

<b>Applicable Law</b>	<p>The provisions of Education Code Chapter 44, Subchapter B, relating to the purchase of goods and services under contract by a school district apply to the purchase of goods and services under contract by a junior college district.</p> <p>To the extent of any conflict, the provisions of Chapter 44, Subchapter B prevail over any other law relating to the purchase of goods and services by a junior college district.</p> <p><i>Education Code 44.0311(a), 130.010</i></p>
Exception	<p>Education Code Chapter 44, Subchapter B does not apply to a purchase, acquisition, or license of library goods and services for a library operated as a part of a junior college district. "Library goods and services" has the meaning assigned by Education Code 130.0101(a). [See EDAA] <i>Education Code 44.0311(c)</i></p> <hr/> <p><b>Note:</b> For information on purchases using federal funds, see CAAB.</p> <hr/>
<b>Board Authority</b>	<p>The board of trustees of the district may adopt rules and procedures for the acquisition of goods and services. <i>Education Code 44.031(d)</i></p>
Delegation of Authority	<p>The board of trustees of the district may, as appropriate, delegate its authority under Education Code Chapter 44, Subchapter B regarding an action authorized or required by Chapter 44, Subchapter B to be taken by a college district to a designated person, representative, or committee.</p> <p>The board may not delegate the authority to act regarding an action authorized or required by Education Code Chapter 44, Subchapter B to be taken by the board.</p> <p><i>Education Code 44.0312(a)–(b)</i></p>
<i>Disaster Exception</i>	<p>Notwithstanding any other provision of the Education Code, in the event of a catastrophe, emergency, or natural disaster affecting a college district, the board of trustees of the district may delegate to the college chief executive officer or designated person the authority to contract for the replacement, construction, or repair of college district equipment or facilities under Education Code Chapter 44, Subchapter B if emergency replacement, construction, or repair is necessary for the health and safety of district students and staff.</p> <p><i>Education Code 44.0312(c)</i></p>
<b>Contract with Another Agency</b>	<p>Except as provided by Government Code 771.003, an agency, including a junior college district, may agree or contract with another</p>

agency for the provision of necessary and authorized services and resources. *Gov't Code 771.003(a)*

**Purchases Valued at  
or Above \$50,000**

Except as provided by Education Code Chapter 44, Subchapter B, all college district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period, shall be made by the method that provides the best value for the district:

1. Competitive bidding for services other than construction services.
2. Competitive sealed proposals for services other than construction services.
3. A request for proposals, for services other than construction services.
4. An interlocal contract.
5. The reverse auction procedure as defined by Government Code 2155.062(d).
6. The formation of a political subdivision corporation under Local Government Code 304.001.

*Education Code 44.031(a)*

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**Note:** Regarding construction of school facilities, see CM generally; CMA for competitive bidding; CMB for competitive sealed proposals; CMC and CMD for contracts using a construction manager; CME for design/build contracts; and CMF for job-order contracts for minor repairs/alterations.

Regarding notice to the Legislative Budget Board (LBB) about contracts, see GGC.

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Factors

Except as provided by Education Code Chapter 44, Subchapter B, in determining to whom to award a contract, the district shall consider:

1. The 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 and rules relating to historically underutilized businesses.
7. The total long-term cost to the district to acquire the goods or services.
8. For a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state.
9. Any other relevant factor specifically listed in the request for bids or proposals.

*Education Code 44.031(b)*

In awarding a contract by competitive sealed bid under Education Code 44.031, a college 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 provision does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. 153.

*Education Code 44.031(b-1)*

The factors listed above are the only criteria that may be considered by the college district in its decision to award a contract. The college district may apply one, some, or all of the criteria, but it may not completely ignore them. *R.G.V. Vending v. Weslaco Indep. Sch. Dist.*, 995 S.W.2d 897 (Tex. App.—Corpus Christi 1999, no pet.).

**Out-of-State Bidder**

A governmental entity, including a college district, may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the amount by which a resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located, or the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing relating to the contract will be performed.

