

CUERO INDEPENDENT SCHOOL DISTRICT

PROCUREMENT
POLICIES & PROCEDURES

2023-2024

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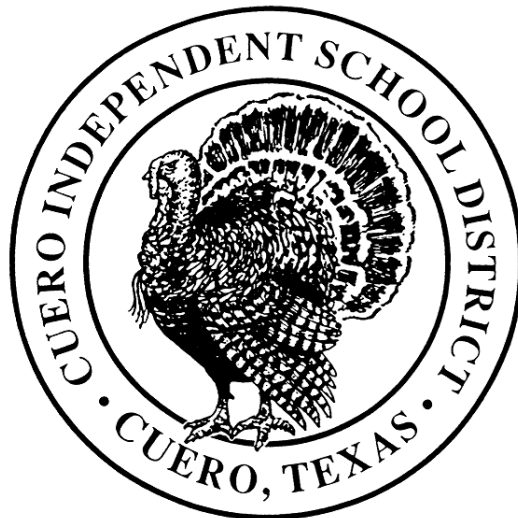


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INTRODUCTION

This manual sets forth the procurement policies and procedures used by Cuero ISD (the “LEA”) to administer federal, state, and local funds. The manual contains the internal controls and grant management standards used by the LEA to ensure that all federal funds are lawfully expended. According to 2 CFR §200.317, non-federal entities (LEAs) will follow §§200.318 General Procurement Standards through 200.326 Contract Provisions when procuring property and services under a federal award. The LEA must use its own documented procurement procedures which reflect applicable state and local laws and regulations provided that the procurements conform to applicable federal law and the standards identified in 2 CFR §200.318.

Statutes containing requirements for competitive purchasing/contracting processes for LEAs are found in the Texas Education Code, Local Government Code, Government Code, Texas Revised Civil Statutes, Texas Attorney General Opinions, federal regulations and other sources. These regulations do not apply to purchases involving student activity funds recorded under an Agency Fund.

This procurement manual was adapted from guidance and excerpts from the Texas Education Agency’s “Financial Accountability System Resource Guide (FASRG), Module 3 Purchasing Guide 2010”, the “Handbook on Purchasing for Texas Public Schools, Junior Colleges and Community Colleges” incorporated into the FASRG’s Purchasing Module as Appendix 1, and the Texas Comptroller of Public Account’s “Model Purchasing Manual for Texas Cities and Counties 2010”. [Note: The “Model Purchasing Manual for Texas Cities and Counties 2010” is no longer accessible on the Comptroller’s website.]

The LEA’s procurement manual includes requirements from EDGAR (Education Department General Administrative Regulations) and incorporates guidance from TEA’s “New EDGAR Regulations Frequently Asked Questions (FAQ)” document.

Although this manual is not all-inclusive and cannot address all situations, it does provide general information to assist with standard procurement operations consistent with federal and state law. Employees of the LEA involved with procurement, new employees as well as incumbent employees, are expected to review this manual to gain familiarity and understanding of the LEA’s rules and practices.

According to the Purchasing Module in the FASRG, every local educational agency (LEA), large and small, should have a written manual describing its purchasing policies and procedures. Rules

and guidelines for those purchases consistent with relevant statutes, regulations, and board policies are a vital part of the manual.

Overall, a good purchasing manual establishes rules for making LEA purchases. It provides guidance to LEA employees at the campus and departmental levels in requisitioning purchases and often is used to acquaint vendors and suppliers with the LEA's policies and procedures. Internally, the manual helps in training LEA personnel in purchasing policy and procedures. Finally, it promotes consistency in purchasing applications throughout the LEA. 2 CFR §200.319 requires written procedures for procurement transactions involving federal funds.

For additional guidance on procurement, the LEA will refer to the Questions and Answers section found in the FASRG's Purchasing Module, Appendix 1 – Handbook on Purchasing for Texas Public Schools, Junior Colleges and Community Colleges, as well as TEA's "New EDGAR Regulations Frequently Asked Questions" guidance document.

PURCHASING OVERVIEW

According to the Purchasing Module in the FASRG, a major management process supporting financial accountability in Texas public schools is the purchasing function. Purchasing has several links to overall accountability initiatives which include the:

- **Strategic Link.** The overall mission of purchasing is to use available fiscal resources to obtain the maximum product or service for the resources expended.
- **Operational Link.** Purchasing supports instructional delivery, administration, and other services. Performance and goal achievement throughout the school district depend on its effectiveness.
- **Tactical Link.** The purchasing process influences day-to-day financial functions including budget management, accounting, and accurate financial reporting.

Purchasing in the *public sector environment* presents numerous challenges including:

- The requirement to comply with numerous statutes, policies, legal interpretations, and procedures. The complexity of these requirements demands not only knowledge of purchasing laws and standards but compliance in implementing a purchasing system that also meets user needs.
- The dynamic and diverse nature of the public education organizational environment. School districts are complex organizations with diverse functions. Although instruction is the heart of the organization, numerous other services – ranging from custodial services to

food service to tax collection – support the overall educational mission. These distinct organizational units need a procurement process that is responsive to their needs.

- The competition among vendors for school district business. The strong competition among vendors for school district business may create pressure on school district personnel for product selection, bid or proposal awards, and dispute resolution. Most school districts seek to foster both good vendor relations and strong competition but balance them with objective purchasing decisions.
- The consistent oversight by interest groups. School district purchasing is scrutinized by diverse groups including those from the public, the media, state and federal agencies, and auditors. Strict adherence to established guidelines and consistency in record keeping, documentation, and execution of procedures assists the school district in withstanding this scrutiny.
- The many “gray” areas relating to purchasing methods and procedures. Complex and diverse needs create challenges for LEAs to determine the appropriate purchasing methods. Ever-changing legislative, executive, and judicial decisions at both the state and federal levels further complicate the procurement process.

Purchasing Policy

According to the Purchasing Module in the FASRG, the objective of the purchasing policy is to purchase the best products, materials, and services at the lowest practical prices within relevant statutes and policies. Procurement policies must, of course, accommodate the LEA’s unique operating environment and needs. While LEA administrators are not authorized to override federal or state law or board policy, they can customize the purchasing function to provide for regulatory compliance while minimizing procedures and related costs.

The purchasing function is the result of conscious process design and is reviewed and challenged periodically. The elements are systematic, comprehensive, and creative. The structure itself, therefore, is not based on historical methods and “the way it’s always been done.” Instead, it begins with a strategic focus and ends by linking operations, strategy, technology, and human resources district-wide. Development of this structure is an interactive process which is cross-functional in providing a sense of ownership for user/designers.

A good design identifies the best purchasing methods and subsequently employs them throughout the LEA. It correlates the diversity of district operations and the important nature of the services with the timing of service delivery. As an example, planning for and subsequent procurement of instructional materials for both students and teachers is coordinated at the district and campus levels to meet both the school calendar and class schedules.

The Assistant Superintendent of Business is responsible for the design, review, and modifications of the LEA’s purchasing function and operations.

Record Keeping

Accurate record-keeping and documentation is a fundamental element of the procurement process. Precise and systematic record-keeping and records management withstands the constant scrutiny of various interest groups including vendors, the general public, and outside agencies as well as internal groups which are the users or customers of the purchasing system. This records management function supports the LEA's overall information management plan consistent with the Data Collection and Reporting module of TEA's FASRG. The records management system generally provides for:

- Both the flow and retention of forms including requisitions, purchase orders, petty cash and cash reimbursement receipts.
- Full documentation of all competitive procurements with comprehensive competitive procurement files containing specifications, competitive procurement advertisement, pre-competitive procurement conference minutes (as appropriate), competitive procurements submitted, competitive procurement tabulation, board minutes indicating competitive procurement awards (or a similar award notice) and related records.
- Full documentation of procurement procedures utilized to obtain goods and services through competitive sealed proposals, design/build contracts, and other procurement options.
- Documentation of price quotations if there are quotations obtained by LEA staff for local policy compliance.

The records management function may rely on electronic formats including automated systems, flash drives/external hard drives, diskettes, CD-ROM, imaging and microfiche. Alternatively, it may use hard copy or a combination of methods. The LEA selects the methods best suited to its needs.

Refer to the LEA's Administrative Procedures Manual (APM), "Record Keeping" section for records management procedures.

Quality Control

Quality assurance and quality control are reflected in all administrative procedures and extend to areas such as analysis of products provided, review of services and review of vendor performance. Specific areas of quality control may be grouped as:

- Administrative Control activities, which may include:
 - Independent review of account coding
 - Confirmation of availability of funds
 - Confirmation of utilization of approved vendors

- Confirmation of legal compliance with bid, proposal and quotation requirements
- Review of pricing and price extensions
- Product and Services Control activities, which may include:
 - Product testing
 - Ongoing analysis of product quality and quality of service delivery
 - Product reliability analysis
- Vendor Performance Control activities, which may include:
 - Review of compliance with contractual terms for prices
 - Analysis of timeliness and accuracy of product delivery
 - Responsiveness to problems

Administrative Control activities are performed by Business Office personnel.

Product and Services Control activities are performed by Business Office personnel.

Vendor Performance Control activities are performed by Business Office personnel.

Staff Training

A consistent program for purchasing staff development and training is important to effective purchasing activity. The complexity of the purchasing environment demands that staff members responsible for purchasing goods and services periodically receive training in policy and procedures. Purchasing training includes all levels of employees providing at least basic information about the LEA's purchasing function.

Training is on-going to accommodate:

- Employee advancement and staff turnover that create training needs for employees
- Procedures, processes, functions and support mechanisms that are modified or enhanced
- Purchasing changes that may be mandated by legislative, executive or judicial action

Staff training is done at the start of the school year.

Purchasing Design

According to the Purchasing Module in the FASRG, design and implementation of certain purchasing processes results in more successful LEA operations. Although not all inclusive, these processes include:

- Planning and Coordination. The LEA develops a comprehensive plan to determine how various purchasing methods will be implemented and the timing of key activities such as

annual bid or proposal requirements. Responsibility for coordination of purchasing activities are assigned to a responsible administrator to ensure that needs are met.

- **Purchasing Infrastructure Development.** Comprehensive policies and procedures, implementation of processes to support these procedures, on-going training of users, and monitoring of the overall purchasing function to ensure sound operations requires careful development.
- **User Responsiveness.** To operate successfully, the purchasing function must be responsive. This includes ensuring that communication lines are open and that a user perspective is incorporated into all processes.
- **Consistent Compliance with Requirements.** The LEA ensures that enforcement mechanisms for laws, regulations, policies and ethical standards are in place and monitored.

The Business Office is responsible for these purchasing design processes.

CONTROL ENVIRONMENT

According to the Purchasing Module in the FASRG, an LEA needs a strong control environment in which to perform the purchasing function. The procurement manual is the primary tool for establishing a strong control environment, and it should be strictly adhered to by employees of the LEA. If a situation occurs which is not addressed in the procurement manual, it should be referred to the department responsible for purchasing to determine the proper course of action. If it is likely that this situation may reoccur, it should be considered for inclusion in the procurement manual.

One of the most important components of an effective purchasing system is a good organization that is staffed with well-trained people. Roles and related responsibilities must be clearly defined and be adapted to meet the unique operating environment of the LEA. The organizational unit responsible for purchasing should strive toward enhancing efficiency and competency through training for both purchasing staff and users.

User Interface

According to the Purchasing Module in the FASRG, most important to the central purchasing function are the users. The foundation of purchasing is the identification of the needs of the users. To be successful, the needs of the users must be met satisfactorily. If the purchasing process is not responsive or slow to respond, the user may attempt to obtain goods and services using alternative methods which may violate purchasing policies.

The key to the success of the purchasing system is a free flow of information between the purchasing department and the users. The central purchasing department should attempt to obtain feedback from the user community. Also, users must be provided with information to properly administer their functions. For example, a short instruction sheet can provide the user with information on how to complete a requisition form. Coordination and cooperation must be developed to unite the technical expertise of purchasing and the needs of the users to effectively meet the educational objectives of the LEA.

Purchasing Functions and Roles

According to the Purchasing Module in the FASRG, the organization of the purchasing function within an LEA may depend on various factors, one of which is the size of the LEA. In smaller LEAs, administrators and support staff “wear many hats” and they may be responsible for purchasing in addition to several other major functional areas. In larger LEAs, staffing levels are greater, allowing for personnel to be more specialized and to perform a specific function, such as purchasing.

The purchasing process includes a wide range of procurement functions, including planning, acquisition, quality assurance, contract administration and distribution. Basic purchasing functions include the following:

- The organization and administration of procurement/purchasing as determined by the superintendent and the board.
- The acquisition of goods and services requested, consistent with state and federal law, board of education policies, and sound business practices.
- The distribution of goods and services to users in a timely and responsive manner with assurance that quality standards have been met.

Assignment of roles may vary according to the number of people employed in purchasing, but typical assignments include:

- A *purchasing director or purchasing agent* is primarily responsible for the effective operation of the purchasing system. Typically, this position:
 - Manages the procurement of goods and services in a timely and cost efficient manner
 - Approves purchase orders and service contracts, including competitive procurement specifications and tabulations
 - Assists in the development and modification of purchasing policies and procedures and is responsible for the implementation of such policies and procedures
 - Resolves problems encountered within the purchasing function
 - Establishes and monitors good working relations with vendors

- Provides for communication with vendors (i.e., pre-competitive procurement conferences, competitive procurement openings, etc.) and approves vendor communication with campuses and departments
- Ensures that LEA staff are aware of relevant purchasing statutes, regulations, and board policies through either formal or informal training programs
- Stays current on purchasing statutes, regulations, and practices
- A *purchasing supervisor/purchasing assistant* assists the purchasing director by:
 - Managing assigned activities within the purchasing department
 - Preparing competitive procurement specifications
 - Evaluating competitive procurement tabulations
 - Maintaining vendor list
 - Supervising the processing of purchase orders for approval by the purchasing director
 - Evaluating the performance of vendors
 - Assisting users
 - Supervising buyers
- *Buyers* are responsible for the purchase of goods and services for the LEA, following state and federal laws and local board policy. They may:
 - Write, review, and modify specifications for competitive procurements
 - Assist in the evaluation of competitive procurements
 - Identify sources to obtain competitive prices and terms
 - Assist in maintaining an updated vendor list from which purchases can be made
 - Obtain and verify vendor price quotes
- The clerical *support staff* perform the daily clerical activities within the purchasing department, including:
 - Typing competitive procurement specifications and competitive procurement award notices
 - Assisting in competitive procurement tabulations
 - Distributing requisitions/purchase orders copies to campuses/departments and vendors
 - Performing other miscellaneous clerical support tasks
 - Assisting users

Purchases are initiated from a campus or department employee. It is then processed and approved by their campus or department. The final approval is by the Assistant Superintendent of Business.

Refer to Appendix C for a chart that lists the functions/responsibilities for the positions involved with procurement for this LEA.

Centralized vs. Decentralized Purchasing

According to the Purchasing Module in the FASRG, an LEA should strive to maximize the efficiency of its purchasing function. As recommended by TEA, the purchasing function should be centralized within the LEA for maximum efficiency to be achieved. Centralized and decentralized purchasing is defined by the Council of State Governments publication, *State and Local Governmental Purchasing*, as follows:

- *Centralized Purchasing* is defined as “a system of purchasing in which authority, responsibility, and control of activities are concentrated in one administrative unit”
- *Decentralized Purchasing* is defined as “a system of purchasing in which there is a varying degree of delegation of authority, responsibility, and control of purchasing activities to the several using agencies”

Decentralized Purchasing

According to the Purchasing Module in the FASRG, in decentralized purchasing, campuses and departments may issue purchase orders, communicate directly with vendors, and receive goods at other than central locations. If purchases are made inappropriately, violation of laws, regulations, and school board policies may result.

Centralized Purchasing

According to the Purchasing Module in the FASRG, centralized purchasing is more efficient than decentralized purchasing because it enables an LEA to coordinate the common purchase requirements of campuses and departments to obtain better prices. For example, when two campuses requisition the same goods and/or services, a centralized purchasing department may combine the goods/services on the same purchase order and arrange for more favorable price terms. Better planning, reduced paperwork, and reduced costs result from centralized purchasing.

