



# TCSA Model Board Policy Series

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Module 100: *Financial Operations*

LEGAL AUTHORITY

## **INTRODUCTION**

The Model Board Policies for Charter Schools is a series of publications by the Texas Charter Schools Association (TCSA). These publications are an educational tool for charter school leaders to aid in the operation and management of open-enrollment charter schools in Texas.

### **Overall Policy Framework**

Each module in the Board Policy Series provides a summary of federal and state statutes, regulations, and related materials applicable to open enrollment charter schools. Citations to these materials are provided throughout the module and many contain a hyperlink so the actual statutory or regulatory provision can be accessed on the Internet. The summary is designated by the LEGAL AUTHORITY tab on the right edge of each page.

After the LEGAL AUTHORITY portion of the module you will find the model policy section designed to comply with current statutory and regulatory requirements described in the LEGAL AUTHORITY summaries. These policies are designated by the red CHARTER BOARD POLICY tab on the right edge of each page.

These are suggested policies to address the requirements set forth in this Module. Prior to adoption of the model policies by the Board of a charter school, each policy should be customized by including the school's name and by tailoring the language, if appropriate, to fit the specific needs, culture and requirements of the school. TCSA recommends that the Board of a charter school consult with and obtain the advice of the school's legal counsel in connection with adopting policies to comply with laws governing charter schools.

TCSA plans to update the Model Board Policies for Charter Schools after each Texas Legislative Session to reflect changes in applicable laws. We also will regularly and continually update the Policy Series when changes occur in state and federal case law and administration regulations that affect open enrollment charter schools. We encourage you to renew your subscription to the policy series each year to ensure that your school has the most recent laws and regulations.

### **Scope of Service & Copyright Notice**

This policy module prepared by the TCSA is designed and intended as a resource of information for charter schools and is not to be construed as legal advice. It should be used in connection with consulting and obtaining the advice of the school's legal counsel to ensure compliance with applicable legal requirements.

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For questions concerning the Model Board Policies for Charter Schools contact:

Lindsey Gordon, Texas Charter Schools Association  
lgordon@txcharterschools.org  
512.584.8272

**Module 100: Financial Operations**

The Financial Operations, Module 100, is the first module of the Model Board Policies. The material included in this module provides a comprehensive summary of statutes and regulations that apply to the financial operations of charter schools, as well as specific model board policies designed to comply with these legal requirements. Other policy modules in the series include:

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Module 200: Charter School Governance & Organization

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Module 300: General School Operations

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Module 400: Students

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Module 500: Open Government

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Module 600: Human Resources

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**Legal Abbreviations Used In the TCSA Model Board Policy Series**

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Atty. Gen. Op.	Attorney General Opinion
C.F.R	Code of Federal Regulations
Tex. Admin. Code	Texas Administrative Code
Tex. Educ. Code	Texas Education Code
Texas Gov't Code	Texas Government Code
Tex. Labor Code	Texas Labor Code
Texas Local Gov't Code	Texas Local Government Code
U.S.C.A	United States Code Annotated

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## **100.020. ANNUAL OPERATING BUDGET**

### **A. Budget Process**

1. Charter schools must adopt a budgeting process that is consistent with the requirements in the Budgeting Module of the Texas Education Agency's [Financial Accountability System Resource Guide](#).
2. The governing board must formally adopt the budget before the fiscal year begins and before the expenditure of funds. It must include all expenses and must be prepared in a manner consistent with the account code structure used by the charter school.
3. The adoption of the budget and any amendments must be recorded in the minutes of the governing board's meetings. The minutes must include a description of the action taken by the board and a copy of the budget and/or amendments adopted.
4. The governing body of a charter school must formally adopt amendments to the charter school's budget.

[Texas Education Agency, Special Supplement to the Financial Accountability System Resource Guide Charter Schools, Update 5.0 \(January 2010\)](#).

### **B. Online Budget Posting**

After the budget receives final approval by the governing board the charter holder shall post it on its Internet website. The charter holder must prominently display an electronic link to the adopted budget on its Internet website and maintain the electronic link until the third anniversary of the date the budget was adopted.

[Tex. Educ. Code § 12.104\(L\); Tex. Educ. Code §39.084](#).

### **C. Accelerated Payments of State Funding**

On the request of an open-enrollment charter school, the commissioner shall compare the student enrollment of the open-enrollment charter school for the current school year to the student enrollment of the school during the preceding school year. If the number of students enrolled at the open-enrollment charter school for the current school year has increased by 10 percent or more from the number of students enrolled during the preceding school year, the open-enrollment charter school may request that payments from the foundation school fund to the school for the following school year and each subsequent school year, be accelerated according to the monthly schedule provided in law.

[TEX. EDUC. CODE §§ 42.2591; 84TH Leg., R.S., HB 2251](#)

## **100.040. USE OF STATE FUNDS**

### **A. Public Funds Held in Trust**

State funds received by a charter holder are public funds to be used for the benefit of the students enrolled in the charter school. They may only be used for a purpose listed under the Texas Education Code §45.105:

1. Salaries for teachers and superintendents and interest on money borrowed on short time to pay those salaries that become due before the state funds for the current year become available;
2. Purchase of appliances and supplies;
3. Payment of insurance premiums;
4. Payment of janitors and other employees;
5. Purchase of school sites;
6. Buying, building, repairing, and renting of school buildings, including acquiring school buildings and sites by leasing through annual payments with an ultimate option to purchase; and
7. Other purposes necessary in the conduct of the charter school as determined by the charter school board.

The charter holder holds these funds in trust for the benefit of the students enrolled in the charter school. In using the public funds the governing body of the charter holder, as well as the governing body and officers of a charter school, are held to the standard of care and fiduciary duties that a trustee owes a beneficiary under Texas law.

The charter holder and the charter school must be able to demonstrate that public funds were used to secure goods and services for the benefit of the charter school's students and that the use of the public funds comported to the list outlined above. Complete original records must be maintained that clearly identify the business purpose of any disbursement of public funds and how they are aligned with the legal requirements in this section.

[Tex. Educ. Code §12.107; 19 Tex. Admin. Code §100.1043\(a\).](#)

### **B. Use of State Funds for Social Activities**

Costs of entertainment, and any costs directly associated with such costs, are prohibited unless there is a direct relation to the benefit of students. Along with having to demonstrate that such an expense had a direct benefit to students the charter holder and/or charter school must identify which student(s) benefitted from the disbursement of public funds.

[Rule 1.8.2.9.1, Texas Education Agency, Special Supplement to the Financial Accountability System Resource Guide Charter Schools, Update 5.0 \(January 2010\).](#)

### C. Depository Contract

1. Depository Contract. State funds received by a charter holder must be deposited into a bank with which the charter holder has entered into a depository contract and which deposits are insured by the Federal Deposit Insurance Corporation (FDIC).
2. Depository bank. A depository bank is:
  - a. a bank;
  - b. a savings and loan association; or
  - c. a savings bank organized under the laws of Texas, another state, or federal law that has its main or branch office in Texas.
  - d. deposits exceeding the FDIC insured amounts need not be collateralized for the institution to constitute a bank for purposes of this section.
3. Filing. The charter holder must file a copy of the depository contract with the Texas Education Agency division responsible for school financial audits no later than November 1st of each year. If there is no change since the previous year's filing, the charter holder may file a statement to that effect instead of the copy of the depository contract.
4. Contents of a Contract. See [Rule 1.8.2.3 of the Texas Education Agency, Special Supplement to the Financial Accountability System Resource Guide Charter Schools, Update 5.0](#) for language that must be included in the depository contract.

[Tex. Educ. Code § 12.107\(b\)](#); [Tex. Educ. Code §45.201](#); [19 Tex. Admin. Code §100.1043\(b\)](#).

### D. Non-Charter Activities & Funds

Business activities of a charter holder that are not directly related to the management and operation of the charter shall be kept in separate and distinct accounting, auditing, budgeting, reporting, and record keeping systems from those recording the business activities of the charter school. Co-mingling of charter and non-charter business in the accounting, auditing, budgeting, reporting, and record keeping systems of the charter school is a material charter violation.