This requirement does not apply to a contract involving federal funds. A governmental entity shall use the information published by the comptroller in the Texas Register in evaluating the bids of a nonresident bidder.

*Gov't Code 2252.001-.004*

**Contracts Valued at  
or Above \$1 Million**

This section applies to an entity that is not a governmental body that executes a contract with a governmental body that:

1. Has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the governmental body; or
2. Results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the governmental body in a fiscal year of the governmental body.

*Gov't Code 552.371(a)*

**Contract  
Requirements**

A contract described above must require a contracting entity to:

1. Preserve all contracting information related to the contract as provided by the records retention requirements applicable to the governmental body for the duration of the contract;
2. Promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the governmental body; and
3. On completion of the contract, either:
  - a. Provide at no cost to the governmental body all contracting information related to the contract that is in the custody or possession of the entity; or
  - b. Preserve the contracting information related to the contract as provided by the records retention requirements applicable to the governmental body.

*Gov't Code 552.372(a)*

**Acknowledgement  
of PIA  
Requirements**

Unless Government Code 552.374(c) applies, a bid for a contract described above and the contract must include the following statement: "The requirements of Subchapter J, Chapter 552, Government Code, may apply to this (include "bid" or "contract" as applicable) and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter." *Gov't Code 552.372(b)*

**Bid Acceptance and Contract Award Prohibited** A governmental body may not accept a bid for a contract described by Government Code 552.371 or award the contract to an entity that the governmental body has determined has knowingly or intentionally failed to comply with Government Code Chapter 552, Subchapter J in a previous bid or contract described by that section unless the governmental body determines and documents that the entity has taken adequate steps to ensure future compliance with the requirements of Subchapter J. *Gov't Code 552.372(c)*

**Termination of Contract** A governmental body may terminate a contract described above if:

1. The governmental body provides notice under Government Code 552.373 to the entity that is party to the contract;
2. The contracting entity does not cure the violation in the period prescribed by Government Code 552.373;
3. The governmental body determines that the contracting entity has intentionally or knowingly failed to comply with a requirement of Subchapter J; and
4. The governmental body determines that the entity has not taken adequate steps to ensure future compliance with the requirements of Subchapter J. An entity has taken adequate steps to ensure future compliance with Subchapter J if the entity produces contracting information requested by the governmental body that is in the custody or possession of the entity not later than the tenth business day after the date the governmental body makes the request and the entity establishes a records management program to enable the entity to comply with Subchapter J.

*Gov't Code 552.374(a)–(b)*

*Exception*

A governmental body may not terminate a contract under this section if the contract is related to the purchase or underwriting of a public security, the contract is or may be used as collateral on a loan, or the contract's proceeds are used to pay debt service of a public security or loan. *Gov't Code 552.374(c)*

**Contract with Person Indebted to College District**

The board of trustees of a college district by resolution may establish regulations permitting the college district to refuse to enter into a contract or other transaction with a person indebted to the college district. It is not a violation of Education Code Chapter 44, Subchapter B for a college district, under the adopted regulations, to refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the college 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 college district requiring approval by the board.

*Education Code 44.044*

**Contracts Prohibited**

Scrutinized  
Companies

A governmental entity, including a college district, may not enter into a governmental contract with a company that is identified on a list prepared and maintained by the comptroller under Government Code 806.051, 807.051, or 2252.153.

"Governmental contract" means a contract awarded by a governmental entity for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment. The term includes a contract to obtain a professional or consulting service subject to Government Code Chapter 2254.

*Gov't Code 2252.001(3), .152*

Companies that  
Boycott Israel

This section applies only to a contract that:

1. Is between a governmental entity and a company with ten or more full-time employees; and
2. Has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract.

"Boycott Israel" has the meaning assigned by Government Code 808.001.

"Company" has the meaning assigned by Government Code 808.001, except that the term does not include a sole proprietorship.

