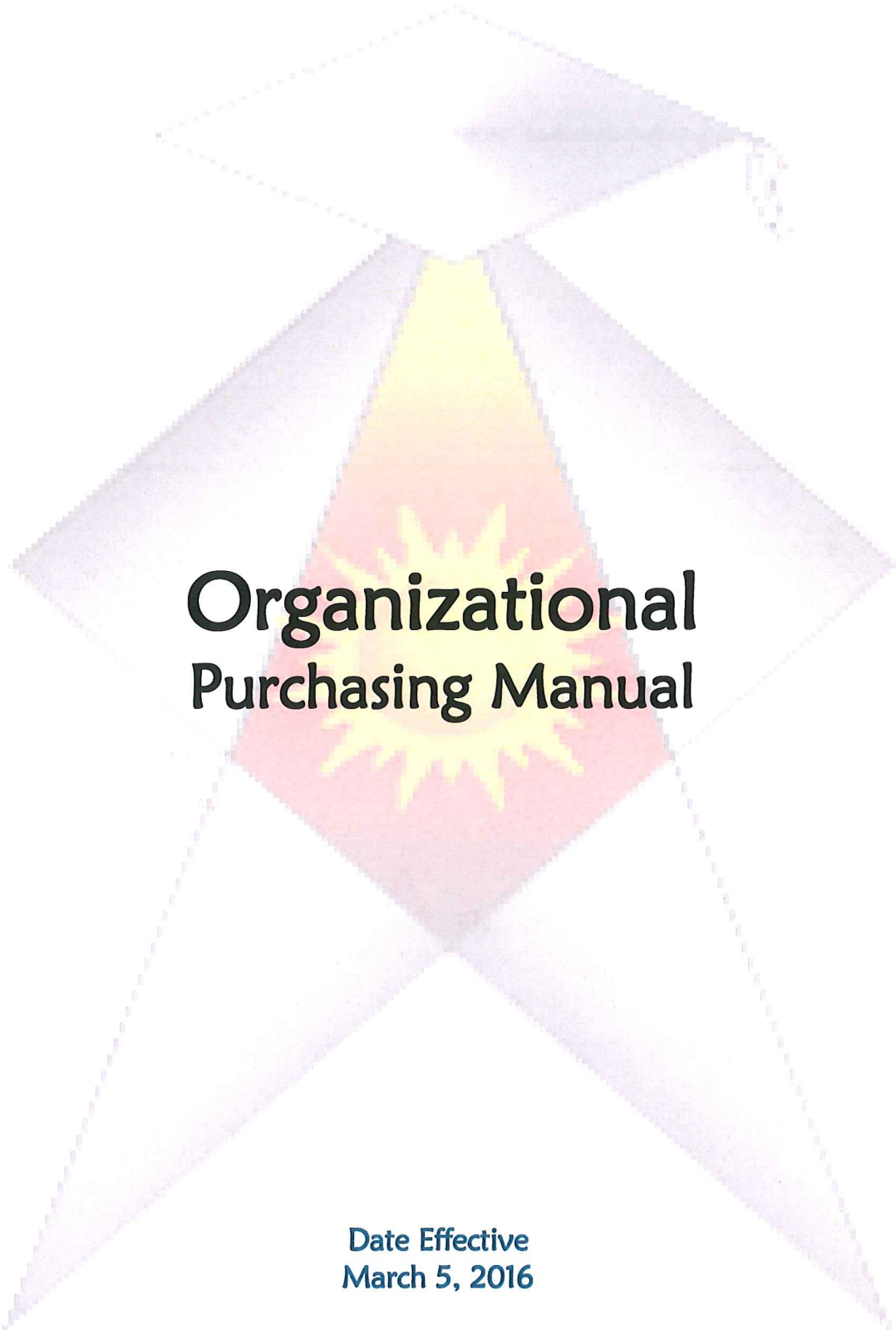


**STUDENT ALTERNATIVES PROGRAM, INC.**



**Organizational  
Purchasing Manual**

**Date Effective  
March 5, 2016**

STUDENT ALTERNATIVES PROGRAM, INC.

# Organizational Purchasing Manual

Central Office

Location

1218 S. Presa

San Antonio, TX 78210-2838

Business/PEIMS Office

Location

717 Lindberg Ave.

McAllen, TX 78501-5708

Phone (956) 994-3861

**Date Effective**

**March 5, 2016**

## 1. OVERVIEW

As with every organization, Student Alternatives Program, Inc. (SAPI) strives to provide its personnel with the procedures and forms necessary to facilitate organizational compliance with applicable legal requirements, to minimize the abuse and waste of limited financial resources, and to mitigate the risk of fraudulent conduct.

### 1.1. Purpose

With this manual, SAPI endeavors to provide its personnel with a sufficiently informative description of the purchasing process applicable to its use of all charter school funds – local, state and federal. Accordingly, this manual identifies and describes the procedures applicable to the procurement of goods and services. This manual does not address other requirements (e.g., federal time and effort reporting) that do not directly pertain to the procurement of goods and services. SAPI personnel should consult the appropriate SAPI handbook for guidance and direction.

### 1.2. Legal Requirements

Through this manual SAPI strives to implement the fiscal requirements set forth in the following legal authorities, as applicable.

- (a) Code of Federal Regulations, Title 2, Part 200 (2 CFR 200)
- (b) Code of Federal Regulations, Title 34
- (c) Chapter 12, Subchapter D of the Texas Education Code (Tex. Ed. Code)
- (d) Tex. Ed. Code Chapter 44, Subchapter B
- (e) Chapter 2269 of the Texas Government Code (Tex. Govt. Code)
- (f) Chapter 271, Subchapter B of the Texas Local Government Code
- (g) Chapter 100, Subchapter AA of Title 19 of the Texas Administrative Code (19 TAC 100)
- (h) Financial Accountability System Resource Guide (FASRG)
- (i) Board Policy CH, Purchasing and Acquisition

### 1.3. Manual to Supplement Legal Requirements

This manual does not supersede and is not in lieu of the legal requirements promulgated in state and federal law and rule (collectively, law), the contract for charter, grants, contracts and other legal mandates. Instead, this manual supplements existing legal requirements and facilitates corporate and charter school compliance with state and federal law and applicable contracts. In any instance where this manual conflicts with the state and federal law or a contractual or grant clause, the law or clause will govern and control. When in doubt, SAPI personnel are advised to consult legal, accounting and business professionals concerning applicable legal and accounting requirements under state and federal law.

### 1.4. Manual to Implement Board Policy

This manual does not supersede and is not in lieu of the policies adopted by the Board of Directors (Board). Instead, this manual supports and implements Board policy by describing the corporate and charter school purchasing practices and processes. In any instance where this manual conflicts with Board policy, Board policy shall control.



### *1.5. General Applicability*

The purchasing policies, procedures and practices described in this manual apply to all of SAPI's charter districts and the use of all charter school funds – local, state and federal – for the procurement of goods and services.

### *1.6. Applicability for Convenience*

In general, the purchasing policies, procedures and practices described in this manual shall not be applied to SAPI's non-charter school programs, services, functions and activities (collectively, activities). However, if administratively convenient and cost effective, SAPI may, at its discretion and on a case-by-case basis, apply the purchasing process described in this manual, in whole or in part, to the purchase of goods and services for its non-charter school activities and from non-charter school funds.

### *1.7. Organization of Manual*

This manual is organized into sections and subsections that are identified with a number. The procedures described in this manual outline the process that the charter districts and corporate office shall follow to demonstrate compliance with applicable law and Board policy.

### *1.8. Responsibility for Development and Maintenance*

The Chief Financial Officer (CFO) is primarily responsible for the development and maintenance of this manual. Charter district and corporate employees, officers and Board members may assist with the development and maintenance of this manual and may make recommendations to the CFO to improve the SAPI's purchasing practices.