Centralizing the purchasing function strengthens internal controls. A centralized purchasing department typically:

- Receives and coordinates purchasing requisitions/purchase orders from campuses or departments
- Communicates with vendors regarding prices and terms of purchases
- Processes and approves all purchase orders
- Issues purchase orders to vendors
- Receives purchases at central warehouse locations
- Coordinates competitive procurement processes
- Distributes goods based on purchase requirements

Centralizing the purchasing function does not erode the principles of site-based management. Purchase requisitions still originate at the campus or department level where needs are identified. Centralized purchasing carries out the site-based requisitions and improves the internal controls within the purchasing function.

The area in which internal controls are improved most is in the purchase approval process. In centralized purchasing, every purchase within the LEA is reviewed by the centralized purchasing department to prevent violations of state and federal law and local school board policies. A centralized purchasing function with varying levels of authority and a receipt and distribution process provides another strong internal control.

Centralized purchasing may, however, delegate certain routine activities. Well-written instructions for the delegated activities and careful monitoring of their performance are recommended.

In summary, a centralized purchasing function is essential to efficiency in purchasing, for the following reasons:

- It provides for the coordination and consolidation of smaller purchases into larger, volume purchases for the entire LEA
- Vendors and the business community have a single central contact within the LEA
- The purchasing department and its personnel have experience and are trained in purchasing, sourcing, prices, and vendor relations, which saves the LEA money and allows for a more efficient process
- The purchasing department and its personnel are trained in state and federal laws and local board policies applicable to purchasing, thereby providing for better compliance

Cuero ISD is a decentralized purchasing organization.

Training and Staff Development

According to the Purchasing Module in the FASRG, an LEA should provide for purchasing training and staff development. This training should extend beyond the professional staff to include other staff who are often involved either directly or indirectly in the purchasing process.

Training should be ongoing. Individuals within the department responsible for purchasing, such as the buyers and clerks, should receive ongoing instruction about changes in relevant statutes and purchasing practices. Campus principals and other departmental staff should also receive ongoing training, to accommodate changes in staffing. Training should consist of updating staff on recent developments in purchasing, including changes in purchasing statutes and regulations, and changes in the purchasing policies and procedures. Training and staff development may be provided by either external or internal resources. Throughout the training and staff development, a common

basis of purchasing theory should be established and reinforced – ensuring that the principles and standards of good public purchasing are applied consistently.

Control Environment

According to the Purchasing Module in the FASRG, expenditure of public money requires a strong control environment. The following items should be present in the purchasing control environment:

- *Approval of purchase requisitions at the campus and departmental levels.* The campus principal or department head should review for need and approve purchase requisitions before they are submitted to the centralized purchasing department for processing.
- *Approval of purchase orders.* The purchasing director or other designated official should review for compliance before approving purchase orders for issuance to vendors. If a purchase is to be federally funded, approval should first be obtained from a special programs administrator, to ensure allowable use of funds.
- *Supervision of purchasing process.* Vigilance in the supervision of the entire purchasing function on a daily basis is essential.
- *Segregation of duties among purchasing and accounting personnel.* The purchasing director, along with the finance director, and ultimately the superintendent, are responsible to ensure that duties among purchasing and accounting personnel are properly segregated (to the degree possible) to provide a checks-and-balances environment.
- *Maintenance of purchasing files and records.* The purchasing clerks should be trained and supervised so that purchasing files and records are complete and maintained in an orderly fashion for the period required by law.
- *Control over incoming merchandise.* Receiving personnel (either centralized or decentralized) should be trained and monitored to ensure that the proper procedures are followed with incoming merchandise (i.e., the counting and inspection of merchandise received, and the completion of receiving reports).
- *Verification of invoices with purchase orders and receiving reports.* Although receiving personnel are responsible for the initial verification of invoices, accounting personnel verify that the invoice, the purchase order, and the receiving report match before presenting the invoice for approval for payment.
- *Verification of delivery.* The requesting campus or department is responsible for ensuring that the order is in agreement with its original purchase order.
- *Internal review of the purchasing process.* An internal review of the purchasing process should be performed periodically. This review usually is made by the LEA's internal audit department and ensures that purchasing policies and procedures are being followed by LEA personnel.

Procurement Records

In accordance with 2 CFR §200.318(h)(i), the LEA must maintain records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, the basis for the contract price (including a cost or price analysis), and verification that the contractor is not suspended or debarred.

Refer to the LEA's Administrative Procedures Manual (APM) for more information on the LEA's record policies.

Procurement Review by USDE or TEA

In accordance with 2 CFR §200.324, the LEA must make available, upon request of the Federal awarding agency or pass-through entity (TEA):

- Technical specifications on proposed procurements
- Procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates

PURCHASING ETHICS

Overview

According to the Purchasing Module in the FASRG, the competitive nature of the public purchasing arena and the expenditure of significant amounts of public funds require that ethical standards be incorporated into the foundation of all purchasing functions. Purchasing personnel and LEA staff face the difficult task of developing good vendor relations and encouraging vendor competition while avoiding even the appearance of favoritism or other ethical misconduct.

Numerous problems may be encountered, including:

- Employees, in an effort to get the job done successfully and on time, are tempted to circumvent policies, procedures, and laws, or to make their own liberal "legal" interpretations of existing policies. Such activity, although well intentioned, can cause ethical problems.
- Sequential purchasing of the same items or type of items over the course of twelve months may exceed the federal, state, and/or local competitive quotation and procurement requirements. Although some sequential purchasing is intentional, it usually results from

needs that could not be anticipated. It may also result from lack of centralization and/or centralized control of the purchasing function.

- An item (usually equipment) is purchased in component parts. Component purchasing usually is an attempt to circumvent bid or proposal laws or other requirements by buying an item through the issuance of multiple purchase orders for the component parts of the item versus a single purchase order for the entire item. Repeated purchases of additional optional equipment or parts after an initial purchase may create the perception of component purchasing.

Ethics relating to conflicts of interest, financial interest in firms conducting business with the LEA, kickbacks and gratuities, and improper use of a position or confidential information should be clearly communicated throughout the district. Additionally, LEA personnel should be made aware of the penalties for violations of purchasing laws and ethics which may include criminal prosecution and loss of employment opportunities.

Fraud, Waste, and Abuse

To ensure the public receives the most value, the LEA strives to ensure its administrative management of public funds is as effective and efficient as possible, with a high standard of accountability to prevent waste, fraud, and abuse.

All trustees, employees, vendors, contractors, consultants, volunteers, and any other parties who are involved in the LEA's financial transactions shall act with integrity and diligence in duties involving the LEA's financial resources.

Fraud and Financial Impropriety

The LEA prohibits fraud and financial impropriety, as defined below, in the actions of its trustees, employees, vendors, contractors, consultants, volunteers and others seeking to maintain a business relationship with the LEA. These persons shall not seek a financial or other advantage, either personally or for the LEA, through bribery, fraud, kickbacks, misapplication of funds, malfeasance, gross mismanagement, or other criminal activities. These persons shall not offer, promise, give, request, agree to receive or accept a bribe for any purpose. Excessive or lavish gifts or hospitality in relation to business transactions or arrangements with granting agencies, contractors, vendors or other parties to contracts might constitute bribery.

Refer to the "Conflict of Interest Requirements Definitions" section of this manual for the LEA's definition of nominal vs excessive gifts.

Fraud and financial impropriety includes, but is not limited to:

- Forgery or unauthorized alteration of any document or account belonging to the LEA;
- Forgery or unauthorized alteration of a check, bank draft, or any other financial document;
- Misappropriation of funds, securities, supplies, or other LEA assets, including employee time;
- Impropriety in the handling of money or reporting of LEA financial transactions;
- Profiteering as a result of insider knowledge of LEA information or activities;
- Unauthorized disclosure of confidential or proprietary information to outside parties;
- Unauthorized disclosure of investment activities engaged in or contemplated by the LEA;
- Accepting or seeking anything of material value from contractors, vendors, or other persons providing services or materials to the LEA;
- Destroying, removing, or inappropriately using records, furniture, fixtures, or equipment;
- Failure to provide financial records required by state and local entities;
- Failure to disclose conflicts of interest as required by policy; and
- Any other dishonest act regarding the finances of the LEA.

The LEA will take appropriate action to prevent incidents of fraud, malfeasance, misapplication of funds, gross mismanagement, or other criminal activities in all forms, which may be prosecutable. The LEA will disclose in writing to the awarding agency any violation of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.

Refer to the “Mandatory Disclosure of Violations of Federal Criminal Law” section of this manual for the LEA’s procedures.

Reporting Fraud or Financial Impropriety

Any person who suspects fraud or financial impropriety, or suspects that an illegal or unethical act has occurred, shall report the suspicions immediately to any supervisor, the Superintendent or designee, the Board President, or local law enforcement. The LEA will not retaliate against any person who, in good faith, has reported what they believe to be illegal acts by LEA employees, officers, or agents, or of other individuals or entities with whom the LEA has a business relationship, on the basis of a reasonable belief that the practice is in violation of law or clear mandate of public policy.

An Incident Report should be completed by the Complainant and should include the following information, if applicable or known: (1) Date of Report; (2) Type of funds, such as federal, state, local; (3) Grant Number; (4) Location of incident; (5) Date and time of incident; (6) Source of complaint (employee, vendor, etc.); (7) Description in detail of infraction.

Investigating Reports of Fraud or Financial Impropriety

The Assistant Superintendent of Business will appropriately investigate, record, and report all suspected instances of fraud or financial impropriety to the Superintendent, including the initial

Incident Report, as well as a report indicating actions taken. If necessary, the appropriate investigative agency or law enforcement will be notified. Depending on the results of the investigation, the LEA will take appropriate action, including disciplinary actions for violations of the LEA's Code of Conduct. Appeals related to the conclusion of an investigation or disciplinary action resulting from an investigation should be made in writing to the Superintendent.

Purchasing Code of Ethics

The LEA adopts, with adaptations, the following Purchasing Code of Ethics outlined by the Texas Comptroller of Public Accounts' "Model Purchasing Manual for Texas Cities and Counties (November 2010)". The Model Purchasing Manual describes general purchasing principles applicable to counties, cities, independent school districts, and other governmental entities. The model manual is no longer accessible on the Comptroller's website.)

Statement of Purchasing Policy

Public employment is a public trust. It is the policy of this LEA to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by this LEA.

Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

LEA employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of this LEA's procurement organization.

To achieve the purpose of this policy, it is essential that those doing business with this LEA also observe the ethical standards prescribed in this manual.

General Ethical Standards

- **Personal Gain.** It shall be a breach of ethics to attempt to realize personal gain through public employment with the LEA by any conduct inconsistent with the proper discharge of the employee's duties.
- **Influence.** It shall be a breach of ethics to attempt to influence any public employee of the LEA to breach the standards of ethical conduct set forth in this code.
- **Conflicts of Interest.** It shall be a breach of ethics for any employee of the LEA to participate directly or indirectly in procurement when the employee knows that:

- The employee or any member of the employee’s immediate family has a financial interest pertaining to the procurement;
 - A business or organization in which the employee, or any member of the employee’s immediate family, has a financial interest pertaining to the procurement; and
 - Any other person, business or organization with which the employee or any member of the employee’s immediate family is negotiating or has an arrangement concerning prospective employment involved in the procurement.
- **Gratuities.** It shall be a breach of ethics to offer, give or agree to give any employee or former employee of the LEA, or for any employee or former employee of the LEA to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefore pending before this local government.
 - **Kickbacks.** It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for the LEA, or any person associated therewith, as an inducement for the award of a subcontract or order.
 - **Contract Clause.** The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation therefore.
 - **Confidential Information.** It shall be a breach of ethics for any employee or former employee of the LEA knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

Conflict of Interest Requirements Definitions

Agent. “Agent” means a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person. The term includes an employee. Local Government Code, §176.001(1), amended by the 84th Legislature.

Business Entity. “Business entity” means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law. Local Government Code, §171.001(2).

Business Relationship. “Business relationship” means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based

on: (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity (includes LEA) or an agency of a federal, state, or local governmental entity (includes LEA); (B) a transaction conducted at a price and subject to terms available to the public; or (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency. Local Government Code, §176.001(1-a).

Conflict of Interest. A “conflict of interest” is a situation where the personal interests of a contractor, public official or classified employee are, or appear to be, at odds with the best interests of the jurisdiction. TEA’s Financial Accountability System Resource Guide (FASRG) Module 3 Purchasing.

Contract. “Contract” means a written agreement for the sale or purchase of real property, goods, or services. Local Government Code, §176.001(1-d).

Financial or Other Interest. The LEA defines “financial or other interest” as gratuities, favors, or anything of monetary value.

Immediate Family. The LEA defines “immediate family” as spouse, son or daughter, including a biological, adopted, or foster child, a son- or daughter-in-law, a stepchild, a legal ward, or a child for whom the employee stands in loco parentis, parent, stepparent, parent-in-law, or other individual who stands in loco parentis to the employee, sibling, stepsibling, and sibling-in-law, grandparent, grandchild and any person residing in the employee’s household at the time of illness or death.

Family Member. “Family member” means a person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code. Local Government Code, §176.001(2), amended by the 84th Legislature.

Family Relationship. “Family relationship” means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code. Local Government Code, §176.001(2-a), amended by the 84th Legislature.

Gift. “Gift” means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient. Local Government Code, §176.001(2-b), amended by the 84th Legislature.

Goods. “Goods” means personal property. Local Government Code, §176.001(2-c), amended by the 84th Legislature.

Local Government Officer. “Local government officer” means (A) a member of the governing body of a local governmental entity (includes LEA); (B) a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity (includes LEA); or (C) an agent of a local governmental entity (includes LEA) who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. Local Government Code, §176.001(4), amended by the 84th Legislature.

Local Public Official. “Local public official” means a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), etc. who exercises responsibilities beyond those that are advisory in nature. Local Government Code, §171.001(1). For charter schools, according to TEC §12.1054, a member of a governing body of a charter holder, a member of the governing body of an open-enrollment charter school, or an officer of an open-enrollment charter school is considered to be a local public official for purposes of Local Government Code §171.

Nominal Value. Cuero ISD’s nominal value for gifts is \$50.00 per item.

The following list can be used as guidance regarding nominal vs. excessive:

- Promotional items that apply to any supply order;
- Promotional items and door prizes that anyone would receive at a conference or event (not singled out for this particular LEA or person);
- Meals when meeting to discuss LEA business, not to exceed \$50;
- Holiday gifts not to exceed \$50

Officer. See definition for “Local Government Officer.”

Partner. The LEA defines “partner” as a person’s spouse.

Records Administrator. “Records Administrator” means the director, county clerk, municipal secretary, superintendent, or other person responsible for maintaining the records of the local governmental entity (includes LEA) or another person designated by the local governmental entity (includes LEA) to maintain statements and questionnaires under Local Government Code §176, and perform related functions. Local Government Code §176.001(5). The LEA has designated the records administrator for Conflict of Interest Disclosure statements.

Substantial Financial Interest. Employees shall not recommend, endorse, or require students to purchase any product, material or service in which the employee has a financial interest or that is sold by a company that employs or retains the LEA employee during non-school hours.

Substantial Financial Interest in a Business Entity. According to Local Government Code §171.002, (a) A person has a substantial interest in a business entity if: (1) the person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or (2) funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year. (b) A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more. (c) A local public official is considered to have a substantial interest if a person related to the official in the first degree by consanguinity (blood) or affinity (marriage) has a substantial interest

Vendor. "Vendor" means a person who enters or seeks to enter into a contract with an LEA. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries. Local Government Code, §176.001(7), amended by the 84th Legislature.

Standards of Conduct (Conflicts of Interest)

In accordance with 2 CFR §200.318(c)(1), the LEA maintains standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts associated with federally funded transactions.

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of the LEA may neither solicit nor accept gifts, gratuities, favors, services, benefits, or anything of monetary value from contractors or parties to subcontracts that could reasonably be construed to influence the person's discharge of assigned duties and responsibilities, unless the financial interest is not substantial or the gift is an unsolicited item of nominal value given, for example, for the purpose of advertising, ceremonial occasions or official events.

In addition to the standards of conduct listed above for federal awards, standards of conduct are applicable to all funds in accordance with TEA's Financial Accountability System Resource Guide (FASRG) Module 3 Purchasing: LEA officials and employees cannot accept anything of value from a vendor, such as personal gifts or gratuities, which may be construed to have been given to influence the purchasing process. Although such practices may be legitimate and generally accepted in the private sector, giving and receiving gifts in the public sector may constitute a violation of law.

