

## 1.8 BIDDING REQUIREMENTS AND THE LAW

### 1.8.1 STATE LAW

Bills passed by the 73rd Legislature in 1993 significantly changed the statutory purchasing requirements. The 74th Legislature in 1995 made certain modifications regarding the bid law as well. Specifically, under the law unless a school district adopts a more restrictive policy, districts must use competitive quotation procedures, according to Subchapter B of the Texas Education Code, if purchases of personal property are anticipated to be between \$10,000 and \$25,000 during a twelve-month period. The personal property dollar range is the one part of the law that affects districts to the greatest extent. A school district's local policy concerning competitive bidding or proposal requirements may be more restrictive according to the local board of trustees' discretion regarding fiscal management.

### 1.8.2 TEXAS EDUCATION CODE: PURCHASES, CONTRACTS

The following is a copy of the law from the Texas Education Code regarding purchases and contracts.

#### SUBCHAPTER B. PURCHASES; CONTRACTS

##### Sec. 44.031. PURCHASING CONTRACTS.

(a) Except as provided by this section, all school 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, of the following methods, that provides the best value to the district:

- (1) competitive bidding;
  - (2) competitive sealed proposals;
  - (3) a request for proposals;
  - (4) a catalogue purchase as provided by Subchapter B., Chapter 2157, Government Code;
  - (5) an interlocal contract; or
  - (6) a design/build contract.
- (b) In determining to whom to award a contract, the district may consider:
- (1) the purchase price;
  - (2) the reputation of the vendor and of the vendor's goods or services;
  - (3) the quality of the vendor's goods or services;
  - (4) the extent to which the goods or services meet the district's needs;
  - (5) the vendor's past relationship with the district;
  - (6) the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses;
  - (7) the total long-term cost to the district to acquire the vendor's goods or services; and
  - (8) any other relevant factor that a private business entity would consider in selecting a vendor.
- (c) The state auditor may audit purchases of goods or services by the district.
- (d) The district may adopt rules and procedures for the acquisition of goods or services.

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

(f) This section does not apply to fees received for professional services rendered, including architect's fees, attorney's fees, and fees for fiscal agents.

(g) Notice of the time by when and place where the bids or proposals will be received shall be published in the county in which the district's central administrative office is located, once a week for a least two weeks before the date set for awarding the contract, except that on contracts involving less than \$25,000, the advertising may be limited to two successive issues of any newspaper published in the county in which the district's central administrative office is located. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the district's central administrative office is located.

(h) If school equipment is destroyed or severely damaged, and the board of trustees determines that the 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 the equipment may be made without competitive bidding as otherwise required by this section.

(i) The board of trustees of a school district may acquire computers and computer-related equipment including computer software through the General Services Commission under contracts entered into in accordance with Chapter 2157, Government Code. Before issuing an invitation for bids, the commission shall consult with the agency concerning the computer and computer-related equipment needs of school districts. To the extent possible the resulting contract shall provide for such needs.

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

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

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

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

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

(a) In this section:

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

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

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

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

(e) The final conviction of a person other than a trustee of a school district for an offense under Subsection (b) or (c) results in the immediate removal from office or employment of that person. A trustee who is convicted of an offense under this section is considered to have committed official misconduct for purposes of Chapter 87, Local Government Code, and is subject to removal as provided by that chapter and Section 24, Article V, Texas Constitution. For four years after the date of the final conviction, the removed person is ineligible to be a candidate for or to be appointed or elected to a public office in this state, is ineligible to be employed by or act as an agent for the state or a political subdivision of the state, and is ineligible to receive any compensation through a contract with the state or a political subdivision of the state. This subsection does not prohibit the payment of retirement benefits to the removed person or the payment of workers' compensation benefits to the removed person for an injury that occurred before the commission of the offense for which the person was removed. This subsection does not make a person ineligible for an office for which the federal or state constitution prescribes exclusive eligibility requirements.

(f) A court may enjoin performance of a contract made in violation of Section 44.031(a) or (b). A county attorney, a district attorney, a criminal district attorney, or a citizen of the county in which the school district is located may bring an action for an injunction. A citizen who prevails in an action brought under this subsection is entitled to reasonable attorney's fees as approved by the court.

**Sec. 44.033. PURCHASES OF PERSONAL PROPERTY VALUED BETWEEN \$10,000 AND \$25,000.**

(a) A school district shall purchase personal property as provided by this section if the value of the items is at least \$10,000 but less than \$25,000, in the aggregate, for a 12-month period. In the alternative, the school district may purchase those items in accordance with Sections 44.031(a) and (b).