### *1.9. Version Control*

The first draft of this manual will be Version 0.1. Subsequent drafts will have an increase of "0.1" in the version number (e.g., 0.2, 0.3, 0.4, ...0.9, 0.10, 0.11). The first final version of this manual will be Version 1.0. Final versions of the manual undergoing revision will be annotated Version X.1 for the first version of the revisions. While the manual is under review, subsequent draft versions will increase by "0.1" (e.g., X.1, X.2, X.3, etc.). When the revised document is deemed final, the version will increase by "1.0" over the version being revised (e.g., if deemed final, the draft 1.3 will become a final 2.0). The CFO will ensure that the current version number is identified in Section 1.12 below and in the header of this manual.

### *1.10. Amendment of Manual*

For administrative expediency, this manual will only be amended during a fiscal year if a new and significant law, policy and/or procedure is adopted and made effective during the fiscal year. Otherwise, this manual will be reviewed and revised annually before the fiscal year ends and prior to the start of the following fiscal year. If this manual is amended during a fiscal year, the old procedure will be marked (*i.e.*, strikethrough) and the new procedure will be highlighted and annotated with a footnote disclosing the effective date of the amendment. The CFO will ensure that the header of this manual identifies the date that the manual was amended.

### *1.11. Last Reviewed*

This manual was last reviewed on March 4, 2016. The CFO will ensure that the header of this manual identifies the date that the manual was last reviewed.



*1.12. Effective Date*

Version 1.0 of this manual is effective for fiscal years beginning on March 5, 2016, and thereafter. The CFO will ensure that the effective date is identified in the header of this manual.

*1.13. Retention of Manual*

Version 1.0 of this manual was superseded on [to be determined<sup>1</sup>]. Accordingly, Version 1.0 shall be retained until [to be determined<sup>2</sup>].<sup>3</sup>

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<sup>1</sup> Insert date that this version of this manual was superseded by an updated version of this manual.

<sup>2</sup> Insert date that is five years after the date this version of this manual was superseded.

<sup>3</sup> See Texas State Library and Archives Commission Local Schedule GR (Record Number GR1000-38 and GR1025-25).

## 2. ORGANIZATIONAL GUIDING PRINCIPLES

To provide direction and guidance in its purchasing activities, it is important for everyone involved in the SAPI purchasing process to be mindful of the organizational vision, mission and goals for the charter districts. Corporate and charter district employees must apply these principles to each purchase of goods and services from charter school funds.

### 2.1. *Vision*<sup>4</sup>

The vision of the SAPI charter schools is to offer educational programs in a community-based non-traditional setting in which teachers are free to be creative and innovative and students are free to explore their full potential. The schools also envision a school in which staff, students, parents, and the local community have a deep sense of ownership through the knowledge that they have the ability to truly be a part of the educational community.

### 2.2. *Mission*<sup>5</sup>

The mission is to teach students to become respectable, responsible citizens who value their self-worth, respect others and realize the importance of hard work and the continuation of learning throughout their lives.

### 2.3. *Goals*<sup>6</sup>

The goals of the four SAPI charter schools are as follows:

- Goal I: To establish the academies as charter schools that offer educational programs and activities that are responsive to each student's educational needs and to empower the students to achieve his/her full potential as a lifelong learner and to become a productive citizen of the community.
- Goal II: Conduct board training and staff development activities to ensure proper and effective provision of instructional services and operation of the academies.
- Goal III: To involve the community through an awareness program that encourages participation in the development of strategic planning and policy and procedures for the operations and service delivery of the academies.
- Goal IV: To offer an instructional program and curricula that is student-centered, individualized, competency-based, and flexible in an environment that is safe and conducive to learning and that addresses the Texas Essential Knowledge and Skills criteria.
- Goal V: Implement curricula and instructional programs that are student centered, individualized, competency-based, and flexible in order to ensure that students are successful and that they meet their individual goals and objectives.

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<sup>4</sup> See Board Policy AE, Vision and Mission Statements.

<sup>5</sup> *Ibid.*

<sup>6</sup> See Board Policy AF, Goals and Objectives.

### 3. CODE OF CONDUCT

#### 3.1. *Standards of Conduct*

SAPI personnel shall be responsible for adhering to the following standards of conduct<sup>7</sup> when using charter school funds for the purchase of goods and services.

- (a) Strive to create an atmosphere that will nurture the fulfillment of each beneficiary's potential by considering the interests of the corporation's charitable programs and the enhancement of each charter district's educational programs first.
- (b) Comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community. In conscientiously conducting corporate and charter district affairs, exemplify the highest standards of professional commitment.
- (c) Maintain the dignity of the profession by respecting and obeying the law, demonstrating personal integrity, and exemplifying honesty.
- (d) Do not intentionally misrepresent official policies and clearly distinguish those views from personal attitudes and opinions.
- (e) Honestly account for all funds committed to your charge and conduct corporate and charter district financial business with integrity by endeavoring to obtain the greatest value for every dollar expended while conducting business in a manner consistent with exemplary business practices, administrative procedures, Board policies, and applicable laws.
- (f) Shall not use organizational or professional privileges for personal advantage but instead ensure that all responsible vendors receive equal consideration and the assurance of unbiased judgment in determining whether their products meet the educational and/or operational needs of the corporation and its charter districts.
- (g) Shall accept no gratuities, gifts, or favors that impair, or that may be construed to impair, professional judgment and that might influence, or that may be construed to influence, the purchase of goods and services.
- (h) Shall not offer any favor, service, or thing of value to obtain special advantage.
- (i) Shall not falsify records, or direct or coerce others to do so.
- (j) Shall not deliberately or recklessly impair physical or mental health, or ignore social prudence, thereby affecting the ability necessary to perform assigned duties.
- (k) Comply with written Board policies and applicable state and federal laws.

#### 3.2. *Organizational Conflicts.*

As set forth in 2 CFR 200.318(c), an organizational conflict of interest may result when SAPI conducts a business transaction with an affiliate or subsidiary organization and, as a result of this

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<sup>7</sup> See Board Policy DH, Code of Ethics.



relationship, SAPI is unable or appears to be unable to be impartial in conducting a procurement action involving its affiliate or subsidiary. Generally, because of its relationship with an affiliate or subsidiary, SAPI may encounter one or more of the following types of organizational conflict of interest.

- (a) Unequal access to information
- (b) Biased ground rules
- (c) Impaired objectivity

Thus, when using federal funds to procure goods and services from an affiliate or subsidiary organization, the Board and SAPI officers and employees are to avoid and take other actions to mitigate the potential for significant organizational conflicts of interest that may result in an unfair competitive advantage to an affiliate or subsidiary. If SAPI personnel identify an organizational conflict of interest, the employee must prepare a memorandum to the Charter Division Superintendent/CEO (Superintendent) identifying the proposed procurement, the conflicted entity, and circumstances giving rise to the conflict. Upon review, the Superintendent must submit the memorandum and a proposed remedy to the Board for consideration and approval.

### 3.3. *Gifts*

No employee shall accept or solicit any gifts, favor, services, or other benefit that could reasonably be construed to influence the employee's discharge of assigned duties and responsibilities, or could be perceived as having been offered because of an existing or potential business relationship. Employees shall disclose any gifts, favors, services, or benefits received with an aggregate value of \$100 or more from any one individual over the course of one school year to the CFO. This includes items of food, lodging, transportation, tickets, or business entertainment accepted as a guest. When the employee is in doubt of the value of the gift, he or she should report it to the CFO. If an employee has any questions regarding acceptable conduct of the interpretation of this policy, or if he or she is in doubt about the best course of action in a particular situation, the employee must seek clarification from his or her supervisor or the CFO. Failure by an employee to disclose gifts pursuant to this policy could result in adverse personnel action against the employee.

### 3.4. *Abuse, Waste and Fraud.*

The Board of Directors and Superintendent are committed to the ethical and lawful operation of each charter district and the use of public funds, public property and other resources. To this end and to provide employees and other individuals with a venue by which to express their concerns, the Board of Directors and Superintendent have established the Fraud, Waste or Abuse Anonymous Reporting Hotline to provide for the anonymous and confidential reporting of suspected fraud, financial impropriety and other unlawful, unethical or otherwise unauthorized or prohibited conduct. SAPI employees should report any suspected abuse, waste or fraud to the anonymous reporting hotline. For more information, SAPI employees should refer to <http://sapiacademies.org/index.php/en/about-us/rss/249-hotline>.