No LEA employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal, state, or other award if he or she has a real or apparent conflict of interest. If required by the terms and agreements of a Grant Award Notice and/or the awarding agency, the LEA will disclose in writing any potential conflict of interest to the awarding agency in accordance with the awarding agency's policies. Furthermore, applicable LEA officials and employees will abide by the LEA's Purchasing Code of Ethics.

Disclosure of Conflict of Interest

The LEA will follow the requirements of Local Government Code Chapter 176 and Local Government Code Chapter 171 regarding conflict of interest statements and reporting. The LEA will also refer to the Texas Ethics Commission website for additional information and sample forms.

Board Member:

According to TEA's Financial Accountability System Resource Guide (FASRG) Module 3 Purchasing, if a board member or member of their immediate family has a financial interest in a business entity(s), they are required to disclose this relationship through the execution of an affidavit, submitted to Superintendent. Local Government Codes §171 and §176 provide information regarding disclosure requirements.

Local Government Officer:

A local government officer of an LEA, according to Local Government Code Chapter 176.003, amended by the 84th Legislature, shall file a conflicts disclosure statement with respect to a vendor if: (1) the vendor enters into a contract with the LEA or the LEA is considering entering into a contract with the vendor; and (2) the vendor (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that: (i) a contract between the LEA and vendor has been executed; or (ii) the LEA is considering entering into a contract with the vendor; (B) has given to the local government officer or family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that: (i) a contract between the LEA and vendor has been executed; or (ii) the LEA is considering entering into a contract with the vendor; or (C) has a family relationship with the local government officer. A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is a political contribution as defined by Title 15, Election Code; or food accepted as a guest; or the LEA or vendor is an administrative agency created under Section 791.013, Government Code.

When applicable to file the conflicts disclosure statement, the local government officer will submit the conflicts disclosure statement to the LEA's designated records administrator no later than 5 pm on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement. The LEA refers to Local Government Code §176.003(e), as amended by the 84th Legislature, for requirements of the contents of the conflicts disclosure statement.

Vendor:

A vendor, according to Local Government Code §176.006, as amended by the 84th Legislature, shall file a completed conflict of interest questionnaire if the vendor has a business relationship with an LEA and: (1) has an employment or other business relationship with a local government officer of that LEA, or a family member of the officer, described in Local Government Code §176.003(a)(2)(A), as amended by the 84th Legislature; (2) has given a local government officer of that LEA, or a family member of the officer, one or more gifts with the aggregate value specified by Local Government Code §176.003(a)(2)(B), as amended by the 84th Legislature, excluding any gift described by Local Government Code §176.003(a-1), as amended by the 84th Legislature; or (3) has a family relationship with a local government officer of that LEA.

The vendor's completed conflict of interest questionnaire must be filed with the LEA's designated records administrator not later than the seventh business day after the later of: (1) the date that the vendor: (A) begins discussions or negotiations to enter into a contract with the LEA; or (B) submits to the LEA an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the LEA; or (2) the date the vendor becomes aware: (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described in Local Government Code §176.003(a)(2)(A), as amended by the 84th Legislature; or (B) that the vendor has given one or more gifts described by Local Government Code §176.003(a)(2)(B), as amended by the 84th Legislature; or (C) of a family relationship with a local government officer. The LEA refers to Local Government Code §176.006(c), as amended by the 84th Legislature, for requirements of the contents of the conflicts disclosure statement.

Additionally, according to Local Government Code §176.006(d), as amended by the 84th Legislature, the vendor shall file an updated completed questionnaire with the LEA's designated records administrator not later than the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in the questionnaire incomplete or inaccurate.

Cuero ISD requires all local vendors to complete a conflict of interest questionnaire.

Employee:

The employee shall disclose in writing to his or her immediate supervisor a personal financial interest, a business interest, or any other obligation or relationship that in any way creates a real or potential conflict of interest with the proper discharge of assigned duties and responsibilities or that creates a potential conflict of interest with the best interest of the LEA. In the case that the individual receiving the report is also involved in the potential conflict, the disclosure should be submitted to the Business Office.

The disclosure is then forwarded to the LEA's designated records administrator.

Conflict of Interest Reported to USDE and/or TEA

According to 2 CFR §200.112, the LEA must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity (TEA) in accordance with applicable federal awarding agency policy. The LEA's Conflict of Interest policy will align with the USDE's Conflict of Interest policy once it has been released.

The LEA will use the Conflict of Interest Disclosure form obtained from the TEA website at <http://tea.texas.gov/index2.aspx?id=25769821440>, to disclose any potential conflict of interest concerning the expenditure of *federal or state grant funds*. The Records administrator is responsible for submitting the Conflict of Interest Disclosure form.

Removal from the Procurement Transaction and/or Abstinance from Voting

According to TEA's Financial Accountability System Resource Guide (FASRG), Module 3 Purchasing, Board members should abstain from voting on award of contracts to businesses in which they or their immediate family members have a financial interest.

Cuero ISD board members abstain from all votes dealing with themselves or their immediate family members having a financial interest in a business.

LEA employees, officers, and agents should recuse themselves from the procurement transaction if there is a real or potential conflict of interest.

Cuero ISD requires an employee to put in writing their conflict of interest or potential conflict of interest in a procurement transaction. The letter is signed by the Superintendent and kept in the Business Office for safe keeping.

Training and Acknowledgment of Code of Ethics

LEA employees, officers, and agents are made aware of the provisions of the Code of Ethics and Conflict of Interest policy and procedures.

Training for all employees occurs at the beginning of the school year by campus or department. New employees are given the same training if they are hired throughout the year. The Code of Ethics policy is the Employee Handbook.

Organizational Conflicts 2 CFR §200.318(c)(2)

If the LEA has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the LEA must include written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. 2 C.F.R §200.318(c)(2).

Disciplinary Actions

Penalties, sanctions, or other disciplinary actions for violations of standards of conduct will be in accordance and to the extent permitted under state and local law. Penalties for violations of purchasing laws and ethics may include criminal prosecution and loss of employment opportunities.

The LEA will follow the enforcement requirements of Local Government Code Chapter 176, as amended by the 84th Legislature, for local government officers and vendors who violate the standards of conduct and conflict of interest requirements.

All disciplinary action will be done by the Superintendent with input from the Federal Program Director and employees supervisor. All discipline is done on a case by case basis.

Enforcement of Purchase Procedures According to Texas Education Code 44.032

According to TEC 44.032, an officer, employee, or agent of an LEA commits an offense if the person, with criminal negligence, makes or authorizes separate, sequential, or component purchases to avoid the requirements of TEC 44.031(a) or (b). An offense under TEC 44.032(b) is a Class B misdemeanor and is an offense involving moral turpitude.

An officer, employee, or agent of an LEA commits an offense if the person, with criminal negligence, violates TEC 44.031(a) or (b) other than by conduct described in TEC 44.032(b). An offense under TEC 44.032(c) is a Class B misdemeanor and is an offense involving moral turpitude.

An officer or employee of an LEA commits an offense if the officer or employee knowingly violates TEC 44.031, other than by conduct described in TEC 44.032(b) and (c). An offense under TEC 44.032(d) is a Class C misdemeanor.

The final conviction of a person other than a trustee of an LEA for an offense under TEC 44.032(b) or (c) results in the immediate removal from office or employment of that person. Additional information concerning a trustee who is convicted of an offense under TEC 44.032(b) or (c) may be found at TEC 44.032(e).

Mandatory Disclosure of Violations of Federal Criminal Law

According to 2 CFR §200.113, the LEA must disclose, in a timely manner, in writing to the federal awarding agency or pass-through entity (TEA), all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.

The LEA will use the Mandatory Disclosure form obtained from the TEA website at <http://tea.texas.gov/index2.aspx?id=25769821440>, to disclose any violation of federal criminal law, including fraud, bribery, or gratuity violations potentially affecting a *federal or state award*. The records administrator is responsible for submitting the Mandatory Disclosure form. The disclosure will occur within 10 working days after the records administrator is notified of the violation.

The LEA will follow any forthcoming USDE or TEA guidance concerning the mandatory disclosure.

PROCUREMENT STANDARDS

General Procurement Standards

In accordance with 2 CFR §200.318, the LEA must use its own documented procurement procedures which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law and the standards identified in §200.318:

- The LEA must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. 2 CFR §200.318(b). Refer to the “Vendor Performance Evaluation”, “Contract Provisions”, “Contract Administration”, and “Accountability” sections of this manual for the procedures.
- The LEA maintains written standards of conduct covering conflicts of interest and standards of conduct. 2 CFR §200.318(c)(1). Refer to the “Purchasing Ethics” and “Standards of Conduct” sections of this manual for procedures regarding purchasing ethics and conflict of interest.

- If the LEA has a parent, affiliate, or subsidiary organization that is not a state or local government, the LEA must also maintain written standards of conduct covering organizational conflicts of interest. 2 CFR §200.318(c)(2). Refer to the “Organizational Conflicts” section of this manual for additional information regarding organizational conflict of interest.
- The LEA’s procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. 2 CFR §200.318(d). The Assistant Superintendent of Business is responsible for conducting this analysis.
- To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the federal government, the LEA is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. 2 CFR §200.318(e). Refer to the “Interlocal Contract/Purchasing Cooperative Process” section of this manual for procedures regarding interlocal contracts.
- The LEA is encouraged to use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. 2 CFR §200.318(f). The Assistant Superintendent of Business is responsible for determining the feasibility of such.
- The LEA must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. 2 CFR §200.318(h). Refer to the “Vendor Award Determination Criteria” section of this manual for procedures regarding award determinations.
- The LEA must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. 2 CFR §200.318(i). Refer to the LEA’s Administrative Procedures Manual (APM), “Record Keeping” section for records management procedures. .
- The LEA may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to the LEA is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore,

each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the LEA awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. 2 CFR §200.318(i)(1-2). The Assistant Superintendent of Business is responsible for this determination and oversight.

- The LEA alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the LEA of any contractual responsibilities under its contracts. 2 CFR §200.318(k). The Assistant Superintendent of Business is responsible for the settlement of procurement issues.

Competition

In accordance with 2 CFR §200.319, Competition:

(a) All federally funded procurement transactions must be conducted in a manner providing full and open competition, consistent with the standards of 2 CFR §200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

Some of the situations considered to be restrictive of competition include, but are not limited to:

- 1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- 2) Requiring unnecessary experience and excessive bonding;
- 3) Noncompetitive pricing practices between firms or between affiliated companies;
- 4) Noncompetitive contracts to consultants that are on retainer contracts;
- 5) Organizational conflicts of interest;
- 6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- 7) Any arbitrary action in the procurement process.

(b) The LEA must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference.* Nothing in 2 CFR §200.319 preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

*State law, TEC 44.042, requires preference to Texas agricultural products, if the cost and quality is equal. For the National School Lunch program, the Department of Agriculture’s regulations in 7 CFR §210.21(d) and (g) provide guidance on Buy American and geographic preference for agricultural commodities.

TEA’s “New EDGAR Regulations FAQ” document (q. 7.30) states:

“Federal EDGAR regulations prohibit the use of residency requirements because it is considered to be limiting competition, which is a more restrictive regulation. For federal procurements, the residency requirement would be deleted from the RFP. The subrecipient [LEA] could, however, have a criteria [in the RFP] such as being able to access the location in a timely manner.”

The most restrictive requirement of applicable federal, state, and local policy must be followed.

(c) The LEA must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- 1) Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
- 2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The LEA must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the LEA must not preclude potential bidders from qualifying during the solicitation period.

PROCUREMENT METHODS

This section describes the various procurement options based on federal and state laws and regulations. **When federal, state, or local purchasing structures conflict, the *most restrictive method must be followed.***

An LEA may design purchasing structures with requirements more restrictive than those mandated by the federal government or the state. However, locally-defined purchasing structures regarding procurement procedures, price quotes, purchase orders, emergency purchases, and blanket purchase orders must not be less restrictive.

The type of procurement method required to be used by the LEA depends on the cost of the purchase.

PROCUREMENT METHOD CHART

Dollar Amount	Procurement Method	Federal or State	Citation	Requirements	Description
\$10,000* or less	Micro-Purchases	Federal	2 CFR 200.320(a); 2 CFR 200.67; 48 CFR 2.101	<ul style="list-style-type: none"> ▪ This method is optional ▪ Quotes not required ▪ Price reasonable ▪ Purchases distributed equitably among qualified suppliers ▪ Aggregate amount does not exceed the Micro-Purchase Threshold* ▪ Usually used for unexpected procurements that may not have been included in the original planning and contracts 	This procurement method is a <u>subset of small purchase procedures</u> and is used to expedite the completion of an LEA's lowest-dollar small purchase transactions and minimize the associated administrative burden and cost.
\$49,999 or less	Small Purchase Procedures	Federal is more restrictive than State	2 CFR 200.320(b); 2 CFR 200.88; TEA FASRG Module 3 Purchasing	<ul style="list-style-type: none"> ▪ Price or rate quotations from an adequate number of qualified sources ▪ Obtain and retain written verification of the prices quoted (FASRG Module 3 Purchasing) <p>Exception:</p>	<p>Relatively simple and informal procurement methods for securing services, supplies, or other property, to expedite the purchase.</p> <p>If small purchase procedures are used, price or rate quotations must be obtained from an adequate</p>

				<ul style="list-style-type: none"> In accordance with TEC 44.031(l), contracts proposed for the purchase or lease of one or more school buses, including a lease with option to purchase, <u>must be submitted to competitive bidding</u> when the contract is valued at <u>\$20,000 or more</u>. 	<p>number of qualified sources.</p> <p><i>Although the federal Small Purchase Procedures are applicable to costs below the Simplified Acquisition Threshold**, state law requires competition for contracts valued at \$50,000 or more. Therefore, price or rate quotations may only be used for costs under \$50,000.</i></p>
\$50,000 or more	Competitive Procurement	State is more restrictive than Federal	<p>TEC 44.031(a)</p> <p>2 CFR 200.320(c);</p> <p>2 CFR 200.320(d)</p>	<p>STATE:</p> <ul style="list-style-type: none"> Contracts valued at \$50,000 or more <u>in the aggregate***</u> for each 12-month period. TEC 44.031(a) Use one of seven procurement methods, as appropriate, to provide the best value to the LEA <p>Exceptions:</p> <ul style="list-style-type: none"> Excludes purchase of produce or vehicle fuel. TEC 44.031(a) Refer to “Professional Services Contracts” section of this manual for options related to contracting professional services Does NOT apply if school equipment, a school facility, or a portion of a school facility is destroyed, severely damaged, or experiences a major 	<p>STATE:</p> <p>Seven Procurement Methods:</p> <ol style="list-style-type: none"> Competitive bidding for services <u>other than construction</u> services; Competitive sealed proposals for services <u>other than construction</u> services; Request for proposals for services <u>other than construction</u> services; Interlocal contract; Method provided by Govt Code 2269 <u>for construction</u> services; Reverse auction procedure according to Govt Code 2155.062(d) (for bidding via Internet); Formation of a political subdivision corporation under Local Govt Code