(b) For each 12-month period, the district shall publish 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 under this section and soliciting the names, addresses, and telephone numbers of vendors that are interested in supplying any of the categories to the district. 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.

(c) Before the district makes a purchase from a category of personal property, the district 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 on the list. Whenever possible, telephone quotes should be confirmed in writing by mail or facsimile. The bidding records must be retained with the school's competitive bidding records and are subject to audit. The purchase shall be made from the lowest responsible bidder.

(d) Purchases of produce and fuel shall be made in accordance with this section.

**Sec. 44.034. NOTIFICATION OF CRIMINAL HISTORY OF CONTRACTOR.**

(a) A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.

(b) A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by

Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for service performed before the termination of the contract.

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

[Sections 44.035 to 44.050 reserved for expansion.]

In regard to all portions of Subchapter B, Purchases and Contracts, the following items must be recognized and adhered to by all district personnel in the purchasing process:

1. An advertisement in a newspaper is required once a year, specifying the categories of property to be purchased, and soliciting the names, addresses, and telephone numbers of vendors interested in supplying the categories to the school district. The Bid Coordinator will create the list of approved vendors.
2. Price quotes must be reduced to writing and kept on file for all categories of items purchased, including produce and motor fuel.
3. School districts are required to obtain at least **three quotes** from applicable vendors or every vendor if fewer than three vendors submit their names for a vendor list.
4. Price quotes are effective for the period quoted by the vendor. Generally, vendors are approved from September through August of the next year.
5. Price quote records are subject to audit and must be kept on file.
6. Purchases must be made from the bidder or proposer whose bid or proposal represents the **best value** for the district. Consideration can be given to the bidder's location (the freight charges on any purchase from a vendor in another state will be considerably higher than if we purchase locally or in this area), price of the property to be purchased, reputation of the vendor, past experience with the vendor, quality of the vendor's product, extent to which the goods or services meet the district's needs, and any other relevant factor that a private business entity would consider in selecting a vendor.
7. The twelve-month period for determining applicability of competitive quotation procedures is established by the local school district and may vary from the fiscal year and may vary by category of products .
8. All maintenance, construction, renovation and repair contracts valued at \$25,000 or more must be submitted to the competitive bidding or proposal process.
9. All contracts for school buses valued at \$20,000 or more, for the lease (rental) or lease-purchase of one or more school buses, are required to be made under competitive bidding or proposal procedures.
10. Competitive Bid or Proposal Purchasing Law Limit Summary
  - \$10,000            Federally Funded Child Nutrition Programs

- \$20,000 School Bus Lease/Lease Purchase
- \$25,000 Public Works Contracts/Real Property
- \$25,000 Personal Property
- \$25,000 Federally Funded Services Contracts (except Child Nutrition)
- \$25,000 Nonprofessional services
- \$25,000 Energy Management Systems

11. Competitive Quotes Summary

- \$10,000 - \$25,000 Personal Property

12. Competitive Proposal Summary

- \$25,000 Federally Funded Services Contracts (except Child Nutrition)

The following pages are copies of CH (LEGAL) and CH (LOCAL), the most current DISD Board Policy regarding purchasing procedures for district employees.

**DICKINSON ISD  
084901**

**PURCHASING AND ACQUISITION**

**CH  
(LEGAL)**

**PURCHASES  
VALUED AT OR  
ABOVE \$25,000**

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 one of the following methods that provides the best value for the District:

1. Competitive bidding[SEE ALSO CVA].
2. Competitive sealed proposals [SEE ALSO CVB].
3. A request for proposals.
4. A catalog purchase as provided by Government Code Chapter 2157, Subchapter B.
5. An interlocal contract.

*Education Code 44.031(a)*

NOTE: Regarding construction of school facilities, see CVC for design/build contracts; CVD, CVE for contracts using a construction manager; CVF for job order contracts for minor repairs/alterations.

**FACTORS**

In awarding a contract, the District may 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. Any other relevant factor that a private business entity would consider in selecting a vendor.