#### 4. PURCHASING AND ACQUISITION PROCEDURES (GENERAL).

##### 4.1. Board Policy CH.

The following subsections were derived, in part, from Board Policy CH, Purchasing and Acquisition.

##### 4.1.1. Purchasing Authority.<sup>8</sup>

Campus directors, charter district directors, central administration directors, CFO and Superintendent are authorized to make budgeted purchases or other purchases authorized by the Board subject to the following thresholds.

- (a) Purchases from petty cash are limited to \$100.
- (b) Purchases through purchase requisitions resulting in the expenditure of up to \$4,999 in funds require approval by the business manager.
- (c) Purchases through purchase requisitions resulting in the expenditure of \$5,000 or more in funds require approval from the Superintendent or designee.
- (d) The Superintendent may authorize purchases resulting in the expenditure of \$50,000 to \$100,000 in funds provided that the Board is notified of the purchases. The Board will review and ratify (or censure) these purchases at the next regularly scheduled meeting of the Board.
- (e) Purchases resulting in the expenditure of more than \$100,000 in funds require Board approval.
- (f) Purchases through a corporate charge or credit account by an authorized cardholder in excess of \$1,000 require the Superintendent's prior written approval.
- (g) Purchases with personal cash or personal charge or credit cards are limited to the same purposes as petty cash and are limited to \$100, unless prior written approval of the Superintendent or designee has been obtained.

##### 4.1.2. Segregation of Duties.

Recognizing that the segregation of duties mitigates the risk of erroneous and inappropriate actions in the procurement of goods and services, the Superintendent and CFO shall ensure that an appropriate degree of separation between duties that could facilitate such actions. Accordingly, the Superintendent and CFO will ensure that a singular employee, acting alone, is not able to perform multiple duties or functions, including the following:

- ◆ Initiate a procurement;
- ◆ Approve a procurement;
- ◆ Record purchases;
- ◆ Reconcile general ledger accounts to third-party bank or billing statements;
- ◆ Receive goods and/or services; and/or

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<sup>8</sup> Board Policy CH, Section 4.



- ◆ Prepare, review and/or approve reports.

If these activities cannot be separated, the Superintendent and CFO must perform a detailed supervisory review of related activities as a compensating control activity. In this manner, SAPI may implement an appropriate degree of segregation of duties as a deterrent to fraud.

Specific examples of an appropriate segregation of duties include:

- ◆ The employee who requisitions the purchase of goods or services does not also approve the purchase.
- ◆ The employee who approves the purchase of goods or services does not also reconcile the monthly financial reports.
- ◆ The employee who approves the purchase of goods or services is not also the custodian, preparer or issuer of checks.
- ◆ The employee who maintains and reconciles the accounting records is not also the custodian, preparer or issuer of checks.

This section of the manual addresses the segregation of duties with respect to the purchase of goods and services. SAPI personnel should consult the appropriate SAPI handbook for guidance and direction regarding the segregation of duties for other business activities.

#### *4.1.3. Full and Open Competition.<sup>9</sup>*

The Board and Superintendent shall endeavor to maximize the use of district funds to purchase goods and services and to limit such purchases to the furtherance of the SAPI's mission and facilitate the implementation of each charter program. To attain this goal, the Superintendent, CFO and SAPI personnel will promote full and open competition in all district purchases through the implementation of the procedures described in this manual. The Superintendent and CFO will bear primary responsibility for ensuring that SAPI personnel adhere to these procedures, especially when using federal funds to procure goods and services.

##### *4.1.3.1. Conflicted Vendors.*

If a vendor develops or drafts specifications, requirements, statements of work, and invitations for bids or requests for proposals, SAPI and the charter districts may not select the vendor for the purchase in question.

##### *4.1.3.2. Restrictions to Competition.*

SAPI and the charter districts may not place restrictions on competition including, but not limited to:

- (a) Placing unreasonable requirements on vendors in order for them to qualify to do business;

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<sup>9</sup> This subsection complies with the requirements of 2 CFR 220.319. Additionally, the procedure discussed in this subsection constitutes a best practice.



- (b) Requiring unnecessary experience and excessive bonding;
- (c) Noncompetitive pricing practices between vendors or between affiliated companies;
- (d) Noncompetitive contracts to consultants that are on retainer contracts;
- (e) Organizational conflicts of interest;
- (f) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (g) Any arbitrary action in the procurement process.

#### 4.1.3.3. *Geographical Preferences.*

Generally, SAPI and the charter districts will not restrict purchases to vendors based upon geographical preference. However, when contracting for architectural, engineering, appraisal or surveying services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. However, SAPI may additionally use geographical preferences when the Board or Superintendent determines doing so will be a benefit and/or in the best interest of SAPI.

#### 4.1.3.4. *Solicitations.*

SAPI and the charter districts must include the following disclosures in any solicitation for a purchase of goods and/or services with an aggregate value of \$100,000 or more for each twelve-month period.<sup>10</sup>

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

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<sup>10</sup> For purchases from federal nutrition programs administered by the Texas Department of Agriculture, this threshold is \$50,000. Refer to Section 17, Procurement, of the Administrator’s Reference Manual.

#### *4.1.4. Publication of Solicitation for Bids.<sup>11</sup>*

Where competitive bidding is utilized (and not including real property improvements requiring the expenditure of more than \$50,000 in public funds), notice of when and where bids, proposals or responses to a request for proposal or qualifications will be received and opened shall be published, in the manner required by law (where applicable), but otherwise in the county where the charter district's central administrative office is located, and/or in the county where the charter district is based, at least once, prior to the deadline for receiving bids, proposals, or responses to a request for proposal or qualifications. If there is no newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the district's central administrative office is located.

#### *4.1.5. Component, Separate and Sequential Purchases Prohibited.<sup>12, 13</sup>*

Unless otherwise allowed, SAPI and the charter districts shall apply the purchasing procedures described in this manual based on the aggregate value of the goods and services purchased during a twelve-month period. Thus, component, separate and sequential purchases are prohibited and not allowed.

##### *4.1.5.1. Component Purchases Defined.*

"Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

##### *4.1.5.2. Separate Purchases Defined.*

"Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

##### *4.1.5.3. Sequential Purchases Defined.*

"Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

#### *4.1.6. Unnecessary or Duplicative Purchases.<sup>14</sup>*

To avoid the purchase of unnecessary or duplicative goods and services, SAPI and the charter districts must give consideration to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

#### *4.1.7. Types of Procurement and Related Requirements.*

SAPI and the charter districts may purchase the following types of goods and services pursuant to the authorized method of procurement.

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<sup>11</sup> Board Policy CH, Section 9.

<sup>12</sup> Board Policy CH, Section 3.

<sup>13</sup> This procedure is deemed to comply with Texas Local Government Code Sections 271.029 and 271.021.

<sup>14</sup> This procedure is deemed to comply with 2 CFR 200.318(d).



*4.1.7.1. General Goods and Services.*<sup>15</sup>

For the purchase of general goods and services, all charter district procurements shall be made through the authorized methods of procurement described in Subsection 4.1.8.

*4.1.7.2. Real Property Improvements.*<sup>16</sup>

For real property improvements<sup>17</sup> valued at \$50,000 or more in the aggregate for a 12-month period, the charter district shall adhere to the procurement process described in Section 6. For real property improvements valued at less than \$50,000 in the aggregate for a 12-month period, the district shall follow the authorized methods of procurement described in Subsection 4.1.8.

*4.1.7.3. Professional Services.*<sup>18</sup>

Contracts for professional services, including the services of an architect, engineer, surveyor, fiscal agent, municipal advisor, financial consultant, or technology consultant, are exempt from the bidding process. These contracts can be procured in a manner provided by Tex. Govt. Code §2254.003, that is, on the basis of demonstrated competence and qualifications to perform the services, and for a fair and reasonable price. Other professionals, as defined by Tex. Govt. Code Chapter 2254, shall also be procured in accordance with that law. Refer to the Section 5.