[19 Tex. Admin. Code §100.1047\(e\)](#).

### E. Interested Transactions

A charter holder shall comply with conflict of interest laws and rules. In addition, the following shall be discretely and clearly recorded in the accounting, auditing, budgeting, reporting, and recordkeeping systems for the management and operation of the school:

1. Financial transactions between the school and the non-charter activities of the charter holder;
2. Financial transactions between the school and an officer or employee of the charter

holder or the school;

3. Financial transactions between the school and a member of the governing body of the charter holder or the school;
4. Financial transactions between the school and a management company charged with managing the finances of a school;
5. Financial transactions between the school and any other person or entity in a position of influence over the charter holder or the school. A person or entity is in a position of influence if:
  - a. The charter holder or the school is a subsidiary of, or shares governing body members, officers, or employees with, another organization, and
    - (a) The person or entity is a shareholder, partner, administrator, official, or employee of the other organization; or
    - (a) The person or entity by any other means participates in the business decisions of the affiliate or parent organization; or
  - b. A relative of the person is in a position of influence over the charter holder or the school under this section, within the third degree by consanguinity or affinity, as determined by nepotism laws and rules.

[19 Tex. Admin. Code §§ 100.1047\(f\)-\(g\).](#)

## 100.060. STATE FISCAL COMPLIANCE

### A. Fiscal Year

A charter holder must adopt a fiscal year that begins either on July 1 or September 1 of each year.

[19 Tex. Admin. Code § 100.1047\(a\); Tex. Educ. Code §44.0011.](#)

### B. Financial Accounting

The charter holder must fully comply with:

1. Generally accepted accounting principles (GAAP);
2. Texas Education Agency's ("TEA") Financial Accountability System Resource Guide; and
3. Applicable federal standards for financial management systems, including the following:
  - a. Financial reporting. Accurate, current, and complete disclosure of financially assisted activities shall be made in accordance with the financial reporting requirements of the grant or sub-grant.
  - b. Accounting records. The school shall maintain records that adequately identify the source and application of funds provided for activities assisted with federal funds. These records must contain information pertaining to grant or sub-grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
  - c. Internal control. The school shall maintain effective control and accountability of all federal grant and sub-grant cash, real and personal property, and other assets obtained with federal funds. The school shall adequately safeguard all such property and assure that it is used solely for authorized purposes.
  - d. Source documentation. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.
  - e. Budget control. The school shall compare actual expenditures or outlays of federal funds with budget amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement.
  - f. Applicable federal cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

- g. Cash management. Whenever advance payment procedures are used, the school shall follow applicable federal procedures.

[34 C.F.R. § 80.20; 19 Tex. Admin. Code § 100.1047\(b\).](#)

### **C. Uniform Grant Management Standards**

State agencies are required to adhere to the Uniform Grant Management Standards (UGMS) Although Chapter 783 of the Texas Government excludes school districts, some state agencies have applied the UGMS standards to all of their subrecipients. If a charter holder/school receives state or federal grants directly from a state agency other than the TEA, the auditor must check the grant requirements of that agency to see if the UGMS is applicable.

[Texas Education Agency, Special Supplement to the Financial Accountability System Resource Guide Charter Schools, Update 5.0 \(January 2010\).](#)

### **D. Annual Audit by the Charter**

A charter holder shall, at its own expense, have the financial and programmatic operations of its charter school(s) audited annually by a certified public accountant, licensed by the Texas State Board of Public Accountancy, and registered as a provider of public accounting services.

1. The charter holder shall file a copy of the annual audit report, approved by the governing body of the charter holder, with the TEA division responsible for school financial audits not later than the 150th day after the end of the fiscal year for which the audit was made.
2. The audit must comply with Generally Accepted Auditing Standards and must include an audit of the accuracy of the fiscal information provided by the charter school through the Public Education Information Management System (PEIMS).
3. Financial statements in the audit must comply with Government Auditing Standards and the Office of Management and Budget Circular A-133 or its successor.
4. A charter holder shall separately disclose, in its annual audit report, all persons with a substantial interest in a management company.

[Tex. Educ. Code § 44.008; 19 Tex. Admin. Code §§ 100.1047\(c\), 100.1153\(c\).](#)

5. The audit must be filed with TEA along with the documents listed in Rule 1.7.2 of the [Special Supplement to the Financial Accountability System Resource Guide, Charter Schools, Update 5.0 \(January 2010\).](#)
6. The report must also include a certificate of the governing body which must include original signatures from the presiding officer and the secretary of the governing body of the charter holder. The certificate must indicate if the governing body approved or disapproved the contents of the financial and compliance report along with the date of its approval or disapproval. This approval or disapproval must be supported in the minutes of the board's meeting. If the board does not approve the report it

must still file it with TEA and include a detailed statement discussing the reasons for disapproval.

7. Reports must be filed in both paper and electronic format.

[Rule 1.7.2, 1.7.2.1, 1.7.4, 1.7.4.1, Special Supplement to the Financial Accountability System Resource Guide, Charter Schools, Update 5.0 \(January 2010\).](#)

#### **E. Annual Financial Statement**

1. The governing body of an open-enrollment charter school shall prepare an annual financial statement showing for each fund subject to the authority of the governing body during the fiscal year:
  - a. the total receipts of the fund, itemized by source of revenue, including taxes, assessments, service charges, grants of state money, gifts, or other general sources from which funds are derived;
  - b. the total disbursements of the fund, itemized by the nature of the expenditure; and
  - c. the balance in the fund at the close of the fiscal year.
2. The financial statement shall be made available in the manner provided by Chapter 552, of the Texas Government Code. The charter school may satisfy this requirement by providing a copy of the Statement of Activities.
3. The board shall take action to ensure that the charter school's financial statement is posted continuously on the school's website.

***TCSA Note: A sample financial statement may be found on [page 57](#) of the *Financial Accountability Systems Resource Guide, Charter Schools, Update 5.0*.***

[Tex. Local Gov't Code §140.005; Tex. Local Gov't Code §140.006; Rule 1.7.5, Texas Education Agency, Special Supplement to the Financial Accountability System Resource Guide, Charter Schools, Update 5.0 \(January 2010\).](#)

#### **F. Annual Financial Management Report**

The TEA will develop a reporting procedure under which each charter holder will have to prepare and distribute an annual financial management report. The charter holder's governing body will have to hold a public hearing on the report and give notice of the hearing through the Open Meetings Act agenda posting, an advertisement in a local newspaper, and in an email to media serving the district.

[Tex. Educ. Code §§39.083; 19 Tex. Admin. Code §109.1005.](#)

#### **G. Audit by the Commissioner**

1. General Authority  
The commissioner may audit the records of the charter holder, the charter school, or

a management company that has provided management services to a charter school or charter holder.

2. Scope of Audit

Such an audit shall be limited to matters directly related to the management or operation of a charter school, including the allocation of costs shared between the charter school and any non-charter business activity. The audit may examine the financial or administrative records related to the charter school that are in the possession of a management company or former management company, including records related to the allocation of shared costs.

3. Charter Holder Cooperation

A charter holder and its employees and agents shall cooperate fully with an audit by the commissioner and shall take all actions necessary to secure the cooperation of a management company. Failure to timely comply with a request for access to records or other cooperation from the charter holder constitutes a material charter violation.

4. Management Company Cooperation

A management company and its employees and agents shall fully cooperate with an audit by the commissioner. Failure to timely comply with a request for access to records or other cooperation from the management company constitutes a management company breach.

[Tex. Educ. Code §12.1163; 19 Tex Admin. Code §100.1051.](#)

#### **H. Attendance Accounting**

1. The charter holder shall comply with the Student Attendance Accounting Handbook, with the [Texas Education Code Chapter 25.002](#), and [Title 19 of the Texas Administrative Code, Chapter 129](#); except that a charter school shall report its actual student attendance data to the TEA at six-week intervals, or as directed by TEA.
2. Attendance for all grades must be determined by the absences recorded in the second or fifth period of the day, unless permission is received from the Texas Education Agency for an alternative period, the governing body of the charter school adopts a policy for recording absences in an alternative period or hour, or unless the students for which attendance is being taken are enrolled in and participating in an alternative attendance accounting program approved by the commissioner of education.