*Education Code 44.031(b)*

NOTICE  
PUBLICATION

Notice of when and where bids or proposals or the responses to a request for qualifications will be received 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 deadline for receiving bids, proposals or responses to a request for qualifications. Where the contract involves less than \$25,000, such advertising shall be limited to two successive issues of any newspaper published in the county where the District's central administrative office is located. *Education Code 44.031(g)*

PERSONAL  
PROPERTY  
PURCHASES  
VALUED AT

\$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, or produce or fuel valued at any amount, 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)(d)*

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. *Education Code 44.033(b)(c)*

PROFESSIONAL

The purchasing requirements of Education Code Section

SERVICES  
EXCEPTION

44.031 do not apply to professional services including the services rendered by architects, fiscal agents or attorneys. *Education Code 44.031(f)*

Competitive bids shall not be solicited for professional services of any licensed architect, physician, certified public accountant, land surveyor, professional engineer or a state-certified or state-licensed real estate appraiser. *Gov't Code 2254.002, 2254.003*

EMERGENCY  
DAMAGE OR  
DESTRUCTION

Contracts for the repair or replacement of school equipment that has been destroyed or severely damaged may be made without resort to competitive bidding or any of the other purchasing requirements of Education Code 44.031 if the Board determines that the time delay posed by adhering to those requirements would prevent or substantially impair the conduct of classes or other essential school activities. *Education Code 44.031(h)*

COMPUTERS

The Board may acquire computers and computer-related equipment, including computer software, through the General Services Commission (GSC) under contracts with the GSC in accordance with Gov't Code Chapter 2157. *Education Code 44.031(i)*

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.

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 the 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 (LEGAL)]

*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. See *Atty. Gen. Op. DM-347 (1995)*. *Education Code 44.031 44.033*

MULTI-YEAR  
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 multi-year 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  
BIDDERS

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*

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 GSC 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 GSC, to perform some of its purchasing functions. *Gov't Code 791.001, 791.011*

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 state agency, including the GSC, 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.

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

*Gov't Code 791.025(b)(c)*

STATE  
PURCHASING  
PROGRAM

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

1. The extension of state contract prices to the District when the GSC considers it feasible.
2. Solicitation of bids on items desired by the District if the solicitation is considered feasible by the GSC and is desired by the District.

3. Provision of information and technical assistance to the District about the purchasing program.

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

Local Gov't Code s72.082

DISTRICT  
REQUIREMENTS

The District may participate in the purchasing program by filing with the GSC a resolution adopted by the Board requesting that the District be allowed to participate on a voluntary basis, to the extent the GSC 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 GSC under contract(s) and for payment directly to the vendor.
  - b. Electronically sending purchase orders directly to vendors and electronically sending the GSC 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 GSC's electronic procurement marketplace, as described in Gov't Code Chapter 2177.

*Local Gov't Code 271.083*

GENERAL  
SERVICES  
ADMINISTRATION

If the District purchases goods or services available under federal supply schedules of the US General Services Administration, it satisfies any competitive bidding requirement for that purchase. *Local Gov't Code 271.103*

COOPERATIVE

The District may participate in a cooperative purchasing pro-

PURCHASING PROGRAM

gram 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

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 CONSERVATION MEASURES

The District may contract for energy conservation measures using a request for proposal process. See CL (LEGAL) for requirements pertaining to such contracts. *Education Code 44.9901*

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 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*

#### BUS LEASES

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

#### CRIMINAL HISTORY

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

The District may obtain criminal history record information that relates to an employee or applicant for employment by a person that contracts with the District to provide services if:

1. The employee or applicant has or will have continuing duties related to the contracted services.
2. The duties are or will be performed on school property or at another location where students are regularly present.