*Gov't Code 2271.001(1)–(2), .002*

Companies that  
Boycott Energy  
Companies

This section applies only to a contract that:

1. Is between a governmental entity and a company with ten or more full-time employees; and
2. Has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written

verification from the company that it does not boycott energy companies and will not boycott energy companies during the term of the contract.

"Boycott energy company" has the meaning assigned by Government Code 809.001.

"Company" has the meaning assigned by Government Code 809.001, except that the term does not include a sole proprietorship.

*Gov't Code 2274.001(1)–(2), .002(a)–(b)*

*Exception*

The above section does not apply to a governmental entity that determines the requirements of that section are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.  
*Gov't Code 2274.002(c)*

Companies that  
Discriminate  
Against a Firearm  
Entity or Firearm  
Trade Association

This section applies only to a contract that:

1. Is between a governmental entity and a company with at least ten full-time employees; and
2. Has a value of at least \$100,000 that is to be paid wholly or partly from public funds of the governmental entity.

A governmental entity may not enter into a contract with a company for the purchase of goods or services unless the contract contains a written verification from the company that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

*Gov't Code 2274.002(a)–(b)*

*Definition*

"Discriminate against a firearm entity or firearm trade association" means, with respect to the entity or association, to:

1. Refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association;
2. Refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or
3. Terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

The term does not include:

1. The established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and
2. A company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship:
  - a. To comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or
  - b. For any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

*Gov't Code 2274.001(3)*

*Exceptions*

The above prohibition does not apply to a governmental entity that contracts with a sole-source provider or does not receive any bids from a company that is able to provide the written verification required by that section.

The above prohibition does not apply to a contract entered into in connection with or relating to the issuance, sale, or delivery of notes under Government Code Chapter 404, Subchapter H or the administration of matters related to the notes, including the investment of note proceeds, as provided by Government Code 2274.003.

*Gov't Code 2274.002(c), .003*

Contracts with  
Foreign-Owned  
Companies

A governmental entity may not enter into a contract or other agreement relating to critical infrastructure in this state with a company:

1. If, under the contract or other agreement, the company would be granted direct or remote access to or control of critical infrastructure in this state, excluding access specifically allowed by the governmental entity for product warranty and support purposes; and
2. If the governmental entity knows that the company is:
  - a. Owned by or the majority of stock or other ownership interest of the company is held or controlled by:
    - (1) Individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; or

- (2) A company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
  - b. Headquartered in China, Iran, North Korea, Russia, or a designated country.

"Company" means a 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.

"Critical infrastructure" means the measures taken to protect a computer, computer network, computer system, or other technology infrastructure against unauthorized use or access.

"Designated country" means a country designated by the governor as a threat to critical infrastructure under Government Code 2274.0103.

*Gov't Code 2274.0101(1), (2), (4), .0102(a)*

**Required Disclosures**

Disclosure of Interested Parties

A governmental entity or state agency, including a college district, may not enter into a contract with a business entity that requires an action or vote by the governing body of the entity or agency before the contract may be signed, has a value of at least \$1 million, or is for services that would require a person to register as a lobbyist under Government Code Chapter 305, with certain exceptions, unless the business entity, in accordance with Government Code 2252.908 and rules adopted by the Texas Ethics Commission, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. [See GL] *Gov't Code 2252.908*

Disclosures by Purchasing Personnel

Before a state agency, including a college district, may award a major contract, a contract that has a value of at least \$1 million, for the purchase of goods or services to a business entity, each of the state agency's purchasing personnel working on the contract must disclose in writing to the administrative head of the state agency any relationship the purchasing personnel is aware about that the employee has with an employee, a partner, a major stockholder, a paid consultant with a contract with the business entity the value of which exceeds \$25,000, or other owner of the business entity who is within a degree described by Government Code 573.002, the

third degree by consanguinity or within the second degree by affinity of the purchasing employee. The state auditor shall develop a form for use in reporting a specified relationship.

"Purchasing personnel" means an employee of a state agency who makes decisions on behalf of the state agency or recommendations regarding contract terms or conditions on a major contract, who is to be awarded a major contract, preparation of a solicitation for a major contract, or evaluation of a bid or proposal.

