded by the council or a state agency under Government Code 2162. A district that purchases goods or services under this type of contract is considered to have satisfied any state law requiring competitive purchasing. *Gov't Code 2162.102(d)*

COMMITMENT OF  
CURRENT REVENUE

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

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*

ENERGY OR WATER  
CONSERVATION  
MEASURES

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

The Board shall establish a goal to reduce the District's annual electric consumption by five percent each year for six years, beginning September 1, 2007.

*Education Code 44.901* [See policy CL for legal requirements pertaining to such contracts]

RECYCLED  
PRODUCTS

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

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

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

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

*Health and Safety Code 361.426*

AGRICULTURAL  
PRODUCTS

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

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

VEGETATION FOR  
LANDSCAPING

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

*Education Code 44.042*

BUS PURCHASE OR  
LEASE

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

CRIMINAL HISTORY

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

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EMPLOYED  
BEFORE  
JANUARY 1, 2008

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

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

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

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

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

*Education Code 22.0834(g)-(i)*

EMPLOYMENT  
OFFERED ON OR  
AFTER JANUARY 1,  
2008

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

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

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

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

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

*Education Code 22.0834(a)-(e)*

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

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VENDOR RELATIONS

CHE  
(LEGAL)

REQUIRED VENDOR  
DISCLOSURE

The Texas Ethics Commission shall adopt a conflict of interest questionnaire that requires disclosure of a vendor's business relationships with the District.

A vendor to the District shall file any required conflict of interest questionnaire if the person has a business relationship with the District and:

1. Has an employment or other business relationship with an officer of the District, or a family member of the officer, described by Local Government Code 176.003(a)(2)(A); or
2. Has given an officer of the District, or a family member of the officer, one or more gifts with the aggregate value specified by Local Government Code 176.003(a)(2)(B), excluding any gift described by Local Government Code 176.003(a-1).

The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the date that the vendor:

1. Begins discussions or negotiations to enter into a contract with the District;
2. Submits to the District an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the District; or
3. The date the person becomes aware:
  - a. Of an employment or other business relationship with a local government officer, or a family member of the officer; or
  - b. That the person has given one or more gifts.

*Local Gov't Code 176.006*

DEFINITION OF  
BUSINESS  
RELATIONSHIP

"Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

1. A transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
2. A transaction conducted at a price and subject to terms available to the public; or
3. A purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

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*Local Gov't Code 176.001(1-a)*

ELECTRONIC FILING

The required questionnaire, including signature requirements, may be filed electronically in a form approved by the Commission. *Local Gov't Code 176.008*

LIST OF LOCAL  
GOVERNMENT  
OFFICERS

The records administrator for each district shall maintain a list of local government officers of the entity and shall make that list available to the public and any person who may be required to file a conflict of interest questionnaire. *Local Gov't Code 176.007*  
[See BBFA]

INTERNET POSTING

The District shall provide access on the District's Internet Web site to the required conflict of interest statements and questionnaires filed with the records administrator. *Local Gov't Code 176.009*



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PAYMENT PROCEDURES

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**PAYMENT DUE** A payment owed by the District based on a contract executed on or after September 1, 1987, is overdue on the 31st day after the date on which the District received the goods under the contract or the date on which the performance of services under the contract was completed, or the date on which the District received the invoice for the goods or services, whichever is later. However, if the Board meets only once a month, the payment is not overdue until the 45th day after the date of receipt of goods, performance of services, or receipt of invoice, whichever is later. The renewal, amendment, or extension of a contract executed on or before September 1, 1993, is considered to be the execution of a new contract. *Gov't Code 2251.021*

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

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

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

*Gov't Code 2251.025, 2251.029*

The District shall compute and pay interest at the time the payment is made on the principal. Interest payments shall accompany payment of the net amount due for the goods or service. The District may not require a vendor to petition, invoice, bill, or wait additional days to receive the interest due. The District may not require a vendor or subcontractor to agree to waive the vendor's or subcontractor's right to interest as a condition of the contract. *Gov't Code 2251.027*

**EARLY PAYMENT DISCOUNT** The District shall attempt to take advantage of an offer for an early payment discount, but may not take an early payment discount unless it makes a full payment within the discount period. If the District takes an early payment discount later, the unpaid balance accrues interest beginning on the date the discount offer expires. *Gov't Code 2251.030*

**EXCEPTIONS** These provisions do not apply to payments made by the District or a vendor if:

1. There is a bona fide dispute between the District and a vendor, contractor, subcontractor, or supplier concerning the

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goods delivered or the service performed that causes the payment to be late;

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

*Gov't Code 2251.002*

ALTERNATE VENDOR  
REMEDY FOR  
NONPAYMENT OF  
CONTRACT

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

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

A vendor who suspends performance is not required to supply further labor, services, or materials until the vendor is paid the amount provided for under Government Code Section 2251, plus costs for demobilization and remobilization. The vendor is also not responsible for damages resulting from suspending work if the governmental entity with which the vendor has the contract has not notified the vendor in writing before performance is suspended that payment has been made or that a bona fide dispute for payment exists.