*Education Code 22.083(b)*

**DICKINSON ISD  
084901**

**PURCHASING AND ACQUISITION**

**CH  
(LOCAL)**

|                                      |  |
|--------------------------------------|--|
| PURCHASING<br>AUTHORITY              | <p>The Superintendent or designee shall have the authority to determine the method of purchasing to be used, in accordance with CH (LEGAL), and to make budgeted purchases unless:</p> <ol style="list-style-type: none"><li>1. State law requires the Board to make or approve a purchase.</li><li>2. The purchase costs or aggregates to a cost of at least \$10,000, an amount that shall require Board approval.</li></ol>                     |
| EMPLOYEE<br>RESPONSIBILITY           | <p>Employees are responsible for adhering to policy without exception in all purchases where payment is made from school funds. Failure to comply shall constitute insubordination.</p>  |
| PURCHASE OF<br>ATHLETIC<br>EQUIPMENT | <p>In the purchase of athletic equipment, the protection of the student shall take precedence over the cost of the item. The athletic director is authorized to make purchases on this basis but also in compliance with purchasing practices and policies for other departments.</p>  |
| QUOTATIONS                           | <p>No quotations or verbal approval shall be required for purchases of \$1,000 or less. Verbal approval from the Deputy Superintendent shall be required for purchases of more than \$1,000 but less than \$5,000. For purchases in excess of \$5,000 but less than \$10,000, three quotations are required as well as written approval by Deputy Superintendent.</p>  |
| COMPETITIVE<br>BIDDING               | <p>If competitive bidding is chosen as the purchasing method, the Superintendent or designee shall prepare bid specifications. All bids shall be submitted in sealed envelopes, plainly marked with the name of the bidder and the time of opening. All bidders shall be invited to attend the bid opening. Any bid may be withdrawn prior too the scheduled time for opening. Bids received after the specified time shall not be considered.</p> |
| BIDS FOR<br>SUPPLIES                 | <p>Bids for supplying school lunchrooms in the District with milk, bread, ice cream and other food products and supplies shall be taken each year and contracts shall be awarded to the best bidder considering both price and quality of products.</p>  |
| CONCESSIONS                          | <p>All concessions at all regularly scheduled athletic contests in which school teams participate shall be awarded to a concessionaire for a period of two years after public bids have been received and the best bid has been determined. Receipts from these concession contracts shall be deposited in the athletic fund.</p>  |
| ACCEPTANCE<br>OF LOW BID             | <p>Statute does not require acceptance of the low bid and the District is not required to purchase from the low bidder at the sacrifice of desired quality; when quality is adequate, the purchase shall be</p>  |

made from the low bidder. Any decision to disqualify the low bidder because of poor quality shall be based on sound and substantial reason.

All bidding on items of \$10,000 or more shall be conducted through the business office unless specific authority is granted to do otherwise.

**SUBMITTING AND  
OPENING BIDS**

Each bidder shall be instructed that bids shall be sealed and plainly marked as a "Bid Proposal for \_\_\_\_\_" on the outside of the envelope. No bid shall be opened prior to the time of the stipulated public opening. Bids received after others have been opened shall be returned unopened. Bids shall be opened in public only at the time specified. All bidders and other interested persons shall be invited to attend the bid opening. A tabulation of the bids shall be furnished each bidder.

**RETENTION OF  
BIDS**

A file of all bids shall be kept for a period of three years and shall be open for public inspection.

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 items to be purchased. All proposals shall be submitted in sealed envelopes, plainly marked with the name of the preparers 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 for 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.

## **1.9 ADVERTISING FOR BIDS FOR DISTRICT VENDOR LISTS**

- 1.9.1 Purchases of items valued at \$10,000 or greater, except as noted under emergency purchases, shall be advertised in at least one local newspaper.
- 1.9.2 The intent to make such purchases shall be advertised as required by state law.
- 1.9.3 Purchases of \$10,000 up to \$24,999 shall be advertised in at least one local newspaper on two successive days.
- 1.9.4 Purchases amounting to \$25,000 or more shall be advertised in at least one local newspaper once a week for two consecutive weeks.
- 1.9.5 A minimum period of ten calendar days must lapse between the date of last advertisement requesting bids and the date of the bid opening.
- 1.9.6 Awards for advertised sealed bids shall be made as indicated under the approval/awarding of bids.

## **1.10 APPROVED DISTRICT VENDOR LISTS**

- 1.10.1 Subsection (b) of Sec. 44.033, Purchases of Personal Property of the Texas Education Code, requires a vendor bid list be established by districts. In compliance with the bid laws, purchases are to be made only from those vendors responding and approved by the DISD Board of Trustees as designated on the vendor list. Refer to the Approved DISD Vendor Lists in the principal's or secretary's office. All DISD employees are to adhere to these instructions.
- 1.10.2 Subsection (c) of Sec. 44.033 specifically instructs that price quotations be requested in written or verbal form from at least three vendors from the Vendor List. A catalog listed price qualifies as a written quote (with discount, if applicable) as per Tom Canby of the Texas Education Agency. Therefore, catalog prices qualify as a price quotation.
- 1.10.3 Approved DISD vendor lists are available for DISD employees to use when making a purchase. Each campus secretary should have an area set up with DISD vendor lists, catalogs from approved vendors, requisition forms and Best Buy/Best Purchase or Sole Source Verification forms. Campus secretaries/designees should be certain catalogs are updated each year.
- 1.10.4 Comparison shopping is required. Find three (3) vendors with the best prices after considering the base price and discount. List the vendor



with the best price less discount and net cost on the purchase order along with stock number, quantity, description, unit price and total price. (If not the best price, reason should be documented.) Phone bid verifications or catalog prices after discounts as recorded on the Best Purchase Price Verification form will be accepted. Remember this process should include at least three (3) catalog bids or verbal phone bids. All phone bids should be received in writing, if possible. Price verifications will be audited and must be kept for five years.