*4.1.7.4. Food, Commodities and Non-Food Goods/Services.*<sup>19</sup>

For the purchase of food, commodities and non-food goods and/or services associated with the federal nutrition programs administered by the Texas Department of Agriculture, the charter district shall adhere to the procurement process described in Subsection 4.1.9 of this manual and in the applicable Administrator's Reference Manual or other superseding or authoritative handbook published by the Texas Department of Agriculture.

*4.1.8. Authorized Methods of Procurement: Non-Federal.*<sup>20</sup>

(a) Pursuant to Board policy and applicable law, SAPI and the charter districts shall purchase goods and services by the method, of the following methods, that provides the best value for the charter district. This subsection applies to the purchase of:

1. General goods and services; and
2. Real property improvements valued at less than \$50,000 in the aggregate for a 12-month period.

(b) In utilizing the methods of procurement described in this subsection, the Superintendent or designee shall adhere to the prohibition on component, separate and sequential purchases established in Subsection 4.1.5.

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<sup>15</sup> Board Policy CH, Section 8.

<sup>16</sup> Board Policy CH, Section 7.1.

<sup>17</sup> Real property improvements are defined as the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property.

<sup>18</sup> Board Policy CH, Section 7.2.

<sup>19</sup> Board Policy CH, Section 7.3.

<sup>20</sup> Board Policy CH, Section 8.



*4.1.8.1. No Method Required.*<sup>21</sup>

(a) The Superintendent or designee may procure goods and/or services that result in the expenditure of less than \$5,000 in non-federal funds through the most expedient manner available that provides value to the charter district. To this end, the Superintendent or designee may procure goods and/or services without soliciting competitive quotations if the Superintendent or designee considers the price to be reasonable. Additionally, the Superintendent or designee is not required to distribute purchases equitably among vendors. Lastly, the Superintendent or designee is not restricted to authorized vendors.

(b) This method of procurement is most appropriate for the purchase of basic goods and/or services such as, but not necessarily limited to, the following goods and/or services.

1. Building, equipment and furniture maintenance materials and supplies
2. Classroom equipment, furniture materials and supplies
3. Custodial supplies
4. Express courier or delivery services
5. Information technology equipment, materials and supplies
6. Non-routine, minor repairs
7. Office equipment, furniture, materials and supplies
8. Professional association membership
9. Professional development (conferences and workshops)
10. Software or media subscriptions
11. Travel, including common carrier or rental car services and lodging

(c) This method of procurement is not appropriate for professional or specialized services, goods that must adhere to particular quality or specifications or purchases that aggregate to more than \$5,000 or \$100,000 over a twelve-month period.

*4.1.8.2. Quotes and Informal Bids.*<sup>22</sup>

For expenditures of non-federal funds exceeding \$5,000 but less than \$100,000, the Superintendent or designee shall procure goods and/or services through the solicitation of written quotes or informal bids from authorized vendors. If this method of procurement is used, the Superintendent or designee shall obtain no less than three written quotes or informal bids from authorized vendors.

*4.1.8.2.1. Use of Quotes.*

The Superintendent or designee may procure goods and/or services through the solicitation of written quotes when the purchase decision is to be based primarily on price and does not require the consideration or evaluation of product specifications or other purchasing criteria besides lowest price. This method of procurement is best utilized when acquiring branded goods and/or services or their generic equivalent.

*4.1.8.2.2. Use of Informal Bids.*

(a) The Superintendent or designee must procure goods and/or services through the solicitation of informal bids when the purchase decision is to be based on price and the consideration or

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<sup>21</sup> Board Policy CH, Section 8.1.

<sup>22</sup> Board Policy CH, Section 8.2.

evaluation of product specifications and other purchasing criteria. This method of procurement is best utilized when acquiring goods and/or services that are intended to address a specific identified need and to implement a specific strategy and activity. The Superintendent or designee must ensure that the identified need, strategy and activity are documented in the applicable district or campus instructional plan.

(b) When procuring goods and/or services through informal bids, the Superintendent or designee must develop product specifications and other purchasing criteria that adequately and sufficiently address the purpose of the purchase. However, the specifications and criteria need not be all-inclusive or exhaustive but should be sufficiently descriptive to adequately guide the Superintendent or designee and inform a potential bidder of the basis for selecting a bid and awarding a contract or issuing a purchase requisition. The Superintendent or designee must issue the product specifications and other purchasing criteria in the form of an *Informal Notice*. In the *Informal Notice*, the Superintendent or designee must:

1. Disclose the date and time by when and the place where informal bids are to be received and opened;
2. Identify, by name, title, telephone number and email address, the SAPI or charter district employee tasked with addressing inquiries from authorized vendors;
3. Provide the product specifications and other purchasing criteria that must be met by the authorized vendor submitting an informal bid; and
4. Require the submission of an informal bid in a sealed envelope plainly marked with the bidder's name and the date and time of the bid's opening.<sup>23</sup>

(c) The Superintendent or designee is not required to publish a notice soliciting informal bids.

(d) The Superintendent or designee must issue the informal bid specifications and other purchasing criteria to any and all authorized vendors who may provide the goods and/or services being solicited. If the Superintendent or designee is unable to identify at least three authorized vendors to whom to issue the specifications and criteria, the Superintendent or designee must publish a notice soliciting informal bids in the manner prescribed under Subsection 4.1.4.

(e) Upon the receipt of a sealed informal bid (or an informal bid submitted through a secure medium that maintains the confidentiality of the bid), the Superintendent or designee must record the date, time, method of delivery and receiving SAPI or charter district employee's name on an *Informal Bid Receipt Log*.

(f) On the date and at the time of the opening of informal bids, the Superintendent or designee must open each bid in the order received as recorded in the *Informal Bid Receipt Log*. As each informal bid is opened, the Superintendent or designee must record the bidder's name and business address and quoted price on an *Informal Bid Quotation Log*. At the conclusion of the bid opening, the Superintendent or designee must review and evaluate the lowest bid to ascertain and ensure that the lowest bidder satisfactorily addressed the informal bid specifications and other purchasing criteria. In the event that the lowest bidder failed to satisfactorily address the

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<sup>23</sup> Alternatively, an authorized vendor may submit an informal bid through a secure medium that maintains the confidentiality of the vendor's bid until the date and time that all informal bids are opened.



specifications and other criteria, the Superintendent or designee must review and evaluate the next lowest bid to ascertain and ensure that the next lowest bidder satisfactorily addressed the specifications and other criteria. This process will continue until a satisfactorily responding bidder is identified.

#### 4.1.8.3. *Competitive Bids.*<sup>24</sup>

(a) The Superintendent or designee shall procure goods and/or services that result in the expenditure of \$100,000 or more in non-federal funds through formal competitive bids.

(b) When using competitive bidding as the purchasing method, the Superintendent or designee shall prepare bid specifications. All bids shall be submitted in sealed envelopes, plainly marked with the name of the bidder and the time of opening. All bidders shall be invited to attend the bid opening if a formal bid opening will occur. Any bid may be withdrawn prior to the scheduled time for opening. Bids received after the specified date and time shall not be considered. The charter district may reject any and all bids or waive any requirements or technicalities it determines is in the best interest of the charter district.

(c) Upon the receipt of a sealed bid, the Superintendent or designee must record the date, time, method of delivery and receiving SAPI or charter district employee's name on a *Bid Receipt Log*.

(d) Prior to opening the bids received, the Superintendent or designee shall require any and all attendees at the bid opening to record their name (legibly), title, business affiliation and signature on a *Bid Opening Sign-In Log*.

(e) On the date and at the time of the bid opening, the Superintendent or designee must open each bid in the order received as recorded in the *Bid Receipt Log*. As each bid is opened, the Superintendent or designee must announce and record the bidder's name and business address and quoted price on a *Bid Quotation Log*. The Superintendent or designee shall notify any bidders present that each bid will be reviewed and evaluated for conformance with the bid specifications and that the lowest, conforming bidder will be awarded a contract.

(f) After the bid opening, the Superintendent or designee must review and evaluate the each bid to ascertain and ensure that each bidder satisfactorily addressed the bid specifications. In the event that the lowest bidder failed to satisfactorily address the specifications and other criteria, the Superintendent or designee must award the contract to the next lowest bid.