[Texas Education Agency, Student Attendance Accounting Handbook; Tex. Educ. Code §25.002; Tex. Admin. Code §129; Tex. Admin. Code §100.1047\(d\);](#)

#### **I. PEIMS Data Standard**

To monitor compliance as determined by the commissioner, charter schools are subject to the PEIMS. A charter school fiscal accounting system must be compatible with PEIMS data standards. The system must also conform to Generally Accepted Accounting Principles.

[Tex. Educ. Code §12.104, §12.111.](#)

## **Account Code Structure**

All charter schools must use the account code structure as described in TEA's [\*Special Supplement to the Financial Accountability System Resource Guide, Nonprofit Charter School Chart of Accounts\*](#).

[\*19 Tex. Admin. Code §109.41; Rule 1.8.2.8, Texas Education Agency, Special Supplement to the Financial Accountability System Resource Guide to Charter Schools, Update 5.0 \(January 2010\)\*](#).

## 100.080. FEDERAL FISCAL COMPLIANCE

***TCSA Note: This TCSA Legal Authority summary addresses the most popular sources of federal funding for open-enrollment charter schools, but may not address every source of federal funding received by your open-enrollment charter school. In addition to referencing this resource, each open-enrollment charter school is encouraged to refer to its Notice of Grant Award and all applicable regulations for the specific compliance standards related to each source of federal funding the charter school receives, whether directly from a federal agency or as a pass through from the Texas Education Agency.***

### **A. General Standards - Proper Use of Federal Grants awarded by the U.S. Department of Education**

1. Adoption of New EDGAR. Charter holder/school grantees should consult the new Education Department General Administration Regulation (EDGAR) for the complete set of applicable federal regulations that were adopted on December 26, 2014. The new EDGAR will apply to all federal grants awarded directly to the charter school after that date and will apply to all state administered programs as of July 1, 2015. Grants awarded before the effective dates will continue to be governed by the OMB circulars that were in effect at the time the grant was awarded.
2. Regulations Comprising the New EDGAR. The new EDGAR consists of the following parts of the Code of Federal Regulations: 34 CFR 75, 34 CFR 6, 34 CFR 77, 34 CFR 81, 2 CFR 200, 2 CFR 3474, and 2 CFR 3485. See, [General and Fiscal Guidelines: The New EDGAR](#).
3. Cost Principles. According to the new EDGAR, any expenditure of federal grant funds must be:
  - a. Allowable, [2 C.F.R. §200.403](#);
  - b. Reasonable and Necessary, [2 C.F.R. §200.404](#); and
  - c. Allocable, [2 C.F.R. § 200.405](#).
4. Costs for Professional Services. Costs of professional and consultant services rendered by persons who are not employed by the charter schools and members of a particular profession or possess a special skill are allowable when reasonable and when certain factors are considered. [2 C.F.R. § 200.459](#).
5. Procurement of Goods and Services.
  - a. General Procurement Standards.
    - i. Responsible Contractors. Charter schools must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Factors include

contractor integrity, compliance with public policy, past performance, and financial and technical resources. [2 C.F.R. § 200.318](#).

- ii. Shared Services. To promote greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the federal government, charter schools are encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. [2 C.F.R. §200.318](#).
  - iii. Full and Open Competition. All procurement transactions must be conducted in a manner providing full and open competition. [2 C.F.R. § 220.319](#).
- b. Specific Procurement Standards. Unless the charter school has adopted more strict procurement standards for the purchase of goods and services than the standards adopted in EDGAR, then EDGAR governs the purchase of goods and services with federal funds. Under EDGAR:
- i. for expenses of \$3,000 or less (i.e., micro-purchases), charter schools must distribute purchases equitably among qualified suppliers;
  - ii. for small purchases of less than \$150,000, charter schools must get price quotes from an adequate number of qualified sources;
  - iii. for construction, charter schools must use procurement by sealed bids;
  - iv. when sealed bids are not appropriate (such as for when one or more source submits a fixed price or cost-reimbursement model), then charter schools must use procurement by competitive proposals;
  - v. for sole source purchasing, charter schools must use noncompetitive proposals; and
  - vi. for every procurement action in excess of the Simplified Acquisition Threshold (i.e., \$150,000 as of December 26, 2014, but from time to time may be adjusted for inflation), the charter school must perform a cost or price analysis, which as a starting point must make independent estimates before receiving bids or proposals.
- [2 C.F.R. § 200.320](#); [2 C.F.R. § 200.323](#); [2 C.F.R. § 200.88](#)
- c. Historically Underutilized Businesses. The charter school must take all necessary affirmative steps to assure minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. [2 C.F.R. § 200.321](#)
  - d. Contract provisions. The charter school’s contracts must contain the applicable provisions described in [Appendix II of 2 C.F.R. § Part 200](#). [2 C.F.R. § 200.326](#)

6. Conflicts of Interest. The charter school must establish a conflict of interest policy for federal awards. Any potential conflict of interest must be disclosed to the federal awarding agency or the Texas Education Agency.
  - a. An individual conflict of interest would arise when a charter school officer, employee, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. Further, no officer, employee or agent of the charter school may solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. [2 C.F.R. § 200.112](#)
  - b. An organizational conflicts of interest would arise if (1) a charter school has a parent, affiliate, or subsidiary organization, and (2) because of the charter school's relationship with the parent, affiliate, or subsidiary, the charter school is unable to be or appears unable to be impartial in conducting a procurement action involving the related organization. [2 C.F.R. § 200.318](#)
7. Mandatory Disclosures of Misconduct. The charter school must disclose, in a timely manner, in writing to the federal awarding agency or the Texas Education Agency, all violations of federal criminal law involving fraud, bribery, or gratuity violations affecting the federal award. [2 C.F.R. § 200.113](#)
8. Documentation for Personnel Expenses (Time-and-Effort Reporting)
  - a. Time and effort records must be maintained for all employees whose salaries are paid in whole or in part with federal funds. The records must:
    - i. be supported by a system of internal control that provides reasonable assurance that the charges are accurate, allowable, and properly allocated;
    - ii. be incorporated into the official records of the non-federal entity;
    - iii. reasonably reflect the total activity for which the employee is compensated by the non-federal entity, not to exceed 100%;
    - iv. encompass both federal assisted and all other activities compensated by the non-federal entity on an integrated basis;
    - v. comply with the established accounting policies and practices of the non-federal entity; and
    - vi. other factors. [2 C.F.R. § 200.430](#)
  - b. The federal time-and-effort reporting requirement requires employees who work on multiple activities or cost objectives to document their time and effort in one of two ways:

- i. *With monthly personnel activity reports (PARs), or*
- ii. *Through an approved substitute system.*

9. Audit Requirements.

- a. The Single Audit Act requires non-federal entities that expend \$750,000 or more in year in federal awards to have a single or program specific audit conducted for that year. This requirement applies to the charter holder as a whole and not to a single charter school. [2 CFR § 200.501](#)
- b. The form to be submitted is the Form SF-SAC, Data Collection Form for Reporting on Audits of States, Local Governments and Non-Profit Organizations. The form is submitted electronically through the [Federal Audit Clearinghouse website](#).

**B. Specific Standards – U.S. Department of Education, No Child Left Behind Act, Title I, Part A**

- 1. Title I, Part A funds are purposed to be used to provide services in addition to the regular services provided by the charter holder. Therefore, the charter holder must meet three fiscal requirements related to the expenditure of regular state funds:
  - a. Maintain state and local effort (MOE). To meet the NCLB LEA MOE requirement in any fiscal year, a charter school is required to expend state and/or local funds at 90% of the level at which it expended funds in the preceding fiscal year. There are four calculations for determining whether a charter school has met the NCLB LEA MOE requirement. The charter school needs to meet at least one of the following four tests to be compliant:
    - i. Total state and local expenditures: The LEA's total state and local expenditures must equal or exceed 90% of expenditures during the previous fiscal year.
    - ii. Total state and local expenditures per-pupil for refined average daily attendance (RADA): The RADA per-pupil amount the LEA expended must equal or exceed 90% of the amount it expended during the previous fiscal year.
    - iii. Total state and local expenditures per-pupil for membership: The membership per-pupil amount the LEA expended must equal or exceed 90% of what it expended during the previous fiscal year.
    - iv. Total state and local expenditures per-pupil for enrollment: The enrollment per-pupil amount the LEA expended must equal or exceed 90% of what it expended during the previous fiscal year.
  - b. Provide services in project areas with state and local funds that are at least comparable to services provided in areas not receiving Title I, Part A services; and
  - c. Use Title I, Part A funds to supplement, not supplant, regular non-federal funds. Docu-

mentation must be maintained which clearly demonstrates the supplementary nature of federal funds.

