



## Community College Board Member's Guide to Purchasing<sup>1</sup>

Purchasing can be a complex and difficult subject for community college administrators and trustees alike because of the numerous statutes, policies, legal interpretations, and procedures that must be followed. From day to day, a college may enter into a variety of different types of contracts for the purchase of goods and services, and each contract may have different rules that must be followed before the contract is considered valid. Depending on the nature of the goods or services for which the college is contracting, the purchase may be governed by the Texas Education Code, Government Code, Local Government Code, Occupations Code, or a combination of these statutes. The complexity of college purchasing or *procurement* demands not only knowledge of relevant laws, but also development and implementation of a local purchasing system that meets a college's unique needs.

Regardless of what procedure must be followed, ultimately, the college's objective in procurement is to purchase the highest quality goods and services at the lowest practical prices. To this end, college boards adopt local procurement policies and delegate certain purchasing decisions to ensure compliance with state laws while maximizing efficiency and cost-savings.

### **Board Authority**

#### **1. What does the law say about community college board purchasing authority?**

The trustees of a community college constitute a body corporate that may exercise certain powers in the name of the college. Together, the board of trustees has the exclusive power and duty to govern and oversee the management of the college. Tex. Educ. Code §§ 1.001(a), 130.082(d), .084. All powers and duties that are not specifically delegated by statute to the Texas Higher Education Coordinating Board or the Texas Education Agency are reserved for the board of trustees. Tex. Educ. Code § 130.002. The trustees may adopt rules and bylaws necessary to carry out their powers and duties. Tex. Educ. Code § 130.802(d).

Texas Education Code Chapter 44, Subchapter B relating to the purchase of goods and services under contract by a school district, also applies to community colleges. Tex. Educ. Code § 44.0311. This law specifically authorizes the board to adopt rules and procedures for the acquisition of goods and services. Tex. Educ. Code § 44.031(d); Tex. Gov't Code § 2269.051. The board's role in adopting such

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<sup>1</sup> An electronic version of this document is available on [TASB College eLaw](https://tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-board-members-guide-to-purchasing.pdf) at [tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-board-members-guide-to-purchasing.pdf](https://tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-board-members-guide-to-purchasing.pdf).

rules and procedures is to set objectives for the community college, determine the policies that will govern the college, approve the plans to implement those policies, and provide the funding necessary to carry out the plans. The management and execution of the purchasing program requires good planning and cooperation between board members and college staff.

## Delegation

### **1. May a community college board of trustees delegate its purchasing authority?**

The board of trustees also has the power to delegate certain powers and responsibilities to designated persons. As with any official board action, delegation, if permitted, should occur at a lawfully called meeting by majority vote and be reflected in the minutes. See *Webster v. Tex. & Pac. Motor Transp. Co.*, 166 S.W.2d 75 (Tex. 1942) (recognizing well-established rule that a political subdivision must act as a body at a properly called meeting of which all the members have notice or are given an opportunity to attend); *Fielding v. Anderson*, 911 S.W.2d 858 (Tex. App.—Eastland 1995, writ denied) (discussing Texas Open Meetings Act mandate that decisions made by governmental bodies must be made by the body as a whole); Tex. Gov't Code § 551.021.

In the context of procurement, a college board of trustees has statutory authority to delegate some legal responsibilities related to purchasing to a designated person, representative, or committee. For purchases of goods and services under Texas Education Code chapter 44, subchapter B, other than construction services, the board of trustees may delegate its authority regarding actions the law requires of the college. The board, however, may not delegate the authority to act when the law requires the action to be taken by the board of trustees of a college. Tex. Educ. Code § 44.0312.

For example, the procurement laws state that a community college may receive bids or proposals by electronic transmission if the board of trustees of the college “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.” Tex. Educ. Code § 44.0313(a). Typically, the college president or chancellor and administrative staff develop purchasing procedures as administrative regulations that are not adopted by the board. However, because the statute states that the board, not the college, must adopt rules related to accepting electronic bids and proposals, the authority to adopt these rules is not delegable. The college, therefore, cannot accept electronic bids and proposals until the board adopts appropriate rules, and it cannot delegate this specific rulemaking authority to the president.

Delegation of purchasing authority is typically found in board policy CF(LOCAL). Most boards have adopted a policy similar to the TASB model policy:

The Board delegates to the College President or designee the authority to determine the method of purchasing, in accordance with CF(LEGAL), and to make budgeted purchases. Any purchases not included in the budget shall be taken to the Board for approval.