				<p>unforeseen operational or structural failure, and the board of trustees determines the delay posed by the contract methods of TEC 44.031(a) would prevent or substantially impair the conduct of classes or other essential school activities. TEC 44.031(h)</p> <ul style="list-style-type: none"> ▪ An LEA may acquire computers and computer-related equipment, including computer software through the Department of Information Resources under contracts entered into in accordance with Govt Code 2054 or 2157. TEC 44.031(i) ▪ Sole-source (Refer to “Non-Competitive” section of this chart) ▪ Contracts proposed for the purchase or lease of one or more school buses, including a lease with option to purchase, <u>must be submitted to competitive bidding</u> when the contract is valued at <u>\$20,000 or more</u>. TEC 44.031(l) ▪ LEAs that have formally adopted a site-based decision making plan under Subchapter F, Chapter 11, and delegate purchasing decisions to the campus level: TEC 44.031 applies 	<p>304.001 (for negotiating the purchase of electricity)</p> <p>FEDERAL:</p> <p><i>Although the federal law requires competition for amounts over the Simplified Acquisition Threshold (\$150,000**), the State is more restrictive, requiring competition for contracts \$50,000 or more in the aggregate.</i></p> <p>Sealed bids:</p> <p>Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. Preferred method for procuring construction.</p> <p>Appropriate when:</p> <ul style="list-style-type: none"> ▪ A complete, adequate, and realistic specification or purchase description is available; ▪ Two or more responsible bidders are willing and able to compete effectively for the business; and ▪ The procurement lends itself to a firm and fixed
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				<p>only to the campus and does not require the LEA to aggregate and jointly award purchasing contracts. The LEA adopts a policy to ensure that campus purchases achieve the best value to the LEA and are not intended or used to avoid the requirement that an LEA aggregates purchases under Subsection (a). TEC 44.031(m)</p> <p><u>FEDERAL:</u></p> <p>Sealed bids:</p> <ul style="list-style-type: none"> ▪ Bids publicly solicited ▪ Firm fixed price contract ▪ Award made principally on the basis of price ▪ Must perform a cost or price analysis <u>before</u> receiving bids, if the amount is over the Simplified Acquisition Threshold** <p>Competitive Proposals:</p> <ul style="list-style-type: none"> ▪ Proposals solicited from an adequate number of qualified sources ▪ Awarded to proposal most advantageous to the program, with price and other factors considered ▪ Method where price is not used as a selection factor can only be used in procurement of A/E (architectural/engineering) professional services 	<p>price contract and selection of the successful bidder can be made principally on the basis of price</p> <p>The LEA complies with the requirements outlined in 2 CFR 200.320(c)(2).</p> <p>Competitive Proposals:</p> <p>Normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. Generally used when conditions are not appropriate for the use of sealed bids.</p> <p>The LEA complies with the requirements outlined in 2 CFR 200.320(d).</p>
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				<ul style="list-style-type: none"> ▪ LEA must have a <u>written method for conducting technical evaluations</u> of the proposals received and for selecting recipients ▪ Must perform a cost or price analysis before receiving proposals, if the amount is over the Simplified Acquisition Threshold** 	
Over \$150,000**	Cost or Price Analysis must be performed before receiving bids or proposals	Federal	2 CFR 200.323	<p>The LEA must perform a cost or price analysis in connection with <u>every Procurement Action</u> in excess of the Simplified Acquisition Threshold (\$150,000**), including contract modifications.</p> <ul style="list-style-type: none"> ▪ Make independent estimates <u>before</u> receiving bids or proposals (during planning process) ▪ In all cases of <u>cost analysis</u>, profit must be negotiated as a separate element of the price ▪ Profit must be negotiated as a separate element of the price for each Sole-Source contract ▪ Cost or price analysis must be documented in writing 	The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the LEA must make independent estimates <u>before</u> receiving bids or proposals.
Non-Competitive (Sole-Source)		Federal; State	2 CFR 200.320(f); TEX 44.031(j,k)	<p>FEDERAL:</p> <p>Sole-source method may be used <u>only</u> when one or more of the following circumstances apply:</p>	<p>Solicitation of a proposal from only one source.</p> <p>Per TEA’s “New EDGAR Regulations FAQ” document, an affidavit or sole-source letter from a</p>

			<ul style="list-style-type: none"> ▪ The item is available only from a single source; ▪ The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; ▪ The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the LEA; ▪ After solicitation of a number of sources, competition is determined inadequate <p>STATE:</p> <p>Sole-source method is applicable when competition is precluded:</p> <ul style="list-style-type: none"> ▪ <u>Due to the existence of a patent, copyright, secret process, or monopoly;</u> ▪ <u>A film, manuscript, or book;</u> ▪ <u>A utility service, including electricity, gas, or water;</u> ▪ <u>A captive replacement part or component for equipment.</u> <p><u>Sole-source method not applicable to mainframe data-processing equipment and peripheral attachments with a single-item purchase in excess of \$15,000.</u></p>	<p>vendor is not sufficient documentation that the item or service is only available from a single source. Sole-source must be proven and adequately documented and will seldom be used in federal procurements.</p>
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*Micro-Purchase Threshold set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 Definitions. The threshold is periodically adjusted for inflation. During implementation of the Uniform Guidance (2 CFR 200), the Micro-Purchase Threshold was \$3,000. Effective 10/1/15, the Micro-Purchase Threshold became \$10,000. This amount will be revised when applicable.

**Simplified Acquisition Threshold set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 Definitions. The threshold is periodically adjusted for inflation. During implementation of the Uniform Guidance (2 CFR 200), the Simplified Acquisition Threshold was \$150,000. This amount will be revised when applicable.

*** Per TEA's "New EDGAR Regulations FAQ" guidance document (q. 7.1), the \$50,000 amount is per individual service, aggregate equipment or supplies (such as 10 similar items of equipment at \$5,000 each), or other individual property.

Competitive Procurement Categories:

The FASRG provides a partial, non-inclusive list of related categories to be used as a guide to determine requirements under the Texas Education Code District purchasing law. If anticipated aggregate purchases in each category during a twelve-month period equal or exceed \$50,000, the purchasing methods described in TEC 44.031(a) are required. Competitive procurement categories, which will vary for individual LEAs, are determined by grouping related items that have a common purpose or function in LEA operations. LEAs will add to the list as aggregate dollars of contracts exceed the threshold amount.

LEA's Competitive Procurement Categories

Micro-Purchases Procurement Method

In accordance with 2 CFR §200.320(a), micro-purchases may be awarded without soliciting competitive quotations if the LEA considers the price to be reasonable. To the extent practicable, the LEA must distribute micro-purchases equitably among qualified suppliers.

Procurement by micro-purchase is defined in 2 CFR §200.67 as the acquisition of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 and is periodically adjusted for inflation.

Per TEA's "New EDGAR Regulations FAQ" guidance document, (q. 7.38), the **total** cost of the procurement determines if the purchase meets the Micro-Purchase Threshold. If the purchase is made from a combination of fund sources, considering only the federal grant share when

determining if the purchase meets the Micro-Purchase Threshold could cause an audit exception for the LEA.

Micro-purchase procedures comprise a subset of the LEA's small purchase procedures. The LEA uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost.

Per TEA's "New EDGAR Regulations FAQ" guidance document (q. 7.5), the LEA must ensure that it does not abuse this procurement method, such as splitting up costs that in the aggregate would normally exceed the Micro-Purchase Threshold and instead purchasing the items in small quantities.

Local Procedures for Micro-Purchases

The LEA does opt to use the Micro-Purchase method.

Micro-purchase are done through approved vendors from one of Cuero ISD's purchasing cooperatives. These purchase are approved by the Federal Program directors and then Assistant Superintendent of Business. To the extent practicable, the LEA distributes micro-purchases equitably among qualified suppliers.

The Federal Program Director is responsible for periodically determining the current federally-defined Micro-Purchase Threshold.

The LEA ensures that the Micro-Purchase procurement method is not abused and is used only as intended, to reduce the administrative burden for the cost of small items that do not exceed the Micro-Purchase Threshold. Micro-purchase are done through approved vendors from one of Cuero ISD's purchasing cooperatives. These purchase are approved by the Federal Program directors and then Assistant Superintendent of Business. To the extent practicable, the LEA distributes micro-purchases equitably among qualified suppliers.

The LEA uses the Micro-Purchase method when making low-cost, unexpected procurements that may not have been included in original planning and contracts for supplies or services.

The LEA ensures equitable distribution of micro-purchases among qualified suppliers by Micro-purchase are done through approved vendors from one of Cuero ISD's purchasing cooperatives. These purchase are approved by the Federal Program directors and then Assistant Superintendent of Business. To the extent practicable, the LEA distributes micro-purchases equitably among qualified suppliers.

The LEA determines a price is reasonable by Micro-purchase are done through approved vendors from one of Cuero ISD's purchasing cooperatives. These purchase are approved by the Federal

Program directors and then Assistant Superintendent of Business. To the extent practicable, the LEA distributes micro-purchases equitably among qualified suppliers.

The LEA ensures that use of the Micro-Purchase method doesn't conflict with the state-defined competitive procurement categories. Per TEA's "New EDGAR Regulations FAQ" guidance document (q. 7.5), once the aggregate of the item exceeds the Micro-Purchase Threshold, it is no longer a micro-purchase and the LEA must follow the appropriate procurement process for the item.

Per TEA's "New EDGAR Regulations FAQ" guidance document (q. 7.7), travel costs for employees are considered reimbursements. Micro-Purchases apply to procurements, not to reimbursements.

Per TEA's "New EDGAR Regulations FAQ" guidance document (q. 7.8), personal services contracts for staff training or professional development that meet the requirements of a micro-purchase may be classified as such. The personal services contract must also meet the requirements of 2 CFR 200.459 Professional Service Costs and should follow the "Guidance and Best Practice: Professional Services Contracts" issued by TEA, located at:

http://tea.texas.gov/Finance_and_Grants/Grants/Administering_a_Grant/The_New_EDGAR/

Copies of all federal funding documentation and procurement methods are approved by the Federal Program Director and the Assistant Superintendent of Business.

Small Purchase Method for Procurement Actions valued at less than \$50,000 Small purchase procedures are defined in EDGAR as those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold** (currently \$150,000). In accordance with 2 CFR §200.320(b), if small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

However, state law requires competition for contracts valued at \$50,000 or more. Therefore, price or rate quotations may only be used for costs under \$50,000. Per TEA's "New EDGAR Regulations FAQ" guidance document (q. 7.1), the \$50,000 amount is per individual service, aggregate equipment or supplies (such as 10 similar items of equipment at \$5,000 each), or other individual property.

According to the Purchasing Module in the FASRG, to obtain the most competitive price, an LEA *at its option* may obtain price quotes for items costing less than \$50,000. The LEA's purchasing procedures should clearly define the lower figure for which quotes are required and obtain and

retain written verification of the prices quoted. Unlike the mandatory competitive procurement required by TEC 44 for purchases over \$50,000, if an item costs less than \$50,000, an LEA may utilize price quotations to stimulate competition and to attempt to receive the most favorable pricing.

Local Procedures for Small Purchases

For purchases below \$50,000, the LEA does not require a competitive process, but instead uses the Small Purchase Procedures described in this manual's Procurement Method Chart.

The LEA requires at least 3 quotations from qualified sources. A qualified source is defined as any approved local vendor.

Documented quotations are maintained by the Federal Program Director. Quotations are obtained on an annual basis for similar purchases.

Cuero ISD uses interlocal agreements and purchasing cooperatives. Local vendors are solicited annually by newspaper advertisement and approved by the school board.

Competitive Procurement Method for Procurement Actions valued at \$50,000 or more

Seven State Competitive Procurement Methods In Accordance with TEC 44.031(a)

For purchases of goods or services \$50,000 or more in the aggregate*** for each 12-month period, the LEA uses one of the following methods, as applicable, to provide the best value for the LEA. Per TEA's "New EDGAR Regulations FAQ" guidance document (q. 7.1), the \$50,000 amount is per individual service, aggregate equipment or supplies (such as 10 similar items of equipment at \$5,000 each), or other individual property.

Refer to the exceptions described in this manual's Procurement Method Chart.

▪ ***Competitive Bidding for Services Other Than Construction Services***

According to the Purchasing Module in the FASRG, competitive bidding is a formal process that may also be referred to as competitive sealed bidding, sealed bidding or formal bidding. It is an option available to LEAs for the procurement of goods and services. The purpose of competitive bidding is to stimulate competition and obtain the lowest practical price for the work, service, and/or item(s) needed.

The competitive bidding process requires that bids be evaluated and awards made based solely upon bid specifications, terms and conditions contained in the request for bids document, and according to the bid prices offered by vendors and pertinent factors that may affect contract performance.

In accordance with TEC 44.0351(c), the LEA awards a competitively bid contract at the bid amount to the bidder offering the best value. In determining the best value for the LEA, the LEA is not restricted to considering price alone but may consider any other factors stated in the selection criteria, which includes the factors listed in TEC 44.031(b).

Refer to the “Vendor Award Determination Criteria” section of this manual for a list of selection criteria factors.

Refer to “The Purchasing Process” section of this manual for information on the process used for competitive bidding.

Competitive Sealed Proposals for Services Other Than Construction Services/Request for Proposals for Services Other Than Construction Services

According to the Purchasing Module in the FASRG, the competitive sealed proposal process is an alternative to competitive bidding. The terms and conditions of competitive sealed proposals are identical to those for competitive bidding except that an important difference between competitive sealed proposals and competitive sealed bidding relates to the finality of initial offers. Under competitive sealed proposals, changes in the nature of a proposal, and in prices, may be negotiated after proposals are opened. In contrast, changes in the price of goods and services are not negotiable in the competitive bidding process.

The competitive sealed proposal process provides for full competition among proposals and allows for negotiation with the proposer(s) to obtain the best services at the best price.

Competitive proposal procedures are recommended where other procurement procedures are not required according to state or federal rules, laws or regulations, in order to stimulate competitive prices for services.

A Request for Proposals (RFP) is a part of the competitive sealed proposal process but may also be used as a procurement option to generate a non-sealed competitive proposal, for services other than construction services. In this instance, the LEA may open the proposal upon receipt and begin the negotiation process for the offered goods/services.

Refer to “The Purchasing Process” section of this manual for information on the process used for competitive proposals and RFPs.

Interlocal Contract/ Purchasing Cooperative

According to the Purchasing Module in the FASRG, an LEA can contract or 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 any services reasonably required for the installation, operation, or maintenance of the goods. Cooperative purchasing agreements may exist between the LEA and the Comptroller, Education Service Centers, cities, counties, community college districts, and certain nonprofit corporations.

Benefits of cooperative purchasing may be realized by LEAs of all sizes and can include:

- Cost savings on products or services. A cooperative purchasing arrangement can increase the buying power of a single LEA with volume discounts.
- Savings on administrative costs. A cooperative arrangement can reduce administrative costs relating to performing the purchasing function. Cost savings can include major areas such as salaries and benefits, supplies, office equipment and contracted services. A cooperative can result in the elimination of redundant costs which may be associated with individual LEAs performing their own purchasing functions. Although purchasing cooperatives may charge annual fees for overhead costs, many LEAs can realize savings on both products and administration.
- Accessibility to more products and services. A cooperative may provide LEAs the opportunity to buy a greater variety of products and services. The LEA chooses what is best for its needs at lower costs.

Local governments that are parties to an interlocal contract for the performance of a service, may, in performing the service, apply the law applicable to a party as agreed by the parties. Section 791.012, Government Code.

In accordance with Government Code 791.011(d), requirements for interlocal contracts include:

- Authorization by the governing body of each party to the contract
- Statement of the purpose, terms, rights, and duties of the contracting parties
- Specification that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party

Interlocal contractual payments must fairly compensate the party who performs the services or functions under the contract. In addition, the parties to an interlocal contract may create an administrative agency or designate an existing local government to supervise the performance of the contract. Consequently, the agency or designated local government can employ personnel, perform administrative activities and provide administrative services necessary to perform the interlocal contract. Government Code 791.011-791.025.

An LEA that enters into a purchasing contract valued at \$30,000 or more under certain cooperative purchasing contracts must document any contract-related fees, including management fees, and

the purpose of each fee. The amount, purpose, and disposition of any fee must be presented in a written report annually as an agenda item in an open meeting of the board of trustees. TEC 44.0331.

An LEA may participate in multiple cooperatives. The LEA's board simply adopts resolutions authorizing participation.

This LEA does participate in interlocal agreements/purchasing cooperatives.

Interlocal agreements are approved by the school board on a case by case basis.

Refer to "The Purchasing Process" section of this manual for information on the process used for interlocal contracts/purchasing cooperatives.

- ***Construction Services***

A method provided by Chapter 2269, Government Code, for construction services; accessed at <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2269.htm>

- ***Reverse Auction***

Texas Government Code, chapter 2155.062(d) describes "reverse auction procedure" as:

- (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 designate goods or services.*

The "Model Purchasing Manual for Texas Cities and Counties 2010" provides an explanation of reverse auction:

"In the reverse auction, bids are submitted electronically in real time and prices start high and go lower as suppliers, instead of buyers as in a traditional auction, bid for contracts to provide goods and services. Suppliers bid against each other online. The vendors remain anonymous to each other. Only the local government and the buyer can see the vendors' identities."

This LEA does not participate in Reverse Auction as a procurement method.