*Gov't Code 2262.001(4), .004*

*Notice  
Publication*

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

**Electronic Bids or Proposals**

A college district may receive bids or proposals under Education Code Chapter 44 through electronic transmission if the board of trustees of the college district adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

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

*Education Code 44.0313*

**Professional Services**

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

The college district may, at its option, 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)*

A governmental entity, including a college district, may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price.

"Professional services" means services:

1. Within the scope of the practice, as defined by state law, of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, professional nursing, or forensic science;
2. Provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant, an architect, a landscape architect, a land surveyor, a physician, including a surgeon, an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, a registered nurse, or a forensic analyst or forensic science expert; or
3. Provided by a person lawfully engaged in interior design, regardless of whether the person is registered as an interior designer under Occupations Code Chapter 1053.

*Gov't Code 2254.002, .003(a)* [See also CM]

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

Certain Medical  
Services

If a governmental entity is procuring services provided in connection with the professional employment or practice of a physician, including a surgeon, or an optometrist or registered nurse and the number of contracts to be awarded under this section is not otherwise limited, the governmental entity may make the selection and award on the basis of:

1. The provider's agreement to payment of a set fee, as a range or lump-sum amount; and
2. The provider's affirmation and the governmental entity's verification that the provider has the necessary occupational licenses and experience.

*Gov't Code 2254.008(a)*

PURCHASING AND ACQUISITION

CF  
(LEGAL)

Professional Services Contract Exceeding \$50,000	A state agency, including a college district and other institutions of higher education, shall provide written notice to the LBB of a contract for professional services, other than a contract for physician or optometric services, if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$50,000. The notice must be on a form prescribed by the LBB and filed not later than the 30th day after the date the agency enters into the contract. <i>Gov't Code 2254.006</i>
<b>Contingent Fee Contracts for Legal Services</b>	Government Code Chapter 2254, Subchapter C provisions applicable to a state governmental entity and a political subdivision apply to a contingent fee contract for legal services entered into by a college district. <i>Gov't Code 2254.102(a)</i>
Exceptions	Subchapter C does not apply to a contract for legal services entered into by a political subdivision for the collection of an obligation that is delinquent or for services under Government Code 1201.027, except that Government Code 2254.1032, 2254.1034, 2254.1036, and 2254.1037 do apply to the contract. "Obligation" includes a debt, judgment, claim, account, fee, fine, tax, penalty, interest, loan, charge, or grant. <i>Gov't Code 2107.001(1), 2254.102(e)</i>
<b>Emergency Damage or Destruction</b>	If school equipment, a school facility, or a portion 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 of trustees 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. <i>Education Code 44.031(h)</i>
<b>Computers and Computer-Related Equipment</b>	A college district may acquire computers and computer-related equipment, including computer software, through the Department of Information Resources (DIR) under contracts entered into in accordance with Government Code Chapter 2054 or 2157. <i>Education Code 44.031(i)</i>
Purchasing Through DIR	
Purchase Using Competitive Bidding	Each institution of higher education, including each college district, that solicits bids or proposals from the public for the purchase and/or lease of computer equipment must do so in accordance with applicable rules adopted by the comptroller pertaining to competitive bidding or competitive sealed proposals. <i>1 TAC 217.30(c)</i>
<i>Required Certification</i>	A public solicitation for the purchase or lease of computer equipment issued by an institution of higher education is required to contain the certification to be completed by bidders, in accordance with 1 Administrative Code 217.30. Failure of a bidder to provide this

certification shall render the bidder ineligible to participate in the bidding. The institution of higher education shall reject the related bid and not evaluate it. *1 TAC 217.30(a)–(b)*

*Special  
Preference*

All institutions of higher education shall include in all bids for the purchase or lease of computer equipment a special preference for all manufacturers that have a program to recycle the computer equipment of other manufacturers, which program includes collection events and manufacturer initiatives to accept computer equipment labeled with another manufacturer's brand. The preference may take the form of extra evaluation points or be the tie-breaking factor among equal bids. *1 TAC 217.31*

*Computer  
Equipment*

“Computer equipment” is defined as a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner. *1 TAC 217.1(1)*

**Cloud Computing  
Services**

A state agency, including a college district, shall require each vendor contracting with the agency to provide cloud computing services for the agency to comply with the requirements of the state risk and authorization management program as provided by Government Code 2054.0593. DIR shall evaluate vendors to determine whether a vendor qualifies for a certification issued by DIR reflecting compliance with program requirements.