See TASB Policy CF(LOCAL).

Based on this provision, the college president or chancellor would not need to seek board approval of a contract to purchase goods and services as long as they are provided for in the adopted budget.

## **2. May a community college board of trustees delegate its authority regarding construction projects?**

As explained in more detail below, the laws related to contracting for construction services are found in Texas Government Code chapter 2269. Unlike Texas Education Code chapter 44, where the board may only delegate duties of the college, but not those of the board of trustees, Chapter 2269 does not make this distinction. The ability to delegate under Chapter 2269 is more broad. The board of trustees may delegate its authority regarding any action authorized or required by Chapter 2269 to a designated representative, committee, or other person. If the board makes a delegation, it must provide notice of the delegation, the limits of the delegation, and the name or title of each person who has been given delegated authority either by rule or in the request for bids, proposals, or qualifications. Tex. Gov't. Code § 2269.053. If the board fails to provide notice of delegation, "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." Tex. Educ. Code § 44.0312(a).

## **Procurement Methods**

### **1. What procurement methods may a community college use for purchasing?**

The general rule for community college purchasing is found at Texas Education Code section 44.031 and states that all college contracts for the purchase of goods and services, except for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period must be made by one of the following seven statutory methods that provides the best value for the college:

- (1) Competitive bidding for services other than construction services;
- (2) Competitive sealed proposals for services other than construction services;

- (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 services;
- (6) Reverse auction; or
- (7) The formation of a political subdivision corporation for purchase of electricity.

Tex. Educ. Code § 44.031(a).

Contracts valued at less than \$50,000 and contracts for the purchase of produce or vehicle fuel do not have to be made using one of the seven listed methods. However, the board still has an obligation to ensure that such purchases are made using a method that is in the college's best interest and is consistent with good business management. Tex. Att'y Gen. Op. No. JC-205 (2000). Consequently, a community college may adopt local procurement requirements for these types of purchases.

## 2. **What procurement methods may a community college use for construction services?**

One of the seven statutory methods of procurement is "a method provided by Chapter 2269, Government Code, for construction services." Tex. Educ. Code § 44.031(a)(5). Chapter 2269 provides six methods of procurement for construction services that college may use:

- (1) Competitive Bidding;
- (2) Competitive Sealed Proposals;
- (3) Construction Manager-Agent;
- (4) Construction Manager-at-Risk;
- (5) Design-Build; and
- (6) Job Order Contacting

Tex. Gov't Code §§ 2269.101, .151, .201, .251, .301, .401.

If a community college uses a construction procurement method other than competitive bidding, the board of trustees must, before advertising, determine which method provides the best value for the college. Tex. Gov't Code § 2269.056(a). To facilitate this determination, most boards have adopted a policy similar to the TASB model policy:

Prior to advertising, the Board shall determine the project delivery/contract award method to be used for each construction contract valued at or above \$50,000. To assist the Board, the College President shall recommend the project delivery/contract award method that he or she determines provides the best value to the College District.

See TASB Policy CM(LOCAL).

Although the Texas Education Agency (TEA) primarily provides resources for school districts, it also provides information relevant to community colleges. For example, in its Financial Accountability System Resource Guide (FASRG), the TEA addresses financial aid and procurement issues that impact colleges. The TEA stated that a board may satisfy the statutory requirement to determine best value by adopting a board policy that designates one of the construction procurement methods as the default best value method, as long as the policy is adopted by resolution describing the board's rationale for selecting the default method and providing a mechanism for the board to select another method upon recommendation by staff. Tex. Educ. Agency, [Financial Accountability System Resource Guide](#), Module 3. Purchasing, Update 14, p. 139 (Jan. 2010).

### **Factors to Consider When Awarding the Contract**

#### **1. What factors must a community college consider when awarding contracts?**

Once a community college has decided which procurement method to use, it must determine to whom to award the contract. For purchases of goods and services, the college must consider the following statutory factors:

- (1) Purchase price;
- (2) Reputation of the vendor and of the vendor's goods or services;
- (3) Quality of the vendor's goods or services;
- (4) The extent to which the goods or services meet the college's needs;
- (5) The vendor's past relationship with the college;
- (6) The impact on the ability of the college to comply with laws and rules relating to historically underutilized businesses;
- (7) Total long-term cost to the college to acquire the vendor's goods or services;

- (8) For certain contracts, whether the vendor or the vendor's ultimate parent company or majority owner has its principal place of business in Texas or employs at least 500 persons in Texas (this does not apply to a contract related to telecommunications or information services, building construction and maintenance, or instructional materials); and
  - (9) Any other relevant factor specifically listed in the request for bids or proposals
- Tex. Educ. Code § 44.031(b).