- ***Formation of a Political Subdivision Corporation***

Local Government Code, section 304.001 describes energy aggregation measures for local governments. A political subdivision, which includes school districts, may join with another political subdivision to form a political subdivision corporation to act as an agent to negotiate the purchase of electricity.

This LEA does not participate in a Political Subdivision Corporation for the purchase of electricity.

Certain Exceptions to State Procurement Methods of TEC 44.031(a)

Refer to the exceptions to the TEC 44.031 procurement methods that are described in the Procurement Method Chart in this manual. In particular, each contract proposed to be made by an LEA for the purchase or lease of one or more school buses, including a lease with an option to purchase, must be submitted to competitive bidding when the contract is valued at **\$20,000 or more**. TEC 44.031(l).

Preference to Texas and United States Products*

“Agricultural products” includes textiles and other similar products.

“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.

TEC 44.042 requires an LEA that purchases agricultural products to give preference to those produced, processed, or grown in Texas if the cost to the LEA is equal and the quality is equal. If agricultural products produced, processed, or grown in Texas are not equal in cost and quality to other products, the LEA 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 LEA is equal and the quality is equal. Additionally, an LEA that purchases vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation if the cost to the LEA is equal and the quality is not inferior.

*Refer to the federal requirements in the “Competition” section under the heading “Procurement Standards” of this manual regarding the prohibition of geographical preferences in most instances.

Prohibition on Contracts with Companies Boycotting Israel

Effective 9/1/2017, in accordance with Government Code 2270, the LEA will not enter into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

Definitions according to Government Code 808.001:

“Boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

“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.

Prohibition on Contracts with Certain Companies: Iran, Sudan, or a Foreign Terrorist Organization

Effective 9/1/2017, in accordance with Government Code 2252, Subchapter F, the LEA will not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153.

Definitions according to Government Code 2252.151:

“Foreign terrorist organization” means an organization designated as a foreign terrorist organization by the United States secretary of state as authorized by 8 U.S.C. Section 1189.

“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 Chapter 2254.

Professional Services Contracts

In accordance with TEC 44.031(f), the procurement methods listed in TEC 44.031(a) do not apply to “a contract for professional services rendered, including services of an architect, attorney, certified public accountant, engineer, or fiscal agent. An LEA *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 procurement methods provided in TEC 44.031(a). In accordance with Government Code 2254.003, a governmental entity *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: (1) on the basis of demonstrated competence and qualifications to perform the services; and (2) for a fair and reasonable price. The professional fees under the contract may not exceed any maximum provided by law.

Whereas Government Code 2254.002 defines professional services within the scope of the practice of (i) accounting; (ii) architecture; (iii) landscape architecture; (iv) land surveying; (vi) optometry; (vii) professional engineering; or (ix) professional nursing, attorneys general opinions have held that the term professional services may encompass more than the services of physicians, attorneys or others traditionally regarded as professional and may include “members of disciplines requiring special knowledge or attainment and a high order of learning, skill and intelligence. [Texas Comptroller of Public Account’s “Model Purchasing Manual for Texas Cities and Counties 2010”, no longer accessible on the Comptroller’s website.]

The LEA follows the requirements of Government Code 2254 (known as the Professional Services Procurement Act) for all professional services contracts, using *competitive proposal* procedures rather than *competitive bidding*.

When procuring architectural, engineering, or land surveying services, the LEA complies with the requirements of Government Code 2254.004.

Local procedures for contracting professional services

The Federal Program Director solicits contracts for professional services. The Federal Program Director reviews and selects the best fit for the district for each service needed.

Refer to the “Competitive Sealed Proposals/Request for Proposals Process” section under the heading of “The Purchasing Process” section of this manual and the “TEA Guidance and Best Practices for Professional Services Contracts” section of this manual for additional local procedures.

Technical Evaluations Required for Competitive Proposals

The following procedures are used by Cuero ISD

- (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- (2) Proposals must be solicited from an adequate number of qualified sources;
- (3) The LEA must have a written method of conducting technical evaluations of the proposals received and for selecting recipients;
- (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (5) The LEA may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby

competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

Local procedures for technical evaluations

The Assistant Superintendent of Business performs the technical evaluations of competitive proposals received.

Contracts are awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

Refer to the "Vendor Award Determination Criteria" section of this manual for additional procedures.

Contract Cost or Price Analysis for Procurement Actions valued over \$150,000**

In accordance with 2 CFR §200.323(a), the LEA must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold** (currently set at \$150,000), including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the LEA must make independent estimates *before* receiving bids or proposals.

The Federal Program Director, Assistant Superintendent of Business and/or Superintendent will estimate all bids and proposals before the due date.

According to TEA's "New EDGAR Regulations FAQ" document (q. 7.33), the cost or price analysis requirement is performed during the **planning process** before the procurement process is completed.

Generally a cost analysis is different from a price analysis in that the cost analysis includes analyzing all the various components of the price, which may include labor, materials, indirect costs, profit, and administration. The price analysis is a review of the total price offered by a vendor and an assessment of whether the price is fair and reasonable.

Examples of conducting cost or price analysis include, but are not limited to:

- Comparing bids,
- Comparing prior price quotes,
- Comparing published price lists (such as prices listed in catalogs), or
- Comparing similar items

The analysis may include documented internet searches for such comparisons.

Regardless of the method used, the cost or price analysis must be documented in writing.

The Federal Program Director, Assistant Superintendent of Business and/or Superintendent will estimate all bids and proposals. This is done by looking at prior year bids and proposals. This documentation is kept in the business office.

In accordance with 2 CFR §200.323(b), the LEA must negotiate profit as a separate element of the price for each contract in which there is no price competition (including sole-source procurement) and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

The Federal Program Director, Assistant Superintendent of Business and/or Superintendent will discuss profit with contractor.

In accordance with 2 CFR §200.323(c), costs or prices based on estimated costs for contracts under the federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the LEA under the Cost Principles of 2 CFR Part 200, Subpart E. The LEA may reference its own cost principles that comply with the federal cost principles.

In accordance with 2 CFR §200.323(d), the cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

Refer to the "Vendor Award Determination Criteria" section of this manual for additional procedures.

Procurement by Noncompetitive Proposals (Sole-Source)

Federal Law

In accordance with 2 CFR §200.320(f), procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The federal awarding agency (USDE) or pass-through entity (TEA) expressly authorizes noncompetitive proposals in response to a written request from the LEA; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

Note: Per TEA’s “New EDGAR Regulations FAQ” guidance document (q. 7.40), TEA does not approve vendors through the grant application process. In fact, the LEA should not include vendor names in the grant application. Requesting pre-authorization from TEA is only one way (item #3 above) of documenting a sole-source. To request a pre-authorization review of a proposed sole-source procurement, the LEA must complete the required TEA form (Request for Noncompetitive Procurement (Sole-Source) Approval) and follow the process described on TEA’s website:

[http://tea.texas.gov/Finance_and_Grants/Grants/Administering_a_Grant/Request_for_Prior Approval,_Disclosure,_and_Justification_Forms/](http://tea.texas.gov/Finance_and_Grants/Grants/Administering_a_Grant/Request_for_Prior_Approval,_Disclosure,_and_Justification_Forms/)

Per TEA’s “New EDGAR Regulations FAQ” guidance document (q. 9.4), the LEA is not required to request approval from TEA to enter into a sole-source procurement. Requesting TEA approval for a sole-source procurement is only one of four allowable circumstances for using a noncompetitive procurement for federally-funded expenditures.

State Law

In accordance with TEC 44.031(j), selected purchases may be exempt from competitive procurement if they meet established criteria for a sole-source purchase (the item is only available from one source):

- Identification and confirmation that competition in providing the item or product to be purchased is precluded by the existence of a patent, copyright, secret process or monopoly;
- A film, manuscript, or book;
- A utility service, including electricity, gas, or water; and
- A captive replacement part or component for equipment

In accordance with TEC 44.031(k), sole-source does not apply to mainframe data-processing equipment and peripheral attachments with a single item purchase price in excess of \$15,000.

It is incumbent upon the LEA to obtain and retain documentation from the vendor which clearly delineates the reasons which qualify the purchase to be made on a sole-source basis.

If the LEA chooses to request authorization from TEA to use the noncompetitive proposal method for a certain purchase, it will submit the required TEA form accessed on the TEA website.

Per TEA's "New EDGAR Regulations FAQ" document (q. 7.16), an affidavit or sole-source letter from a vendor is not sufficient documentation that the item or service is only available from a single source. Sole-source must be proven and adequately documented and will seldom be used in federal procurements.

The best practice for claiming sole-source is to first use the competitive proposal process. Only when the results are inadequate, the LEA then proceeds to noncompetitive proposal.

Local procedures for Sole-Source

Sole-source is used for various items determined to be a one of a kind purchase.

The Assistant Superintendent of Business provides reviews and approval of purchases under the noncompetitive proposal method.

Per TEA's "New EDGAR Regulations FAQ" guidance document (q. 7.35), it is the responsibility of the LEA to document a sole-source procurement. The documentation must include how the LEA determined the noncompetitive procurement is the appropriate procurement method.

The Assistant Superintendent of Business will ensure adequate documentation is maintained that shows how the decision to use this method of procurement was reached, including the uniqueness of the services or goods sought, the scarcity of providers, and the specific expertise and experience of the vendor selected.

The LEA defines "public exigency or emergency" as Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source.

THE PURCHASING PROCESS

The purchasing process section of this manual describes the actual process for goods and services procurement, including vendor selection and relations, requisition process, purchase orders, receiving/distribution, and control environment.

Delegation

In accordance with TEC 44.0312, the LEA's board of trustees may, as appropriate, delegate its procurement authority under TEC 44 to a designated person, representative, or committee. In procuring construction services, the LEA shall provide notice of the delegation and the limits of the delegation in the request for bids, proposals, or qualifications or in an addendum to the request. If the LEA fails to provide that notice, a ranking, selection, or evaluation of bids, proposals, or

qualifications for construction services other than by the board of trustees in an open public meeting is advisory only.

The board may not delegate the authority to act regarding a procurement action authorized or required by TEC 44 to be taken by the board of trustees of a school district.

In the event of a catastrophe, emergency, or natural disaster affecting the LEA, the board of trustees may delegate to the superintendent or designated person the authority to contract for the replacement, construction, or repair of school equipment or facilities under TEC 44 if emergency replacement, construction, or repair is necessary for the health and safety of LEA students and staff.

Competitive Procurement Process

According to the Purchasing Module in the FASRG, the following processes are essential for effective competitive bidding:

- **Requirements Planning.** An LEA plans for major purchases to be made during the next twelve months identifying the products or services and when they are needed. The award of bids is scheduled to ensure timely delivery so that operations are not interrupted. From that schedule, a mechanism for coordinating bidding of like or similar items on a district-wide basis is developed. Requirements planning also enables the LEA's purchasing official to analyze and plan their workloads.
- **Activities and Responsibilities for Bid Specifications and Bid Award.** This process structures the total bid package which includes developing and reviewing specifications, incorporating these specifications into a standard bid form, determining objective bid award criteria, advertising the bid, responding to vendor questions, tabulating/analyzing bid responses, and recommending a vendor for bid award.
- **Development of an Approved Vendor List.** The identification and qualification of vendors for specific products can facilitate the bid process in two ways. First, the LEA can identify vendors who are interested in doing business with the LEA and their products and services. Second, the LEA can monitor the vendor's responses to bids and performance when they are awarded a bid.

In accordance with TEC 44.031(g), 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 LEA'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 LEA'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.

Competitive Bids Process

According to the Purchasing Module in the FASRG, the bid process is structured and incorporated into LEA purchasing procedures and involves:

- Development of clear specifications
- Advertising for competitive bids
- Responding to vendor questions
- Procedures for opening and tabulating the bids
- Analysis of the bids to ensure compliance with requirements
- Recommending the vendor(s) for bid award
- Award of the bid by the board

A request for bids contains the following elements:

- Purchase description or specifications covering the item(s) to be obtained
- Work and/or services needed
- Terms and conditions for the proposed bid contract
- Time and place for opening bids and other provisions

Local Government Code 271 in Relation to TEC 44

In accordance with TEC 44.0351, Subchapter B, Chapter 271, Local Government Code does not apply to a competitive bidding process under TEC 44, with the exceptions of Sections 271.026, 271.027(a), and 271.0275 Local Government Code:

- Section 271.026. Opening of Bids. (a) 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. (b) This subchapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.
- Section 271.02. 7 Award of Contract. (a) The governmental entity is entitled to reject any and all bids.
- Section 271.0275. Safety Record of Bidder Considered. In determining who is a responsible bidder, the governmental entity may take into account the safety record of the bidder, firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such a 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 specification that the safety record of a bidder may be considered in determining the responsibility of the bidder; and (3) the determinations are not arbitrary and capricious.

Cuero ISD looks at all records especially safety records in any bid process.

Electronic Bids or Proposals

According to the Purchasing Module in the FASRG, an LEA may receive bids or proposals through electronic transmission if the LEA's board of trustees 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, but if the governing statutes or rules require paper bids or proposals to be sealed, the same requirements would apply to an electronic process. TEC 44.0313

Cuero ISD does not use electronic bids.

Competitive Sealed Proposals/Request for Proposals Process

According to the Purchasing Module in the FASRG, in selecting a vendor through competitive sealed proposals, the LEA shall prepare a request for competitive sealed proposals that includes information that vendors may require to respond to the request. The LEA shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

The RFP (Request for Proposal) is the mechanism that generates the receipt of competitive sealed proposals and should contain several key elements:

- Determination by board of trustees that this method will provide the best value for the LEA must be done first, if a construction contract
- Newspaper advertisement
- Notice to proposers
- Standard terms and conditions
- Special terms and conditions
- Scope of work (scope and intent; definitions and applicable documents; requirements; quality assurance)
- Acknowledgement form/response sheet
- Felony conviction notice
- Contract clause

The LEA 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 LEA shall evaluate and rank each proposal submitted in relation to the published selection criteria.

The LEA shall select the offeror that offers the best value for the LEA based on the published selection criteria and on its ranking evaluation. The LEA shall first attempt to negotiate a contract with the selected offeror. The LEA may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the LEA is unable to negotiate a satisfactory contract with the selected offeror, the LEA 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.

An RFP may also be used as a procurement option to generate a non-sealed competitive proposal, but only for services other than construction services. In this instance, an LEA may open the proposal upon receipt and begin the negotiation process for the offered goods/services.

In determining the best value for the LEA, the LEA is not restricted to considering price alone but may consider any other factors stated in the selection criteria. TEC 4.0352.

Per TEA's "New EDGAR Regulations FAQ" document (q. 7.27), the LEA must follow the most restrictive rules, either state or federal. In the instance of RFPs for professional services or consultants, the federal regulations are more restrictive so price must be a component of the review

Change Orders Process

According to the Purchasing Module in the FASRG, 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 LEA may approve change orders making the changes.

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.

The LEA may grant general authority to an administrative official to approve the change orders. The Superintendent is authorized to approve change orders.

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. TEC 44.0411.

Interlocal Contract/ Purchasing Cooperative Process

According to the Purchasing Module in the FASRG, operating characteristics of cooperative purchasing agreements vary widely. In some cases, the lead agency in the cooperative, having received and combined orders from participating LEAs, purchases in bulk and stores purchases in a centralized warehouse. This lead agency then serves as the member districts' principal "vendor" and distributes goods as they are ordered and subsequently invoices the LEA. It may offer a catalog of centralized warehouse merchandise. Distribution may be either direct delivery to the LEA or by pick-up at the cooperatives' central warehouse.

Other operating arrangements may allow each LEA to order directly from approved vendors at bulk prices negotiated by the cooperative. A third arrangement may have a lead agency serving as a warehousing site for other LEAs with each LEA responsible for pick-up of goods and products.

The LEA considers the following areas when determining whether to join a cooperative:

- Variety of products and services offered
- Cost of these products and services as compared with other cooperatives or the LEA's individual ability to buy these products or services
- Timing and method of delivery
- Participation charges, including administrative and operating costs
- Reputation for overall service delivery, including problem resolution
- Administrative requirements placed on member districts, including paperwork or related issues

Federally-Funded Expenditures using Purchasing Cooperatives

Per TEA's "New EDGAR Regulations FAQ" guidance document (q. 7.14), the purchasing cooperative must follow the same state and federal procurement rules that would apply if the local LEA made the procurement. Once the LEA has verified that the purchasing cooperative has followed the most restrictive of the state or federal procurement rules, the LEA may purchase goods and services from the purchasing cooperative directly, without any additional procurement activities or documentation.

