

OFFICERS AND OFFICIALS
DUTIES AND REQUIREMENTS OF DEPOSITORY

BDAE
(LEGAL)

Note: The Texas Education Agency maintains [information regarding depository contracts for districts](#),¹ including the forms referenced in this policy.

Selection

A school depository must be a bank located in this state and may be selected only as provided by this policy. "Bank" means a bank, a savings and loan association, or a savings bank organized under the laws of this state, another state, or federal law that has its main office or a branch office in this state. The term does not include any bank the deposits of which are not insured by the Federal Deposit Insurance Corporation (FDIC). *Education Code 45.201(2), .202, .203*

Method

Not later than the 60th day before the date a school district's current depository contract expires, the district shall choose whether to select a depository through competitive bidding or through requests for proposals. *Education Code 45.206(a)*

The district must keep the selected bid or proposal form in the district and make it available to TEA upon request. *19 TAC 109.51(b)*

Competitive Bidding
Notice

If a district chooses to use competitive bidding, the district shall, not later than the 30th day before the date the current depository contract expires, mail to each bank in the district and, if desired, to other banks, a notice stating the time and place in which bid applications will be received for selecting a depository or depositories. The notice must include the uniform bid blank form prescribed by State Board of Education (SBOE) rule. The district may add to the uniform bid blank other terms that do not unfairly restrict competition between banks in or near the territory of the district. *Education Code 45.206(a-1), (b); 19 TAC 109.51(b), (c)*

Requests for
Proposals
Notice

If a district chooses to use requests for proposals, the district shall, not later than the 30th day before the date the current depository contract expires, mail to each bank located in the district and, if desired, to other banks, a notice stating the time and place in which proposals will be received for selecting a depository or depositories. The notice must include the uniform proposal blank form prescribed by SBOE rule. A district shall state the selection criteria, including the factors specified under Education Code 45.207(c) [see Factors to Consider, below], in the request for proposals. The district may add to the uniform proposal blank other terms that do not unfairly restrict competition between banks in or near the territory of the district. *Education Code 45.206(a-2), (b), (d); 19 TAC 109.51(b), (d)*

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Best Value

A district shall select the proposal that offers the best value to the district based on the evaluation and ranking of each submitted proposal in relation to the stated selection criteria. A district may negotiate with the bank that submits the highest-ranked proposal to determine any terms of the proposed depository contract other than the interest rates proposed. *Education Code 45.206(d)*

Award of Contract

A district shall award the depository contract to the bank that submits the highest bid or the highest-ranked proposal, as determined under Factors to Consider, below, except that the district may award the contract as provided at Tie Bids and Proposals, below if:

1. The district:
 - a. Receives tying bids for the contract; or
 - b. After evaluating the proposals for the contract, ranks two or more proposals equally;
2. Each bank submitting a tying bid or proposal has bid or proposed to pay the district the maximum interest rates allowed by law by the Federal Reserve System and the FDIC; and
3. The tying bids or proposals are otherwise equal in the judgment and discretion of the board.

Education Code 45.207(a)

Factors to Consider

The board shall at a regular or special meeting consider each bid or proposal received. In determining the highest and best bid or the highest-ranked proposal, or in case of tying bids or proposals the highest and best tying bids or proposals, a board shall consider:

1. The interest rate bid or proposed on time deposits;
2. The charge for keeping district accounts, records, and reports and furnishing checks;
3. The ability of the bank submitting the bid or proposal to provide the necessary services and perform the duties as school district depository; and
4. Any other matter the board considers to be in the best interest of a district.

Education Code 45.207(c)

Tie Bids or
Proposals

In the case of tying bids or proposals, a board may:

1. Determine by lot which of the banks submitting the tying bids or proposals will receive the contract; or

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2. Award a contract to each of the banks submitting the tying bids or proposals.

Education Code 45.207(a-1)

Rejection of Bids or Proposals

A board has the right to reject any and all bids or proposals. *Education Code 45.207(d)*

Conflict of Interest

If a member of the board is a stockholder, officer, director, or employee of a bank, the bank is not disqualified from bidding, submitting a proposal, or becoming the depository of the district if the bank is selected by a majority vote of the board or a majority vote of a quorum when only a quorum is present.

