
	<p>Each ESC shall use money distributed to it from the Foundation School Program under Education Code 8.121 to provide core services required under Education Code 8.051 or to pay for necessary administrative and operational expenses of the ESC related to the provision of those services. <i>Education Code 8.121(c)</i></p>
Acquisition of Property	<p>Subject to approval by the board, the ESC may purchase or lease property or acquire property through lease-purchase and may incur debts for that purpose. [See CHA] Any ESC purchase, lease, or lease-purchase that involves real property must be approved by both the board and the Commissioner. [See CHE] <i>Education Code 8.055</i></p>
Financing Personal Property Purchases	<p>The board may execute, perform, and make payments under a contract with any person for the use, purchase, or other acquisition of any personal property, or the financing thereof, in accordance with the requirements of the Public Property Finance Act. The board may also contract for materials and labor incident to the installation of personal property under that Act. <i>Local Gov't Code 271.005</i></p>
Lease of Property to a Governmental Entity	<p>To promote a public purpose of the ESC, the ESC may:</p> <ol style="list-style-type: none">1. Lease property owned by the ESC to another political subdivision or an agency of the state or federal government; or2. Make an agreement to provide office space in property owned by the ESC to the other political subdivision or agency. <p>The ESC:</p> <ol style="list-style-type: none">1. Shall determine the terms of the lease or agreement so as to promote and maintain the public purpose;2. May provide for the lease of the property or provision of the office space at less than fair market value; and3. Is not required to comply with any competitive purchasing procedure or any notice and publication requirement imposed by this chapter or other law. <p><i>Local Gov't Code 272.005</i></p>
Public Contracts General Principles	<p>An ESC is required to act faithfully and in the exercise of its best judgment so as to best serve the interests of the center. When not specifically required by statute to competitively bid, the board may devise its own bidding procedures, so long as the procedure is consistent with good business management. See <u><i>Stapleton v. Trussell</i></u>, <i>Tex. Civ. App.</i>, 196 S.W. 269 (<i>Tex. Civ. App.—Fort Worth 1917</i>); <u><i>Patten v. Concho County</i></u>, 196 S.W.2d 833, 835 (1946);</p>

Texas Roofing v. Whiteside, 385 S.W.2d 699 (Tex. Civ. App.—Amarillo 1964, writ ref'd n.r.e.); *Atty. Gen. Op. DM-347 (1995)*

Note: The ESC should consider any applicable conflict of interest rules when selecting a vendor or otherwise awarding a contract. [See BBFA]

Required Contract Provision

An ESC may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it does not boycott Israel and will not during the term of the contract. *Gov't Code 2270.002*

“Company” means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. *Gov't Code 808.001(2)*

Exemption from Taxation

An ESC and its employees are subject to or exempt from taxation in the same manner as a school district and school district employees. [See also CFC] *Education Code 8.005*

Disclosure of Interested Parties

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

A contract does not require an action or vote of the board if the board has legal authority to delegate to its staff the authority to execute the contract, the board has delegated to its staff this authority, and the board does not participate in the selection of the business entity with which the contract is entered into. *1 TAC 45.6(c)*

Exclusions

The disclosure requirement does not apply to a contract with:

1. A publicly traded business entity, including a wholly owned subsidiary of the entity;
2. An electric utility, as defined by Utilities Code 31.002; or
3. A gas utility, as defined by Utilities Code 121.001.

Gov't Code 2252.908(c)(4)–(6)

Required Form

The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission (TEC) that includes a list of each interested party for the contract of which the contracting

	<p>business entity is aware; and a written, unsworn declaration subscribed by the authorized agent of the contracting business entity as true under penalty of perjury that is in substantially the form set out in Government Code 2252.908(e)(2). <i>Gov't Code 2252.908(e); 1 TAC 46.5(a)</i></p> <p>The certification of filing and the completed disclosure of interested parties form generated by TEC's electronic filing application must be printed, signed by an authorized agent of the contracting business entity, and submitted to the ESC that is the party to the contract for which the form is being filed. <i>1 TAC 46.5(b)</i></p>
Deadline	<p>An ESC that receives a completed disclosure of interested parties form and certification of filing shall notify TEC, in an electronic format prescribed by TEC, of the receipt of those documents not later than the 30th day after the date the board receives the disclosure. <i>1 TAC 46.5(c); Gov't Code 2252.908(f)</i></p>
Contract Changes	<p>The disclosure requirements do not apply to a change made to an existing contract, including an amendment, change order, or extension of a contract except as set out below.</p> <p>The disclosure requirements apply to a change made to an existing contract, including an amendment, change order, or extension of a contract if:</p> <ol style="list-style-type: none">1. A disclosure of interested parties form was not filed for the existing contract; and either the changed contract requires an action or vote by the board or the value of the changed contract is at least \$1 million; or2. The business entity submitted a disclosure of interested parties form to the ESC that is a party to the existing contract; and either there is a change to the disclosure; or the changed contract requires an action or vote by the board; or the value of the changed contract is at least \$1 million greater than the value of the existing contract. <p><i>1 TAC 46.4</i></p>
Definitions	<p>"Contract" means a contract between a board and a business entity at the time it is voted on by the board or at the time it binds the board, whichever is earlier, and includes an amended, extended, or renewed contract. <i>1 TAC 46.3(a)</i></p> <p>"Business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. The term includes an entity through which business is conducted with an ESC, regardless of whether the entity is a for-profit or nonprofit entity, and does not include a govern-</p>