A notification under Government Code 2251.051(c)(2) that a bona fide dispute for payment exists must include a list of the specific reasons for nonpayment. If a reason specified is that labor, services, or materials provided by the vendor or the vendor's subcontractor are not provided in compliance with the contract, the vendor is entitled to a reasonable opportunity to cure the noncompliance of the listed items; or offer a reasonable amount to compensate for listed items for which noncompliance cannot be promptly cured.

*Gov't Code Sec. 2251.051*

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DISPUTED PAYMENT

The District shall notify a vendor of an error in an invoice submitted for payment by the vendor not later than the 21st day after the date the District receives the invoice. If a dispute is resolved in favor of the vendor, the vendor shall receive interest on the unpaid balance beginning on the date that the payment for the invoice is overdue. If a dispute is resolved in favor of the District, the vendor shall submit a corrected invoice that shall be paid within 30 days of receipt. The unpaid balance accrues interest if it is not paid by the appropriate date. *Gov't Code 2251.042*

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OVERVIEW OF  
UNCLAIMED  
PROPERTY

All school districts holding unclaimed property belonging to Texas residents must file an unclaimed property report with the Texas Comptroller of Public Accounts Office by November 1 of each year. If the District determines it's not holding unclaimed property, then it is not required to file a zero report.

DEFINITION  
UNCLAIMED  
PROPERTY

Unclaimed property is personal property that is presumed unclaimed and subject to reporting to the State if, for longer than the applicable unclaimed period:

- The location of the payee is unknown to the District whom is holding the property; and
- According to the knowledge and records of the District a claim to the property has not been asserted or an act of ownership of the property has not been exercised.

The State of Texas takes custody, not ownership, of unclaimed property. The right of the true owner, or the owner's heirs, to claim the property from the State of Texas is never extinguished.

INTRODUCTION

For the District to ensure proper distribution of checks and payments due to employees or vendors, to ensure their safekeeping, and to ensure that ultimately unclaimed property will be properly reported to the Texas Comptroller of Public Accounts as required by law, the District establishes these procedures for unclaimed checks and/or funds from both payroll and accounts payable, and unclaimed notices of direct deposit.

PROCEDURES AND  
REGULATIONS

PAYROLL CHECKS

Unclaimed wages have an unclaimed period of one year. This one-year period applies to all methods of payroll distribution; including checks, direct deposit, and payroll cards.

The Texas Payday Law requires that wages be delivered to the employee at his or her regular place of work during working hours; be mailed by registered mail to be received by the employee not later than payday, by any reasonable means, or by delivery to any person authorized in writing by the employee.

VENDOR CHECKS

All other types of uncashed checks (vendor payments, employee reimbursements, etc.) are considered unclaimed property after a period of three years.

UNCLAIMED PERIOD

The unclaimed period commences on the date of last contact with the payee (employee or vendor), the check issue date, or, if an actual check was not issued, the date the amount became payable to the payee.

Reissuing a check does not change the commencement date for the unclaimed period, or the date the funds should be reported or remitted to the office of the Texas Comptroller of Public Accounts.

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The unclaimed period still begins on the original date the amount was owed to the missing payee.

PAYROLL CHECKS

For all employees, checks and notices of direct deposit will be delivered to the campus or department where the employee works. If the check or notice of direct deposit is not claimed by the employee within three business days, then the check or notice will be returned to the payroll department. The payroll department will determine whether the payee is still employed by the District, and if still employed, the reason for the payee's failure to collect the check or notice.

If an employee has not collected a payroll check or notice of direct deposit within seven workdays after issuance, the payroll office will mail the check or notice to the current address for the employee on file in the District's records, unless the employee has made other arrangements for the check or notice to be picked up from the payroll office.

If the employee has left the District, the payroll office is responsible for mailing the payroll check to the employee's forwarding address. If a forwarding address is not known, the payroll department will immediately attempt to locate the former employee, obtain a forwarding address, and mail the check to the forwarding address.