A state agency may not enter or renew a contract with a vendor to purchase cloud computing services for the agency that are subject to the state risk and authorization management program unless the vendor demonstrates compliance with program requirements.

A state agency shall require a vendor contracting with the agency to provide cloud computing services for the agency that are subject to the state risk and authorization management program to maintain program compliance and certification throughout the term of the contract.

In this section, “cloud computing service” has the meaning assigned by Government Code 2157.007.

*Gov't Code 2054.0593(a), (d)–(f)*

**Data Security  
Controls for Vendors**

Each state agency, including a college district, entering into or renewing a contract with a vendor authorized to access, transmit, use, or store data for the agency shall include a provision in the contract requiring the vendor to meet the security controls the agency determines are proportionate with the agency's risk under the contract based on the sensitivity of the agency's data. The vendor must periodically provide to the agency evidence that the vendor meets the security controls required under the contract. *Gov't Code 2054.138*

**Automated Information System**

A local government, including a college district, shall 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 local government that purchases an item using a method listed above satisfies any state law requiring the local government to seek competitive bids for the purchase of the item. *Gov't Code 2157.006; 34 TAC 20.391*

**Sole Source**

Without complying with Education Code 44.031(a), a college district may purchase an item that is 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 does not apply to mainframe data-processing equipment and peripheral attachments with a single-item purchase price in excess of \$15,000.

*Education Code 44.031(j)–(k)*

**Insurance**

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

**Multiyear Contracts**

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

**Competitive Bidding**

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

A college district shall award a competitively bid contract at the bid amount to the bidder offering the best value for the district. In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors

stated in the selection criteria. The selection criteria may include the factors listed in Education Code 44.031(b) [see Factors, above].

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

*Education Code 44.0351*

Opening Bids

Bids may be opened only by the governing body of the governmental entity at a public meeting or by an officer or employee of the governmental entity at or in an office of the governmental entity. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price.

The governmental entity is entitled to reject any and all bids.

*Local Gov't Code 271.026-.027(a)*

Safety Record

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

1. The governing body of the governmental entity has adopted a written definition and criteria for accurately determining the safety record of a bidder.
2. The governing body has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder.
3. The determinations are not arbitrary and capricious.

*Local Gov't Code 271.0275*

Identical Bids

If a district is required to accept bids on a contract and receives two or more bids from responsible bidders that are identical, in nature and amount, as the lowest and best bids, the governing body of the district shall enter into a contract with only one of those bidders and must reject all other bids.

If only one of the bidders submitting identical bids is a resident of the district, the district must select that bidder. If two or more of the bidders submitting identical bids are residents of the district, the district must select one of those bidders by the casting of lots. In all other cases, the district must select from the identical bids by the casting of lots.

The casting of lots must be in a manner prescribed by the governing body of the district and must be conducted in the presence of the governing body of the district. All qualified bidders or their legal representatives may be present at the casting of lots.

This section does not prohibit a district from rejecting all bids.