2. A charter holder may use Title I, Part A funds to conduct Schoolwide Programs or Targeted Assistance Programs.
  - a. *For Schoolwide Programs, the charter holder must use the funds that are part of the Campus Improvement Plan to improve student performance and upgrade the entire educational program. A comprehensive needs assessment must be conducted that will inform the campus improvement plan.*
  - b. For Targeted Assistance Programs, the charter holder may only use these funds to meet the needs of children identified as being in greatest need of services.

20 U.S.C.A §§6314–6315; 20 U.S.C.A. § 9521; See also, [Guidance for the Implementation of Title I, Part A, Texas Education Agency, Title I, Part A Comparability of Services Guidance Handbook](#), and the NCLB LEA Maintenance of Effort Handbook at [19 TAC § 109.3001\(c\)\(2\)](#).

### **C. Specific Standards –U.S. Department of Education, IDEA- B Special Education Grant Funding**

1. Maintenance of Effort. Unless an exception applies, funds provided to an open-enrollment charter school under Part B of the Individuals with Disabilities Education Act (IDEA) must not be used to reduce the level of expenditures for the education of children with disabilities made by the charter school from local funds below the level of those expenditures for the preceding year. The four methods that charter schools may use to meet this standard are: (1) Local funds only, (2) the combination of State and local funds, (3) local funds only on a per capita basis, or (4) the combination of State and local funds on a per capita basis. [34 C.F.R. § 300.203](#), IDEA-B LEA Maintenance of Effort (MOE) Guidance Handbook at [19 TAC § 109.3001\(c\)\(1\)](#)
2. Excess Costs. The excess cost requirement mandates how much the charter school must expend in state and local funds before it may begin expending IDEA-B grant funds. IDEA-B funds must be used only to pay the excess cost of providing special education and related services to children with disabilities. “Excess costs” means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student. [34 C.F.R. §300.202\(a\)\(2\)](#), [34 CFR § 300.16](#), IDEA-B LEA Maintenance of Effort (MOE) Guidance Handbook at [19 TAC § 109.3001\(c\)\(1\)](#); [IDEA-B Excess Cost Guidance](#).
3. Supplement, Not Supplant. Funds for this program must be used to supplement (increase the level of services) and not supplant (replace) funds from federal, state, and local funds for similar activities. Documentation must be maintained which clearly demonstrates the supplementary nature of federal funds.
4. Coordinated Early Intervening Services (CEIS). Under IDEA-B, grantees are permitted to expend grant funds on services (known as coordinated early intervening services, or

CEIS) for students who do not meet the definition of students with a disability. When you set funds aside for CEIS, the amount by which you may voluntarily reduce your maintenance of effort (MOE) is affected. [IDEA-B CEIS Handbook](#)

**D. Specific Standards – Direct Funding from the U.S. Department of Education for the Charter Schools Program (CSP), No Child Left Behind Act, Title V, Part B**

1. Charter schools that receive CSP grants directly from the U.S. Department of Education must comply with and use federal funds in accordance with all statutes, regulations, and approved applications. [34 C.F.R §75.700.](#)
2. Grantees must directly administer or supervise the administration of the project, and they must use fiscal control and fund accounting procedures that ensure proper disbursement of, and accounting for, federal funds. [34 C.F.R. § 75.702.](#)
3. Charter schools that receive CSP grants must avoid apparent and actual conflicts of interest when administering grants. Regulations prohibit a person from participating in an administrative decision regarding a project if:
  - a. The decision is likely to benefit that person or an immediate family member; and
  - b. The person is a public official or has a family or business relationship with the grantee.

A person may not participate in a project to use his or her position for a purpose that is, or gives the appearance of being, motivated by a desire for a private or financial gain for that person or for others. [34 C.F.R. § 75.525](#)

**E. United States Department of Agriculture - [Child Nutrition Programs](#)**

1. Charter schools that choose to participate in the federal National School Lunch Program must comply with Title 7 of the Code of Federal Regulations Parts 210, 245, and 3016 and Title 4 of the Texas Administrative Code Chapter 25 and Chapter 26. [7 C.F.R §210 et. seq., §245 et. seq., §3016 et. seq.; 4 Tex. Admin. Code §25 – §26 et. seq.](#)
2. If a charter school participates in the National School Lunch Program, the School Breakfast Program, or the Special Milk Program, the charter school must publicly announce to the parents of each student in attendance the eligibility criteria for these nutrition programs near the beginning of the school year. Charter schools must also provide an application for the program(s). [20 U.S.C. § 7221i \(1\)\(G\); 7 C.F.R §245.5.](#)
3. If at least 10 percent of enrolled students in a charter school are eligible for free or reduced-price breakfasts under the National School Breakfast Program, provided for by the Child Nutrition Act of 1966, the charter school shall either:
  - a. participate in the School Breakfast Program and make the benefits of the national program available to all eligible students; or

- b. develop and implement a locally funded program to provide free meals, including breakfast and lunch, to each student eligible for free meals under federal law and reduced-price meals, including breakfast and lunch, to each student eligible for reduced-price meals under federal law, provided that the reduced price may not exceed the maximum allowable rate under federal law. *Tex. Educ. Code §33.901(a)*; [84th Leg., R.S. HB 1305](#) and 42 U.S.C.A. 1773;
4. An open-enrollment charter school is permitted to participate in the national program at one or more campuses in the charter district and provide a locally funded program at one or more other campuses in the charter district. *Tex. Educ. Code §33.901 (a-1)*; [84th Leg., R.S. HB 1305](#).
5. If an open-enrollment charter school participates in the National School Breakfast program or offers a locally funded program and at least 80 percent or more of the students in a charter school qualify under the national program for a free or reduced-price breakfast, the open-enrollment charter school shall provide a free breakfast to all students. *TEX. EDUC. CODE 33.901(b)*; [84th Leg., R.S. HB 1305](#).
6. Each school year, the Board may request a waiver from the commissioner from the requirement described above, provided the board votes to request the waiver at the annual meeting of the board called to adopt the budget for the open-enrollment charter school, the board lists the waiver as a separate item for consideration on the meeting's agenda, and the board provides an opportunity for public comment regarding the waiver at the meeting. The waiver shall not exceed one year. *TEX. EDUC. CODE 33.901(c)*.

## F. Discrimination in Non-Charter Operations

1. Federal law defines a charter school as a public school that complies with the Age Discrimination Act of 1975 [[42 U.S.C. 6101](#) et seq.], Title VI of the Civil Rights Act of 1964 [[42 U.S.C. 2000d](#) et seq.], Title IX of the Education Amendments of 1972 [[20 U.S.C. 1681](#) et seq.], Section 504 of the Rehabilitation Act of 1973 [[29 U.S.C. 794](#)], and Part B of the Individuals with Disabilities Education Act [[20 U.S.C. 1411](#) et seq.]. [20 U.S. Code § 7221i\(1\)\(G\)](#).
2. Civil Rights Restoration Act (CRRA) of 1987. Under the CRRA, the entire corporation or other legal entity that holds an open-enrollment charter is subject to broad, institution-wide coverage under the four major civil rights statutes that prohibit discrimination in federally assisted programs. Thus, the CRRA applies Title IX, Title VI, Section 504, and the Age Act – but not the IDEA – to “all of the operations of” the entire corporation or other legal entity that is “principally engaged in the business of providing education, health care, housing, social services, or parks and recreation” any part of which receives federal funds. [20 U.S.C. § 1687](#).