Per TEA's "New EDGAR Regulations FAQ" guidance document (q. 7.36), the LEA must ensure the purchasing cooperative is compliant with EDGAR regulations, and in particular with the cost or price analysis rule for procurements that exceed the Simplified Acquisition Threshold**.

Per TEA’s “New EDGAR Regulations FAQ” guidance document (q. 7.28), for documentation purposes, the LEA could maintain a signed certification statement or an email from the purchasing cooperative that the cooperative followed EDGAR rules. Per TEA’s “New EDGAR Regulations FAQ” guidance document (q. 7.37), if the purchasing cooperative posts its compliance certification to its website, the LEA may document that compliance as long as the posted certification is dated and is current (no more than one year old.) If the posted compliance certification is not updated annually, the LEA must ask the cooperative for a current compliance verification.

Per TEA’s “New EDGAR Regulations FAQ” guidance document (q. 7.36), the LEA must read the cooperatives’ statement of compliance closely and ensure that the LEA itself is meeting any compliance requirements not met by the cooperative.

Per TEA’s “New EDGAR Regulations FAQ” guidance document (q. 7.41), if the purchasing cooperative is not fully compliant with the EDGAR purchasing regulations regarding cost or price analysis for purchases that exceed the Simplified Acquisition Threshold**, it is up to the LEA to perform their cost analysis prior to the purchase and confirm the actual price paid was essentially consistent with the original cost analysis and not significantly more. Therefore, the LEA may use price quotes from multiple vendors offered by one purchasing cooperative or a combination of vendors from multiple purchasing cooperatives.

The LEA considers the following areas when determining whether to join a cooperative:

- Variety of products and services offered
- Cost of these products and services as compared with other cooperatives or the LEA’s individual ability to buy these products or services
- Timing and method of delivery
- Participation charges, including administrative and operating costs
- Reputation for overall service delivery, including problem resolution
- Administrative requirements placed on member districts, including paperwork or related issues

Centralized Purchasing

According to the Purchasing Module in the FASRG, centralized purchasing is the act of combining related items/commodities of various departments to coordinate purchases and obtain better prices. Centralized purchasing enables an LEA to coordinate purchases when two or more campuses or departments have common requirements for supplies and equipment.

The centralized purchasing function is used to coordinate purchases of two or more campuses or departments as follows:

- Combining on purchase order forms the individual purchase requirements of two or more teachers, departments, or campuses; and
- Arranging for favorable purchase terms, for example discount from retail or catalog prices, for items to be purchased “as needed” by individual employees (minimizes cash flow and warehouse storage requirements associated with large single order quantities).
- Ensuring LEA compliance with state laws and local policies concerning purchasing.

Refer to the “Control Environment” section of this manual for additional information on centralized vs decentralized purchasing.

VENDOR SELECTION AND RELATIONS

A good purchasing system establishes standards for both LEA personnel and vendors.

Vendor Communications

According to the Purchasing Module in the FASRG, establishment of certain district-wide procedures regarding vendor contact is important to an effective purchasing design. Such policies and procedures may include requiring appointments with vendors be scheduled through the department responsible for purchasing or that a representative of the department responsible for purchasing (i.e., purchasing agent or equivalent) attends all meetings with vendors.

In centralized purchasing, the purchasing department usually is responsible for all vendor contact. In this environment, principals, department heads or staff may communicate with vendors only through the purchasing department. Better control of vendor relations may result.

Vendor List

According to the Purchasing Module in the FASRG, the LEA compiles and maintains an approved vendor list. This list includes the names and addresses of various vendors and the products and services they offer. Vendors are encouraged to submit their names for inclusion on the list and are asked to complete an application form. Soliciting and including as many vendors as possible results in a complete and functional list of vendors with whom the LEA conducts business.

The LEA ensures that no procurement contracts are awarded to companies on the debarment and suspended list, or to companies that boycott Israel or are listed on the comptroller’s list of foreign terrorist organizations, as outlined in this manual.

The purchasing department maintains the vendor list, analyzing and updating it on a periodic basis. The vendor list is distributed to campuses and departments within the district so LEA employees are aware of the approved vendors.

Appendix A of this manual provides a sample of the Vendor Application form.

In accordance with 2 CFR §200.319(d), the LEA must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the LEA must not preclude potential bidders from qualifying during the solicitation period.

The Assistant Superintendent of Business is responsible for ensuring the standards and elements described above are met.

Vendor Award Determination Criteria

According to the Texas Education Code (TEC) 44.031(b), the LEA will consider all of the following when determining to whom to award a contract:

- 1) The purchase price;
- 2) The reputation of the vendor and of the vendor's goods or services;
- 3) The quality of the vendor's goods or services;
- 4) The extent to which the goods or services meet the LEA's needs;
- 5) The vendor's past relationship with the LEA;
- 6) The impact on the ability of the LEA to comply with laws and rules relating to historically underutilized businesses;
- 7) The total long-term cost to the LEA to acquire the vendor's 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: (A) has its principal place of business in this state; or (B) employs at least 500 persons in this state; and
- 9) Any other relevant factor specifically listed in the request for bids or proposals. Factors the LEA may consider under this criteria includes:
 - Vendor response time
 - Compatibility of goods/products purchased with those already in use in the LEA

Also, refer to the "Competitive Bids Process" section of this manual regarding the consideration of the bidder's safety record.

Under TEC 44.035, the LEA must publish in the request for bids, proposals, or qualifications for construction services, the criteria that will be used to evaluate the offerors and relative weights given to the criteria.

Under 2 CFR §200.319(c)(2), in all solicitations, the LEA identifies all factors to be used in evaluating bids or proposals.

The LEA ensures that no procurement contracts are awarded to companies on the debarment and suspended list, or to companies that boycott Israel or are listed on the comptroller's list of foreign terrorist organizations, as outlined in this manual.

Right to Work

In accordance with TEC 44.043, whenever an LEA is engaged in (1) procuring goods or services; (2) awarding a contract; or (3) overseeing procurement or construction for a public work or public improvement, the LEA may not consider whether a vendor is a member of or has another relationship with any organization; and shall ensure 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.

Contract with Person Indebted to the LEA

In accordance with TEC 44.044, the LEA's board of trustees by resolution may establish regulations permitting the LEA to refuse to enter into a contract or other transaction with a person indebted to the LEA. The LEA may, accordingly, refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the LEA.

In this context, "person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the LEA requiring approval by the board.

Debarment and Suspension

In accordance with 2 CFR §200.212, the LEA awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The LEA may not subcontract with or award subgrants to any person or company who is debarred or suspended.

Per TEA’s “New EDGAR Regulations FAQ” guidance document (q. 7.19 and 7.25), the LEA must not award any federal funds to any vendor who is suspended or debarred. In addition, if the award exceeds \$30,000, the LEA must verify and document that the vendor is in good standing by one of the following methods:

- Checking the SAM.gov website on the day the contract is to be signed to ensure the vendor is not included in the suspended or debarred list. If the search produces a “record not found” result, the LEA should print and maintain the search results as documentation that the vendor is not suspended or debarred.
- Requiring a certification signed by the vendor that they are not suspended or debarred.
- Including a clause in the contract whereby the vendor assures they are not suspended or debarred.

The Federal Program Director is responsible for checking for excluded parties on the System for Award Management (SAM) website before any procurement transaction.

The search results documentation is maintained with the Procurement Department.

Vendor Gifts and Relations

LEA officials and employees cannot accept anything of value from a vendor, such as personal gifts or gratuities, which may be construed to have been given to influence the purchasing process.

Refer to the “Purchasing Code of Ethics” section of this manual for policy and procedures regarding purchasing ethics and conflict of interest.

Vendor’s Notification of Criminal History of Contractor

In accordance with TEC 44.034, a person or business entity that enters into a contract with an LEA must give advance notice to the LEA if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.

The LEA may terminate a contract with a person or business entity if the LEA determines that the person or business entity failed to give notice as required by TEC 44.034(a) or

misrepresented the conduct resulting in the conviction. The LEA must compensated the person or business entity for services performed before the termination of the contract.

The requirements of TEC 44.034 do not apply to a publicly held corporation.

Vendor Performance Evaluation

According to the Purchasing Module in the FASRG, a system for the evaluation of vendors and their performance is important to support an effective purchasing function. Factors considered by the LEA for inclusion in the evaluation are:

- Timeliness of deliveries
- Service availability
- Completeness and accuracy of order
- Quality of products or services received

The Assistant Superintendent of Business performs vendor performance evaluation.

Whenever problems are encountered with a vendor (i.e., a vendor fails to deliver certain items or delivery does not meet specifications), it is important to document the problem, noting the date and an accurate description of the problem. This information is provided to the Assistant Superintendent of Business

Cuero ISD's procedure for dealing with a problem vendor:

The vendor is contacted by telephone or email by the Assistant Superintendent of Business and informed of the problem and told specifically how the LEA wants the problem corrected. The LEA keeps a record of all such communication, including the dates and what was discussed. If the problem is not resolved or continues, the vendor is notified in writing, stating the problem, the corrective action required, and that the vendor's failure to correct the problem will be considered a breach of contract and could result in the cancellation of the contract. If significant problems are encountered with the vendor, the LEA consults with legal counsel concerning the removal of the vendor from the approved vendor list and discontinuing any business with the vendor. The [position/department] is responsible for consulting legal counsel. The Assistant Superintendent of Business is responsible for removing the vendor from the vendor list, and notifying LEA staff of the removal of the vendor from the list.

This record of information about vendor performance is important in the evaluation of the vendor. All records of information, communication with the vendor, and evaluation of the vendor are maintained by the procurement department.

The LEA strives to develop an open and professional relationship with each vendor while still maintaining total independence and objectivity.

Protest Procedures to Resolve Dispute

The LEA maintains protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency.

Cuero ISD's protest procedures allow vendors to protest bids or proposals. Cuero ISD Superintendent, Assistant Superintendent of Business and/or Federal Program Director or Special Education Director will review the protest and submit a report to all vendors being reviewed by the protest. The review will be done within 5 business days of receiving the protest. The director or supervisor awarding the contract will not be on the review committee.

CONTRACTS

Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

In accordance with 2 CFR §200.321:

- (a) The LEA must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) above.

Contract Provisions

EDGAR Requirements

In accordance with 2 CFR §200.326, all federally-funded contracts must contain the applicable provisions described in Appendix II to 2 CFR Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards:

- (A) Contracts for more than the Simplified Acquisition Threshold** (currently set at \$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the LEA, including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b).
- (D) Davis-Bacon Act. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by LEAs must include a provision for compliance with the Davis-Bacon Act.
- (E) Contract Work Hours and Safety Standards Act. Where applicable, all contracts awarded by the LEA in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 USC 3702 and 3704.
- (F) Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of “funding agreement” under 37 CFR §401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement” must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”
- (G) Clean Air Act and the Federal Water Pollution Control Act. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act.
- (H) Debarment and Suspension. A contract award must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM). Refer to local procedures in the “Debarment and Suspension” section under the heading “Vendor Selection and Relations” of this manual.
- (I) Byrd Anti-Lobbying Amendment. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification.

Procurement of Recovered Materials described in 2 CFR §200.322.

TEA Guidance and Best Practices for Professional Services Contracts

The Texas Education Agency (TEA) requires all contracts be effective only during the period of availability of funds identified in the Notice of Grant Award (NOGA).

Cuero ISD may use either Option 1 or 2 for best practices when negotiating contracts prior to the effective date of the NOGA.

TEA provides the following guidance for best practices on how the LEA may negotiate contracts prior to the effective date of the contract:

Option 1: A letter of intent to contract with a third party may be signed prior to the issuance of a NOGA.

- (a) The letter of intent should contain a provision that the future contract is contingent upon receipt of the specific NOGA.
- (b) Execute the contract *after* the NOGA is issued.

Option 2: The contract should contain the following provisions:

- (a) The contract is only effective upon receipt by the subgrantee of the NOGA from the awarding agency.
- (b) The contract period is aligned to the grant period of availability as stated on the NOGA from the awarding agency (period of availability).
- (c) All services will be completed during the effective dates of the contract.
- (d) All services will be invoiced monthly after services are received (rather than paid lump sum at the beginning of the period of availability before services are rendered) and paid upon verification of receipt of services.
- (e) The regulations for procurement in 2 CFR §§200.318-323 are followed in issuing the contract.
- (f) All professional services provided under the contract will follow the provisions of 2 CFR §200.459 Professional service costs.
- (g) The contract identifies the funding sources that will be charged for the services provided, including the specific amount and/or percentage of the total contract amount to be charged to each funding source.
- (h) The contract identifies and lists only reasonable, necessary, and allocable services to be provided during the period of availability of the funding sources listed in the contract.
- (i) The administrative costs charged to the grant in the contract must comply with any limitations for administrative costs for funding sources (if applicable).
- (j) The contract specifies that the invoice provided by the contractor will include the list of services provided, dates of services, and location(s) where services were provided during the billing period.]

Multi-Year Contracts and Subscriptions with Federal Funds

Per TEA’s “New EDGAR Regulations FAQ” guidance document (q. 7.9), the LEA may only pay for one year of service *per grant year*, since the LEA cannot pay for benefits not yet received. The LEA may enter into multi-year contracts if it is permissible with the vendor [to only pay for one year of service per grant year] and if the LEA follows TEA’s “Guidance and Best Practice: Professional Services Contracts” (notated above). Generally, a multi-year subscription is treated as a contract.

Per TEA’s “New EDGAR Regulations FAQ” guidance document (q. 7.10), the contract for the grant year may be paid at the beginning of the period of availability provided the LEA receives the full benefit of the subscription (full access to the service) at the beginning of the grant year. If the subscription contains items that are not all available at the beginning of the service, such as completing one level of the software before the next level is available, then the LEA may only pay for the service that has been invoiced and received during the period of the invoice. In this example, the LEA could not pay for the entire year of the subscription at the beginning of the grant year because the LEA has not received the full benefit (full access).

Cuero ISD does not use multi-year contracts or subscriptions.

Contract Administration

The LEA maintains oversights to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Refer to the “Vendor Performance Evaluation” and “Accountability” sections of this manual for local procedures.

All contracts and service agreements, etc. must be signed by the Superintendent or designee. Only the Superintendent or designee is authorized to sign a contract or agreement on behalf of the LEA. Contracts that exceed \$ 50,000 shall be approved by the Superintendent and the School Board.

The Superintendent has designated himself as having signature authority for the LEA. An employee who signs a contract or agreement without proper authorization will be personally liable for the terms of the contract or agreement and the act may be grounds for termination of employment.

The business office maintains a copy of the signed contract, agreement, or purchase order for services performed and the rationale or procedure for selecting a particular vendor.

Contracts or agreements in excess of \$10,000 describe conditions under which the contract may be terminated for cause or for convenience by the LEA, including the manner by which it will be effected and the basis for settlement. Appendix II to 2 CFR Part 200.

Contracts for more than the simplified acquisition threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Appendix II to 2 CFR Part 200.

If the contract is to develop materials, concepts, or products, the agreement or contract contains provisions that protect and retain ownership of such materials, concepts, or products by TEA, the State of Texas, and the federal government, as applicable (including copyright, patent, trademark).

The business office maintains evidence that awards were made only to contractors or consultants possessing the ability to perform successfully under the terms and conditions of the proposed contract or procurement.

The business office maintains evidence that consultants were selected based on demonstrated competence, qualifications, experience, and reasonableness of costs and that consideration was given to contractor integrity, compliance with public policy, past performance, and financial and technical resources.

No contracts are entered into with employees of the LEA.

The business office maintains evidence that an employee did not participate in selection or award of a contract if a conflict of interest was involved.

Rental of Facilities: The Assistant Superintendent of Business and Maintenance Director will coordinate the rental of LEA facilities. A Rental Agreement is required for all rentals of facilities by outside organizations. All contracts will include security deposits (unless waived), charges for facility usage, custodial services, and other related charges, if applicable. The Assistant Superintendent of Business is authorized to waive security deposits.

Refer to the “Control Environment” section of this manual for additional information on purchasing functions and roles.