If payroll checks mailed to current or former employees are returned due to an invalid address, then the payroll department will attempt to contact the employee or former employee to obtain a valid mailing address. If the payroll department is unable to contact a current or former employee by telephone or by mail, then the payroll department will make another attempt to locate the employee or former employee by telephone and/or by mail every three months.

If a payroll check is not cashed within six months from the date it is issued, then the payroll department will contact the employee or former employee by telephone and/or by mail, and give the employee notice that the District will stop payment on the check in 30 days if the check is not cashed. If the payroll department is unable to deliver a paycheck to a current or former employee within 12 months from the date the wages were due and owing, or if a payroll check is not cashed within 12 months from the date issued then the check and the funds will be deemed to be unclaimed property, and will be reported to the Comptroller and the funds remitted, as required by law and this policy.

VENDOR CHECKS

All unclaimed accounts payable checks, other than payroll checks (vendor payments; employee reimbursements, etc.), will be returned to the business office within seven workdays after receipt by

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a campus or department, if unclaimed. The business office is responsible for tracking all accounts payable checks that are mailed and returned, or that are not cashed within 30 days. The business office will attempt to contact each payee for each returned or uncashed check to determine a correct mailing address or to notify the payee that the check has not been cashed. The business office will attempt to contact the payee for each returned check every three months, and will document in writing the attempted contact, the date, the means of contact attempted, and the result. As to each uncashed check, the business office will attempt to contact the payee every three months, and will document in writing the attempted contact, the dates, the means of contact attempted, and the result. No later than six months after the check was issued, if the business office has a valid mailing address for the payee, the business office will issue written notice that if the check is not cashed within six months from the date of issuance, the District will stop payment on the check, and that if the payee does not collect payment within three years from the date the check was issued that the funds will be sent to the Texas Comptroller, and reported as unclaimed funds.

All accounts payable items have a three-year unclaimed period. The Texas Property Code does not have an express provision that exempts "business to business" credits, but balances owed to current vendors should not be reported. The District should only report those vendors with which the District has not had any contact for three years.

CONTACTING  
EMPLOYEES OR  
VENDORS

Any positive contact the District may have with the payee restarts the unclaimed period from the date of that contact if the unclaimed property hasn't already been delivered to the Texas Comptroller's Office as of that date.

ESTABLISHING  
POSITIVE CONTACT

Mail not being returned to the District by the Post Office does not, by itself, qualify as contact with the payee.

Positive contact may be established by mail, e-mail, or by phone, but phone contact must be documented in writing with the date and time of the conversation. Positive contact includes:

- Letters, completed forms, or change of address notifications on file containing the employee's or vendor's dated signature.
- The employee's or vendor's cashing of a check written by the District.
- A payee-generated deposit or withdrawal to the payee's account with the District.

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FILING METHODS AND  
DEADLINES

The deadline for filing the unclaimed property report and remitting the property is November 1 of every year.

Unclaimed property should not be reported until it has reached the required unclaimed period, as of June 30 each year.

The District must hold property until the appropriate unclaimed period has run and include it in the next remittance to the state.

The unclaimed period is determined by the property type.

- Payroll checks—one year
- Vendor payments, reimbursements, etc.—three years

Property that is due November 1 may be remitted any time after the annual cut-off date of June 30.

In order to avoid delaying the efforts to locate the missing owner's payments, prompt filing of the unclaimed property report is crucial.

DELIVERY METHODS  
FOR FILING REPORT

Reports with ten or more records should be filed electronically. Texas uses the electronic reporting format developed by the National Association of Unclaimed Property Administrators (NAUPA). Files must be prepared in the NAUPA 2 record layout, regardless of the delivery method used.

The Texas Comptroller of Public Accounts Office requires the report be submitted in any of the delivery methods listed below:

- Internet
- Diskette
- CD Rom
- Magnetic Tape Cartridge (3480 or 3490)
- Magnetic Tape Reel (9-track)
- Form 53-105

The preferred method of payment to the Texas Comptroller of Public Accounts, if the District's annual unclaimed property liability is more than \$100,000, is a wire transfer.

[Refer to the Texas Comptroller of Public Accounts for detailed information on how to properly submit the wire transfer]

RETENTION OF  
RECORDS

The District is required to retain unclaimed property records for ten years after the property was reportable.

The District may be contacted by the State to verify previously reported information.

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CASH PURCHASES  
WITH AVAILABLE  
FUNDS

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

DEFINITIONS

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

PROPOSED  
CONTRACT

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

PETITION AND  
REFERENDUM

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

SUBMISSION TO  
ATTORNEY GENERAL

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



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

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

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

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