**TCSA Note: For more information on prohibited discrimination in federally assisted programs, see TCSA Model Board Policy Module 400: Students, and Model Board Policy Module 600: Human Resources.**

## **100.100. CASH MANAGEMENT & CREDIT CARD PROCEDURES**

**Note from TCSA regarding Section 100.200 LEGAL AUTHORITY:** *This area of the policies does not have a direct legal counterpart. Please reference 100.200 CHARTER BOARD POLICY for the recommended policy to address the management of cash, checks, and credit cards.*

## 100.110 ELECTRONIC SIGNATURES

**A. Legal Recognition of Electronic Signatures and Electronic Contracts** Unless prohibited by other law, with respect to any transaction in or affecting intrastate, interstate, or foreign commerce—

1. a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and
2. *a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.*

[15 U.S.C.A. § 7001](#); [Tex. Bus. & Com. Code § 322.007](#).

### **B. Definition of Electronic Signature**

The term “electronic signature” means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.

[15 U.S.C.A. § 7006](#) ; [Tex. Bus. & Com. Code § 322.002 \(7\)](#).

### **C. Record Retention**

If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record that (1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and (2) remains accessible for later reference.

[Tex. Bus. & Com. Code § 322.012](#).

## **100.120. CAPITAL ASSETS**

### **A. Definition of Capital Asset**

A capital asset is an asset that is:

1. Tangible in nature;
2. Has a life that exceeds one year;
3. Of significant value (\$5,000 per unit or a lower amount designated by the charter holder board of directors); and
4. Reasonably identified and controlled through a physical inventory system.

Examples include: land, buildings, machinery, and furniture.

[\*Rule 1.2.4, Texas Education Agency, Special Supplement to the Financial Accountability System Resource Guide, Charter Schools, Update 5.0 \(January 2010\).\*](#)

### **B. Accounting for Capital Assets**

1. Accurate Records. Charter schools must maintain accurate records of capital assets. Those records must contain the following information:
  - a. A description of the capital asset;
  - b. Identification number (e.g. manufacturer's serial number, model number, federal stock number, national stock number);
  - c. Local state, and/or federal funds used to acquire the capital asset;
  - d. Who has title to the asset (charter school, state government, or the federal government);
  - e. Date of acquisition or date asset was received;
  - f. The cost;
  - g. Information indicating the percentage of state and/or federal participation in the cost of the asset (not applicable to donated equipment);
  - h. Location and condition of the capital asset and the date the information was reported (e.g. date of the last physical inventory taken by the charter school); and
  - i. Information containing the ultimate disposition of the data. This should include the disposal date, sales price or method used to determine current fair market value where a charter school compensates the federal awarding agency for its share.

2. Physical Inventory. A physical inventory must take place once every two years to determine whether or not the capital asset still exists and if it is still in use.

[Rule 1.2.4.9, Texas Education Agency, Special Supplement to the Financial Accountability System Resource Guide, Charter Schools, Update 5.0 \(January 2010\).](#)

3. Reporting. All capital assets, along with the ownership interest of local, state, and federal parties in the capital assets, must be identified by the charter holder in an exhibit which is added to the annual audit report submitted to the Texas Education Agency. A reconciliation of amounts must also be included with the exhibit if the exhibit amounts differ from the amounts reported on the applicable statement of financial position.

Instead of an exhibit, a charter holder may include a note of disclosure stating that all property acquired during the term of the charter, and all property presently held by the charter holder, may be considered public property.

[Rule 1.2.4.10, Texas Education Agency, Special Supplement to the Financial Accountability System Resource Guide, Charter Schools, Update 5.0 \(January 2010\).](#)

## 100.140. INVESTMENT OF STATE FUNDS

The following provisions apply to charter holders unless alternative requirements have been submitted by the charter holder to the State Board of Education (“SBOE”), have received approval from the SBOE, and the commissioner of education has amended the charter contract to adopt the approved procedures.

### A. Compliance

Charter holders shall invest state funds in accordance with [Texas Government Code, §§2256.009–2256.016](#)

1. State funds invested shall be maintained in a discrete charter investment account, separate and distinct from the operating accounts for the charter school and separate and distinct from any investment accounts related to non-charter activities.
2. Investments will be made in accordance with any applicable provision or covenant contained in a debt instrument, bond indenture, or similar agreement.
3. Investment of state or federal grants is not authorized unless their investment is expressly authorized under the terms of the grant.

### B. Standards

Investment of state funds shall be made with judgment and care and not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived.

1. Investment of state funds shall be governed by the following objectives, in order of priority:
  - a. Preservation and safety of principal;
  - b. Liquidity; and
  - c. Yield.
2. In determining whether a charter holder, or its employee or agent, has exercised prudence with respect to an investment decision respecting state funds, the determination shall be made taking into consideration:
  - a. The investment of all funds, or funds under the entity’s control, over which the officer had responsibility rather than a consideration as to the prudence of a single investment; and
  - b. Whether the investment decision was consistent with the written investment policy of the entity.**

[19 Tex. Admin. Code §100.1045; Tex. Educ. Code §12.1053\(b\)\(3\); Texas Education Agency, Special Supplement to the Financial Accountability System Resource](#)

### **C. Authorized Investments**

1. Obligations of or guaranteed by a governmental entity:
  - a. Obligations, including letters of credit, of the United States or its agencies and instrumentalities;
  - b. Direct obligations of the state of Texas or its agencies and instrumentalities;
  - c. Collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States;
  - d. Other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, the state of Texas, the United States, or their respective agencies and instrumentalities, including obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation or by the explicit full faith and credit of the United States;
  - e. Obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent;
  - f. Bonds issued, assumed, or guaranteed by the State of Israel.

[Tex. Gov't Code §2256.009\(a\).](#)

2. Certificates of Deposit and Share Certificates
  - a. A certificate of deposit or share certificate is an authorized investment if the certificate is issued by a depository institution that has its main office or a branch office in Texas and is:
    - i. guaranteed or insured by the Federal Deposit Insurance Corporation or its successor or the National Credit Union Share Insurance Fund or its successor;
    - ii. secured by obligations that are described above in Section (C)(1), including mortgage backed securities directly issued by a federal agency or instrumentality that have a market value of not less than the principal amount of the certificates; or
    - iii. secured in any other manner and amount provided by law for deposits of the investing entity.
  - b. In addition to the authority to invest funds in certificates of deposit under Subsection (a), an investment in certificates of deposit made in accordance with the following conditions is an authorized investment:

- i. the funds are invested by an investing entity through:
  - (1) a broker that has its main office or a branch office in this state and is selected from a list adopted by the investing entity as required by Section 2256.025; or
  - (2) a depository institution that has its main office or a branch office in this state and that is selected by the investing entity;
- ii. the broker or the depository institution selected by the investing entity under Subdivision (1) arranges for the deposit of the funds in certificates of deposit in one or more federally insured depository institutions, wherever located, for the account of the investing entity;
- iii. the full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States; and
- iv. the investing entity appoints the depository institution selected by the investing entity under Subdivision (1), an entity described by the Texas Government Code Section 2257.041(d), or a clearing broker-dealer registered with the Securities and Exchange Commission and operating pursuant to Securities and Exchange Commission Rule 15c3-3 (17 C.F.R. Section 240.15c3-3) as custodian for the investing entity with respect to the certificates of deposit issued for the account of the investing entity.

[Tex. Gov't Code § 2256.010.](#)

- 3. Fully collateralized Repurchase Agreements that:
  - a. has defined termination date,
  - b. is secured by a combination of cash and obligations of the United States or its agencies and instrumentalities;
  - c. requires the securities being purchased by the entity, or cash held by the entity, to be pledged to the entity, held in the entity's name, and deposited at the time the investment is made with the entity or with a third party selected and approved by the entity; and
  - d. is placed through a primary government securities dealer, as defined by the Federal Reserve or a financial institution doing business in Texas.
  - e. The term of any reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered.

- f. Money received by the school under the terms of a reverse security repurchase agreement shall be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.