Multiple items may be grouped for the best total price and be purchased from one vendor. Combine the five (5) highest value items and select the vendor with the best price total for all five items combined and include your entire order form that vendor on a purchase order.

- 1.10.5 All purchase orders must have a completed Best Buy/Best Purchase or Sole Source Verification form attached with these three (3) vendors and prices. If the purchase qualifies as a sole source then state in "Comment" section. Make sure the form is signed and dated. Secretaries are not to enter requisitions without three (3) prices included on the form. Instead, return to requestor for completion. Also, please note attached rule card law on sole source purchases. Sole source purchases are very restrictive.
- 1.10.6 If the vendor has a reference number, include it in the text window.
- 1.10.7 Deduct any discounts from the final total. Double check for correctness.
- 1.10.8 Telephone orders are not to be placed without prior clearance. Should a quick turnaround be required, telephone the Accounts Payable department with the requisition number. After approval, the purchase order will be faxed.
- 1.10.9 Blanket purchase orders will be issued by some departments for repetitive small purchases from the same approved vendor. Blanket purchase orders will be limited to a reasonable daily purchase amount. No one item or group of items may exceed the daily limit. Any item or group of items costing more than the daily limit should be submitted on a separate purchase order. Blanket orders are not processed through the Pentamation System. Allow a maximum of three authorized employees to purchase. Blanket purchase orders expire August 31. Blanket purchase orders are limited and must be approved by the Business Manager. They are not to be used to circumvent normal purchasing procedures.

1.10.10 **Do not bypass the above procedure by making a purchase, paying cash and then asking for reimbursement.** Reimbursements will be made only if the purchase is an emergency and is pre-approved by the budget manager. Reimbursement will not be made for taxes paid. It is not legal for school districts to pay certain taxes.

#### 1.10.11 Vendor List Categories

The following is a partial list of bid-related categories to be used as a guide to determine bidding requirements. The district shall add to this list as aggregate dollars of products exceed the bid limit. This list is non inclusive. Note: Items in the supplies and materials categories or within each equipment/nonconsumable category listed below must be considered as an aggregate purchase, if available from a single vendor; however, bids may be split into seasonal purchases.

#### **Category/Subcategories**

Athletics, Athletic Equipment/Nonconsumables

Athletic/Trainer Supplies

Sports and Supplies (i.e., baseball, basketball, cross country, football, golf, soccer, swim, tennis, track, volleyball)

Uniforms

Custodial

Chemicals/Janitorial Supplies/Paper Products/Can Liners

Contracted Services

Custodial Equipment/Nonconsumables

Food Service

Bread

Dry Goods, Canned and Frozen Foods

Fresh Meat and Poultry

Milk

Non-food Supplies

Food Service Equipment/Nonconsumables

Instructional/General - Capital Equipment

Art Equipment

Audio Visual Equipment

Band Instruments

Computers/Hardware and Software

Copy Machines

Instructional Furniture

- Library Furniture
- Office Equipment
- Office Furniture
- Playground Equipment
- Science Equipment
- Telephone Equipment
- Instructional Equipment
- Multimedia/Tech Equipment

Instructional/General - Supplies

- Art Supplies
- Dictionaries
- Duplicating Paper
- Industrial Gases
- Instructional Teaching Aids/Supplies
- Library Books/Periodicals/Filmstrips/Videos/Cassettes
- Maps and Globes
- Nursing Supplies
- Office Supplies
  - Physical Education Supplies
  - Science Supplies
  - Drill/Dance Supplies

Maintenance

- Contracted Services
- Electrical Supplies/Parts
- Freon
- Ground Maintenance Supplies (Fertilizer, Mulch, etc.)
- HVAC Supplies/Parts
- Lumber and Related Building Materials
- Paint
- Plumbing Supplies/Parts
- Roofing Supplies
- Uniform and Dust Mop Rental

Maintenance Equipment/Nonconsumables

Transportation

- Automotive Parts and Supplies
- Lubricants/Oils
- Fuel

Transportation Equipment/Nonconsumables

- Buses (Lease/Rent/Lease Purchase/Buy)
- Capital Equipment
- Storage Tanks

## Vehicles, Trucks and Vans

Miscellaneous

Bank Depository

Printed Forms

### 1.10.12 Vendor Contract With Instructional/Support Personnel

1. Vendors and their representatives are strictly prohibited from contacting, either in person or by telephone, instructional or maintenance personnel during school/work hours without approval from the principal or designee.
2. Only salesmen and solicitors who are cleared by the principal or designee shall be permitted to contact teaching personnel in the district.
3. Vendors calling on support personnel shall first check with the principal or supervisor for visitation approval.