All factors that will be considered, along with any specifications, terms, and conditions related to the contract, should be included in the invitation for bids, request for proposals, or other mechanism used to solicit vendor responses.

**2. What additional factors may a community college consider when awarding contracts?**

When using a construction procurement method under Chapter 2269, the college may consider the following criteria in determining the award of a contract:

- (1) Price;
- (2) Offeror's experience and reputation;
- (3) Quality of the offeror's goods or services;
- (4) Impact on the ability of the college to comply with rules relating to historically underutilized businesses;
- (5) Offeror's safety record;
- (6) Offeror's proposed personnel;
- (7) Whether the offeror's financial capability is appropriate to the size and scope of the project; and
- (8) Any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

A community college is also required to consider and apply any existing laws related to historically underutilized businesses and the use of women, minority, small, or disadvantaged businesses. The college must publish the criteria that will be used to evaluate the offerors and the applicable weighted value for each criterion in the request for proposals or qualifications, and must base its selection on the published criteria. The college must document the basis of its selection and must make the evaluations of offerors public not later than seven days after the contract is awarded. Tex. Gov't Code §§ 2269.055, .056(b)-(c).

## **Notice and Publication**

### **1. What notice and publication requirements apply to purchasing and procurement?**

After a community college chooses the purchasing method and develops its bid or proposal documents, it must publish notice of the time by when and place where the bids or proposals will be received and opened once a week for at least two weeks before the deadline for receiving bids or proposals in a newspaper in the county in which the college's central administrative office is located. This rule applies to purchases of goods and services under Chapter 44 as well as the procurement of construction services under Chapter 2269. Tex. Educ. Code § 44.031(g); Tex. Gov't Code § 2269.052.

As previously mentioned, a college may receive bids or proposals through electronic transmission if the 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. A provision of the law that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission in accordance with the rules adopted by the board of trustees. Tex. Educ. Code § 44.0313.

Unlike Texas Education Code chapter 44, Texas Government Code chapter 2269 does not expressly permit a college to receive bids or proposals for construction services through electronic transmission. On the contrary, a person who submits a bid, proposal, or qualifications to a college under a method provided by Chapter 2269 must seal it before delivery. Tex. Gov't Code § 2269.059. Consequently, community colleges do not appear to have legal authority to accept bids or proposals for construction-related contracts that are transmitted electronically.

## **Common Methods for Purchasing Goods and Services**

### **1. What is competitive bidding?**

The purpose of competitive bidding is to stimulate competition and obtain the lowest practical price for the goods or services needed. The competitive bidding process can be rather complex, but basically requires that bids be evaluated and awards be made based solely upon a vendor's bid documents submitted in response to the invitation for bids. Once a bid is submitted, changes in the price of the goods or services are not negotiable. Tex. Educ. Agency, [Financial Accountability System Resource Guide](#), Module 3, Purchasing, Update 14, pp. 20-22 (Jan.2010).

A community college must award a competitively bid contract at the bid amount to the bidder offering the best value for the college. In determining the best value for the college, the college is not restricted to considering price alone but may consider any other factors stated in the selection criteria. The selection criteria may include the factors listed above from Section 44.031(b). Tex. Educ. Code § 44.0351.

Because of the complexity of the competitive bidding process, TEA recommends educating personnel in the requirements through a staff development program that may include outside training resources, in-service training, self-study or a combination of these methods. Tex. Educ. Agency, [Financial Accountability System Resource Guide](#), Module 3. Purchasing, Update 14, p. 54 (Jan. 2010).

## 2. What are competitive sealed proposals?

Competitive sealed proposals essentially allow for full competition among offerors by permitting negotiation with a vendor to get the best services at the best price. Tex. Educ. Agency, [Financial Accountability System Resource Guide](#), Module 3. Purchasing, Update 14, pp. 22, 76 (Jan. 2010).<sup>2</sup>

A request for competitive sealed proposals must include information that vendors may need to respond to the request and must state the selection criteria that will be used in selecting the successful offeror. The community college must 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. The college must then evaluate and rank each proposal submitted in relation to the published selection criteria not later than the 45th day after the date the proposals are opened. Tex. Educ. Code § 44.0352(a)-(c).

