



Trinity Valley Community College
107501

PURCHASING AND ACQUISITION

CF
(LEGAL)

APPLICABLE LAW	<p>The provisions of Subchapter B, Chapter 44, Education Code, 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 Subchapter B, Chapter 44, prevail over any other law relating to the purchase of goods and services by a junior college district.</p> <p><i>Education Code 130.010, 44.0311</i></p>
BOARD AUTHORITY	<p>The Board 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 may delegate its authority regarding an action authorized or required to be taken by the College District by Education Code Chapter 44, Subchapter B to a designated person, representative, or committee.</p> <p>The Board may not delegate the authority to act regarding an action authorized or required to be taken by the Board by Education Code Chapter 44, Subchapter B.</p> <p><i>Education Code 44.0312</i></p>
INJUNCTION	<p>A court may enjoin performance of a contract made in violation of Education Code Chapter 44, Subchapter B. A county attorney, district attorney, criminal district attorney, citizen of the county in which the 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 subsection is entitled to reasonable attorney's fees as approved by the court. <i>Education Code 44.032(f)</i></p>
PURCHASES VALUED AT OR ABOVE \$25,000	<p>All College District contracts, except contracts for the purchase of produce or vehicle fuel, valued at \$25,000 or more in the aggregate for each 12-month period, shall be made by the method that provides the best value for the College District:</p>

1. Competitive bidding.
2. Competitive sealed proposals.
3. A request for proposals for services other than construction services.
4. A catalog purchase as provided by Government Code Chapter 2157, Subchapter B.
5. An interlocal contract.
6. The reverse auction procedure as defined by Government Code 2155.062(d).
7. The formation of a political subdivision corporation under Local Government Code 304.001.

Note: Regarding construction of school facilities, see CV generally; CVA for competitive bidding; CVB for competitive sealed proposals; CVC for design/build contracts; CVD, CVE for contracts using a construction manager; and CVF for job order contracts for minor repairs/alterations.

Education Code 44.031(a)

FACTORS

In awarding a contract, the College 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 College District's needs.
5. The vendor's past relationship with the College District.
6. The impact on the ability of the College District to comply

with laws relating to historically underutilized businesses.

7. The total long-term cost to the College District to acquire the goods or services.
8. Any other relevant factor specifically listed in the request for bids or proposals.

Education Code 44.031(b)

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.).

CONTRACT
WITH PERSON
INDEBTED TO
COLLEGE
DISTRICT

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

Education Code 44.044

NOTICE
PUBLICATION

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

PERSONAL
PROPERTY
PURCHASES
VALUED \$10,000

When the College District seeks to purchase personal property of a value of at least \$10,000 but less than \$25,000, in the aggregate, for a 12-month period, the College District may either purchase those items in accordance with Education Code 44.031(a) and (b)

TO \$25,000	described above or follow the vendor list procedures described below. <i>Education Code 44.033(a)</i>
NOTICE	For each 12-month period, the College 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 College District. <i>Education Code 44.033(b)</i>
VENDOR LIST	For each category, the College District shall create a vendor list consisting of each vendor that responds to the published notice and any additional vendors the College District elects to include. Before the College 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 College 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 College District 's competitive bid records and are subject to audit. Purchases shall be made from the lowest responsible bidder. <i>Education Code 44.033(b)(c)</i>
PRODUCE OR FUEL PURCHASES	When the College District purchases produce or fuel valued at \$10,000 or more in the aggregate, for a 12-month period, the College District must either purchase those items in accordance with Education Code 44.031(a) and (b) described above or follow the vendor list procedures described immediately above. <i>Education Code 44.033(a)(d)</i>
PROFESSIONAL SERVICES	<p>The purchasing requirements of Education Code 44.031 do not apply to a contract for professional services rendered, including the services of an architect, attorney, or fiscal agent.</p> <p>The College District may contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Government Code 2254.003, in lieu of the methods provided by Education Code 44.031.</p> <p><i>Education Code 44.031(f)</i></p> <p>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</p>

appraiser, or registered nurse. Contracts for these professional services shall be made on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price. *Gov't Code 2254.002, 2254.003(a)* [See also CM]

EMERGENCY
DAMAGE OR
DESTRUCTION

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

COMPUTERS

The College District may acquire computers and computer-related equipment, including computer software, through the Texas Building and Procurement Commission (BPC) under contracts with the BPC in accordance with Government 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 this provision is considered to have committed official misconduct and for four years after the date of final conviction, the removed person is ineligible to be appointed or elected to public office in Texas, is ineligible to be employed by or act as an agent for the state or a political subdivision, and is ineligible to receive any compensation through a contract with the state or a political subdivision. [See BBC]

Education Code 44.032

INSURANCE

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

MULTIYEAR
CONTRACTS

The 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

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

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

Local Gov't Code 271.901

REVERSE

A college district that uses the reverse auction procedure must

AUCTION

include in the procedure a notice provision and other provisions necessary to produce a method of purchasing that is advantageous to the College District 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)

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 College District shall rely on information published by BPC in evaluating the bids of a nonresident bidder. *Gov't Code 2252.003, 2252.004*

INTERLOCAL AGREEMENTS

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

The College 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 BPC 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 medication personnel.

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

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

STATE
PURCHASING
PROGRAM

Purchasing services performed for the College District by the BPC shall include:

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

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

Local Gov't Code 271.082

COLLEGE
DISTRICT
REQUIREMENTS

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

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

the BPC reports on actual purchases.

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

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

ELECTRONIC
MARKETPLACE

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

Local Gov't Code 271.083

MULTIPLE
AWARD
CONTRACT
SCHEDULE

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

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

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

Gov't Code 2155, Subchapter I

COOPERATIVE
PURCHASING
PROGRAM

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

1. Designate a person to act on behalf of the College 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 College District participates in a cooperative purchasing program, it satisfies any law requiring it to seek competitive bids.

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

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

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

1. Retains to the Board the continuing right to terminate the contract at the expiration of each budget period during the term of the contract.
2. Is conditioned on a best efforts attempt by the Board to obtain and appropriate funds for payment of the contract.

Local Gov't Code 271.903

ENERGY OR WATER CONSERVATION MEASURES The College District may contract for energy or water conservation measures. Such a contract shall be let according to the procedures established for professional services by Government Code 2254.004. *Education Code 51.927* [See policy CH for legal requirements pertaining to such contracts]

RECYCLED PRODUCTS The College District shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. The College 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 College District purchase products that may be recycled when they have served their intended use.

The College 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 College District.

Health and Safety Code 361.426

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

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

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

Education Code 44.042

DAIRY PRODUCTS The Board shall 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. However, imported milk powder may be purchased if domestic milk powder is not readily available in the normal course of business. *Health & Safety Code 435.021*

IMPORTED BEEF The College District shall not purchase beef or a product consisting substantially of beef that has been imported from outside the United States. *Agriculture Code 150.012*

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

RIGHT TO WORK While engaged in procuring goods and services or awarding a

contract, the 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

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UPDATE 18

CF(LLEGAL)-LJC

This online presentation of your college district's policy concerning the stated subject material is an electronic representation of TASB's record of the college district's currently adopted policy manual. It does not reflect updating activities in progress nor is it a legally binding document. Please contact the office of the President or Chancellor for the official, legally binding generation of this and the other policies that pertain to your college district.