[Tex. Gov't Code § 2256.011.](#)

4. Banker's Acceptance

A banker's acceptance is an authorized investment if it:

- a. Has a stated maturity of 270 days or fewer from the date of issuance;
- b. Will be liquidated in full at maturity;
- c. Is eligible for collateral for borrowing from a Federal Reserve Bank; and
- d. Is accepted by a bank organized and existing under the laws of the United States or any state, if the short-term obligations of the bank, or of a bank holding company of which the bank is the largest subsidiary, are rated not less than A-1 or P-1 or an equivalent rating by at least one nationally recognized credit rating agency.

[Tex. Gov't Code § 2256.012.](#)

5. Commercial Paper

Commercial paper is an authorized investment if it:

- a. Has a stated maturity of 270 days or fewer from the date of issuance;
- b. Is rated not less than A-1 or P-1 or an equivalent rating by at least two nationally recognized credit rating agencies or by one nationally recognized credit rating agency and is fully secured by an irrevocable letter of credit issued by a bank organized and existing under U. S. law or the law of any state.

[Tex. Gov't Code § 2256.013.](#)

6. Mutual Funds

- a. No-load money market mutual funds are authorized if they:
  - i. Are registered with and regulated by the Securities and Exchange Commission (SEC);
  - ii. Provide the school with a prospectus and other information required by the Securities and Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*);
  - iii. Have a dollar-weighted average stated maturity of 90 days or fewer; and

- iv. Include in their investment objectives the maintenance of a stable net asset value of \$1 for each share.
- b. No-load market mutual funds that:
- i. Are registered with the SEC;
  - ii. Have an average weighted maturity of less than two years;
  - iii. Are invested exclusively in obligations approved by the Public Funds Investment Act ([Government Code, Chapter 2256](#));
  - iv. Are continuously rated by at least one nationally recognized investment rating firm of not less than AAA or its equivalent; and
  - v. Conform to the requirements in [Tex. Gov't Code § 2256.016\(b\)](#) and (c) relating to the eligibility of investment pools to receive and invest funds of investing entities.
- c. Limitations – the school may not invest:
- i. In the aggregate more than 15% of its monthly average fund balance, excluding bond proceeds and reserves and other funds held for debt service, in mutual funds described above in subsection (6)(b);
  - ii. Any portion of the bond proceeds, reserves, and funds held for debt service, in mutual funds described above in subsection (6)(b)
  - iii. Funds or funds under its control, including bond proceeds and reserves and other funds held for debt service, in any one mutual fund described above in subsection (6)(b) in an amount that exceeds 10% of the total assets of the mutual fund.

[Tex. Gov't Code § 2256.014.](#)

7. Guaranteed Investment Contracts

A guaranteed investment contract, as an investment vehicle for bond proceeds, is authorized if:

- a. It has a defined termination date;
- b. It is secured by obligations described by [§ 2256.009\(a\)\(1\)](#), Tex. Gov't Code, excluding those obligations described by [§ 2256.009\(b\)](#), in an amount at least equal to the amount of bond proceeds invested under the contract;

- c. It is pledged to the school and deposited with the school or with a third party selected and approved by the school's governing body;
- d. The board has specifically authorized guaranteed investment contracts as eligible investments in the order, ordinance, or resolution authorizing the issuance of bonds;
- e. The school has received bids from at least three separate providers with no material financial interest in the bonds from which proceeds were received;
- f. The school has purchased the highest yielding guaranteed investment contract for which a qualifying bid is received;
- g. The price of the guaranteed investment contract must take into account the reasonably expected drawdown schedule for the bond proceeds to be invested. The provider must certify the administrative costs reasonably expected to be paid to third parties in connection with the guaranteed investment contract.

[Tex. Gov't Code § 2256.015.](#)

#### 8. Public Fund Investment Pools

- a. Investment in a public funds investment pool is authorized if:
- b. The pool complies with the requirements of the Public Funds Investment Act; and
- c. The board has authorized the investment in the particular pool by resolution.

[Tex. Gov't Code § 2256.016\(a\).](#)

#### **D. Unauthorized Investments**

- 1. Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;
- 2. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;
- 3. Collateralized mortgage obligations that have a stated final maturity date of greater than 10 years;
- 4. Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

Bond proceeds, other than bond proceeds representing reserves and funds maintained for debt service purposes, may not be invested in a guaranteed investment contract with a term longer

than five years from the date of issuance of the bonds.

[Tex. Gov't Code § 2256.009\(b\); Tex. Gov't Code § 2256.015\(b\).](#)

## **100.160. PAYROLL**

### **A. Texas Payday Act**

#### 1. Paydays

- a. At a minimum, charter schools must pay employees that are exempt from the overtime pay provisions of the Fair Labor Standards Act of 1938 once a month. Employees that are not exempt from such provisions must be paid at least twice a month. If wages are paid twice a month, each pay period must consist, as much as possible, of an equal number of days.
- b. A charter school must designate paydays in accordance with (1)(a). If paydays are not designated, then employer's paydays are the first and 15th of each month. Charter schools must post in the workplace, in a place likely to attract attention, a notice indicating the paydays.
- c. Charter schools must pay an employee who is not paid on a payday for any reason on another regular business day on the employee's request.
- d. Charter schools must pay in full an employee who is discharged from employment not later than the sixth day after the date the employee is discharged. An employee who leaves employment for a reason other than by discharge must be paid not later than the next regularly scheduled payday.

[Tex. Labor Code §§61.011–61.014.](#)

#### 2. Form of payment

- a. An employer shall pay wages to an employee:
  - i. In United State currency;
  - ii. By a written instrument (e.g. check) issued by the employer that is negotiable on demand at full face value for United State currency; or
  - iii. By the electronic transfer of funds.
- b. An employee may agree in writing to receive part or all of the wages in kind or in another form.
- c. Payment by a written instrument that is not negotiable or for which payment is refused for any reason attributable to the employer does not constitute payment of wages.

[Tex. Labor Code §61.016.](#)

3. Delivery of Payment. An employer shall pay wages by:
  - a. delivering them to the employee at the employee's regular place of employment during regular employment hours;
  - b. delivering them to the employee at a time and place agreed on by the employer and employee;
  - c. sending them to the employee by registered mail, to be received by the employee not later than payday;
  - d. delivering them in a matter specified in (a),(b), or (c) to a person designated by the employee in writing;
  - e. delivering them to the employee by any reasonable means authorized by the employee in writing; or
  - f. a direct deposit plan to an employee's financial institution account if:
    - i. the employer has notified each employee that would be affected by this method of payment, at least 60 days before the direct deposit, that the employer is adopting a direct deposit payroll system; and
    - ii. the employer obtains from the employee any information required by the financial institution, in which the employee maintains the account, that is necessary to implement the electronic funds transfer.

[Tex. Labor Code §61.017.](#)

4. Withholding Wages
  - a. A charter school may not withhold or divert any part of an employee's wages unless the charter school:
    - i. is ordered to do so by a court of competent jurisdiction;
    - ii. is authorized to do so by state or federal law; or
    - iii. has written authorization from the employee to deduct part of the wages for a lawful purpose.

[Tex. Labor Code §61.018.](#)

**B. Teacher Retirement System of Texas**

1. Charter school employees who qualify for membership in the Teacher Retirement System of Texas (TRS) shall be covered under TRS to the same extent a qualified employee of a school district is covered.
2. For each employee of the charter school covered under TRS, the charter school is responsible for making any contribution that otherwise would be the legal responsibility of the school district.

[Tex. Educ. Code §12.1057.](#)

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- c. Charter schools must pay an employee who is not paid on a payday for any reason on another regular business day on the employee's request.
- d. Charter schools must pay in full an employee who is discharged from employment not later than the sixth day after the date the employee is discharged. An employee who leaves employment for a reason other than by discharge must be paid not later than the next regularly scheduled payday.