The college must select the vendor that offers the best value for the college based on the published selection criteria and on the college's ranking evaluation. In determining the best value for the community college, the college is not restricted to considering price alone but may consider any other factors stated in the selection criteria. The college must first attempt to negotiate a contract with the selected vendor, and may discuss options for a scope or time modification and any price change associated with the modification. If the college cannot negotiate a satisfactory contract with the selected vendor, the college must, formally and in writing, end negotiations with that vendor and proceed to the next vendor in the order of the selection ranking until a contract is reached or all proposals are rejected. Tex. Educ. Code § 44.0352(d)-(e).

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<sup>2</sup> [tea.texas.gov/Finance\\_and\\_Grants/Financial\\_Accountability/Financial\\_Accountability\\_System\\_Resource\\_Guide/](http://tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial_Accountability_System_Resource_Guide/).

### 3. What are requests for proposals?

The Texas Legislature clearly contemplated that competitive sealed proposals and a request for proposals are two distinct purchasing methods, but it only provided statutory procedures for competitive sealed proposals. Both processes use the request for proposals (RFP) as the mechanism for soliciting proposals, but competitive sealed proposals are more formal. For example, a request for proposal is not required to be sealed and may be discussed with the vendor immediately upon receipt by the community college. Tex. Educ. Agency, [Financial Accountability System Resource Guide](#), Module 3. Purchasing, Update 14, p. 99 (Jan. 2010).<sup>3</sup>

### 4. What is an interlocal contract?

An interlocal contract is created when one local government contracts or agrees with another local government to provide a governmental function or service that each party to the contract is authorized to perform individually. For example, a college may contract with other colleges to purchase goods and services. An interlocal contract must contain certain terms and be approved by the board of trustees. Tex. Gov't Code §§ 791.001, .011, .025(a); see Tex. Att'y Gen. Op. No. GA-352 (2005) (interpreting requirement of Texas Government Code section 791.011(d)(1) that interlocal contracts be authorized by the governing body of each party to the contract unless a party to the contract is a municipally owned electric utility).

One very common type of interlocal contract is a cooperative purchasing program. If the community college participates in a cooperative purchasing program, the college satisfies any law requiring it to seek competitive bids. A college that enters into a purchasing contract under a cooperative purchasing program must document any contract-related fee, including any management fee, and the purpose of each fee. The amount, purpose, and disposition of any such fee must be presented in a written report and submitted annually in an open meeting of the board of trustees of the college. The report must appear as an agenda item. Tex. Loc. Gov't Code § 271.083(b); Tex. Gov't Code § 791.025(c); Tex. Att'y Gen. Op. No. JC-37 (1999); Tex. Educ. Code § 44.0331.

## Common Methods for Procuring Construction Services

### 1. What is a construction manager-agent?

*Construction manager-agent* (CMA) is “a delivery method by which a [college] contracts with a CMA to provide consultation or administrative services during the design and construction phase of a project.” A community college selects a

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<sup>3</sup> [tea.texas.gov/Finance\\_and\\_Grants/Financial\\_Accountability/Financial\\_Accountability\\_System\\_Resource\\_Guide/](http://tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial_Accountability_System_Resource_Guide/).

CMA based on demonstrated competence and qualifications under the Professional Services Procurement Act, similar to how the college selects an architect. As the name suggests, the CMA serves as the college's agent in a fiduciary capacity during the construction, rehabilitation, alteration, or repair of a facility by providing construction administration and management services. The CMA must maintain professional liability or errors and omissions insurance in the amount of at least \$1 million for each occurrence. Tex. Gov't Code §§ 2269.201, .204, .207, .208.

Because the CMA is only a consultant, the college itself enters into separate contracts with multiple prime contractors for specific portions of the work. The college must follow all procurement laws when awarding these contracts. The CMA then manages the multiple contracts with the various construction prime contractors. A CMA is not permitted to perform any aspect of the construction, be a party to a subcontract, or provide performance and payment bonds. Each prime contractor that the college contracts with must provide payment and performance bonds for their portion of the work in accordance with applicable laws. When using the CMA method, a college will pay the CMA fee plus all the costs associated with each contract it enters into for the project. Tex. Gov't Code §§ 2269.201(a), .203, .206.