*Local Gov't Code 271.901*

**Competitive Sealed Proposals**

In selecting a vendor through competitive sealed proposals as authorized by Education Code 44.031(a)(2), a college district shall follow the procedures prescribed below. *Education Code 44.0352(a)*

Request for Proposals

The district shall prepare a request for competitive sealed proposals that includes information that vendors may require to respond to the request. The district shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror. *Education Code 44.0352(b)*

Opening Proposals

The district shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Not later than the 45th day after the date on which the proposals are opened, the district shall evaluate and rank each proposal submitted in relation to the published selection criteria. *Education Code 44.0352(c)*

Selection

The district shall select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. The district may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected. *Education Code 44.0352(d)*

Best Value Determination

In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria. *Education Code 44.0352(e)*

**Interlocal Agreements**

A local government, including a college district, may contract or agree with another local government or with the state or a state agency, including the comptroller, or a federally recognized Indian Tribe, as listed by the U.S. secretary of the interior under 25 U.S.C. 479a-1, whose reservation is located within the boundaries of this state to perform governmental functions and services, such as to

purchase goods and services, in accordance with Government Code Chapter 791. *Gov't Code 791.001, .011, .025*

An interlocal contract must be authorized by the governing body of each party to the contract; 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. An interlocal contract may have a specified term of years. An interlocal contract may be renewed.

*Gov't Code 791.011(d)–(f), (i)*

A local government, including a council of governments, 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. This provision does not apply to services provided by firefighters, police officers, or emergency medical personnel.

A local government that purchases goods and services under Government Code 791.025 satisfies the requirement to seek competitive bids for the purchase of goods and services.

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

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

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

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

*Gov't Code 791.011(j)*

**State Purchasing  
Program**

The comptroller shall establish a program by which the comptroller performs purchasing services for local governments. The services must include:

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

The comptroller may charge a participating local government an amount not to exceed the actual costs incurred by the comptroller in providing purchasing services to the local government under the program.

*Local Gov't Code 271.082*

College District  
Requirements

A local government 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 governing body of the local government requesting that the local government be allowed to participate on a voluntary basis, to the extent the comptroller deems feasible, and stating that the local government shall:

1. Designate an official to act for the local government in all matters relating to the program, including the purchase of items from the vendor under any contract, and that the governing body will direct the decisions of the representative;
2. Be responsible for:
  - a. Submitting requisitions to the comptroller under any contract; or
  - b. Electronically sending purchase orders directly to vendors, or complying with procedures governing a reverse auction purchase and electronically sending to the comptroller reports on actual purchases made under this paragraph that provide the information and are sent at the times required by the comptroller;
3. Be responsible for making payment directly to the vendor; and
4. Be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.

A local government that purchases an item under a state contract or under a reverse auction procedure sponsored by the comptroller satisfies any state law requiring the local government to seek competitive bids for the purchase of the item.

*Local Gov't Code 271.083*

**Multiple Award  
Contract Schedule**

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

A local government may purchase goods or services directly from a vendor under a contract listed on a schedule. A state agency or local government contracting for the purchase of an automated information system under a contract listed on a schedule developed under this Government Code Chapter 2155, Subchapter I shall comply with Government Code 2157.068(e-1). 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. A local government may negotiate a lower price for goods or services under a contract listed on a schedule.

*Gov't Code 2155.502, .504*

**Cooperative  
Purchasing Program**

A local government 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. A local government that is participating in a cooperative purchasing program may sign an agreement with another participating local government or a local cooperative stating that the signing local government will:

1. Designate a person to act under the direction of, and on behalf of, that local government in all matters relating to the program;
2. Make payments to another participating local government or local cooperative organization or directly to a vendor under a contract made under Local Government Code Chapter 271, Subchapter F, as provided in the agreement between the participating local governments or between a local government and a local cooperative organization; and
3. Be responsible for the vendor's compliance with provisions relating to the quality of items and terms of delivery, to the extent provided in the agreement between the participating local

governments or between a local government and a local cooperative organization.

A local government that purchases goods or services under Local Government Code Chapter 271, Subchapter F satisfies any state law requiring the local government to seek competitive bids for the purchase of the goods or services.

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

**Contract-Related Fee Report**

A college district that enters into a purchasing contract valued at \$25,000 or more under Education Code 44.031(a)(5) (interlocal contract), under Local Government Code Chapter 271, Subchapter F (cooperative purchasing program), or under any other cooperative purchasing program authorized for college districts by law shall document a contract-related fee, including a management fee, paid by or to the college district 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 of trustees of the college district. The written report must appear as an agenda item.

