Purchasing Related Statutes

• Texas Education Code 44.031 – 44.047 & 130.010 – 130.0101

• Government Code
  – 791 Interlocal Cooperation Contracts
  – 2155 Reverse Auction Procedure Defined
  – 2175 Surplus Equipment
  – 2251 Prompt Payment Act
  – 2252 Award of Contract to Nonresident Bidder
  – 2253 Performance and Payment Bonds
  – 2254 Professional and Consulting Services
  – 2258 Prevailing Wage Rates
Additional Statutes & Resources

• Texas Local Government Code
  – Chapter 176 Disclosure of Certain Relationships
  – Chapter 271 Subchapter D. State Cooperation in Local Purchasing Programs
  – Chapter 271 Subchapter G. Purchases from Federal Schedule Sources of Supply

• Labor Code
  – Title 5. Workers Compensation

• Texas Education Agency Financial Accountability System Resource Guide
What does the AG have to say?

• Texas Attorney General Opinions
  – https://www.oag.state.tx.us/opin/opinions_wd.shtml
Statutory Purchasing Thresholds

• TEXAS EDUCATION CODE CHAPTER 44, SUBCHAPTER B, 44.031  All school district contracts, except contracts for the purchase of produce or vehicle fuel, valued at $50,000 or more in the aggregate for each 12-month period shall be made by the method that provides the best value for the district.
  
  – Legal notice shall be published in the county in which the district’s central administrative office is located, once a week for at least two weeks before the deadline.
  
  – Solicitation responses sealed or electronically secured
Internal Purchasing Thresholds

• Establish internal policies and procedures for purchases under $50,000
• A best practice is to require 3 quotes for any purchase over $5,000
• Thresholds are determined by the aggregated amount spent within a 12 month period, District-wide
• Purchase orders should not be processed until required quotes, bids, proposals and approvals are received
Evaluation Criteria

- Texas Education Code Subchapter B Sec. 44.031 states that in determining to whom to award a contract, the District shall consider:
  - The purchase price;
  - The reputation of the vendor and the vendor’s goods or services;
  - The quality of the vendor’s goods or services;
  - The extent to which the goods or services meet the District’s needs;
Evaluation Criteria, cont.

– The vendor’s past relationship with the District;
– The impact on the ability of the District to comply with laws and rules relating to historically underutilized businesses;
– The total long-term cost to the District to acquire the vendor’s goods or services; and
– Any other relevant factor specifically listed in the request for bids or proposals*

*You must be able to justify listing these factors and be able to justify your recommendation based on any of the criteria!
Cooperative Purchasing is your friend!

• District’s are allowed to participate in cooperative purchasing programs that offer volume discounts for items commonly purchased by a number of public entities.

• Purchases made through a cooperative may satisfy the competitive bid requirement.

• Most Commonly Used Cooperative Programs
  – U.S. Communities
  – State of Texas
    • DIR
    • TPASS
    • TXMAS
  – TCPN
  – Buyboard
  – E & I Cooperative
  – PEPPM
  – PSA (Purchasing Solutions Alliance)
  – Tarrant County
  – TIPS
  – Other public agencies
  – Collin County Governmental Purchaser’s Forum
Purchasing Cycle

Need Recognized – Specifications & Requisition created and submitted to Purchasing

Quotes, bids or proposals are solicited, received, tabulated and evaluated

Board approval obtained, if necessary

Purchase Order Issued

Contract Administration – vendor has delivered according to specifications, receiver done, vendor submits invoice and is paid
Bid Specifications

• Information should be clear, concise and must not be restrictive
• The same information should be provided to all prospective suppliers
• Having a supplier write bid specifications is considered a conflict of interest and should be avoided
  – Suppliers tend to write restrictive specifications that will prohibit other suppliers or products from meeting the specifications
  – Contact other agencies that have purchased the same item or service
  – TACCBO, NIGP, NAEP, TXPPA, NPI specification libraries
  – Consultants, Architects or Engineers
Bid Specifications, cont.

• Things to consider when preparing specifications:
  – Timelines: When do you need it?
  – Issues that can affect timeliness of deliveries
    • Stock outs, backorders
    • Economic, environmental or political issues
    • Time of year
    • Force Majeure
  – Where do the goods need to be delivered or services need to be performed?
  – Is there a specific room or location inside the building that the goods need to be delivered to?
Specifications: Things to consider, cont.

- Is there installation involved? If so, who is going to do the installation? Does the vendor provide installation?
- Provide a specific or estimated quantity.
- Are licenses or certifications required?
- Warranty, training, support.
- Who are the vendors that can provide the goods or service?
- What evaluation factors need to be considered?
Shipping Terms

- F.O.B. (Free on Board) determines the point at which title or ownership transfers and responsibility for the goods while in transit.
  - F.O.B. Destination: Shipper maintains ownership and is responsible for the goods until received by the buyer at the destination indicated on the purchase order.
    - Any loss or damages would be handled by the shipper.
  - F.O.B. Origin: Buyer takes ownership and responsibility once the goods leave the shippers location.
    - Any loss or damages would be handled by the buyer.
Vendor Documentation

• Always document unsatisfactory performance by a vendor and keep on file. You never know when unsatisfactory performance will become habitual, so keep good records in order to support any future debarment of the vendor or actions against the vendor.
Ethics

• Avoid even the appearance of favoritism or ethical misconduct and make sure your staff and district staff do the same!
Construction Contracts
Education Code 44.035

• Board must determine, before advertising, which method provides the best value for the district
• Evaluation criteria and relative weights must be published
• District must document the basis of its selection and make the evaluations public not later that the seventh day after the date the contract is awarded.
Construction Contract Methods

- Texas Education Code allows the following procurement methods for construction:
  - Design-Build
  - Construction Manager-Agent
  - Construction Manager-At-Risk
  - Competitive Sealed Proposals
  - Competitive Bidding
  - Job Order Contracts
Professional Services

• Government Code Chapter 2254
  – May not select on the basis of competitive bids (price)
    • CPA
    • Architect
    • Landscape Architect
    • Land Surveyor
    • Physician (including a surgeon)
    • Optometrist
    • Professional Engineer
    • State Certified or Licensed Real Estate Appraiser
    • Registered Nurse
Contract for Professional Services of Architect, Engineer or Surveyor

• Select the most highly qualified provider based on demonstrated competence and qualifications and then attempt to negotiate a contract with that provider to perform the services for a fair and reasonable price

• If a satisfactory contract cannot be negotiated then the entity shall:
  – Formally end negotiations with that provider;
  – Select the next most highly qualified provider; and
  – Attempt to negotiate a contract with that provider

• Process continues until a satisfactory contract can be negotiated
Ode to a Purchasing Agent

The Purchasing Agent stood at the Golden Gate,
His head was bending low.
He merely asked the man of fate,
Which way he ought to go.
“What have you done,” St. Peter said,
“to seek admittance here?”
“I was a Purchasing Agent down on earth,
for many and many a year.”
St. Peter opened wide the gate,
and gently pressed the bell.
“Come in,” he said, “and choose your harp.
You’ve had your share of hell!”

Author Unknown
Questions???