## 2. What is a construction manager-at-risk?

*Construction manager-at-risk* (CMAR) is a delivery method by which a community college contracts with a CMAR to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, or repair of a facility. The CMAR assumes the risk for construction of a facility at a contracted price as a general contractor and provides consultation to the college regarding construction during and after the design of the facility. Because the CMAR is acting as the general contractor, the college enters into only one contract with the CMAR to complete the project. The CMAR then is required to follow all procurement laws and enter into separate contracts for the performance of all major elements of the work. The CMAR also must provide performance and payment bonds for the entire project in accordance with applicable laws. Tex. Gov't Code §§ 2269.251(a), (b), .255, .258.

A community college selects a CMAR in either a one-step or two-step process. If a one-step process is used, the college may request proposed fees and prices as part of the CMAR's proposal. If a two-step process is used, the college first narrows down the offerors to five or fewer solely on the basis of qualifications during step one, and can consider the CMAR's proposed fee and prices in step two. Tex. Gov't Code § 2269.253.

### 3. What is the design-build method?

*Design-build* is “a project delivery method by which a [college] contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.” Tex. Gov’t Code § 2269.301. A design-build firm will include an engineer or architect and a construction contractor qualified to engage in building construction in Texas. Tex. Gov’t Code § 2269.304. If using this method, the community college must hire a separate engineer or architect independent of the design-build firm to act as the college’s representative for the duration of the project. Tex. Gov’t Code § 2269.305.

Design-build firms are not selected under the Professional Services Procurement Act like CMAs and architects, but pursuant to specific procedures in Texas Government Code chapter 2269, which require the preparation of a request for qualifications and design criteria package, evaluation of responses, and selection based on best value. Tex. Gov’t Code §§ 2269.306-.308. Design-build firms also must provide performance and payment bonds for the construction portion of the project in accordance with applicable laws. Tex. Gov’t Code § 2269.367.

### 4. What are job order contracts?

*Job order contracting* is “a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite.” Tex. Gov’t Code § 2269.401. The job order contracting method is typically used for small projects for which a design, bid, and build method is impractical, and should not be used for large, complex, or new construction projects that require design or are likely to encounter changes and revisions during construction. A community college uses the competitive sealed proposal method for awarding a job order contracting contract, and may award contracts to multiple contractors in connection with each solicitation of proposals. Tex. Gov’t Code §§ 2269.405-.406.

## Exceptions to the General Rule

### 1. Is a community college required to follow statutory purchasing methods when contracting for professional services?

No. The required purchasing methods and factors listed in Texas Education Code section 44.031 do not apply to a contract for professional services. Contracts for professional services are governed by the Professional Services Procurement Act (PSPA). The PSPA defines *professional services* to mean services within the scope of the practices, as defined by state law, of accounting, architecture, landscape

architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing. Tex. Educ. Code § 44.031(f); Tex. Gov't Code §§ 2254.001-.007, .002(2).

The list of professional services is not exhaustive, however. A community college has discretion to determine whether particular services, other than those named specifically in the PSPA, are professional services for purposes of exemption from the requirements of Section 44.031. See Tex. Att'y Gen. Op. No. DM-106 (1992) (opining that city had discretion to determine that auctioneering services were not "professional" for purposes of PSPA). Other professional services may include members of disciplines requiring special knowledge or attainment and a "high order of learning, skill, and intelligence" and involving "labor and skill that is predominately mental or intellectual, rather than physical or manual." Also, when entering into a contract for professional services rendered by a financial consultant or a technology consultant, a college can choose whether to follow the PSPA or Section 44.031. Tex. Att'y Gen. Op. No. JM-940, at 3 (1988); Tex. Educ. Code § 44.031(f).

The PSPA states that a college may not select a provider of professional services or award a contract for professional services based on competitive bids, but must make the selection and award based on demonstrated competence and qualifications to perform the services, and for a fair and reasonable price. Tex. Gov't Code § 2254.003(a). For architectural, engineering, or land surveying services, a college must first select the most highly qualified provider based on demonstrated competence and qualifications, and then attempt to negotiate a contract at a fair and reasonable price with that provider. Tex. Gov't Code § 2254.004. While the PSPA does not specifically state how a provider of professional services is to demonstrate competence and qualifications, the mechanism commonly used by community colleges to evaluate providers of professional services is a request for qualifications (RFQ).