[Tex. Labor Code §§61.011–61.014.](#)

#### 2. Form of payment

- a. An employer shall pay wages to an employee:
  - i. In United State currency;
  - ii. By a written instrument (e.g. check) issued by the employer that is negotiable on demand at full face value for United State currency; or
  - iii. By the electronic transfer of funds.
- b. An employee may agree in writing to receive part or all of the wages in kind or in another form.
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  - b. delivering them to the employee at a time and place agreed on by the employer and employee;
  - c. sending them to the employee by registered mail, to be received by the employee not later than payday;
  - d. delivering them in a matter specified in (a),(b), or (c) to a person designated by the employee in writing;
  - e. delivering them to the employee by any reasonable means authorized by the employee in writing; or
  - f. a direct deposit plan to an employee's financial institution account if:
    - i. the employer has notified each employee that would be affected by this method of payment, at least 60 days before the direct deposit, that the employer is adopting a direct deposit payroll system; and
    - ii. the employer obtains from the employee any information required by the financial institution, in which the employee maintains the account, that is necessary to implement the electronic funds transfer.

[Tex. Labor Code §61.017.](#)

#### 4. Withholding Wages

- a. A charter school may not withhold or divert any part of an employee's wages unless the charter school:
  - i. is ordered to do so by a court of competent jurisdiction;
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[Tex. Labor Code §61.018.](#)

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1. Charter school employees who qualify for membership in the Teacher Retirement System of Texas (TRS) shall be covered under TRS to the same extent a qualified employee of a school district is covered.
2. For each employee of the charter school covered under TRS, the charter school is responsible for making any contribution that otherwise would be the legal responsibility of the school district.

[Tex. Educ. Code §12.1057.](#)

## 100.180. PROPERTY

### A. Public Property Held in Trust

1. An interest in real estate or personal property acquired, improved, or maintained using state funds that were received by the charter holder on or after September 1, 2001, is public property for all purposes under state law.
2. Special rules apply to property acquired with state funds received before September 1, 2001. See [Texas Administrative Code §100.1065](#).
3. Public property is held by the charter holder in trust for the benefit of the students of the charter school. The members of the governing body of the charter holder and charter school, as well as officers of a charter school, are trustees and each is held to the standard of care and fiduciary duties that a trustee owes the beneficiary of a trust under Texas law. The students enrolled in the charter school are beneficiaries.

[Tex. Educ. Code §12.128](#); [19 Tex. Admin. Code §100.1063\(a\)-\(b\)](#).

### B. Use of Public Property

1. A charter holder/school may use public property only for a purpose for which a school district may use school district property and only to implement a program that is described in the open-enrollment charter and is consistent with the [Texas Education Code §12.102](#). Any use of public property that is inconsistent with this section constitutes misuse and misapplication of such property and is subject to Texas law governing misuse or misapplication of public property.
2. **The governing body of a charter holder shall adopt and enforce local policies governing the use of public property by its employees, agents, contractors, and management companies. The policies shall prohibit the use of public property for any purpose but a program described in the open-enrollment charter. The policies may authorize charter holder employees to use local telephone service, cellular phones, electronic mail, Internet connections, and similar public property for incidental personal use if the policies:**
  - a. **Do not result in any direct cost paid with state funds, or the charter holder is reimbursed for any incurred direct cost;**
  - b. **Do not impede charter school functions;**
  - c. **Do not authorize incidental personal use of public property for private commercial purposes; and**
  - d. **Authorize only incidental amounts of employee time for personal matters.**
3. The governing body of a charter holder shall take a separate vote to approve any joint use of real property for charter and non-charter activities. In the meeting minutes of the vote approving the joint use, the governing body shall set forth the methodology used to

allocate shared costs and the percentage allocation basis between charter and non-charter activities.

4. The members of the governing body of a charter holder and charter school, as well as the officers of a charter school, shall authorize all uses of the public property under their control and shall not authorize a use that is inconsistent with the local policies adopted under (B)(2).
5. If the daily management of public property is delegated to any person, including a management company, the members of the governing body of the charter holder and charter school, as well as the officers of the charter school, remain responsible to authorize all uses of public property and enforce local policies.
6. The board may set and collect rentals, rates, and charges from students and others for the occupancy or use of any of the facilities, in the amounts and manner determined by the board.

[Tex. Educ. Code §12.128; 19 Tex. Admin. Code §100.1063\(c\); Tex. Educ. Code §45.033.](#)

#### **C. Accounting for Public Property**

1. Each charter holder must include in its annual audit report an exhibit identifying the fixed assets of the charter holder and the ownership interest of all parties for all real estate and capitalized property presently held by the charter holder or acquired, improved, or maintained by the charter holder during the term of the open-enrollment charter.
  - a. The annual audit report must separately disclose the cost basis and accumulated depreciation of all public property, and all other property held, acquired, improved, or maintained by the charter holder.
  - b. Instead of the exhibit required by paragraph (a) of this subsection, a charter holder may substitute a statement that all property acquired, improved, or maintained during the term of the open-enrollment charter, and all property presently held by the charter holder, is public property.

[19 Tex. Admin. Code §100.1063\(f\).](#)

#### **D. Purchasing and Selling Real Property**

1. A charter holder may not purchase real property held in trust until the trustee submits to the governing body of the charter holder a copy of the trust agreement identifying the true owner of the property. The trust shall identify the true owner of the property to the charter holder.
2. A charter holder may not sell real property to a trustee until the charter holder receives from the trustee a copy of the trust agreement identifying the person who will be the true owner of the property. The trustee shall identify the person who will be the true owner of the property to the charter holder.
3. A conveyance subject to this section is void if the charter holder fails to comply with

this section.

4. A trust agreement submitted to the governing body of the charter holder is confidential information excepted from the requirements of the Texas Government Code, §552.021, but must be disclosed to the Texas Education Agency under the Texas Administrative Code §100.1029.

[Tex. Admin. Code §100.1071; Tex. Educ. Code §12.1053; Tex. Gov't Code §2252.092.](#)

## 100.200. PURCHASING & CONTRACTING

The laws listed and summarized below apply to an open-enrollment charter school unless the charter school's charter contract otherwise describes procedures for purchasing and contracting and those procedures have been approved by either the State Board of Education or the Commissioner.

- A. Public Works Contracts
  - 1. Chapter 271 of the Texas Local Government Code
  - 2. Chapter 44 of the Texas Education Code
- B. Professional Services, Chapter 2254 of the Texas Government Code
- C. Cooperative Purchasing Programs
- D. Federal Purchasing Requirements
- E. State's Travel Services Contracts Program
- F. Additional Purchasing Options

[Tex. Educ. Code §12.1053.](#)

### A. Public Works Contracts

- 1. Chapter 271, Texas Local Government Code
  - a. General Rule. If the awarding of a contract will involve the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property that will require the expenditure of more than \$50,000 in public funds, a charter holder must comply with Local Government Code, Chapter 271, Subchapter B.
  - b. Exception. A charter holder may amend its charter to include a statement adopting the provisions of Texas Education Code, Chapter 44, Subchapter B, as the charter holder's process for awarding a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property that will require expenditure of more than \$50,000 in public funds. These alternative procedures must be approved by the Commissioner in the form of a charter amendment. (See Part 2 below, Chapter 44, Texas Education Code).

[19 Tex. Admin. Code § 100.103; 19 Tex. Admin. Code § 100.1073;](#)  
[Tex. Loc. Gov't Code § 271.021-.030.](#)

- c. Competitive Bidding. For any contract involving an expenditure of more than \$50,000 on construction, repair, or renovation of a structure, road, highway, or

other non-facility work, the bidding must be accomplished in the manner set forth below:

- i. The charter holder must advertise for bids. The advertisement must include a notice that:
  - (1) Describes the work;
  - (2) States the location at which the bidding documents, plans, specifications, or other data may be examined by all bidders; and
  - (3) States the time and place for submitting bids, and the time and place that bids will be reopened.
- ii. The notice must be published at least twice in a newspaper of general circulation in the county or counties in which the work is to be performed. The second publication must be on or before the 10th day before the first date bids may be submitted.
  - (1) A newspaper of general circulation is one that has more than a de minimis number of subscribers within a particular geographic region, has a diverse subscribership, and contains some news, editorials, and advertisements of a general character and interest to the community.