No orders are to be given to salesmen on site. Orders must be input as a requisition and processed for approval through the Pentamation System.

No phone orders are to be placed.

4. Vendors are prohibited from offering gifts or favors that could influence or that could be construed to influence purchasing decisions. Employees are to refuse any such offers and report such offers to their principal or department head. The principal or department head shall immediately report any such incidents to the Business Manager.
5. School district officials and employees cannot accept anything of value from a vendor, such as personal gifts or gratuities. Although such practices are legitimate and generally accepted in the private sector, both the giving and receiving of such "hospitality" constitutes the Class A misdemeanor offense of "Gifts to a Public Servant" if the recipient is a government employee who exercises some influence in the purchasing process of the governmental body.

## 1.11 OPENING SEALED BIDS

- 1.11.1 All sealed bids shall be received in the Bid Coordinator's office where they will be opened publicly on the date and at the time advertised. Bids shall be opened by the Business Manager or designated representative.
- 1.11.2 The closing time for sealed bids is final. Bids received after the closing time shall not be opened or considered.
- 1.11.3 Submitted bids are final and may not be altered. Vendors may, however, submit sealed alternate bids before the closing time to substitute prices on their formal bid, in which case only the substitute prices will be considered.
- 1.11.4 No bid can be withdrawn after opening without approval of the Business Manager based upon a written, acceptable reason.
- 1.11.5 Withdrawal of a bid or failure to honor a bid may result in the deletion of the company from future bid requests.
- 1.11.6 Bids will not be considered unless they are manually signed by an authorized representative of the company.
- 1.11.7 All accepted bids will be tabulated and awarded as provided under Approval/Awarding of Bids.
- 1.11.8 After the bids have been opened and tabulated, they will be available for those interested to copy and study. They shall not, however, be removed from the Bid Coordinator's office.
- 1.11.9 If no acceptable bids are received, the proposed acquisition will be re-advertised seeking an acceptable bid.
- 1.11.10 The district reserves the right to reject any and all bids. Faxed bids are not acceptable.

## **1.12 APPROVAL/AWARDING OF BIDS**

- 1.12.1 Approval for all capital expenditures, supplies, and services valued at \$10,000 or over shall be made by the Board of Trustees.
- 1.12.2 Additional local requirements (Policy CH) are to be followed when purchasing. [See Policy CH "Quotations" page 25.]
- 1.12.3 If circumstances warrant, Board consideration and approval of any purchase may be requested.

- 1.12.4 Proposed emergency purchases of \$10,000 or more shall be submitted to the Board for approval prior to making any commitments as per Board Policy.
- 1.12.5 The best bid submitted by a qualified bidder that meets the requirements of the district may be recommended for purchase.
- 1.12.6 The user department shall be responsible for making recommendations for purchase of bid items. Whenever the lowest bid price is not recommended, the user department shall provide written justification for such recommendations.
- 1.12.7 The recommendations for purchase shall include an assessment of these considerations: individual price, total price of items, life cycle cost, delivery dates, terms, location of vendor, transportation charges, good business practices and conformance to appropriate local, state and federal ordinances, statutes and regulations.
- 1.12.8 Upon receipt of recommendations from the user department, the Business Manager shall present all recommendations for purchase to the Superintendent of Schools and the Board of Trustees.
- 1.12.9 Bids accepted by the Board of Trustees may be extended for additional purchases without additional Board consideration provided that:
- the prices, terms and conditions of the original bid remain firm, and
  - the extended bids do not total more than the original award, the original bid had provisions for additional purchases, and all legal requirements are fulfilled.
- 1.12.10 In all cases where bidding is required and where two or more bidders submit the lowest and best bids in connection with a proposed contract and these bids are identical in both amount and nature, the district may enter into a contract with only one of the bidders and reject all other 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.

1.12.11 Multiple vending bids may be awarded.