**2. Must a community college comply with statutory purchasing methods in the event of an emergency?**

If college equipment, a college facility, or personal property is destroyed, severely damaged, or experiences a major operational or structural failure, and the board of trustees determines that the delay posed by the required contract methods would prevent or substantially impair the conduct of classes or other essential college activities, then contracts for the replacement or repair of the equipment, facility, or property may be made by a method other than the approved methods of competitive procurement in Texas Education Code chapter 44 or Texas Government Code chapter 2269 of the Texas Government Code. Tex. Educ. Code § 44.031(h).

In the event of a catastrophe, emergency, or natural disaster affecting a community college, the board of trustees may delegate to the college president or chancellor or designated person the authority to contract for the replacement, construction, or repair of college equipment or facilities if emergency replacement, construction, or repair is necessary for the health and safety of college students and staff. Tex. Educ. Code § 44.0312(c).

**3. How may a community college purchase computers and computer-related equipment?**

A community college may acquire computers and computer-related equipment, including computer software, through the Texas Department of Information Resources. Tex. Educ. Code § 44.031(i).

**4. Is a community college excepted from statutory purchasing methods if it purchases from a sole source?**

A community college may purchase an item that is available from only one source without using one of the statutory purchasing methods. Texas Education Code section 44.031 lists several examples of items considered to be available from a sole source:

- (1) An item for which competition is precluded because of the existence of a patent, copyright, secret process, or monopoly;
- (2) A film, manuscript, or book;
- (3) A utility service, including electricity, gas, or water; and
- (4) A captive replacement part or component for equipment

Tex. Educ. Code § 44.031(j).

This exception, however, does not apply to mainframe data-processing equipment and peripheral attachments with a single-item purchase price in excess of \$15,000. Tex. Educ. Code § 44.031(k).

**5. Is a community college required to use competitive bidding to purchase school buses?**

Contracts 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. Tex. Educ. Code § 44.031(l).

## **Penalties for Violating Procurement Laws**

The procurement laws are not merely suggestions for community college trustees and employees. Failure to comply with statutory requirements can result in criminal penalties against an individual or an injunction against performance of the contract.

### **1. What criminal penalties are associated with violating the procurement laws?**

An officer, employee, or agent of a community college commits an offense if the person with criminal negligence violates Texas Education Code section 44.031 or makes or authorizes separate, sequential, or component purchases to avoid the requirements of Section 44.031. The offense is a Class B misdemeanor and is considered an offense involving moral turpitude. *Component purchases* are purchases of the component parts of an item that normally would be purchased in one purchase. *Separate purchases* are purchases, made separately, of items that normally would be purchased in one purchase. *Sequential purchases* are purchases, made over a period, of items that normally would be purchased in one purchase. If an officer or employee of a college otherwise knowingly violates Section 44.031, the person commits a Class C misdemeanor. Tex. Educ. Code § 44.032(a)-(d).

### **2. How do violations of the procurement laws affect employment of college employees and trustees?**

The final conviction of a person other than a trustee of a community college for a purchasing offense requires the immediate termination of that person's employment. A trustee who is convicted of an offense is considered to have committed official misconduct and is subject to removal from office. For four years after the date of the final conviction, the removed person is ineligible to be a candidate for or to be appointed or elected to a public office in this state, is ineligible to be employed by or act as an agent for the state or a political subdivision of the state, and is ineligible to receive any compensation through a contract with the state or a political subdivision of the state. Tex. Educ. Code § 44.032(e).

### **3. What legal remedies are available if a community college enters a contract that violates the procurement laws?**

A court may enjoin performance of a contract made in violation of the procurement laws. A county attorney, a district attorney, a criminal district attorney, a citizen of the county in which the college is located, or any interested party may bring an action for an injunction. A party who prevails in such an action is entitled to reasonable attorney's fees as approved by the court. Tex. Educ. Code § 44.032(f).

#### 4. What TASB Policies apply to purchasing?

See TASB Policies CF(LLEGAL) and (LOCAL), CFE(LLEGAL), CFF(LLEGAL), CFG(LLEGAL), CFH(LLEGAL), CM(LLEGAL) and (LOCAL), CMA(LLEGAL) and (LOCAL), CMB(LLEGAL) and (LOCAL), CMC(LLEGAL), CMD(LLEGAL), CME(LLEGAL), and CMF(LLEGAL).

#### 5. Where can I get more information about purchasing?

If you have questions about these or other legal issues, community college representatives may contact Community College Services at 800.580.1488 or [colleges@tasb.org](mailto:colleges@tasb.org).

For more information on community college law topics,  
visit TASB College eLaw online at [colleges.tasb.org/elaw](http://colleges.tasb.org/elaw).

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