(g) In awarding a contract, the charter district shall consider appropriate criteria, which may include, but are not limited to, the following factors:

1. Purchase price;
2. The reputation of the vendor and of the vendor's goods and services;
3. The quality of the vendor's goods 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 relating to historically underutilized businesses;
7. The total long-term cost to the district to acquire goods or services; and

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<sup>24</sup> Board Policy CH, Section 8.3.



8. Any other relevant factor specifically listed in the request for bids or proposals.

*4.1.8.4. Purchases Through Cooperative.*<sup>25, 26</sup>

(a) The Superintendent is authorized to engage or join interlocal and governmental purchasing cooperatives organized under Texas Government Code Chapter 791 as deemed beneficial and advantageous to the charter districts.

(b) In lieu of competitive bids, the Superintendent or designee may procure goods and/or services through a cooperative that provides written assurance of compliance with state purchasing requirements.

(c) In the event that a participating vendor in the purchasing cooperative program quotes a lower price for the same goods and/or services than the price available through the cooperative, the Superintendent or designee may procure the goods and/or services directly from and using the vendor's direct quote.

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

1. Designate a person to act on behalf of the district in all matters relating to the program.
2. Make payments to another participating local government or local cooperative organization or directly under a contract, as provided in the agreement.
3. Be responsible for the vendor's compliance.

(e) Shared Service Arrangements. To foster greater economy and efficiency and to promote the cost-effective use of shared services, the charter districts are encouraged to enter into intergovernmental agreements or inter-entity agreements where appropriate for the procurement or use of common or shared goods and services. At a minimum, a shared services agreement must:

1. Establish clear procedures for administering services under the direction and control of the shared services arrangement and for assigning responsibility for all costs and liabilities associated with services provided under the agreement;
2. Establish the duties, responsibilities, and accountability of the fiscal agent and of each member for services provided under the agreement;
3. Establish clear procedures for withdrawal of a member from the agreement and for the dissolution and winding up of the affairs of the arrangement;
4. If the cooperative may provide special education services, comply with Tex. Ed. Code §29.007 and FASRG Module 1 §1.3.7.1; and

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<sup>25</sup> Board Policy CH, Section 8.4.

<sup>26</sup> This section facilities compliance with 2 CFR 200.318(e).

5. Be approved in writing by the commissioner before any services are provided.<sup>27</sup>

#### 4.1.8.5. Computers.<sup>28</sup>

As authorized under Texas Government Code Chapters 2054 and 2157, the charter district may acquire computers and computer-related equipment, including computer software, through a contract administered by the Department of Information Resources.

#### 4.1.8.6. Sole Source.<sup>29</sup>

The charter district may procure goods and/or services that are available from only one source provided that adequate and sufficient documentation is maintained demonstrating that no other source was identified to provide a similar good and/or service. Accordingly, prior to purchasing from a sole source vendor, the charter district or SAPI administrator shall certify that:

- (a) The goods and/or services relate to an identified need and related goal, strategy and activity documented in the applicable district or campus instructional plan;
- (b) After a diligent search and research, no other like products were identified that meet the intended needs, as disclosed in the applicable plan;
- (c) All reasonable efforts were undertaken to identify more than one vendor for the goods and/or services to be procured;
- (d) The purchase was not for the purpose of acquiring a preferred brand;
- (e) The vendor does not market the goods and/or services through distributors or more than one outlet;<sup>30</sup> and
- (f) The goods and/or services to be purchased constitute one of the following:
  - (1) An item for which competition is precluded because of a patent, copyright, secret process, or monopoly;
  - (2) A film, manuscript, or book;
  - (3) A utility service, including electricity, gas, or water; or
  - (4) A captive replacement part or component of equipment.

#### 4.1.9. Authorized Methods of Procurement: Federal.<sup>31</sup>

(a) Pursuant to Board policy and applicable law and when using federal grant funds and funds received from federal nutrition programs administered by the Texas Department of Agriculture,

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<sup>27</sup> Texas Administrative Code, Title 19, Section 100.1001(24).

<sup>28</sup> Board Policy CH, Section 8.5.

<sup>29</sup> Board Policy CH, Section 8.6.

<sup>30</sup> In this instance, it may be argued that the purchase is not through a sole source as the goods and/or services are available from more than one source.

<sup>31</sup> This procedure is deemed to comply with 2 CFR 200.320.



SAPI and the charter districts shall purchase goods and services by the method, of the following methods, that provides the best value for the charter district.

(b) In utilizing the methods of procurement described in this subsection, the Superintendent or designee shall adhere to the prohibition on component, separate and sequential purchases established in Subsection 4.1.5.

#### 4.1.9.1. *Micro-Purchases.*<sup>32</sup>

Pursuant to 2 CFR 200.67 and 200.320(a), a charter district purchase of supplies<sup>33</sup> or services charged to a federal award and valued at less than \$3,500 (or \$2,500 in the case of acquisitions for construction subject to the Davis-Bacon Act), in the aggregate, shall be classified as a micro-purchase. To the extent practicable, the charter district must distribute micro-purchases equitably among the qualified suppliers identified on the vendor list. Although micro-purchases may be awarded without soliciting competitive quotations if the district considers the price to be reasonable, the charter district is nonetheless encouraged to obtain at least two quotes of which at least one was obtained from an authorized vendor. If the district does not solicit competitive quotations, the charter district must document its determination of the reasonableness of the price offered by the vendor selected by the district.

#### 4.1.9.2. *Small Purchases.*<sup>34</sup>

Pursuant to 2 CFR 200.88 and 200.320(b), a charter district purchase of property or services charged to a federal award and valued at less than \$150,000, in the aggregate, shall be classified as a small purchase. With the exception of the dollar thresholds identified therein, a purchase under this subsection shall follow the process described in Subsection 4.1.8.2, Quotes and Informal Bids.

#### 4.1.9.3. *Sealed Bids.*<sup>35</sup>

(a) Pursuant to 2 CFR 200.88 and 200.320(c), a charter district purchase of property or services charged to a federal award and valued at over \$150,000, in the aggregate, shall be made through sealed bids if the following conditions are met:

1. A complete, adequate, and realistic specification or purchase description is available;
2. Two or more responsible bidders are willing and able to compete effectively for the business; and
3. 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.

(b) If the conditions at (a) above are met, the charter district shall publicly solicit bids in the manner described in Subsections 4.1.3.4 and 4.1.5.

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<sup>32</sup> This procedure is deemed to comply with 2 CFR 200.320(a).

<sup>33</sup> Pursuant to 2 CFR 200.94, "*Supplies* means all tangible personal property other than those described in § 200.33 Equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life."

<sup>34</sup> This procedure is deemed to comply with 2 CFR 200.320(b).

<sup>35</sup> This procedure is deemed to comply with 2 CFR 200.320(c).



(c) When using the sealed bid method of procurement, the charter district shall apply following requirements:

1. 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;
2. The invitation for bids must be publically advertised;
3. 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;
4. All bids will be opened at the time and place prescribed in the invitation for bids;
5. The bids must be opened publicly;
6. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest;
7. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
8. Any or all bids may be rejected if there is a sound documented reason.

(d) The charter district shall award a firm fixed price contract (lump sum or unit price) to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

(e) To the degree appropriate and feasible, the charter district shall consider and utilize the process described in Subsection 4.1.8.3.

#### 4.1.9.4. *Competitive Proposals.*<sup>36</sup>

(a) Pursuant to 2 CFR 200.88 and 200.320(d), a charter district purchase of property or services charged to a federal award and valued at over \$150,000, in the aggregate, shall be made through competitive proposals if the following conditions are met:

1. When conditions are not appropriate for the use of sealed bids;
2. When more than one source submits an offer; and
3. Either a fixed price or cost-reimbursement type contract is to be awarded

(b) When using the competitive proposals method of procurement, the charter district shall apply following requirements:

1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance;

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<sup>36</sup> This procedure is deemed to comply with 2 CFR 200.320(d).