Accountability:

The LEA ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

a) The LEA obtains written contracts or purchase orders.

b) Contracts for services include a description of the services to be performed, the date(s) the services will be performed, the location(s) of where the services will be performed, the number or type of beneficiaries to be served, if applicable, and when payment(s) will be made, specifying verification before payment. The terms of the contract will include language that

assures the activities performed by the contractor are allowable activities according to the Federal program, if applicable.

c) Purchase orders for goods include a description of the goods to be delivered, the date(s) the goods will be delivered, the location(s) of where the goods will be delivered, and when payment(s) will be made, specifying verification before payment.

d) Invoices match the contracts or purchase orders, including a description of services performed by the contractor or goods delivered by the vendor, the date(s) services were performed or goods delivered, the location(s) where the services were performed or goods were delivered, and if applicable, the number of beneficiaries served and identifying information of the beneficiaries who were served.

e) The Assistant Superintendent of Business verifies that the services were performed or the goods were received before issuing payment. The Assistant Superintendent of Business verifies that the contractor or vendor met all of its responsibilities under the contract or purchase order before approving payment. Invoices that merely state “for services rendered” will not be approved for payment. Invoices for services provided to students must indicate which student(s) was served and under which program.

The business office maintains records on services performed – date of service, purpose of service – ensuring that services were consistent and satisfactory as described in the signed contract or purchase order.

The business office maintains evidence that payment was made only after the service was performed or goods received, and not before. Advance payment to contractors is prohibited.

Procedures for Submitting a Consultant Service Contract:

A. Submit the Consultant Service Contract to the Assistant Superintendent of Business for review.

B. Obtain the following documents from the consultant and submit with the purchase order to the business office: A completed W-9 Form; A Felony Conviction Form; A Criminal Check Authorization and Fingerprinting Form, if the consultant will work directly with students; A Conflict of Interest Questionnaire; Documentation of insurance, such as general liability, workers compensation, and auto liability, if applicable.

C. Follow the procedures for Suspension and Debarment Verification for transactions supported with Federal funds outlined in this manual, as applicable.

D. Follow the procedures for verifying the LEA does not award contracts to companies that boycott Israel or are listed on the comptroller's list of foreign terrorist organizations, as outlined in this manual.

E. Follow TEA's "Guidance and Best Practices for Professional Services Contracts" documentation.

The Assistant Superintendent of Business will ensure that contractors, consultants, service providers, and vendors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Prior to disbursement of funds to a contractor, consultant, service provider, or vendor, documentation must be provided to the LEA to support the goods or services rendered.

Documentation includes, but is not limited to: Description of the goods or services rendered; Dates; Rate; Total Hours, if applicable; Number of students served or names of students served, if applicable.

When procuring contracted services with Federal funds, the LEA will ensure that every purchase order or contract includes language to ensure services align with allowable use of grant funds, if applicable.

PETTY CASH

According to the Purchasing Module in the FASRG, a petty cash fund may be used to reimburse employees for small expenditures for LEA supplies or services and to make small district purchases. Such a fund can save time, paperwork, and associated administrative costs. Authorization to purchase from this source should be clearly defined in district or campus procedures and the dollar amount for each purchase should be limited (usually between \$50-\$100). Purchases made with petty cash may occur at both the campus and departmental level. It is important that petty cash purchases be kept at a minimum and that accurate accounting records be maintained for all purchases by employees who have been assigned as custodians of the petty cash funds.

The LEA does not authorize the use of Petty Cash.

If applicable, refer to the LEA's Administrative Procedures Manual (APM) for petty cash procedures.

CREDIT, DEBIT, GIFT, & PROCUREMENT CARDS

Procurement Cards

According to the Purchasing Module in the FASRG, purchasing cards (p-cards) can provide efficiency, transparency, and security when utilized correctly. As the volume of transactions increases, more transactions can be processed without the addition of staff to handle labor-intensive purchase order processes and employees can focus on doing the job at hand rather than the paperwork (requesting, approving, logging, and ordering). The software tools provided allow supervisors to review details on vendors, timing of purchases, and the actual amount spent. Purchasing staff can focus their attention on the larger dollar, infrequent purchases and their compliance requirements.

In order to avoid fraud and waste, purchasing cards must be controlled closely. The superintendent, business manager, human resources director, and procurement director must work together to set and enforce policies and procedures. It should be clear that misuse and abuse will not be tolerated. Two ways of demonstrating this are including the use of the card as a factor in performance appraisals and employing a 3-strikes-you're-out feature, where an employee who misused the card or couldn't provide receipts would have card privileges revoked or terminated. Reviewers should be held to the same standards as cardholders. The same set of rules should be applied to all card users, although spending limits may vary.

Restrict card usage by spending limits, unauthorized merchant category codes, and time of use to business hours. Only issue cards to employees after they have completed training on the purchase card program.

Segregation of Duties

- The same employee should not buy, receive, approve, and reconcile card purchases
- Different employees should set up cardholders and reviewers in the P-card system and the banking system

Cardholders

- Cardholders must turn in detailed receipts in accordance with policies and document the business reason. Restaurant receipts should include line-by-line detail of the order.
- Cardholders must complete training prior to receiving a card and acknowledge in writing receipt of the policy and procedure manual

Reviewers

- If a reviewer does not review and approve transactions according to policy, that department's card privileges should be revoked
- Reviewers should call the employee immediately upon noticing a questionable transaction rather than waiting for the due date of receipts
- Reviewers must complete training prior to reviewing transactions and acknowledge in writing receipt of the policy and procedure manual
- Reviewers should be responsible for 4 to 10 cardholders at most, in order to be effective

Monitoring and Oversight

- Be selective when issuing cards – focus on repetitive, small-dollar purchases
- Keep limits as low as possible to accommodate normal business needs. If there is a need to allow for emergency purchases, certain employees can have a higher limit
- Selection of card reviewers should follow the same high standards applied to cardholders
- The business office staff should review the work of the card reviewers and the list of P-card users should be reviewed annually
- Use the software to review the average spend by cardholder, purchases from unauthorized suppliers, purchases shipped to the cardholder's home, and purchase amounts slightly below purchase limits
- Review reports provided by the P-card programs, such as declined authorizations report, disputes report, and lost/stolen card report, which can reveal employees in need of additional training or attempting to misuse the card
- Review district-wide activity periodically to identify frequently used vendors or products to consider negotiating volume discounts in order to obtain best prices for the LEA
- Encourage staff to contact the hotline used to report any fraud

Cuero ISD does not use procurement cards.

Credit and Debit Cards

The LEA does authorize the use of credit cards or debit cards for purchases with federal, state or local funds.

Cuero ISD Superintendent or Assistant Superintendent of Business are the only employees authorized to use or allow another employee to use the district credit cards.

Gift Cards

The LEA does not authorize the use of gift cards for purchases with state or local funds. Gift cards are not authorized for purchases with Federal grant funds because they do not provide adequate accountability for ensuring allowable use of funds.

Purchase or Credit/Debit Card Rebates or Discounts

If the purchase card or credit/debit card provides rebates or discounts back to the LEA, each federal award for which the card was used must receive a proportional credit.

Per TEA’s “New EDGAR Regulations FAQ” guidance document (q. 9.2), 2 CFR §200.406 Applicable Credits, requires the refund or rebate from procurement cards or credit cards to be credited back – either as a cost reduction or cash refund – to the federal grant program in proportion to the amount of federal program expenditures that were charged on the card that generated the refund/rebate. For example, the LEA receives a rebate of \$150 from the procurement card for the year. Of the total expenditures, 10% was charged to the IDEA-B program initially; therefore, 10% of the rebate must be credited back to the IDEA-B account.

Per TEA’s “New EDGAR Regulations FAQ” guidance document (q. 4.7), there is no threshold that applies to “applicable credits” regulations. The regulation applies to any rebate received by the LEA which relate to allowable costs charged to a federal award.

Per TEA’s “New EDGAR Regulations FAQ” guidance document (q. 7.31), the applicable credit may be applied either by individual purchase or in the aggregate. Since most rebates from procurement cards are done annually, an aggregate credit may be the most practical. In either instance, the prorate distribution of the applicable credits back to allocable federal grants must be documented.”

If the purchase card or credit/debit card provides rebates or discounts back to the LEA, each federal award for which the card was used must receive a proportional credit. Gift cards are not authorized for purchases with Federal grant funds because they do not provide adequate accountability for ensuring allowable use of funds.

REQUISITIONS

According to the Purchasing Module in the FASRG, a requisition is an internal document by which a campus or department of the LEA requests the purchasing department to initiate a purchase order. It is a request generated manually or electronically (through use of automated systems) for the purchase of supplies, services, equipment, etc.

Approval of Requisitions

According to the Purchasing Module in the FASRG, requisitions should be initiated by those having proper authority, as defined by the LEA. Requisitions initiated by instructional, maintenance, and support personnel should then be approved by the appropriate person, either the principal, department head or superintendent. Requisitions which require expenditures from the Special Revenue Fund should be approved by the program administrator.

TEC 44.052 states that a superintendent that approves any expenditure of school funds in excess of the amount appropriated for that item(s) in the adopted budget or supplementary, amended budget commits a Class C misdemeanor offense. Consequently, close supervision and monitoring of the availability of budget dollars and of the approval process for requisition are important elements of an LEA's purchasing process.

Requisition Format

According to the Purchasing Module in the FASRG, requisitions should include certain items:

- A description of items to be purchased
- The quantity needed
- A suggested vendor (should be from the LEA's approved vendor list, if applicable)
- The code of the account to be charged

The requisition should be in a standard format so that the information can be readily identified and transferred to a purchase order. If proper control procedures are used, the requisition and the purchase order can be combined on one form. For example, an unnumbered requisition, once properly approved, may become a numbered purchase order.

See Appendix B for a sample of the LEA's requisition form.

Flow of Requisitions

According to the Purchasing Module in the FASRG, requisitions are received by the LEA's central purchasing department or department responsible for this function. In smaller LEAs, requisitions may be received by the business office or by the superintendent. When received, the requisition should be reviewed for the following:

- Accuracy
- Availability of funds
- Proper signatures
- Adequate description
- Proper account coding
- Overall completeness

The request is then assigned a purchase order number, vendor number (if applicable), purchase order date, and a cancellation date. The LEA should ensure that the appropriate competitive purchasing method is determined and performed before the requisition is approved for processing.

After approval by the designated authority, a purchase order is issued to the vendor.

ENCUMBRANCES

Encumbrances are funds that have been reserved when a purchase requisition is finalized and encumbered. When a requisition is processed, funds are placed aside for that transaction and are no longer available for use in other transactions to prevent the possibility of budget overspending. Encumbrances are used as a general planning tool, to predict cash outflow, and to avoid overspending. The amount of the encumbrance will not be included in the actual funds balances since payment has not been generated. Once payment is made, the encumbrance will be reversed and the funds will appear under the actual funds balance rather than the encumbrance balance.

The Assistant Superintendent of Business utilizes the Skyward to generate obligation, encumbrance, and expenditure information on a monthly basis to monitor and review budget performance.

PURCHASE ORDERS

According to the Purchasing Module in the FASRG, purchase orders are among the most commonly utilized method for procuring goods and services. As its name indicates, this document serves as a formal order for goods, materials, and/or services from a vendor. A purchase order, once approved, is a binding commitment for an LEA to remit payment to the vendor after the item(s) and an invoice are received by the LEA.

A purchase order is also an important accounting document. It contains information on the expenditure to be made and the account code to be charged. Once issued, the purchase order encumbers funds, which serves as an expenditure control mechanism. Finally, the purchase order is utilized in the accounts payable process as it documents that an order has been received and accepted by the user and payment can be made to the vendor.

See Appendix B for a sample of the LEA's Purchase Order form.

Items requiring purchase orders include, but are not necessarily limited to, the following:

- a) Capital Outlay/Fixed Assets (Equipment, furniture, etc.);
- b) Travel Expenses for Outside Consultants;
- c) Travel by Employees (Hotel, airfare, rental car expenditures require purchase orders; Mileage, parking, meals, and other approved incidentals may be reimbursed without a purchase order, by utilizing the Travel Reimbursement form) (Exception: Emergency Only);
- d) Registration fees for conferences;
- e) Instructional Materials (Exception: Situations which would render the purchase order procedure impractical);
- f) Office Supplies not stocked/available through the LEA;
- g) Professional and Contracted Services (Exception: Equipment Repair).

Purchases from vendors that operate on a cash basis (do not accept purchase orders) will be used in extenuating circumstances only. The LEA participates in several cooperative purchasing programs. A list of these programs is available from the business office. Priority should be given to these vendors since the goods and/or services have been subjected to the rigor of a competitive bid process.

Reimbursements for goods/services purchased personally will be reimbursed only if an approved purchase order is in place prior to the purchase of the goods and does not exceed the amount of the purchase order (shipping costs should be included in the purchase order). No changes, substitutions, or increases in funds may be made without approval from the business office.

All LEA personnel are required to follow the following guidelines for any purchase, regardless of fund source. In addition, Federal Program personnel will adhere to the applicable statute, regulations, and other grant requirements when making purchases. Employees who violate the LEA's purchasing procedures shall be held personally liable for the debt incurred.

Purchase Order Process

According to the Purchasing Module in the FASRG, a purchase order should be of a standard format to facilitate processing and should contain the following items:

- Vendor name and address
- Quantity of goods

- Description of goods
- Account codes
- Price (per unit and in total)
- Payment terms
- Discounts, if any
- Transportation arrangements
- Other pertinent factors, such as delivery destination
- Cancellation terms

It is recommended that purchase orders include a signed assurance that purchases with federal funds have been reviewed for allowability and meet the federal cost principles. Refer to the LEA's Administrative Procedures Manual (APM) for procedures on determining allowability of costs charged to federal grants.

As indicated in this manual, purchase orders start with a requisition which may be prepared manually or electronically. Requisitions originate with the user or user department and describe the item to be purchased, the quantity, pricing (if known), the account to be charged, and normally a suggested vendor. From the requisition, a purchase order authorizing the purchase is prepared.

Most purchase orders have multiple copies which may include a(n):

- *Vendor Copy* which is sent to the selected vendor
- *Accounting Copy*, which is sent to the LEA's business office and used for encumbering funds from the proper account
- *Receiving Copy*, which is sent to the accounting department when the order is received, confirming that payment should be made according to the LEA's accounts payable process
- *User or File Copy*, which is kept by the user department for financial management purposes

According to the Purchasing Module in the FASRG, the LEA should establish purchase order cancellation procedures. Vendors should be informed of these procedures and the cancellation terms should be stated on the face of the purchase order itself. For example, an LEA may establish that purchase orders shall be cancelable if merchandise is not received within 60 days. Depending on certain factors relating to the purchase, flexible cancellation dates may be more appropriate (i.e., proximity of vendor, availability of merchandise, quantity ordered, etc.).

Cancellation terms are stated on the face of the purchase order, to inform vendors of purchase order cancellation procedures.

In the event it is necessary to cancel a purchase order, the ordering employee notifies the business office in writing so the encumbrance can be liquidated. The business office then cancels the order and contacts the appropriate vendor.

Approval and Processing of Purchase Orders

All purchase orders require approval. No confirmation (“after-the-fact”) purchase orders will be allowed without justification and approval by the Superintendent or Chief Financial Officer.

According to the Purchasing Module in the FASRG, the purchase order should be approved through one central office by a responsible, designated official who is educated about purchasing law, policies, and procedures. In larger LEAs, the purchase order may be approved by the purchasing agent; in smaller LEAs, by the superintendent.

For costs charged to federal grants, a determination of allowability of costs is performed prior to approval. Refer to the LEA’s Administrative Procedures Manual (APM) for procedures on determining allowability of costs charged to federal grants.

During review and approval of requisitions and purchase orders, special attention should be given to the account coding. If there are not sufficient funds in the account the expenditure is to be coded to, the Assistant Superintendent of Business will request either a budget amendment or budget transfer. Expenditures that are not correctly coded will be returned to the department, causing delays in the expenditure process.

The purchasing department may maintain a record of all purchase orders issued for control purposes. The log should include the date of submission, purchase order number, vendor name, and campus/department name.

All purchasing information is maintained in the business office.