Abstention

If a board member is a stockholder, officer, director, or employee of a bank that has bid or submitted a proposal to become the depository, the member may not vote on awarding a depository contract to the bank, and the contract must be awarded by a majority vote of the trustees as provided above who are not either a stockholder, officer, director, or employee of a bank receiving a depository contract.

Education Code 45.204

Contract

Term

The depository shall serve for a term of two years and until its successor is selected and has qualified. A district and its depository bank may agree to extend the contract for three additional two-year terms. The contract may be modified for each two-year extension if both parties mutually agree to the terms. The contract term and any extension must coincide with the district's fiscal year. An extension is not subject to the requirements of Education Code 45.206 [see Method, above]. *Education Code 45.205*

Form

The depository or depositories and a district shall enter into a depository contract(s), bond(s), or other necessary instruments setting forth the duties and agreements pertaining to the depository in the form and with the content prescribed by the SBOE. The parties shall attach and incorporate by reference the bid or proposal of the depository. A copy of the contract and bond, if applicable, shall be filed with TEA. *Education Code 45.208(a), (e); 19 TAC 109.52*

Authorized Collateral

Bond

The depository shall attach to the contract and file with the district a bond in an initial amount equal to the estimated highest daily balance, determined by the board, of all deposits the district will have in the depository, less any FDIC insurance. The bond must be payable to the district and signed by the depository and some surety company authorized to do business in this state. The depository shall increase the amount of the bond if the board determines it to be necessary to adequately protect the funds of the district deposited with the depository. *Education Code 45.208(b)*

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The bond and surety must be approved by the board. A premium on the bond may not be paid out of district funds. *Education Code 45.208(d)*

Bond Conditions

The bond shall be conditioned on:

1. Faithful performance of all legal duties and obligations;
2. Payment on presentation of all checks or drafts on order of the board;
3. Payment on demand of any demand deposit;
4. Payment, after the expiration of the required notice period, of any time deposit;
5. Faithful keeping of school funds by the depository and accounting for the funds according to law; and
6. Faithful paying over to the successor depository all balances remaining in the accounts.

Education Code 45.208(c)

*Approved
Securities*

In lieu of a bond, the depository may deposit or pledge, with the district or a designated trustee, approved securities, as defined in Education Code 45.201(4), in an amount sufficient to adequately protect the funds of the district deposited with the depository. A depository may give a bond and deposit or pledge approved securities in an aggregate amount sufficient to adequately protect the funds of the district. The district shall designate from time to time the amount to adequately protect the district. The district may not designate an amount less than the balance of school district funds on deposit with the depository from day to day, less any applicable FDIC insurance. *Education Code 45.208(f)*

In accordance with written board policy, a district shall determine if an investment security, as defined in Government Code 2257.002(5), is eligible to secure deposits of public funds under the Public Funds Collateral Act, Government Code, Chapter 2257. *Gov't Code 2257.023(a)*

“Eligible security” means:

1. A surety bond;
2. An investment security;
3. An ownership or beneficial interest in an investment security, other than an option contract to purchase or sell an investment security;

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4. A fixed-rate collateralized mortgage obligation that has an expected weighted average life of ten years or less and does not constitute a high-risk mortgage security;
5. A floating-rate collateralized mortgage obligation that does not constitute a high-risk mortgage security; or
6. A letter of credit issued by a federal home loan bank.

Gov't Code 2257.002(4)

The policy may include the security of the institution that obtains or holds an investment security, the substitution or release of an investment security, and the method by which an investment security used to secure a deposit of public funds is valued. *Gov't Code 2257.023(b)*

**Texas Bullion
Depository**

The Texas Bullion Depository is established as an agency of this state in the office of the comptroller under Subtitle C, Title 10, Government Code. The depository may receive a deposit of bullion or specie from or on behalf of a district in accordance with rules adopted by the comptroller. *Gov't Code 2116.002(a), .005(a); 34 TAC 14.1–.20.*

An investment by a school district in a depository account may be made instead of an investment as provided by Education Code 45.102, and the depository may be used by a district instead of a depository bank for purposes of Subchapter G, Chapter 45, Education Code. *Gov't Code 2116.015(b)*

¹ Depository Contracts for School Districts:
http://tea.texas.gov/Finance_and_Grants/Financial_Compliance/Depository_Contracts_for_School_Districts/