2. Any response to publicized requests for proposals must be considered to the maximum extent practical;
3. Proposals must be solicited from an adequate number of qualified sources;
4. SAPI and the charter district must have a written method for conducting technical evaluations of the proposals received and for selecting recipients; and
5. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the federal grant program, with price and other factors considered.

(c) To the degree appropriate and feasible, the charter district shall consider and utilize the process described in Subsection 4.1.8.3.

#### 4.1.9.5. *Noncompetitive Proposals.*<sup>37</sup>

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

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

(b) To the degree appropriate and feasible, the charter district shall consider and utilize the process described in Subsection 4.1.8.6.

#### 4.1.10. *Contracting with Certain Vendors.*<sup>38</sup>

SAPI and the charter districts must take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

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<sup>37</sup> This procedure is deemed to comply with 2 CFR 200.320(f).

<sup>38</sup> This section facilitates compliance with 2 CFR 200.321.

4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

#### 4.1.11. *Authorized Vendors.*

(a) To facilitate the purchasing process and minimize the administrative cost of the purchasing function, the CFO will develop, maintain and update a listing of authorized vendors. The CFO will include a vendor on the listing based on the following criteria.

1. The reputation of the vendor and of the vendor's goods and services.
2. The quality of the vendor's goods or services.
3. The extent to which the vendor's goods or services meet SAPI's and the charter district's needs for commonly ordered goods and services.
4. The vendor's past relationship with SAPI and the charter districts.
5. The impact on the ability of SAPI and the charter district to comply with laws relating to historically underutilized businesses.
6. The vendor's financial and technical ability to provide goods and/or services.

(b) Generally, the CFO should only include vendors for each category of good (e.g., classroom supplies, library books, laptops) or service (e.g., diagnostic services for special education, plumbing, electrical) commonly procured by the charter districts that meet the criteria listed above.

#### 4.1.12. *Responsible Vendors.*<sup>39</sup>

Consistent with the factors identified in section 4.1.15, SAPI and the charter districts must award contracts only to responsible vendors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as vendor integrity, compliance with public policy, record of past performance, and financial and technical resources.

#### 4.1.13. *Excluded Parties.*<sup>40</sup>

In accordance with applicable federal rule, SAPI and the charter districts may not obligate federal funds through the award of a contract or issuance of a purchase order or otherwise procure goods and services from a party listed on the government-wide Excluded Parties List System in the System for Award Management (SAM). The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties

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<sup>39</sup> This section facilitates compliance with 2 CFR 200.318(h).

<sup>40</sup> This section facilitates compliance with 2 CFR 180, 200 and 3985.



declared ineligible under statutory or regulatory authority. SAPI and the charter districts must acquire and maintain documentary evidence that the vendor was not listed on the Excluded Parties List System.

#### 4.1.14. Authorized Modes of Payment.

The Superintendent or designee and other district employees are authorized to use the following methods of payment when purchasing goods and services.

##### 4.1.14.1. Check.

Districts/schools are required to purchase goods and services with a value exceeding \$100 through a purchase requisition. Subsequently, SAPI will issue payment to vendors via check drawn from the district's bank account. SAPI will issue checks for payment of invoices, reimbursements to employees, reimbursements of the petty cash fund, etc.

##### 4.1.14.2. Petty Cash.

###### 4.1.14.2.1. General Policy.

Purchases may be made using the school's petty cash fund for items needed in an emergency basis, or where time constraints necessitate, but not to exceed \$100. Such purchases must be approved by the Superintendent or designee. Reconciliation and reimbursement of the petty cash fund will be done on a monthly basis (every two pay periods) using the Board approved Petty Cash Reimbursement Form. Failure to adhere to the petty cash guidelines will suspend all petty cash privileges.

###### 4.1.14.2.2. Administrative Regulation.

At their discretion Academy Directors may establish a petty cash fund for the cash purchase of small miscellaneous items. A petty cash account cannot exceed \$300.00. Academy Directors are responsible for ensuring the maximum protection of the petty cash funds. Unless previously authorized by the Academy Director, disbursements from petty cash should not exceed \$25 for an individual purchase.

###### 4.1.14.2.3. Operating Procedures.

The petty cash account is established at the beginning of each year by issuing a check in the desired amount payable to petty cash followed by the name of the Academy Director. For example: Petty Cash - Jane Doe. The Academy Director shall then endorse the check and cash it at the bank.

Cash disbursements may be made from the petty cash account not to exceed \$25. Original invoices or other suitable documentation must be obtained for all petty cash expenditures.

Replenishment of the petty cash account shall be made once the cash balance falls below a manageable level such as \$10. A check is written to increase the cash to the amount originally approved and set up.

Example:	Actual cash on hand	\$	10
	Amount to be replenished	\$	90
	Original petty cash amount	\$	100

The original invoices or other suitable documentation supporting the petty cash disbursements (totaling \$90 per the above example) should be attached to the Petty Cash Reimbursement form to be completed authorizing the issuance of the check.

When recording the petty cash disbursement in the Petty Cash Reimbursement Form, proper accounting codes should be entered to appropriate the expense to the proper funding source.

At the close of each school year, the petty cash on hand should be receipted returned to the Business Office. The receipt is coded to the Petty Cash account, which should be -0- after closing.

#### *4.1.14.3. Personal Cash and Credit.*

District/school employees may use personal cash or personal credit cards for the same purpose as using petty cash. Employee purchases using personal cash and credit are limited to \$100, unless prior approval of the Superintendent or designee has been obtained. Employees shall submit a request for reimbursement for such purchases on a bi-monthly basis (with every pay period) using the Board approved Reimbursement Form.

The school may open credit accounts, with the approval of the Superintendent, or designee, with vendors dealing in school related supplies and equipment. Purchases made with the school's credit card should be billed directly to the finance office for payment.

#### *4.1.15. Other Purchases.*

Only an employee in an administrative position may make purchases with personal cash or personal credit cards for the same purpose as using petty cash. These purchases are also limited to \$100, unless prior approval of the Superintendent or designee has been obtained. Reimbursement for such purchases will be done on a bimonthly basis (with every pay period) using the Board approved Reimbursement Form.

The school may open credit accounts, with the approval of the Superintendent or designee, with vendors dealing in school related supplies and equipment. Purchases made with the school's credit card should be billed directly to the finance office for payment.

#### *4.1.16. Unauthorized Purchases.*

SAPI and charter district employees shall not be permitted to purchase services, supplies, equipment or other property for personal use through the business office. Additionally, district employees are prohibited from purchasing goods and services unless such purchases conform to the requirements of Board Policy CH and this manual.

#### *4.2. Contract Provisions.*

With respect to the use of federal funds for the procurement of goods and services, 2 CFR 200.326 and Appendix II to 2 CFR 200 require the inclusion of the following contract provisions.

1. Remedies for Contract Breach or Violations. Contracts for more than the simplified acquisition threshold currently set at \$150,000 must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.



2. Termination for Cause and Convenience. All contracts in excess of \$10,000 must address termination for cause and for convenience by SAPI and the charter district including the manner by which it will be effected and the basis for settlement.
3. Equal Employment Opportunity. Except as otherwise provided under 41 CFR 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
4. Davis-Bacon Act. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by SAPI and the charter districts must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. SAPI and the charter districts must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. SAPI and the charter districts must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. SAPI and the charter districts must report all suspected or reported violations to the Federal awarding agency.
5. Contract Work Hours and Safety Standards Act. Where applicable, all contracts awarded by SAPI and the charter districts in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.



6. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
7. Clean Air Act and the Federal Water Pollution Control Act. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
8. Energy Efficiency Standards and Policies. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
9. Debarment and Suspension. A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
10. Byrd Anti-Lobbying. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier.
11. Procurement of Recovered Materials. SAPI, the charter districts and their contractors must comply 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 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, 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; 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.

## 5. PROCUREMENT OF PROFESSIONAL SERVICES.

Pursuant to Tex. Ed. Code §12.1053, SAPI and the charter districts shall adhere to the requirements set forth in Tex. Govt. Code Chapter 2254, Subchapter A (also known as the Professional Services Procurement Act, or PSPA).