*Education Code 44.0331*

**Reverse Auction**

A local government 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 local government and fair to vendors. *Local Gov't Code 271.906(b)*

“Reverse auction procedure” means:

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

*Gov't Code 2155.062(d)*

**Commitment of Current Revenue**

If a contract for the acquisition, including lease, of real or personal property retains to the governing body of a local government the continuing right to terminate the contract at the expiration of each

budget period of the local government during the term of the contract, is conditioned on a best efforts attempt by the governing body to obtain and appropriate funds for payment of the contract, or contains both the continuing right to terminate and the best efforts conditions, the contract is a commitment of the local government's current revenues only. *Local Gov't Code 271.903*

**Change Orders**

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

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

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

*Education Code 44.0411*

**Energy or Water Conservation Measures**

The governing board of an institution of higher education may enter into an energy savings performance contract in accordance with Education Code 51.927. An energy savings performance contract shall be let according to the procedures established for procuring certain professional services by Government Code 2254.004. *Education Code 51.927(b), (i)*

[See policy CH for legal requirements pertaining to such contracts]

**Recycled Products**

A junior or community college district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality and the average price of the product is not more than ten percent greater than the price of comparable nonrecycled products. Preferences will be applied in accordance with state procurement statutes and rules.

*Health and Safety Code 361.426; 30 TAC 328.201, .203*

Exception

A college district may request additional consideration from the Texas Commission on Environmental Quality (TCEQ) if compliance

with this section would create a hardship. "Hardship" means a circumstance that causes unreasonable burden on the college district. *Health and Safety Code 361.426(d); 30 TAC 328.201, .204(c)*

**Agricultural Products**

A college district that purchases agricultural products shall give preference to those produced, processed, or grown in this state if the cost to the college district is equal and the quality is equal. "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 agricultural products produced, processed, or grown in this state are not equal in cost and quality to other products, the college district shall give preference to agricultural products produced, processed, or grown in other states of the United States over foreign products if the cost to the college district is equal and the quality is equal.

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

*Education Code 44.042(a)–(b), (f), (g)(1)*

Vegetation for Landscaping

A college district that purchases vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation if the cost to the college district is equal and the quality is not inferior. *Education Code 44.042(c)*

**Dairy Products**

A political subdivision, including a college district, may not purchase milk, cream, butter, cheese, or a product consisting largely of one or more of those items, that has been imported from outside the United States. The 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*

**Imported Beef**

A political subdivision, including a college district, may not purchase beef or a product consisting substantially of beef that has been imported from outside the United States. *Agriculture Code 150.012(a)*

**Commodity Items**

Subject to Government Code 418.193, a public safety entity, as defined by 47 U.S.C. 1401, may purchase commodity items through DIR, and be charged a reasonable administrative fee, as provided by Government Code 2157.068. *Gov't Code 2157.068(j)*

**Criminal History**

A person or business entity, with the exception of a publicly-held corporation, that enters into a contract with a college 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. A college 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 or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract. *Education Code 44.034*

**Right to Work**

While engaged in procuring goods or services, awarding a contract, or overseeing procurement or construction for a public work or public improvement, a college 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*

**Impermissible Practices**

An officer, employee, or agent of a college district commits an offense if the person with criminal negligence makes or authorizes separate, sequential, or component purchases to avoid the requirements of Education Code 44.031(a) or (b) or otherwise violates Section 44.031(a) or (b). An officer or employee of a college district commits an offense if the officer or employee knowingly violates 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 purchased in one purchase. "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

*Education Code 44.032(a)–(d)* [See BBC]

**Injunction**

A court may enjoin performance of a contract made in violation of Education Code Chapter 44, Subchapter B. A county attorney, a district attorney, a criminal district attorney, a citizen of the county in which the college district is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this provision is entitled to reasonable attorney's fees as approved by the court. *Education Code 44.032(f)*