mental entity or state agency. *Gov't Code 2252.908(a)(1); 1 TAC 46.3(b)*

"Interested party" means a person who has a controlling interest in a business entity with whom an ESC contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity. *Gov't Code 2252.908(a)(3); 1 TAC 46.3(d), (e)*

"Controlling interest" means:

1. An ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds ten percent;
2. Membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than ten members; or
3. Service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. This subsection does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.

1 TAC 46.3(c)

"Signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing, including an electronic signature. *1 TAC 46.3(f)*

"Value" of a contract is based on the amount of consideration received or to be received by a business entity from a board under the contract. *1 TAC 46.3(g)*

[See BBFA for additional conflict of interest disclosures]

**Procuring
Professional
Services**

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. [See also CU] *Gov't Code 2254.002, 2254.003*

**Automated
Information System**

An ESC 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 controller to obtain the best value for the state, including a request for offers method. An ESC that purchases an item using a method

listed above satisfies any state law requiring the ESC to seek competitive bids for the purchase of the item. *Gov't Code 2157.006; 34 TAC 20.391*

**Interlocal
Agreements**

To increase efficiency and effectiveness, the ESC may contract or agree with other local governments and with state agencies, including the comptroller, to perform some of its purchasing functions. Interlocal contracts must be authorized by the ESC board and meet other requirements specified in the Interlocal Cooperation Act. *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 and may have a specified term of years.

Gov't Code 791.011(d)–(f), (i)

The ESC may agree with another local government, including a nonprofit corporation that is created and operated to provide one or more governmental functions and services, or with the state or a state agency, including the comptroller, to purchase goods and services reasonably required for the installation, operation, or maintenance of the goods. Such an agreement may not, however, apply to services provided by firefighters, police officers, or emergency medical personnel.

An ESC 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 ESC by the comptroller shall include:

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

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

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

Local Gov't Code 271.082

ESC Requirements

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

1. Designate an official to act for the ESC in all matters relating to the program, including the purchase of items from the vendor under any contract;
2. Direct the decisions of its representative;
3. Be responsible for:
 - a. Submitting requisitions to the commission under contract(s) and for payment directly to the vendor; and
 - b. Electronically sending purchase orders directly to vendors, or complying with procedures governing a reverse auction purchase, and electronically sending the comptroller reports on actual purchases; and
4. Be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.

Competitive Bids

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 ESC 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

Reverse Auction

An ESC 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 ESC and fair to vendors. *Local Gov't Code 271.906(b)*

Reverse auction procedure means:

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

Gov't Code 2155.062(d)

**Multiple Award
Contract Schedule**

The comptroller shall develop a schedule of multiple award contracts that have been previously awarded using a competitive process by the federal government or any other governmental entity in any state. *Gov't Code 2155.502*

An ESC may purchase goods or services directly from a vendor under a contract listed on a schedule. An ESC contracting for the purchase of an automated information system under a contract listed on a schedule shall comply with Government Code 2157.068(e-1) (regarding purchase of information technology commodity items) [see Automated Information System, above]. An authorized purchase satisfies any requirement of state law relating to competitive bids or proposals.

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

Gov't Code 2155.504

**Cooperative
Purchasing Program**

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

1. Designate a person to act on behalf of the ESC 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; and
3. Be responsible for the vendor's compliance.

If the ESC 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)

**Foreign Dairy
Products**

The ESC may not purchase milk, cream, butter, or cheese, or a product consisting largely of one or more of these items that has been imported from outside the United States. This restriction does not apply to the purchase of milk powder if domestic milk powder is not readily available in the normal course of business. *Health and Safety Code 435.021*

**Commitment of
Current Revenue**

A contract for the acquisition, including lease, of real or personal property is a commitment of the ESC'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

Criminal History

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

Education Code 22.083(b)(2) [See also DBAA]