### 5.1. *Applicability.*

(a) In accordance with the PSPA, SAPI and the charter districts will apply the procedures described in this section to the procurement of professional services. Professional services include services, within the scope of the practice, as defined by state law, of:

1. Accounting;
2. Architecture;
3. Landscape architecture;
4. Land surveying;
5. Medicine;
6. Optometry;
7. Professional engineering;
8. Real estate appraising; or
9. Professional nursing.

(b) Typically, the professional services identified above are provided in connection with the professional employment or practice of a person who is licensed or registered as:

1. A certified public accountant;
2. An architect;
3. A landscape architect;
4. A land surveyor;
5. A physician, including a surgeon;
6. An optometrist;
7. A professional engineer;
8. A state certified or state licensed real estate appraiser; or
9. A registered nurse.

(c) This section does not apply to the procurement of services not defined as professional services under the PSPA. SAPI personnel should consult the appropriate section of this manual for guidance and direction.

### 5.2. *Selection of Provider; Fees.*

A charter district may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award:

- (a) On the basis of demonstrated competence and qualifications to perform the services; and
- (b) For a fair and reasonable price.

### 5.3. *Professional Fees.*

The professional fees under the contract may not exceed any maximum provided by law.

5.4. *Contract for Professional Services of Architect, Engineer or Surveyor.*

(a) In procuring architectural, engineering, or land surveying services, the charter district shall:

1. First select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and
2. Then attempt to negotiate with that provider a contract at a fair and reasonable price.

(b) If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the charter district shall:

1. Formally end negotiations with that provider;
2. Select the next most highly qualified provider; and
3. Attempt to negotiate a contract with that provider at a fair and reasonable price.

(c) The charter district shall continue the process described in (b)1 through (b)3 above to select and negotiate with providers until a contract is entered into.



## 6. PROCUREMENT OF CONSTRUCTION SERVICES.

### 6.1. Legal Requirements.

Pursuant to Tex. Ed. Code §12.1053 and 19 TAC 100.1006, SAPI adopted the provisions of Tex. Ed. Code Chapter 44, Subchapter B as the charter district process for awarding a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property. Accordingly, pursuant to Tex. Ed. Code §44.031(a)(5), SAPI and the charter districts shall award contracts for construction services valued at \$50,000 or more in the aggregate for each twelve-month period be made by a method provided by Chapter 2269, Texas Government Code. Additionally, as set forth in Tex. Govt. Code §2269.106, SAPI and the charter districts shall consider certain statutory requirements of Texas Local Government Code, Chapter 271, Subchapter B.

### 6.2. Adoption of Administrative Regulations.

As provided in Tex. Govt. Code §2269.051, SAPI may adopt rules as necessary to implement the requirements promulgated at Tex. Govt. Code Chapter 2269. This manual and especially this section promulgate such rules. Importantly, this section is based significantly upon the requirements promulgate by the Texas Legislature in Tex. Govt. Code Chapter 2269. Accordingly, the Superintendent or designee should seek legal guidance when amending this section.

### 6.3. Authorized Methods of Procurement.

(a) When considering a construction contract using a method authorized by Tex. Govt. Code Chapter 2269, other than competitive bidding must, the Board (or designee) must determine which method set forth in Subsection 6.3(d) provides the best value for the charter district before it advertises for requests for bids, proposals or qualifications.<sup>41</sup>

(b) SAPI and the charter districts shall base its selection among offerors on applicable criteria listed for the particular method used. SAPI and the charter district shall publish in the request for bids, proposals or qualifications the criteria that will be used to evaluate the offerors and the applicable weighted value for each criterion.<sup>42</sup>

(c) SAPI and the charter districts shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded.<sup>43</sup>

(d) In accordance with Tex. Govt. Code Chapter 2269, the Board (or designee) may award a contract for construction services using one of the following methods:

1. Competitive bidding,
2. Competitive seal proposal,
3. Construction manager-agent,
4. Construction manager-at-risk,
5. Design-build, or
6. Job order contracts.

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<sup>41</sup> Tex. Govt. Code § 2269.056(a)

<sup>42</sup> Tex. Govt. Code § 2269.056(b)

<sup>43</sup> Tex. Govt. Code §§ 2269.056(c), 2269.105

(e) Unless determined otherwise by the Board (or designee), SAPI and the charter districts shall procure construction services using the competitive bidding method of procurement.

(f) In the event that the Board (or designee) determines that another procurement method is in the best interest of SAPI and the charter district, the Board's (or designee's) determination will be documented in the minutes to the pertinent Board or other meeting or on a memorandum bearing the designee's signature.

(g) The Superintendent or designee will seek legal and professional advice and counsel regarding the legal and other requirements applicable to the procurement method selected by the Board (or designee).

(h) Refer to Subsection 6.7 for guidance concerning the Board's delegation of duties.

#### *6.4. Component, Separate and Sequential Purchases Prohibited.<sup>44</sup>*

(a) Refer to Subsection 4.1.5.

(b) The final conviction of a person other than a Board member for an offense of applicable state law results in the immediate removal from office or employment of that person.

#### *6.5. Selection of Architect or Engineer.<sup>45</sup>*

Unless SAPI employs an architect or engineer on a full-time basis to oversee the construction project, SAPI and the charter district shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Tex. Govt. Code § 2254.004. Refer to Section 5 of this manual.

#### *6.6. Other Professional Services.<sup>46</sup>*

SAPI and the charter districts shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility. SAPI and the charter districts shall select the services for which it contracts under this section in accordance with Tex. Govt. Code § 2254.004. Refer to Section 5 of this manual.

#### *6.7. Delegation of Authority.<sup>47</sup>*

(a) The Board may delegate its authority to procure construction services to a designated representative, committee, or other person (hereafter the "designee" as used herein). This delegation shall occur at a duly noticed and conducted open meeting in compliance with the Texas Open Meeting Act and recorded in the minutes or a written resolution.

(b) SAPI and the charter district shall provide notice of the delegation, if any, and the limits of the delegation, and the name or title of each person designated under Subsection (a) by rule or in the request for bids, proposals, or qualifications or in an addendum to the request.

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<sup>44</sup> Tex. Ed. Code § 44.032

<sup>45</sup> Tex. Govt. Code § 2269.057(b)

<sup>46</sup> Tex. Govt. Code § 2269.058

<sup>47</sup> Tex. Govt. Code § 2269.053



6.8. *Right to Work.*<sup>48</sup>

In engaging in an activity to which this section applies, SAPI and the charter districts:

- (a) May not consider whether a person is a member of or has another relationship with any organization; and
- (b) Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

6.9. *Criteria to Consider.*<sup>49</sup>

(a) In determining the award of a contract pursuant to this section, SAPI and the charter districts may consider:

1. The price;
2. The offeror's experience and reputation;
3. The quality and reputation of the offeror's goods or services;
4. The extent to which the offeror's goods or services meet the district's needs;
5. The vendor's past relationship with the district;
6. The impact on the ability of SAPI and the charter district to comply with rules relating to historically underutilized businesses;
7. The total long-term cost to the charter district to acquire the offeror's goods or services;
8. Whether the vendor or the vendor's ultimate parent company or majority owner:
  - a. Has its principal place of business in this state; or
  - b. Employs at least 500 persons in this state;
9. The offeror's safety record;
10. The offeror's proposed personnel;
11. Whether the offeror's financial capability is appropriate to the size and scope of the project; and
12. Any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

(b) In determining the award of a contract under this chapter, SAPI and the charter district shall:

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<sup>48</sup> Tex. Govt. Code § 2269.054

<sup>49</sup> Tex. Govt. Code § 2269.055; Tex. Ed. Code § 44.031(b)

1. Consider and apply any existing laws, including any criteria, related to historically underutilized businesses; and
2. Consider and apply any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses.

*6.10. Safety Record of Bidder Considered.*<sup>50</sup>

(a) In determining who is a responsible bidder, SAPI and the charter district may take into account the safety record of the bidder, of the firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such a firm, corporation, partnership, or institution as set forth in Board Policy CH.