Blanket Purchase Orders

According to the Purchasing Module in the FASRG, a blanket purchase order is issued to a pre-approved vendor authorizing purchases from that vendor over a period of time. Blanket purchase orders are valuable because they allow the purchase of items quickly. Both paperwork and related processing costs usually are reduced by blanket purchase orders. However, blanket purchase orders must follow certain criteria:

- Pre-qualification of vendors
- Limitation on the maximum amount for purchases (usually up to \$500 per month per vendor)
- A specific time frame for purchases covered by the blanket purchase order (usually one month), and

- Identification of authorized purchasers

Blanket purchase orders are issued so that supplies, materials, or services are available “as needed” by user departments. For example, blanket purchase orders may be requested on a regular basis by the Food Service department for perishable items. Commonly used in larger LEAs, these purchase orders eliminate numerous individual purchase orders for small dollar-value items. Blanket purchase orders are requested by user departments and, if approved by centralized purchasing, issued to vendors.

Usually this type of purchase order remains in effect for only a specified amount of time and has a specified dollar limit. During this time period, the LEA may purchase certain specified items from the vendor not exceeding the total dollar limit without issuing additional purchase orders. The user department must issue a new requisition if items are requested beyond the specified time period. The advantage of blanket or open purchase orders is that merchandise is accessible to users with some flexibility and without the effort of processing purchase orders.

Certain controls, however, should be in place for the use of blanket purchase orders:

- The number of vendors to whom blanket purchase orders are issued should be limited
- Those who can make purchases under blanket purchase orders should be clearly designated
- Dollar limits should be carefully observed

All blanket (open) purchase orders are generated with a broad description and closed prior to year-end. All receipts must be received 28 calendar days prior to the budget end date to process payment.

Blanket purchase orders may be made for no more than \$500 and approved by the Assistant Superintendent of Business.

Emergency Purchases

According to the Purchasing Module in the FASRG, two types of emergency purchases are made in LEAs. One type results from an eminent threat to the health, safety, or welfare of students. Such purchases must comply with state law and may be made only after a formal board action declaring an emergency and authorizing the purchase. An example of an emergency purchase of this type is the authorization to repair a school after a fire or a natural disaster.

Emergency purchases exceeding the dollar amount triggering competitive procurement requirements shall be made in conformance with TEC 44.031(h).

The second type of emergency purchase is defined by local policy to provide for the acquisition of goods or services to meet an immediate need such as purchases to repair damage to a facility which

may imperil students or the security of the facility. For example, if windows are broken at a school by vandals, an immediate need exists to not only secure the building, but also to protect the contents from damage by the elements. This type of emergency purchase is normally utilized after regular business hours or on weekends and holidays. After purchases of this type are made, a purchase order should be issued after the fact on the next business day. Care should be taken that emergency purchases do not result from improper planning rather than from a true emergency.

It is important that the LEA attempts to eliminate emergency purchases for non-emergency situations as much as possible and requires that all emergency purchases be fully justified.

Warehouse Requisitions

According to the Purchasing Module in the FASRG, some LEAs keep inventories of office and teaching supplies and materials in a central warehouse. Such inventories provide ready access to supplies that are commonly used. If the LEA has such a warehouse, a warehouse requisition may be used to obtain supplies or materials. A warehouse requisition is completed at the department or campus level and submitted to the warehouse. Warehouse personnel then review the requisition for accuracy, completeness, and availability of funds. After processing the requisition, the supplies and materials are removed from the warehouse stock and delivered to the appropriate party.

RECEIVING AND DISTRIBUTING PURCHASES

According to the Purchasing Module in the FASRG, carefully checking deliveries and making sure that those needing the delivered goods and services actually receive them as ordered is part of the purchasing process. Centralized receiving, which is recommended, and decentralized receiving departments and campuses are both used; however, their missions are the same.

The Receiving Function

According to the Purchasing Module in the FASRG, purchases may be received by a central receiving department or at campuses in a decentralized plan.

Centralized Receiving

According to the Purchasing Module in the FASRG, central receiving may consist of more than one warehouse (i.e., food service, maintenance, instructional supplies, athletic supplies, etc.) and provides more control. Having only one centralized receiving point ensures that merchandise received agrees with merchandise ordered. Also, it provides for inventorying and tagging fixed assets upon receipt before distribution to campuses or departments. In certain instances, however, it may be in the best interest of the LEA for the vendor to deliver items directly to a campus or department (known as “drop shipped”). The LEA should, therefore, establish and adhere to procedures for handling alternative delivery locations, ensuring that proper approvals are obtained for items which are drop shipped.

Decentralized Receiving

According to the Purchasing Module in the FASRG, some LEAs may have decentralized receiving, although it is not recommended. If receiving is decentralized, the LEA should ensure that only authorized individuals trained in receiving procedures at the various campuses or departments are receiving goods. Policies and procedures must be in place regarding such receipt of goods, and monitoring should be performed to ensure that standardized policies and procedures are implemented and adhered to by those receiving goods and services. These include checking the quantity and quality of merchandise and procedures to ensure that required inventory records are maintained.

Cuero ISD is decentralized.

Receiving Report

According to the Purchasing Module in the FASRG, a receiving report should be prepared for all merchandise that is received by the LEA. The receiving report may be either a part of the purchase order (i.e., a receiving copy) or a separate report. Upon receipt of merchandise ordered, receiving personnel compare items received to the purchase order. Receiving personnel must have access to the specifications of the purchase prior to delivery to check for deficiencies in the order. All exceptions are noted on the receiving report which is then dated, signed and returned to the accounting department to be reconciled to the invoice. Damaged merchandise also should be noted on the receiving report. The department responsible for purchasing is also responsible for contacting the vendor regarding any deficiencies.

If an order is received in partial shipments, each shipment should be recorded on the receiving report and submitted to the accounting department. The accounting department maintains a record of receipts to date until all items have been received or the purchase order has been canceled.

Quality Assurance

According to the Purchasing Module in the FASRG, appropriate steps should be taken to assure the quality of merchandise received. The first step is to examine the merchandise for obvious defects or damages. All defects and damage should be documented on the receiving report and reported to the department responsible for purchasing who should then contact the vendor.

Other more formal methods may be used to test the quality of merchandise, especially in larger LEAs. It may be more cost-efficient to perform inspection and testing only on purchases of larger dollar amounts. It is important that LEA personnel who are responsible for receiving and inspecting items are trained in testing procedures. Alternatively, product testing may be an interactive process involving user departments.

Distribution

According to the Purchasing Module in the FASRG, distribution procedures should be in place for goods received at central locations. Receiving personnel may contact the ordering campus or department to inform them that goods have been received. Personnel should then distribute goods according to the specifications to the proper location and/or staff members. For control purposes, the requesting campus or department should then compare goods received to its copy of the purchase order to ensure that they agree.

INVOICES

Vendors are required to submit all invoices to the business office. If an invoice is received at the campus or department, the supervisor will sign (if the goods/services were received) and attach the invoice to the applicable purchase order and forward to the business office.

Texas law requires that all invoices be paid to vendors within thirty (30) calendar days of receipt of the goods/services. If the LEA fails to pay promptly, the vendor can assess penalty interest charges. All invoices must be submitted to the business office within 5 business days of receipt to ensure prompt payment to the vendor. If a school employee neglects to submit an invoice on a timely basis, he/she may be held personally liable for the penalty interest charges.

Invoices for goods must contain a clear description of the merchandise. Invoices for contracted services must include documentation containing dates, hours, students served, if applicable, and services provided, along with the total amount due for services rendered. A statement on the invoice "for services rendered" will not be accepted in lieu of a detailed description of the services performed. Invoices are signed by the appropriate administrator or designee.

PURCHASING DEADLINES

In an effort to maximize the use of budgeted funds during the current fiscal year and meet the needs of the intended beneficiaries, the purchasing deadline for supplies and equipment shall be no later than March 1, unless the specific State or Federal grant specifies an earlier date.

Summer needs for staff development and summer school should be anticipated and ordered prior to the start of summer school.

Purchasing documents for services and travel should be submitted within 28 calendar days from the date in which it was incurred.

At times, the purchasing deadlines for State or Federal grants may be earlier than the deadlines stated above due to grant ending dates.

REQUIRED DOCUMENTATION

Third-party documentation is required to support disbursement of funds.

Documentation includes, but is not limited to:

- Purchase Orders;
- Purchase Acquisitions;
- Invoices;
- Original Receipts;
- Packing Slips

The LEA will maintain records sufficient to detail the significant history of procurement with Federal funds.

In addition to the documentation listed above, these records will include, but are not necessarily limited to, the following:

- a) Rationale for the method of procurement;
- b) Selection of contract type;
- c) Contractor selection or rejection; and
- d) The basis for the contract price.

Registration Fees

Registration fees are only processed and paid by purchase order. Registration is paid in advance of the conference, and is sent directly to the conference vendor.

The requisition/purchase order for registration must include the date of the event and the number/names of attendees. A copy of the approved travel must accompany the requisition/purchase order before any payments will be made.

If registration fees are paid with Federal funds, relative benefit to the federal program must be demonstrated. For a discretionary grant that will be ending at the end of the grant period and no continuation funding is expected, the benefit must be received within the grant period. For a formula entitlement grant that will receive a continuing funding allocation in the subsequent

year, benefit may be received during the liquidation period (the time period from the end of the grant period to the due date of the revised final expenditure report).

According to guidance in TEA's "New EDGAR Regulations FAQ" document (q. 5.3), the LEA has discretion on whether to obligate registration fees as a travel expense or as personal services by a contractor (non-employee of the LEA). If the registration fee is obligated as travel, the registration fee may not be paid with federal funds until the travel is taken. It must be obligated the day the conference or meeting begins. If the registration fee is obligated as personal services by a contractor, the registration fee may be paid with federal funds at the time the registration is submitted. The benefit of obligating registration fees as personal services by a contractor is that the LEA may benefit from reduced cost registration fees when registering earlier for conferences or trainings.

The LEA obligates registration fees as travel.

Sales Tax Exemption Form

The Sales Tax Exemption Form shall be used for school-related purchases only. Misuse of the exemption form for personal purchases constitutes a misdemeanor.

Copies of the exemption form may be obtained from the business office or online. Taxes, which should have been exempt, will be unauthorized for reimbursement if the exemption form was not presented to the vendor at the time of the purchase.

LEGAL AUTHORITIES AND HELPFUL RESOURCES

The following documents contain relevant grants management requirements. Staff should be familiar with these materials and consult them when making decisions related to the federal grant.

- Education Department General Administrative Regulations (EDGAR)
 - <http://www2.ed.gov/policy/fund/reg/edgarReg/edgar.html>
- Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 200)
 - <http://www.ecfr.gov/cgi-bin/text-idx?SID=ccccf77e01c9e6d4b3a377815f411704&node=pt2.1.200&rgn=div5>
- USDE’s Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 3474)
 - http://www.ecfr.gov/cgi-bin/text-idx?SID=ccccf77e01c9e6d4b3a377815f411704&tpl=/ecfrbrowse/Title02/2cfr3474_main_02.tpl
- Federal program statutes, regulations, and guidance
 - <http://www.ed.gov/>
- State regulations, rules, and policies
 - <http://tea.texas.gov/>
- State Purchasing Rules Under FASRG
 - TEA Division of Financial Compliance (512) 463-9095
- TEA’s Financial Accountability System Resource Guide (FASRG), Module 3 Purchasing Guide
 - [http://tea.texas.gov/Finance and Grants/State Funding/Additional Finance Resources/Additional Finance Resources/](http://tea.texas.gov/Finance_and_Grants/State_Funding/Additional_Finance_Resources/Additional_Finance_Resources/)
-
- TEA’s “New EDGAR Regulations Frequently Asked Questions (FAQ)” guidance document
 - [http://tea.texas.gov/Finance and Grants/Grants/Administering a Grant/The New EDGAR/](http://tea.texas.gov/Finance_and_Grants/Grants/Administering_a_Grant/The_New_EDGAR/)
- LEA regulations, rules, and policies
 - www.cueroisd.org

APPENDIXES

Appendix A: Vendor Forms

Appendix B: Requisition/Purchase Order Form

Appendix C: Purchasing Organization Chart

Appendix A: Vendor Application Form

Instructions:

1. The application form should be completed and signed by an authorized representative of the vendor.
2. The application should be submitted (as noted below) with all supporting documents, including but not limited to:
 - a. W-9 Form
 - b. Conflict of Interest Questionnaire
 - c. Felony Conviction Form
 - d. Certificate of Insurance (as appropriate for on-site professional services)
 - e. Certification of Criminal History Record Information (if working directly with students)

Notice to Prospective Vendors:

1. Vendors are not placed on the district's approved vendor list until a purchase order is approved by the purchasing department.
2. Vendors must accept purchase orders for all purchases. The district will not be responsible for payment for goods or services that are provided to Cuero ISD staff without an approved purchase order issued by the purchasing department.
3. All invoices must reflect the purchase order number and must be mailed, faxed, or emailed to the Cuero ISD Accounts Payable Department (mailing address, fax number and email address are noted below).
4. All payments are net 30 days after receipt of the goods and/or services.

VENDOR IDENTIFICATION:	
Vendor Name	
Vendor DBA, if appropriate	
Federal Tax ID or Social Security #	
Type(s) of Goods or Services	
List any Co-Op contracts such as TCPN, ESC, Buy Board, etc.	
VENDOR CONTACT INFORMATION:	
Vendor Mailing Address:	
Vendor Remit Address: (If different from mailing)	
Vendor Phone Number:	
Vendor Fax Number:	
Vendor Website URL:	
Vendor Email Address:(For distribution of Purchase Orders)	

I hereby certify that the above information is true and correct. I further certify that I am an authorized representative of this vendor.

Vendor Authorized Representative (Print Name) Title

Vendor Authorized Representative (Signature)

Date

FELONY CONVICTION NOTIFICATION

The Texas Education Code, Section 44.034(a) states that a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of the felony.

Furthermore, Section 44.034(b) states that a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract.

Lastly, Section 44.034 (c) states that this section does not apply to a publicly held corporation.

- () My firm is a publicly held corporation, therefore this requirement is not applicable.
- () My firm is not owned nor operated by anyone who has been convicted of a felony.
- () My firm is owned or operated by the following individual(s) who has/have been convicted of a felony:

Name: _____

Description of conduct resulting in a felony: _____

Name: _____

Description of conduct resulting in a felony: _____

Name: _____

Description of conduct resulting in a felony: _____

I, the undersigned agent for the firm named below, certify that the information concerning notification of felony conviction has been received by me and that the information furnished above is true to the best of my knowledge.

Vendor's Name: _____

Authorized Company Official's Name: _____

Authorized Company Official's Title: _____

APPENDIX C: PROCUREMENT CHART

Procurement Chart - Cuero ISD

Staff	Procedure
Employee	Orders items by creating a requisition
Supervisor	Approves/Declines requisition
Secretary	Enters requisition into Skyward Software
Assistant Superintendent of Business	Receives email from Skyward stating a requisition is waiting to be approved/declined
Assistant Superintendent of Business	Approves or declines requisition
District Receptionist	Prints out approved requisitions and places orders with corresponding vendors
Employee	Receives items and signs a copy of purchase ordering stating items are all received
Accounts Payable Clerk	Files signed purchase order for payment
Accounts Payable Clerk	Pays vendor after an invoice has been received

ADOPTION OF MANUAL

I hereby approve and adopt the Cuero ISD 2020-20 Procurement Manual.

I understand that the information in this manual is subject to change. I understand that changes in LEA policies may supersede, modify, or render obsolete the information summarized in this manual.

NAME (Printed):

TITLE:

SIGNATURE:

DATE SIGNED:

NAME (Printed):

TITLE:

SIGNATURE:

DATE SIGNED:

EMPLOYEE ACKNOWLEDGEMENT FORM

I hereby acknowledge receipt of my personal copy of the Cuero ISD 2020-20 Procurement Manual.

I agree to read the manual and abide by the standards, policies, and procedures defined or referenced in this document.

I understand that the information in this manual is subject to change. I understand that changes in LEA policies may supersede, modify, or render obsolete the information summarized in this manual. As the LEA provides updated policy information, I accept responsibility for reading and abiding by the changes.

I understand that this manual will be available on the LEA's website/intranet site with the most current policies. I agree that I am responsible for checking the website/intranet site for any updates or changes.

Name (Printed):

Signature:

Date Signed: