All purchases shall be in accordance with the district’s School Board Policies (CH Legal and Local) and the district’s Purchasing Procedures Manual. The district purchasing procedures shall comply with all federal, state and local procurement requirements, including the new Education General Administration Regulations (EDGAR).
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I. OVERVIEW

The Purchasing Department of the Katy Independent School District is a part of the Support Services Department and responsible for the organization and administration of the purchasing/procurement functions for the District in accordance with the authority delegated by the Superintendent and Board of Trustees.

The primary function of the District’s Purchasing Department is to meet the products and service needs of the District by:

1. Obtaining the best product at the lowest cost to the taxpayer while complying with all federal, state and local laws as well as District policies and guidelines.
2. Achieving a reliable and timely delivery for the requesting school or department.
3. Promoting competition among bidders.
4. Insuring an equal opportunity for all vendors to secure District business.
5. Educating and informing all vendors about District rules, regulations, and methodology that forms the basis for bid awards.

As a support organization of the District charged with the acquisition of goods and services requested by instructional and administrative departments, The Purchasing Department will function in a manner consistent with applicable laws, School Board policies, the Uniform Commercial Code and other sound business practices.

The Purchasing Department shares with the Business Office and other fiscal offices the responsibility of expending District funds in such a manner that will meet all requirements of the State, Federal, and District procurement regulations and safeguard the public trust.

Effective purchasing is a cooperative venture between the Purchasing Department and the schools and other departments within the District. The purpose of this manual is to provide guidelines and procedures for the Purchasing Department staff and others involved in the procurement process throughout the District.

Situations will undoubtedly arise which are not fully covered by these procedures. The Purchasing Department staff is available to discuss and/or assist in any special situations or needs and will facilitate a solution in the best interest of the students and staff of Katy ISD.

The purchasing procedures contained in the document are intended to comply with all applicable laws, policies, and procedures. In the event of conflict, the appropriate law or policy shall prevail.
II. General Standards & Ethics

Ethics relating to conflicts of interest, financial interests in firms conducting business with the district, kickbacks, gratuities and improper use of a position or confidential information are clearly communicated throughout the District.

Additionally, District personnel should be aware that under the Education Code, Chapter 44.031, as well as other state or federal statutes regarding the expenditure of public funds, there are penalties for violations of purchasing processes which can include criminal prosecution and loss of employment opportunities.

There are certain common standards of ethics which govern the conduct of employees involved in the purchasing function. The fundamental standards for the Katy ISD purchasing processes are as follows:

1. It is a breach of ethics to attempt to realize personal gain through employment with a public school district by any conduct inconsistent with the proper discharge of the employee’s duties.
2. It is a breach of ethics to attempt to influence any public employee of a district to breach the standards of ethical conduct set forth in this code.
3. It is a breach of ethics for any employee of a district to participate directly or indirectly in a procurement when the employee knows:
   a. The employee or any member of the employee’s immediate family has a financial interest pertaining to the procurement.
   b. 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; or
   c. Any other person business or organization with whom the employee or any member of the employee’s immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

III. Integrity

Fairness and impartiality in all phases of the process are an essential part of any transaction in public purchasing. Dealings with vendors and peers must be open, honest, and objective.

Like all service functions, the Purchasing Department’s objective is to provide quality services and products for the District’s schools and departments.

Katy ISD does not discriminate on the basis of sex, race, disability, color or national origin in its business practices.

IV. Purchasing Department Code of Ethics

Endeavor to obtain the greatest value for every District dollar expended but conducting business in a manner consistent with exemplary business practices, district policies, and legal statutes.

Give prompt and courteous reception to all District staff and legitimate business representatives.

Provide support to the District’s schools and departments charged with the responsibility of creating an educational environment of excellence.
Insure that all responsible bidders receive equal consideration and the assurance of unbiased judgment in determining whether their products meet the educational and/or operational needs of the District.

Always consider the interests of the District and the enhancement of its educational programs first.

Strive for a thorough knowledge and understanding of the District’s equipment and supplies in order to assist in the Best Value evaluation for the products and services purchased.

Work to identify and implement strategies and techniques that will preserve the integrity of the department while enhancing the level of service provided by the department.

Never accept gifts or favors which might influence, or be construed to influence, the purchase of goods and services.

V. Purchasing Authority

Katy ISD Board Policy Manual lists the following under CH (LEGAL) and CH (LOCAL):

- The Board may adopt rules and procedures for the acquisition of goods and services. Education Code 44.031(d).
- The Board may delegate its authority regarding an action authorized or required to be taken by the District by Education Code Chapter 44, Subchapter B to a designated person, representative, or committee.
- The Board may not delegate the authority to act regarding an action authorized or required to be taken by the Board by Education Code Chapter 44, Subchapter B.
- Authorized District employees in charge of a department or school budget may purchase items included in their approved budget, in accordance with administrative procedures.
- The Board shall assume responsibility for debts incurred in the name of the District so long as those debts are for purchases made in accordance with adopted Board policy and current administrative procedures. The Board shall not be responsible for debts incurred by persons or organizations not directly under Board control; persons making unauthorized purchases shall assume full responsibility for all such debts.
- All purchase commitments shall be made by the Superintendent or designee on a properly drawn and issued purchase order, in accordance with administrative procedures.

Accordingly the District Superintendent has established the Katy ISD Purchasing Department under the direction of the Chief Financial Officer as the designee for the procurement function, and to assure such function is within compliance of all applicable statutes, Board policies, and Administrative Regulations.
VI. Purchasing Process

Texas Education Code, Chapter 44 defines the methods of procurement to be utilized by school districts based on the level of expenditure during a twelve month period. All expenditures are looked at in the aggregate, that is all locations in the District are considered as one unit.

There are different categories of purchases including personal property, services, maintenance, construction, and real property.

Personal property is defined as including, but not limited to, any item or thing that can be typically moved from one location to another or is consumable and does not include real property such as land, buildings, and repair or renovations to buildings. This category includes food products such as bread, milk, produce, and ready-to-serve foods, supplies, and equipment utilized in the Child Nutrition Programs by the District.

Services can include both professional and non-professional services. Professional services are generally defined as those for which a special qualifications or licensing is required.

Maintenance is the act of keeping an existing building, facility or equipment in proper working order.

Construction can mean both new facilities and buildings or it can apply to renovations of existing facilities. Basically if the services being applied to an existing facility are not LIKE FOR LIKE then the project will be considered construction under the public works statutes.

Real property procurements are the purchase of land and/or buildings by the District. These procurements are extremely specialized and require legal assistance.

In order to determine the level of expenditures, the Purchasing Department has developed a grouping of commodity categories based on those listed in Texas Education Agency Financial Accountability System Resource Guide. These commodities include, but are not limited to:

- Athletic Supplies
- Awards
- Bread
- Frozen Foods
- Ready-to-Serve Foods
- Teaching and Instructional Materials
- Cabling Services
- Furniture
- General Merchandise and Groceries
- Musical Instruments
- Musical and Performing Arts Equipment and Supplies
- Police Equipment and Supplies
- Portable Buildings
- Professional Reference Materials
- Restaurant Services – Prepared Meals

These commodities are grouped so that contracts for the purchases of these items can be awarded in a competitively awarded process to assure that the schools and departments are receiving Best Value for their budget expenditures and
are in compliance with all statutes, policies, and procedures. A complete listing of all commodity groupings and current procurement contracts is posted on the Katy ISD Knowledgebase online system, under the Purchasing Department tab.

District transactions are monitored within the Purchasing Department so that procurements can be grouped as needed and required under these guidelines. All procurements must be classified within a designated commodity code. Procurements not covered under current commodity groupings and competitively bid contract may be delayed in order to satisfy these requirements.

Schools and departments are encouraged to purchase from established contracts to prevent such delay.

VII. Purchase Limits

Schools and departments are encouraged to use vendors currently under contract with the District for all procurements, or a competitively bid contract through one of the Purchasing Cooperatives in which the District participates. Purchases through awarded contracts must follow the terms of the awarded contract. If the contract calls for competitive quotes from awarded contract vendors, then competitive quotes will be required for any expenditure under that contract.

If the District does not have a current contract for the specific commodity or service needed and a valid contract through an authorized Purchasing Cooperative is not utilized, the following procedures apply:

For purchases of personal property or services (see Exceptions to Purchase Limits) totaling less than $50,000 in the aggregate for the fiscal year, schools and departments will be allowed to purchase using the Best Value criteria for the individual transaction, with the following guidelines:

A. Purchases up to $500 may be made in the most expeditious manner possible in order to meet the needs of the schools and departments. Although highly encouraged to utilize Katy ISD contracted vendors or purchasing cooperatives, new vendors may be entered, as needed.

B. Purchases $501 up to $25,000 (see exceptions*), schools and departments must include one (1) written quotation with the requisition. Katy ISD contracted vendors and purchasing cooperatives are to be used as first order of priority. New vendors may be used if authorized by the Purchasing Department.

C. Purchases exceeding $25,000 and under $50,000, three (3) written quotes are required (see Exceptions to Purchase Limits). The requisition will not be processed until written documentation of the quotes is provided.

Under all circumstances referenced in sections A through C above, Katy ISD awarded vendors (“Contracted Vendors”) and vendors on a contract with a Board approved Purchasing Cooperative take precedence over non-contracted vendors (“NCV”). The Purchasing Department maintains lists of both Contracted Vendors and Board approved Purchasing Cooperatives. In circumstances that non-contracted vendors are allowed, the Purchasing Department maintains a list of vendors who have expressed interest in doing business with the District. All schools and departments are recommended to seek assistance from the Purchasing Department in obtaining information on potential vendors.

➢ For any purchases of commodities or services over $50,000 in the aggregate for the fiscal year, the Purchasing Department should be contacted so that a formal competitive procedure can be followed in the procurement process. The Purchasing Department will assist the campus or department in following the statute requirements for competitive procurements and in preparing the contract recommendations for Board consideration if the total contract award exceeds $250,000. The Purchasing Department maintains lists of potential vendors or service
providers for this purpose. The Purchasing Department can assist the campus or department by identifying any potential problems or pitfalls that might occur with the procurement.

VIII. Exceptions to Purchase Limits

The following exceptions to the Purchase Limits referenced above apply:

a. **Purchases Funded with Federal Grant Awards**: Purchases for goods and/or services to be funded with federal grant awards require compliance with the administrative requirements imposed by the respective federal awarding agency. For example, the US Department of Education (USDE) or the US Department of Agriculture (USDA). Refer to Appendix A (Federal Procurement Guidelines) for procedures and guidance on making purchases in compliance with federal grant awards.

b. **Software and Online Subscription Purchases**: Purchase of a given software application and/or online software subscription (herein referred to as “Software”) **not exceeding $50,000 in the aggregate for a given fiscal year** do not require multiple price quotes. However, the expenditure amount of the same Software by multiple locations must be aggregated as if they were one and the same contract, and if the aggregate amount between all locations exceeds $50,000 in one fiscal year, then the Software must be procured through a formal competitive procurement process (i.e. Competitive Sealed Proposal), unless the purchase can be made through a Board approved Purchasing Cooperative or approved as a Sole Source (Sole Source is extremely rare, however).

c. **Contracted Services for Professional Development**: Purchases for contracted services by Independent Contractors providing consulting and/or training services **to enhance the knowledge and skill of teachers, administrative personnel, or other District personnel (herein referred as “Professional Development”) not exceeding $50,000 in the aggregate** for a given fiscal year do not require multiple price quotes. In such cases, the contract for the purchase of such services must be made through an Independent Contractor that has demonstrated competence and possesses the qualifications and experience to provide such services, including the attainment of a certain level of education and/or professional licensures, as applicable, and as may be required by Federal, State, or local laws and regulations. An Independent Contractor may demonstrate competence, qualifications, and experience by providing any of the following: a resume or curriculum vitae, a statement of qualifications and experience, a list of client references where Independent Contractor provided services of similar scope. Positive and successful past experience with Katy ISD will also be accepted as meeting this requirement.

*NOTE:* For Professional Development services, tracking of expenditures “in the aggregate” over the term of a given fiscal year should be tracked either by Independent Contractor (i.e. company name or individual name) or by the category of services rendered (e.g. 5th Grade Math teacher training, etc.). In cases where the District has adopted a particular methodology in the District’s curriculum (e.g. John Doe’s 5th Grade Math Methodology), the expenditure will be aggregated by such contracted services. However, other contracted services like interpreters, Speech Language Pathologists, Diagnosticians, and other similar services should be tracked by category or commodity.

d. **Contracted Services for Consulting Services (Excluding Professional Services as referenced in Texas Education Code 44.031 or Government Code 2254)**: Purchases for contracted services by Independent Contractors providing professional consulting and/or advising services to the District (herein referred as “Consulting Services”) **not exceeding $50,000 in the aggregate** for a given fiscal year do not require multiple price quotes. In such cases, the contract for the purchase of such services must be made through an Independent Contractor that has
demonstrated competence and possesses the qualifications and experience to provide such services, including a attainment of a certain level of education and/or professional licensures, as applicable and as required by Federal, State, or local laws and regulations. An Independent Contractor may demonstrate competence, qualifications, and experience by providing any of the following: a resume or curriculum vitae, a statement of qualifications and experience, a list of client references where Independent Contractor provided services of similar scope. Positive and successful past experience with Katy ISD will also be accepted as meeting this requirement.

*NOTE:* For Consulting Services, tracking of expenditures “in the aggregate” over the term of a given fiscal year should be tracked either by Independent Contractor (i.e. company name or individual name) or by the category of services rendered (e.g. 5th Grade Math teacher training, etc.). In cases where the District has adopted a particular methodology in the District’s curriculum (e.g. John Doe’s 5th Grade Math Methodology), the expenditure will be aggregated by such contracted services. However, other contracted services like interpreters, Speech Language Pathologists, Diagnosticians, and other similar services should be tracked by category or commodity.

e. **Purchases Funded by Student Activity Funds:** Purchases for goods or services funded by Student Activity Funds (Budget Fund Code 865) are not considered District funds, so they are exempt from all public procurement requirements, both federal and state procurement rules and regulations. However, purchases for goods or services with funds derived from student activities (i.e. fundraisers) that are deposited into a District-controlled activity account (e.g. Budget Code 461) or General Operating Fund account (e.g. Fund Account 199) must comply with all applicable procurement requirements.

f. **Exceptions Authorized by Purchasing Director:** In some instances, depending on the circumstances, the Director of Purchasing shall have the right to waive the standard purchasing procedures referenced in this procedures manual, under the condition that any applicable Federal, State, or Local rules and regulations are still complied with in their entirety. Circumstances leading to waiving such standard purchasing procedures may involve situations including but not limited to time sensitive procurements where standard procurement procedures would cause a disadvantage to the District, lack of known qualified vendors, etc.

g. **Purchases for Registrations to Events and Conferences:** Purchases for registrations to events and conferences offered by industry related organizations (e.g. TASBO, TASB, etc.) where staff will be attending for either professional development or to keep up with industry or job-related information are exempt from the Purchase Limits requirements, unless federal grant awards are used to fund the expenditure, in which case the applicable federal grant requirements must be complied with in their entirety.

h. **Purchases for Student or Staff Related Activities at Public Organizations:** Purchases for District-organized activities at unique public organizations (e.g. Houston Zoo, etc.) are exempt from the Purchase Limits requirements, unless federal grant awards are used to fund the expenditure, in which case the applicable federal grant requirements must be complied with in their entirety.

IX. **Competitive Procurement Processes**

As directed in School Code, Section 44.031, Subchapter A, with the exception of produce or fuel, all District contracts valued at $50,000 or more in the aggregate for the 12 month period must be procured by use of one of the following methods:

1) Competitive Bidding, for personal property or for services other than construction services
2) Competitive Sealed Proposals
3) A Request for Proposals, for Services other than Construction Services
4) An Interlocal Contract
5) A Method provided by Chapter 2269, Government Code for construction
6) The Reverse Auction Procedure Defined in Government Code, Section 2155.062
7) The Formation of a Political Subdivision Corporation under Local Government Code, Section 304.001.

This applies to all personal property, services, and construction contracts, with the exception of those categories listed in the following section.

X. COMPETITIVE PROCUREMENT EXCEPTIONS:

A. Produce and Fuel

There is an exception for produce and fuel that allows the District to use any method listed above or those in School Code, 44.034 for these purchases.

B. Cooperative Purchase Programs

All items and services available through a Board approved purchasing cooperative have satisfied all procurement regulations for the formal competitive procurement process. However, unless the specific item or service is identified specifically in the awarded contract, the department or school is encouraged to obtain multiple quotes from awarded cooperative vendors.

Additionally if the item or service is identified as having been competitively awarded, the unit of measurement is typically “one”. For purchases of any quantity or level of service over the base unit every effort to negotiate a volume price should be made.

C. Professional Services

An additional exception applies to professional services as defined under Government Code, Section 1610.002. These services include, but are not limited to, professionals such as attorneys, architects, fiscal agents, or licensed medical professionals. Contracts for professional services are not procured through competitive bids. Rather such services are chosen through a process of selection involving the review of professional qualifications.

Professional services are defined under Attorney General Opinion DM-347 is a person whose profession requires years of education and service for one to attain competence and calls for a high order of intelligence, skill, and learning.

Departments requesting services under this category shall be required to provide proper justification as to why the proposed service qualifies as a professional service.

D. Consultant Services

All contracts for consultant services are subject to the same review and approval process as procurements for any other type of service. Departments requesting services under this category provide proper justification as to why the proposed consultant qualifies as a professional service; citing the professional expertise required to qualify to consult for the District in a particular area.
E. **Sole Source Exception with State & Local Funding**

As allowed under School Code, 44.031, the District is allowed to purchase items available from a single source without complying with the competitive procurement provisions.

Sole source items are defined as follows:

i. An item for which competition is precluded because of the existence of a patent, copyright, secret process, or monopoly;
ii. A film, manuscript, or book;
iii. A utility service, including electricity, gas, water (if available through a single source) or;
iv. A captive replacement part of component for equipment.

These exceptions do not apply to main-frame data-processing equipment and peripheral attachments with a single-item purchase price of $15,000 or more.

Vendors claiming sole source status will be asked to provide written and signed documentation stating the reason. The vendor must cite that it not only owns the rights to the product but that there is only one distribution source for the product. If the product is available from multiple suppliers, it does not qualify as a sole source.

Departments or schools may also be requested to document the reason why the particular product is required to meet the needs specified.

F. **Sole Source Purchases with Federal Funds**

Departments or schools will be requested to document the reason why the particular product is required to meet the needs specified. Documentation must include the justification as to why this service or product is unique. However, even once this information is received, the procurement can only proceed when one of the two following provisions is met:

- The Federal awarding agency or pass-through entity (TEA) expressly authorizes the noncompetitive procurement in response to a written request; or
- After solicitation of a number of sources in the public domain is documented, competition is determined inadequate.

G. **Emergency Damage or Destruction**

If school equipment, a school facility, or a portion of a school facility or personal property is destroyed or severely damaged or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and the Board or its designee determines the delay posed by the methods for procurement listed School Code Chapter 44.031 would prevent or substantially impair the District’s ability to conduct classes or other essential school activities, then other procurement methods may be utilized as needed.
H. **School Bus Purchases**

Any contract for the purchase or lease of one or more school buses must be submitted to competitive bidding when the contract is valued at $20,000 or more. A competitively awarded contract through a Purchasing Cooperative will satisfy this requirement.

I. **Leases & Rentals**

Any leases or rentals of personal property or services are subject to the procurement procedures outlined in this document. An exception may be made for lease of real property where sole-source limitations might apply due to location or building requirements.

However it is mandatory that any contracts for such transactions contain the time period for the contract, stating both the beginning and ending date. If the ending date extends past the current fiscal year ending date, a cancellation clause must be contained in the contract allowing cancellation for non-appropriation as listed in Government Code Sub –Chapter Z, 271.903.

XI. **Competitive Procurement Process**

If it is determined that the personal property or service needed will require either a Request for Bids or Request for Competitive Sealed Proposal process on the open market, the Purchasing Department will prepare the bid documents. The requesting department will be responsible for providing specifications of the products or services needed. Upon conclusion of the bidding process, the Purchasing Department will open, tabulate, and provide the school or department with written documentation of the results. The school or department will be asked to evaluate and score the results, and provide a written recommendation for award.

Notices of the time and place when the bids or proposals or other responses to a request for qualification may be examined must be published once a week for at least two weeks before the deadline for receipt. This notice must include the notice as to where the bids shall be opened as well as the date and time due. Such notice must be published in the county where the District’s administrative office is located.

Bids or Proposals will be opened in a public meeting by the Purchasing Department. All such openings are open to the general public or any interested party.

If the contract value exceeds $250,000 annually, the Purchasing Department will review and prepare an Agenda Item for Board approval and submit it for consideration.

Once a contract award is determined either through administrative action or Board action, the Purchasing Department will notify the using school or department as well as all vendors involved in the process.

XII. **Contract Time Period**

Katy ISD staff may only use funds appropriated by the Board in the approved budgets. Therefore the staff does not have the authority to commit funds in future budgets. While contracts may be issued for any time period as agreed to by the District and the vendor, if the contract extends beyond the end of the current fiscal year, it must contain a cancellation clause as defined by Local Government Code, Chapter 271.903. This clause permits the district to cancel, without penalty, any contract for which the Board does not allocate funding in the sequential year’s budget.
If a competitive procurement process is utilized such as a Request for Bid (RFB) or Request for Competitive Sealed Proposal (RFCSP) the contract time period must be clearly defined.

XIII. Best Value

In evaluating procurement decisions the District will always apply best business practices. In doing so, the District will always consider the Best Value criteria as listed below. When seeking a competitively procured contract, the District will state the Best Value criteria listed below as well as any additional criteria to be considered within the bid or proposal document.

Best Value criteria to be considered shall include:

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 and services;
4) The extent to which the goods or services meet the district’s needs;
5) The vendor’s past relationship with the district;
6) The impact on the ability of the District to comply with laws and rules relating to historically underutilized businesses;
7) The total long-term cost to the District to acquire the 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 it principal place of business in this state; or
   (B) Employs at least 500 persons in this state.
9) Any other relevant factor specifically listed in the request for bids or proposals.

Schools or departments will be asked to provide evaluation on all criteria included in the bid documents. All such evaluations will be maintained in the Purchasing Department files and may be presented to the Board with the contract award recommendation.

XIV. Cooperative Purchasing Contracts

To conserve and coordinate the use of public funds, a school district may enter into agreements for the cooperative purchase of goods and services between itself and other local governments or agencies (interlocal agreement).

Such contracts, if competitively bid by the cooperative administration, satisfy the requirement for competitive procurements listed under Education Code, Chapter 44.031.

Participation is allowed through the execution of an Interlocal Agreement between the Katy ISD Board of Trustees and the administration of the Cooperative. Currently, Katy ISD is an active member in a number of Purchasing Cooperatives. These include, but are not limited to:

1) Texas Procurement and Support Services (TPASS)
2) Region V Purchasing Cooperative
3) The Intergovernmental Purchasing Alliance (formerly TCPN)
4) Houston–Galveston Area Council (H-GAC)
5) Region VIII TIPS Cooperative (TIPS)
6) Harris County Department of Education (HCDE) Choice Partners Cooperative
7) The Texas Association of School Boards (TASB) BuyBoard Cooperative (BUYBOARD)
8) The Brazos Valley Council of Governments Purchasing Solutions Alliance (PSA)
9) Allegheny County, Pennsylvania U. S. Communities Program (US Communities)
10) Texas A & M University
11) The National Cooperative Purchasing Alliance through Region XIV

However, before grant funds or federal funds can be utilized for a procurement through one of the Cooperative’s contracts, the Purchasing Department must have a statement from the Cooperative’s administration that the Cooperative is in total compliance with EDGAR requirements. Additionally the vendor must submit the background certification form required by the District, if the vendor will have continuing duties in relation with the contract and direct contact with students.

The District may utilize the Cooperative’s Job Order Contracts (JOC) for the purpose of routine maintenance, repair, alteration, and small construction on existing facilities, in accordance with Chapter 2269, Texas Government Code. If such contracts are utilized the District must obtain any required bonds – both performance and payment. The District must also certify that the project meets the requirements for any design or engineering services required.

Purchases under these contracts can expedite the procurement process for District departments and schools.

For additional information regarding available commodities or services, please contact the Purchasing Department.

XV. Independent Contractors

From time to time, District departments or schools will contract with individuals or companies for certain services or programs. The term “independent contractor” is used in these instances to denote Non-District personnel performing such services or programs on District property or on behalf of the District. Depending on the value of the services or program to be provided the award of such contract may be subject to competitive procurement procedures. As soon as the requirement for the desired services or program is identified, the school or department should contact the Purchasing Department to determine the proper procurement procedure.

All independent contractors will be required to sign an Independent Contractor’s Contract and either provide proof of insurance at the levels recommended by the District or a Bodily Injury and Property Damage Waiver. Additionally Independent Contractors who will have direct contact with students as defined by Katy ISD are required by statute to provide a Criminal History Certification by Independent Contractor/Subcontractor affidavit certifying that the statute requirements have been met and will be monitored by the Contractor.

These procedures are detailed in the Katy ISD Administrative Regulation CJ.

Required Background Checks for Service Providers and Contractors
Effective January 1, 2008, Texas Education Code Chapter 22, Subchapter C requires service contractors to school districts in Texas to obtain criminal history record information regarding covered employees and to certify to school districts that they have done so. Covered employees with disqualifying convictions are prohibited from performing services at a school district. As defined by Texas Education Code, Chapter 22, disqualifying convictions include any of the following, if at the time of the offense, the victim was under 18 or enrolled in a public school:

1. A felony offense under Title 5, Texas Penal Code;

2. An offense for which a defendant is required to register as a sex offender under Chapter 62, Texas code of Criminal Procedure; or

3. An equivalent offense under federal law or the laws of another state.

Service contractors must obtain the criminal history record information on all new or existing employees who will have continuing duties relating to the contract and will have direct contact with students. Covered employees employed by a contractor before January 1, 2008, are subject to name-based criminal history reviews and contractors must obtain the criminal history record information as soon as practical. Covered employees employed by a contractor employed on or after January 1, 2008, are subject to fingerprint-based criminal history reviews and contractors must obtain the criminal history record information before or immediately after securing the services of the covered employees.

Contractors must contact the Texas Department of Public Safety (DPS) directly to establish an account to obtain criminal histories. Instructions for the performance of this requirement by this contractor can be obtained from the Purchasing Department. Fingerprints are conducted through the DPS vendor, Integrated Biometric Technology. The contractor must certify to the school district that it has performed the required criminal history reviews.

**XVI. Insurance Requirements**

State law requires that any contractor entering into a construction contract must certify in writing that he provides worker’s compensation insurance coverage for each employee of the contractor employed on the public project. This extends to any subcontractors. All certificates must be on file at the District before work commences.

The District has chosen to extend this requirement to any contractor of the District. Additionally, general liability and automobile coverage is required for any contractor performing services on District property. Insurance certificates listing Katy ISD as an additional insured should be on file at the District before work commences.

Failure to produce proof of satisfactory insurance coverage will be a consideration for non-award or contract termination.

**XVII. Bonding**

In order to protect the District’s investment in public work projects, the District will require performance or payment bonds as required under current State law. State law requires that the school district require performance bonds for any public works projects $100,000 or more in value, and requires payment bonds for any public works projects $25,000 or more in value.
The District also has the right to request a bid bond. This is typically used for high value contracts with complex bidding processes. The vendor is required to provide a bond of 5% of the project value to guarantee that it is ready to contract with the District upon award and this is a responsible bidder.

Bonding requirements are outlined in Texas Government Code, Chapter 2253.

XVIII. Specifications

The District’s end user or department is responsible for the development of specifications for the items or services needed. Specifications cannot be used that preclude competition in the marketplace on comparable items or services. The use of any brand name or manufacturer’s reference should be descriptive, not restrictive, and should merely indicate the type and quality of the items desired. Detailed specifications are desired, but, at the least, all specifications should include the minimum acceptable requirements or features. Alternate bids may be considered for award if in the best interest of the District. The Purchasing Department staff is available to assist in this area as needed.

XIX. Standardization

The District has standardized on certain equipment and materials to maintain the integrity of the District’s network operations and instructional processes. For computer related items, there is a list on the Technology Standards page on Katy Net. Standardization regarding instructional items will be communicated from the District’s Curriculum Department. Items meeting the District’s standards will be processed upon receipt in the Purchasing Department. Any items requested that are not on the approved standards list will require review by the Purchasing and Technology or Curriculum Department before processing.

XX. Impermissible Practices

School Code 44.031 prohibits the separate sequential or component purchases to avoid the purchasing limit requirements as set forth in this document. Violations of this or other provisions of the procurement statutes can result in criminal charges, removal from office, and/or termination of employment.

XXI. Personal Purchases

District employees shall not be permitted to purchase supplies or equipment for personal use with District funds. All items purchased are the property of Katy ISD. Personalized items and items not used in the performance of Katy ISD duties or responsibilities cannot be purchased with District funds.

XXII. Conflict of Interest

Local Government Code Chapter 176 provides information regarding conflict of interest statements to be filed by vendors and certain school district employees.

The Texas Conflict of Interest statutes apply to the District’s officers and elected officials. There are specific rules regarding what constitutes a conflict of interest in regards to a business transaction or real property transaction. For more information, please review the information provided on the Texas Ethics Commission website, www.ethics.state.tx.us.

For expenditures from federal funds, District employees should be aware that the rules regarding conflict of interest are more stringent than the State requirements. For federal fund expenditures the rules state that neither an employee...
administering, directing or authorizing the expenditure of federal funds, nor members of the employee’s immediate family, can have a financial interest in a vendor or his company involved in the procurement transaction involving these funds.

District policy on Conflict of Interest and the reporting requirements can be found under District Board Policy – DBD.

XXIII. Certificate of Interested Parties

Effective January 1, 2016 the 2015 Texas Legislature enacted House Bill 1295 (“HB 1295”). HB 1295 is codified in the Texas Government Code Section 2252.908. HB 1295 applies to contracts with business entities that have a value of at least $1,000,000 or require a vote of the governing body of the governmental entity.

To comply with this provision Katy ISD will notify vendors of the disclosure requirement and certify the receipt of the disclosure to the Texas Ethics Commission. Disclosure forms must be filed even if no conflicts exist within the contract. The forms required to file the disclosure can be found at:

https://www.ethics.state.tx.us/tec/1295-Info.htm

XXIV. Tax Exempt Status

The District is a political subdivision of the State of Texas and as such is exempt from state sales tax under Chapter 20, Title 122A, Revised Statutes of Texas.

Items or services purchased for which tax exemption status is claimed must be used within the performance of the District’s business.

It is a criminal offense to utilize this tax exempt status for any other purpose.

XXV. Vendor Relations

Katy ISD is committed to maintaining an open and equitable opportunity to all interested vendors. Katy ISD will seek to competitively procure goods and services whenever possible or as required by policies or statutes. Vendors awarded contracts by Katy ISD are placed on the approved vendor list maintained by the Purchasing Department. This list includes the names and contact information for all vendors with currently active Katy ISD contract.

Additionally, Katy ISD will maintain a potential vendor list of all interested vendors. Vendors will be solicited for quotes as well as formal bids or proposals in their area of interest as opportunities are developed.

Katy ISD does not discriminate on the basis of sex, race, disability, color or national origin in its business practices.

A. HUB Vendors

A Historically Underutilized Business (HUB) is a for-profit business that is owned at a level not less than 51% by one or more persons who are members of the following groups:

- African-American
- Hispanic Americans
- Asian Pacific – Americans
- Native Americans
• Women
• Service Disabled Veterans

HUB Businesses certify their compliance with the state standards by registering and receiving certification from the State of Texas Comptroller’s Office.

Katy ISD does not currently have a HUB program that requires expenditures at any mandatory dollar level or percentage. However, HUB certification is accepted and recorded into the vendor database. Reports on HUB level expenditures can be generated upon request.

B. **Buy American Provisions**

For any procurements funded from federal funds, the District will require that the vendor certify to the District that it is in compliance with all applicable provisions of the Buy America Act.

C. **Local Vendor Initiative (LVI)**

In 2009 Katy ISD initiated a program to encourage its schools and departments to purchase items locally where it was fiscally prudent and within the established state and federal statutes, policies, and rules for public school and grant fund procurement. The term local was defined in the LVI as those vendors within the Katy ISD school district geographic boundaries. Accordingly all schools and departments are encouraged to purchase items or services locally whenever possible.

D. **On-Site or Telephone Sales Calls**

Vendors and their representatives are strictly prohibited from contacting, either in person or by telephone, instructional or support personnel during instructional periods, without the prior approval of the principal or department director.

All vendors calling on school buildings are required to follow the proper check-in procedures for each location. This includes the presentation of a picture identification card. Vendors cleared for entry into the school will receive a visitor’s badge which must be worn while on the premises.

Vendors may make appointments with the Purchasing Department to discuss opportunities with Katy ISD.

E. **Gifts from Vendors**

Vendors are prohibited from offering gifts or favors that could influence, or that could be perceived to influence, purchases utilizing District funds. Any such offers should be refused by the employee and immediately reported to their principal or department director. The principal or department director should then report such activity directly to the Purchasing Department.

Such gifts could include meals, trips, tickets for entertainment, or electronics. Employees should note that acceptance of such gifts can be a violation of state or federal statutes, and a basis for criminal prosecution.

It is permissible to accept small incidental advertising items with a value of less than $10 retail. These items must be clearly identified as marketing items with the company’s name or logo clearly displayed. Such items may be accepted by staff or distributed to campus staff, as desired. These items include, but are not restricted to, coffee
mugs, calendars, notepads, pens, and pencils. Care should be taken that the display of such items is not done in such a manner that would give the perception of vendor preference.

F. Complaints Regarding Vendors and Evaluations
When problems are encountered with a vendor regarding products or service, it is important that the problem be documented. All pertinent information should be noted – date, time, location, problem details. The vendor should then be contacted by phone or in writing notifying of the problem and the resolution desired. A record of all such communication should be kept. If the problem cannot be resolved or continues, the Purchasing Department should be notified. All details of the problem should be provided, including the history of all previous communication regarding the problem.

The Purchasing Department will then take appropriate action which may include written notification to the vendor outlining the problem and the potential breach of contract. All record of the problem and action taken will be kept on file and used in future vendor evaluations.

G. Fundraising Vendors
The Purchasing Department has the responsibility of reviewing and approving all fundraising vendors used by the schools and departments. Fundraising vendors are those who provide a product(s) directly to the students, parents, or patrons, through a catalog or order form sale. Vendors are paid directly for the goods and the schools receive or organizations receive a commission from the sales.

Vendors interested in providing this type of program to be used by the schools or organizations for fundraising activities must submit an application with background information for the District’s review. Once approved, the vendor is placed on the Fundraising Vendor List for the current fiscal year. All applications must be renewed annually.

XXVI. School Store Sales or Direct Sales by Students
Schools and organizations purchasing and selling products direct to their customers (as in a school store) do not have to receive approval for their suppliers. Examples of this would be the produce supplier from whom pumpkins would be purchased for an annual pumpkin patch activity. However, all such supplies should be purchased through awarded contract vendors whenever possible.

XXVII. Donations
The Purchasing Department is responsible for tracking donations to the District. This list is forwarded to the Superintendent’s Office monthly. Donations are reviewed and accepted by the Board of Trustees at the Regular Business Meeting. A letter of appreciation and acknowledgement of the donation is mailed from the Superintendent to the Donor.

All donations from patrons or outside organizations should be submitted to the Purchasing Department on the Request for Acceptance of Donated Items. This form is located on the Katy Net under Online Forms. Schools and departments should include all applicable information on the form. It is important to include the contact information and a complete mailing
address. All donations whether monetary or tangible items should not be placed into use until the donation is officially accepted.

If purchasing fixed assets with donated funds (from outside donations or any activity fund donations), the source of the donation should be listed in the Printed Comments section of the requisition. Further instructions on properly recording the donation through a journal voucher and information required to track the donation through the purchasing process can be found in the District’s Finance Procedures Manual.

If using the funds to purchase goods or services that will in any way be attached to the building or become a permanent fixture on the grounds, you must include an approved Building Modification form. This form can be found on Katy Net under Online Forms. Purchase Orders for these types of items or services cannot be processed until all required approvals have been obtained.
Appendix A
Federal Procurement Guidelines

Federal Grants Compliance Notice

All purchases shall be in accordance with the district’s School Board Policies (CH Legal and Local) and the district’s Purchasing Procedures Manual. The district purchasing procedures shall comply with all federal, state and local procurement requirements.

In some situations, the federal requirements pertaining to purchasing methods are more restrictive than state of Texas requirements. In other situations, the state requirements are more restrictive than the federal requirements. Therefore, when determining the method that must be used in a particular purchasing situation, the more restrictive method or requirement must be used in each case.

I. State Requirements Related to Purchasing Methods

Unless otherwise more restrictive in federal law for procurement with federal funds, the District complies with the purchasing methods prescribed in TEA’s FASRG and in state law for all purchases regardless of the funding source (i.e., state, local, or federal).

Texas Education Code § 44.031 (a) states that all school district contracts for the purchase of goods and services valued at $50,000 or more in the aggregate, for each 12-month period are to be made by the method that provides the best value to the district. This does not apply to contracts for the purchase of produce or vehicle fuel.

The law enumerates several options for competitive procurement that are available to school districts. One of these options must be used for contracts expected to equal or exceed $50,000 regardless of the funding source (i.e., state, local, or federal):

1. competitive bidding
2. competitive sealed proposals
3. request for proposals, for services other than construction services
4. interlocal contracts
II. Professional and Consulting Services

Several exceptions to following one of these competitive procurement methods are identified in TEC § 44.031. This section does not apply to a contract for professional services rendered, including services of an architect, attorney, certified public accountant, or engineer (which must be selected in accordance with Chapter 2254 of the Government Code.) A school district may, at its option, contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Section 2254.003, Government Code, in lieu of the methods provided by this section.

The federal cost principles (specifically in 2 CFR § 200.459) broadly define professional and consultant services as those services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the District.

a. Professional services are further defined in the Handbook on Purchasing as “infrequent, technical, and/or unique functions performed by independent contractors whose occupation is the rendering of such services.” Finally, professional services as described in Attorney General Opinion DM-418, referenced in the Handbook, includes not only the services of lawyers, physicians, or theologians, “but also those members of disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence including guest speakers, consultants, writers, and artists.” A professional is only one who "is a member of [a] discipline with widely accepted standards of required study or specified attainments in special knowledge as distinguished from mere skill." Id. (quoting Wooddell, 230 S.E.2d at 470).

Certain professional services, specifically those covered under Chapter 2254, Subchapter A of the Texas Government Code, (i.e., architects, CPAs, registered engineers, optometrists, physicians, surgeons, land surveyors, landscape architects, registered nurses and state certified or state licensed real estate appraisers) are not selected based on competitive bidding. Rather, they must be selected based on demonstrated competence and qualifications obtained through a Request for Qualifications or similar document. After the District makes its selection based on demonstrated competence and qualifications, a fair and reasonable price for the services is then negotiated and agreed upon.

b. Consulting services: According to FAR (Module 1 of TEA's FASRG), consulting services "refer to the practice of helping districts to improve performance through analysis of existing problems and development of future plans. Consulting may involve the identification and cross-fertilization of best practices, analytical techniques, change management and coaching skills, technology implementations, strategy development, or operational improvement. Consultants often rely on their outsider’s perspective to provide unbiased recommendations. They generally bring formal frameworks or methodologies to identify
problems or suggest more effective or efficient ways of performing tasks. Consulting services cover all functional areas such as instruction, curriculum, and administration.

Consulting does not include a routine service/activity that is necessary to the functioning of a school district’s programs, such as hiring additional people on contract to supplement present staff. It also does not apply to services provided to conduct organized activities (such as training or other similar educational activities.)"

The District shall use a consultant only if the services of the consultant are necessary to accomplish the objectives of the particular program/project, the fees are reasonable in cost, and the District cannot meet the needs by using an employee. 34 CFR 75.515. For example, an employee may have the knowledge, skills, and capability to provide the consulting services, but the employee may not have the time in an already-busy schedule to provide the consulting services in the time required.

Under IRS rules, a person cannot work part of the time as an employee, and part of the time as a contractor/consultant. If an employee provides additional services above and beyond his regular contracted hours and regular job responsibilities, the employee is paid extra-duty pay in accordance with the District’s employee compensation policy, and not a fee based on a contract.

III. Allowable Professional Service Costs:

Professional and consultant services are allowable to be purchased with federal funds when reasonable and when the District considers the following factors:

- The nature and scope of the service rendered in relation to the service required;
- The necessity of contracting for the service, considering the District’s capability in the particular area;
- The past pattern of such costs, particularly in the years prior to federal awards;
- The impact of federal awards on the District’s business (i.e., what new problems have arisen);
- Whether the proportion of federal work to the District’s total business is such as to influence the District in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under federal awards;
- Whether the service can be performed more economically by direct employment rather than contracting;
- The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities; and
- The adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

IV. Purchasing Goods or Services with Federal Funds

In accordance with 2 CFR Part 200, Subpart E, Cost Principles, all purchases made with federal funds, regardless of the method of purchase, must be determined to be:
• *reasonable* in cost (comparable to current fair market value)
• *necessary* to carry out the objectives of the federal program
• *allowable* under the federal cost principles and the terms and conditions of the award
• *allocable* (chargeable or assignable) to the grant program based on the relative benefits received

Prior to each purchase and for each proposed purchase, on each purchase order, purchase requisition, contract, invoice, receipt, travel voucher, or other documentation for obligations, encumbrances, or expenditures, the District documents these criteria are met in the following manner regardless of the purchase method used:

The program Manager/Director assigned to the grant verifies the proposed purchase is necessary to accomplish the objectives of the grant program in that the expenditure is vital or required for the grant program to be successful. The Federal Funds Department and Director of Purchasing verifies the proposed purchase is *reasonable in cost* (i.e., comparable to current fair market value).

V. Five Methods for Procuring with Federal Funds

2 CFR § 200.320 provides for five methods that must be used when making purchases with federal funds. In some cases, these federal methods are less restrictive than state requirements; in other cases, the state requirements are more restrictive than these federal methods. Additionally, if local requirements are more restrictive than either state or federal, then local requirements must be followed. In all cases, the more restrictive requirements or methods must be followed when making purchases with federal funds.

The type of purchase method and procedures required depends on the cost (and type, in some cases) of the item(s) or services being purchased.

• Micro-purchase
• Small purchase procedures
• Sealed bids
• Competitive proposals
• Noncompetitive proposals (sole source)

The following describes the five procurement methods allowed under federal law. While the federal rules provide a basic structure for each procurement method, the District must have documented procurement policies which provide detail on the process by which all purchases are made. Consequently, for each procurement method, provide the following detail either here or in the referenced procurement procedures:

• Procurement Documents
  • What type of procurement document is used? For example, is a purchase order or a requisition used?
  • Detail how this procurement documentation is generated. Are the documents pre-numbered? If paper copies, where are those kept and who has access? If electronic, how does the District ensure that only certain people have access?
  • When a purchase is made, what type of information must be contained on the purchase order or requisition
    • It should include a description of the services to be performed or goods to be delivered;
A location where the services are to be performed or goods to be delivered; and
The appropriate dates of service or delivery.

- Where is the documentation kept once the purchase is made? What other documentation is maintained with it? Are they recorded in a log?

- Responsibilities
  - If purchase order/requisition, what position requests the document?
  - What position completes it and what position approves it?
  - If a contract, what position writes the contract? Approves it?

- Required Number and Types of Quotations
  - How many bids are required for each purchase threshold?
  - Are these bids oral or written?
  - How are they received if written?
  - These bids must be received before a purchase order, requisition, or contract is made.
  - What position is responsible for obtaining the bids?
  - What documentation is required and where is it maintained?

**Note:** In addition to these rules, districts must also follow both state and local procurement rules. State and local procurement rules are often stricter than federal requirements. Accordingly, this section has been revised to account for the appropriate thresholds and purchasing procedures within each threshold amount in accordance with some state procurement rules. However, if local procurement rules are even more restrictive, those must be inserted either here or in the District’s separate procurement procedures.

**VI. Micro-Purchases (Purchases up to $3,500))**

Federal methods provide for procurement by micro-purchase. Micro-purchase is defined in 2 CFR § 200.320(a) as a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed $3,500. The micro-purchase method is used in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost.

In accordance with federal requirements, micro-purchases may be awarded without soliciting competitive quotations if the District considers the price to be reasonable. Also, when using federal funds, to the extent practicable, the District must distribute micro-purchases equitably among qualified suppliers. If this method is utilized, the District shall maintain evidence of this reasonableness in the records of all micro-purchases.

**VII. Small Purchase Procedures (Purchases between $3,501 and $49,999 in the Aggregate)**

The federal threshold for small purchase procedures is $150,000. 2 CFR § 200.320(b). However, with some exceptions noted in TEC § 44.031, the state threshold for all school district contracts that do not require competitive bidding is less than $50,000 in the aggregate. Therefore, the more restrictive state threshold of less than $50,000 must be followed.
Small purchase procedures (as defined in 2 CFR § 200.320[b]) may be used in those relatively simple and informal procurement methods for securing nonprofessional services, supplies, or other property that do not cost more than $50,000.

For purchases funded from state or local funds, to obtain the most competitive price, a district, may at its option, obtain price quotes for items costing less than $50,000. Per Module 3, the district’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 described for purchases over $50,000, if an item to be paid from state or local funds costs less than $50,000, a district may utilize price quotations to stimulate competition and to attempt to receive the most favorable pricing.

However, if using federal funds to purchase goods or services, price or rate quotations must be obtained from an adequate number of qualified sources for all purchases between $3,500 and $49,999. Such price or rate quotations must be documented in writing, and the District must demonstrate that price or rate quotations were obtained from an adequate number of qualified sources.

VIII. Purchases $50,000 or More in the Aggregate

According to Texas law, one of the following competitive methods must be used for purchases of $50,000 or more in the aggregate over a 12-month period (fiscal year):

1. competitive bidding
2. competitive sealed proposals
3. request for proposals, for services other than construction services
4. interlocal contracts
5. design-build contracts
6. contract to construct, rehabilitate, alter, or repair facilities that involve using a construction manager
7. a job order contract for the minor construction, repair, rehabilitation, or alteration of a facility
8. reverse auction procedure as defined by Section 2155.062(d), Government Code; or
9. the formation of a political subdivision corporation under Section 304.001, Local Government Code.

Each of these competitive methods is described more thoroughly in Module 3 of FASRG.

In addition, one of the three following methods must be used, depending on the circumstance described below, when purchasing with federal funds: sealed bids (formal advertising); competitive proposals; or noncompetitive proposals (sole source).

Sealed Bids (Formal Advertising)

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. The sealed bid method is the preferred method for procuring construction, if the following conditions apply:
• 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 fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

• Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids. The invitation for bids must be publically advertised.
• The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond.
• All bids will be opened at the time and place prescribed in the invitation for bids. The bids must be opened publicly.
• A firm fixed-price contract award must be made in writing to the lowest responsive and responsible bidder.  
• Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. Any or all bids may be rejected if there is a sound documented reason.

**Competitive Proposals**

A competitive proposal is normally used with more than one source submitting an offer, and either a fixed price or a cost-reimbursement type contract is awarded. (A cost reimbursement contract reimburses the contractor for actual costs incurred to carry out the contract.) Competitive proposals are generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

• 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.
• Proposals must be solicited from an adequate number of qualified sources.
• The District must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
• Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

When using federal funds, the District 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.
Noncompetitive Proposals (Sole Sourcing)

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used when using federal funds only when one or more of the following circumstances apply:

- The item is available only from a single source and an equivalent cannot be substituted. This must be documented.
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- TEA (or other federal awarding agency) expressly authorizes noncompetitive proposals in response to a written request from the District.
- After solicitation of a number of sources, competition is determined inadequate.

Additionally, state requirements related to sole source purchasing are, in some ways, more restrictive. In addition to the federal requirements above, sole source purchases must meet established criteria:

- 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.

According to state requirements, sole source does not apply to mainframe data-processing equipment and peripheral attachments with a single item purchase price in excess of $15,000.

In all cases, the District will obtain and retain documentation from the vendor which clearly delineates the reasons which qualify the purchase to be made on a sole source basis.

IX. Cost/Price Analysis for Federal Procurements in Excess of $150,000

In accordance with the requirements in 2 CFR § 200.323, the District will make independent estimates of the goods or services being procured before receiving bids or proposals to get an estimate of how much the goods and services are valued in the current market.

To accomplish this, after bids and proposals are received, but before awarding a contract, the District conducts either a price analysis or a cost analysis, depending on the type of contract, in connection with every procurement with federal funds in excess of $150,000. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the District will come to an independent estimate prior to receiving bids or proposals. 2 CFR § 200.323(a). The cost analysis or price analysis, as appropriate for the particular situation, will be documented in the procurement files.

Accordingly, the District performs a cost or price analysis in connection with every federal procurement action in excess of $150,000, including contract modifications, as follows:
Cost Analysis ➔ Non-competitive Contracts: A cost analysis involves a review of proposed costs by expense category, and the federal cost principles apply, which includes an analysis of whether the costs are allowable, allocable, reasonable, and necessary to carry out the contracted services.

In general,

- A cost analysis must be used for all non-competitive contracts, including sole source contracts.
- The federal cost principles apply.
- All non-competitive contracts must also be awarded and paid on a cost-reimbursement basis, and not on a fixed-price basis.
- In a cost-reimbursement contract, the contractor is reimbursed for reasonable actual costs incurred to carry out the contract.
- Profit must be negotiated as a separate element of the price in all cases where there is no competition.

When performing a cost analysis, the Federal Funds Department/Director of Purchasing negotiates profit as a separate element of the price. To establish a fair and reasonable profit, consideration is 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. 2 CFR § 200.323(b).

Price Analysis ➔ Competitive Contracts: A price analysis determines if the lump sum price is fair and reasonable based on current market value for comparable products or services. In general,

- A price analysis can only be used with competitive contracts and is usually used with fixed-price contracts. It cannot be used with non-competitive contracts.
- Compliance with the federal cost principles is not required for fixed-price contracts, but total costs must be reasonable in comparison to current market value for comparable products or services.
- A competitive contract may be awarded on a fixed-price basis or on a cost-reimbursement basis. If awarded on a cost-reimbursement basis, the federal cost principles apply and costs are approved by expense category, and not a lump sum.

Costs or prices based on estimated costs for contracts are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable costs under the federal cost principles.

X. Use of Federal Excess and Surplus Property and Procurement of Recovered Materials

The District considers the use of 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). To search for available Texas Federal Surplus material, [Click Here](#).
To purchase material found on the Texas Federal Surplus material list, please contact Karla Kessler or Joe Schuster.

**Procurement of Recovered Materials:** In addition, the District complies with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

The requirements of section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The requirements apply to state and local governments, including school districts, and include the purchase of everyday items such as paper products, non-paper office products, office furniture, floor mats, and awards and plaques, as well as many other items, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000. Requirements also include

- procuring solid waste management services in a manner that maximizes energy and resource recovery and
- establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- Pursuant to section 6002, the decision not to procure recovered materials must be based on a determination that such procurement items—
  a. are not reasonably available within a reasonable period of time;
  b. fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the District; or
  c. are only available at an unreasonable price. Any determination under subparagraph (B) shall be made on the basis of the guidelines of the Bureau of Standards in any case in which the material is covered by the guidelines.

While the procurement of materials with the highest recycled content is always recommended, the Federal Grants and Programs Office will monitor federal fund purchase activities to ensure the $10,000 threshold is adhered to. Please contact the Federal Grants and Programs Office with any questions.
Appendix B
Frequently Asked Questions

Why all the rules? Whose money is it?
School District funding sources include, but are not limited to:
- Local Taxes & Fees
- State Taxes
- Federal & State Grant Funds

As “keepers” of the taxpayers’ money, we have a responsibility to be “fiscally” responsible—to document that we have received good value for the dollars spent.

Why do we have to apply purchasing rules to vending machine funds or the Principal’s Activity fund?
Effective in September 2009, Education Code 44.908 defined these funds as revenue over which the District maintains direct control, thus making these funds subject to the same laws and rules as all other District funding. The only exception are those funds raised by student activities and controlled by the student organizations—identified as Student Activity Funds.

Where are all the rules?
State statutes
Katy ISD Board Policies
Katy ISD Administrative Procedures
Texas Education Agency Financial Accountability System Resource Guide (FASRG)

What does the Purchasing Department do?
School district spending is looked at in the aggregate. That means that we must look at what the district is spending as a whole. We cannot look at one department or school independently. Therefore the Purchasing Department monitors the spending of the schools and departments to ensure compliance with all of the state statutes and local policies. Additionally, and of equal importance, we bid and/or negotiate contracts to obtain better pricing or service. Our goal is to assist you in obtaining better value for your budget dollars.

I can buy these items for much lower prices. Why does the District pay more?
There is a cost to doing business with a school district. Companies must process a large number of documents to become an awarded vendor for the school district. They must also agree to abide by the District’s terms and conditions. They must deliver and bill correctly so that the expenditure can be tracked properly. We have strict hours of operation and often even stricter requirements on deliveries. All of this can add to a vendor’s cost. Some vendors refuse to bid to school districts.
because of this. Unfortunately when this happens, it leaves the District in a position of being unable to do business with that vendor. It can also mean that we may pay more to an awarded vendor than we might have paid to another one who is not an approved vendor.
The Purchasing Department works very closely with vendors to encourage their participation in our bid or contracting processes. We also work hard to obtain the best possible pricing from our vendors.

**How do I know what type of contracts Katy ISD has in place?**

Katy ISD Purchasing Department posts all awarded contracts on the Katy Net Site under the Purchasing Department tab; available for view by all Katy ISD staff. However, if you have questions, please contact the Purchasing Department at 281-396-6260. We will be happy to guide you to the correct current contract or assist you with obtaining pricing.