(b) Before considering the safety record of the bidder, SAPI and the charter district must give notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder.

(c) In making determinations concerning the safety records of the bidders, the Board, Superintendent, SAPI employees and charter district employees are prohibited from making the determinations in an arbitrary and capricious manner.

(d) In the request for bids, SAPI and the charter district must include a questionnaire and affidavit to be completed by the bidder. The questionnaire must include the following inquiries:

1. Has the "bidder" received any Citations<sup>51</sup> for violations of Occupational Safety & Health Administration OSHA within the past five (5) years?
2. Has the bidder received any Citations for violations of environmental protection laws or regulations within the past five (5) years?
3. Has the bidder ever been convicted, within the past ten (10) years, of a criminal offense or has been subject to a judgment for a negligent act or omission, which resulted in serious bodily injury or death?

(e) If the bidder replies "Yes" to any question at (d) above, the bidder must provide with its bid submission, the following information:

1. Date of Citation or offense;
2. Location where violation or offense occurred;
3. Type of violation or offense
4. Final disposition of violation or offense, if any; and
5. Penalty assessed.

(f) The Superintendent or designee shall provide the responses provided to the bidder as well as a summary report of the information provided by the bidder under (e) above to the Board for its

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<sup>50</sup> Tex. Govt. Code § 2269.106; Tex. Local Govt. Code § 271.0275

<sup>51</sup> Refer to Board Policy CH Section 7.1(b)(1) for the definition of "Citations."



consideration and to facilitate its determination of whether to disqualify the bidder based upon its safety record.

*6.11. Notification of Criminal History of Contractor.<sup>52</sup>*

(a) SAPI and the charter district should ensure that a bidder's response includes an advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.

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

(c) This subsection does not apply to a publicly held corporation.

*6.12. Contract with Person Indebted to Charter District.*

(a) The Board may refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to SAPI and the charter district.<sup>53</sup>

(b) For purposes of implementing this subsection, "person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with SAPI and the charter district requiring approval by the Board.

(c) The Superintendent or designee shall notify the Board of any debt due by an apparent low bidder or successful proposer. In the notice to the Board, the Superintendent or designee must disclose:

1. The amount outstanding;
2. The date(s) of when the bidder or proposer became indebted to SAPI and the charter district;
3. The cause(s) resulting in the bidder's or proposer's indebtedness;
4. Any adverse consequence to SAPI and the charter district resulting from the bidder's or proposer's indebtedness;
5. The date of the last written correspondence to the bidder or proposer requesting the bidder's or proposer's satisfactory settlement of the indebtedness; and
6. The frequency of requests for settlement of the indebtedness.

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<sup>52</sup> Tex. Ed. Code § 44.034

<sup>53</sup> Tex. Ed. Code § 44.044

*6.13. Competitive Bidding Method.*

*6.13.1. Awarding of Contract.*

(a) In accordance with state law, "competitive bidding" is a procurement method by which SAPI and the charter districts may contract with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder.<sup>54</sup>

(b) SAPI and the charter districts may contract for the construction, alteration, rehabilitation, or repair of a facility only after they advertise for bids for the contract in a manner prescribed by law, receives competitive bids, and awards the contract to the lowest responsible bidder.<sup>55</sup> Refer to Subsection 4.1.3.4 and 4.1.4 for further guidance.

*6.13.2. Responsible Bidder Defined.*

(a) A responsible bidder is a person who has the capability in all respects to perform in full the contract requirements and the integrity and reliability assuring good faith performance.<sup>56</sup>

(b) A responsible bidder may be required to meet any or all of the following requirements.

1. Be an experienced contractor who has served as a prime contractor on similar construction projects for Texas public schools, has satisfactorily completed the scope of work described in the construction documents, and is knowledgeable about the requirements for the construction of and the building elements for Texas public schools including, without limitation, applicable building code requirements.
2. Provide a warranty and support for any equipment installed as part of the construction services and in accordance with the scope of work described in the construction documents.
3. Be able to obtain payment and performance bonds of the types and in the amounts described in Tex. Govt. Code § 2253.
4. When submitting the bid, provide a Letter of Statement from a bonding company that the bidder is able to obtain both a payment bond and a performance bond described as stipulated in Tex. Govt. Code § 2253.
5. Prior to executing the contract, obtain and provide the payment and performance bonds of the types and in the amounts established at Tex. Govt. Code § 2253.
6. Have adequate financial resources or ability to obtain such resources as required during the performance of any resulting contract.
7. Be able to comply with the required performance schedule, taking into consideration all existing business commitments.

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<sup>54</sup> Tex. Govt. Code § 2269.101(a)

<sup>55</sup> Tex. Govt. Code § 2269.101(b)

<sup>56</sup> FASRG Module 3, Glossary of Terms.



8. Have necessary management and technical capability to perform any resulting contract for construction services.
9. Be qualified as an established firm regularly engaged in the type of business to provide the items and work required by the request for bids.
10. Be registered to do business in the State of Texas.
11. Be in good standing with the State of Texas.
12. Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

(c) To be effective, the requirements to establish an offeror as a responsible bidder must be disclosed in the request for bids.

#### *6.13.3. Preparation of Construction Documents.*

(a) SAPI and the charter districts shall select or designate an architect or engineer to prepare the construction documents required for a project to be awarded by competitive bidding.<sup>57</sup>

(b) SAPI and the charter districts must procure the services of an architect or engineer as prescribed in Section 5 of this manual.

#### *6.13.4. Preparation of Request.<sup>58</sup>*

SAPI and the charter districts shall prepare a request for competitive bids that includes construction documents, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to submit a bid.

#### *6.13.5. Notice.*

Refer to Subsection 4.1.4.

#### *6.13.6. Receipt and Opening of Bids.*

(a) A person who submits a bid, proposal, or qualification to SAPI and a charter district is required to seal it before delivery.<sup>59</sup> The Superintendent or designee shall reject any bid, proposal or qualification that is not sealed and return it to the offeror with a statement:

1. Representing that the bid, proposal or qualification was not opened, viewed or otherwise examined;
2. Asserting that the content and form of the bid, proposal, or qualification was not duplicated or disseminated with any person or entity; and
3. Instructing the offeror to resubmit an appropriately sealed bid, proposal or qualification as required by state law.

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<sup>57</sup> Tex. Govt. Code § 2269.102

<sup>58</sup> Tex. Govt. Code § 2269.103

<sup>59</sup> Tex. Govt. Code § 2269.059

(b) SAPI and the charter districts shall receive, publicly open, and read aloud the names of the offerors and their bids.<sup>60</sup>

(c) Only the Board, during a lawfully convened Board meeting, or the Superintendent or designee, at or in SAPI's or the charter district's central administrative office, may open the bids submitted by offerors.<sup>61</sup>

(d) A bid that has been opened may not be changed for the purpose of correcting an error in the bid price.<sup>62</sup>

(e) A bidder has the common law right to withdraw a bid due to a material mistake in the bid.<sup>63</sup>

(f) SAPI and the charter districts are entitled to reject any and all bids.<sup>64</sup>

(g) To the degree appropriate and feasible, the charter district shall consider and utilize the process described in Subsection 4.1.8.3.

#### 6.14. Change Orders.<sup>65</sup>

(a) If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the Superintendent or designee may approve change orders making the changes.

(b) The total contract price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.

(c) The Superintendent or designee has general authority to approve change orders.

(d) A contract with an original contract price of \$1 million or more may not be increased under this subsection by more than 25 percent. If a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

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<sup>60</sup> Tex. Govt. Code § 2269.104

<sup>61</sup> Tex. Govt. Code § 2269.106; Tex. Local Govt. Code § 271.026(a)

<sup>62</sup> *Ibid.*

<sup>63</sup> Tex. Govt. Code § 2269.106; Tex. Local Govt. Code § 271.026(b)

<sup>64</sup> Tex. Govt. Code § 2269.106; Tex. Local Govt. Code § 271.027(a)

<sup>65</sup> Tex. Ed. Code § 44.0411



STUDENT ALTERNATIVES PROGRAM, INC.

# Organizational Purchasing Manual