[Tex. Att’y Gen. Op. No. JC-0223 \(2000\).](#)

- iii. The charter holder must mail a notice, on the date of publication or before the day the first newspaper advertisement is published, containing the information included in the advertisement for bids to any organization that:
  - (1) Requests in advance to receive notices for bids;
  - (2) Agrees in writing to pay the actual cost of mailing the notice; and
  - (3) Certifies that it circulates notices for bids to the construction trade in general.
- iv. Receipt of Bids
  - (1) The charter holder shall provide all bidders with the opportunity to bid on the same items on equal terms and have bids judged according to the same standards as set forth in the specifications.
  - (2) The school shall receive bids in a fair and confidential manner and may receive bids in hard copy format or through electronic transmission.
- v. Opening of Bids

Bids may be opened only by the board at a public meeting or by an officer or employee of the school in an office of the school. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. However, a bidder may withdraw a bid due to material mistake in the bid.

[Tex. Loc. Gov't Code §§271.024 – .026.](#)

- d. Award of Contract
  - i. The charter holder is entitled to reject any bid.
  - ii. The contract must be awarded to the lowest responsible bidder. The contract may not be awarded to a bidder who is not the lowest bidder, unless, before the award, each lower bidder is given notice of the proposed award, and is given an opportunity to appear before the board or the board's designee and present evidence concerning the bidder's responsibility.

[Tex. Loc. Gov't Code §271.027.](#)

- e. Safety Record of the Bidder
  - i. The school may, in determining who is a responsible bidder, take into account the safety record of the bidder if:
    - (1) The board has adopted a written definition and criteria for accurately determining the safety record of a bidder;
    - (2) The board has given 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; and
    - (3) The determinations are not arbitrary and capricious.

[Tex. Loc. Gov't Code §271.0275.](#)

- f. Noncompliance

Unless a charter holder has chosen to amend their charter to expressly state that the Texas Education Code, Chapter 44, Subchapter B, applies, a contract awarded in violation of the Local Government Code, Chapter 271, Subchapter B, is void.

[Tex. Loc. Gov't Code §271.028.](#)

- 2. Chapter 44, Texas Education Code

A charter holder may amend its charter to include a statement adopting the provisions of *Texas Education Code, Chapter 44, Subchapter B*, as the charter holder's process for awarding a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property requiring expenditures over

\$50,000. These alternative procedures must be approved by the Commissioner in the form of a charter amendment.

[Tex. Admin. Code §100.1073\(a\); Tex. Admin. Code §100.103](#)

a. Permissible Methods

For construction services, an open-enrollment charter school that has adopted Subchapter B of Chapter 44 shall follow a method provided by Chapter 2267 of the Texas Government Code. See [Chapter 2269 of the Texas Government Code](#) for applicable, mandatory requirements and procedures.

[Tex. Educ. Code §44.031\(a\)\(5\); Tex. Gov't Code §2269.](#)

b. Delegation of Authority; Notice of Delegation

The board of directors of the open-enrollment charter school may delegate its authority under Chapter 2269 to a designated representative, committee, or other person. The open-enrollment charter school shall provide notice of the delegation, the limits of the delegation, and the name or title of each person to whom such authority has been delegated in the request for bids, proposals, or qualifications or in an addendum to the request.

[Tex. Gov't Code §2269.056; Tex. Gov't Code §2269.053](#)

c. Requisite Selection Criteria; Sealed Proposals/Qualifications

In determining the award of a contract, the open-enrollment charter school shall consider and apply any existing laws or rules related to historically underutilized businesses and laws or rules related to the use of women, minority, small or disadvantaged businesses.

[Tex. Gov't Code §2269.055\(b\)](#)

All bids, proposals or qualifications must be sealed before delivery to the open enrollment charter school.

[Tex. Gov't Code §2269.059](#)

d. Discretionary Selection Criteria

In determining the award of a contract, the open-enrollment charter school may consider:

- i. Price
- ii. Experience and reputation
- iii. Quality of goods and services
- iv. Impact on the ability of the open-enrollment charter school to comply with rules

relating to historically underutilized businesses;

- v. Safety record
- vi. Proposed personnel
- vii. Financial capability is appropriate to the size and scope of the project
- viii. Any other relevant factor specifically listed in the request for bids, proposals or qualifications.

[Tex. Gov't Code §2269.055\(a\)](#)

e. Notice Requirements

The time by when and the place where the bids, proposals or responses to a request for qualifications will be received and opened shall be published in the county in which the open enrollment charter school's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids/proposals/responses to requests for qualifications.

[Tex. Gov't Code §2269.052; Tex. Educ. Code §44.031\(g\)](#)

f. Use of Architect or Engineer

If an architect or engineer is required to be selected or designated for the procurement, the architect or engineer has full responsibility to comply with Chapter 1051 or 1001, Occupations Code, as applicable.

If the selected architect or engineer is not a full-time employee of the charter school, the charter school shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by [§2254.004, Texas Gov't Code.](#)

[Tex. Gov't Code §2269.057](#)

g. Use of Other Professional Services

Independently of the contractor, construction manager-at-risk, or design-build firm, the open-enrollment charter school shall provide for or contract for the construction materials, engineering, testing and inspection services and the verification testing services necessary for the facility. The open-enrollment charter school shall select these services in accordance with [§2254.004, Texas Gov't Code.](#)

[Tex. Gov't Code §2269.058](#)

h. Method Other than Competitive Bidding; Best Value

An open-enrollment charter school that considers a construction contract using a method authorized by Chapter 2269 other than competitive bidding must, before advertising, determine which method provides the best value for the open-

enrollment charter school.

- i. Selection shall be based on applicable criteria listed for the particular method used.
- ii. The open-enrollment charter school shall publish in the RFP or RFQ the criteria that will be used to evaluate the offerors, and the applicable weighted value for each criterion.
- iii. The open-enrollment charter school shall document the basis of its selection and shall make the evaluations public not later than the seventh (7th) day after the date the contract is awarded.

[Tex. Gov't Code §2269.056](#)

- i. **Competitive Bidding**  
Competitive bidding is a procurement method by which an open-enrollment charter school awards the contract to a contractor who is the lowest responsible bidder.
  - i. The open-enrollment charter school shall select or designate an architect or engineer to prepare the construction documents required for the project.
  - ii. The open-enrollment charter school must prepare a request for competitive bids that includes:
    - (1) Construction documents;
    - (2) Estimated budget;
    - (3) Project scope;
    - (4) Estimated project completion date; and
    - (5) Other information that a contractor may require to submit a bid.
  - iii. The open-enrollment charter school shall receive, publicly open, and read aloud the names of the offerors and any monetary proposals made by the offerors.
  - iv. No later than seven (7) days after the date of the award of the contract, the open-enrollment charter school shall document the basis of its decision and make the evaluations public.

[Tex. Gov't Code §§2269.101-106.](#)

- j. **Competitive Sealed Proposals**  
Competitive sealed proposals is a procurement method by which an open-enrollment charter school requests proposals, ranks the offerors, negotiates

as prescribed, and then contracts with a general contractor.

- i. The open-enrollment charter school shall select or designate an architect or engineer to prepare construction documents for the project.
- ii. The open-enrollment charter school shall prepare a request for competitive sealed proposals (RFCSP) that includes:
  - (1) Construction documents;
  - (2) Selection criteria and the weighted value for each criterion;
  - (3) Estimated budget;
  - (4) Project scope;
  - (5) Estimated project completion date; and
  - (6) Other information that a contractor may require to respond to the request.
- iii. The open-enrollment charter school shall receive, publicly open, and read aloud the names of the offerors and any monetary proposals made by the offerors.
- iv. No later than the 45th day after the date on which the proposals are opened, the open-enrollment charter school shall evaluate and rank each proposal submitted in relation to the published criteria.
- v. The open-enrollment charter school shall select the proposal that offers the best value for the school, based on
  - (1) The selection criteria in the RFP and their weighted value; and
  - (2) Its ranking evaluation.
- vi. The open-enrollment charter school shall first attempt to negotiate a contract with the selected offeror. The open-enrollment charter school and its architect or engineer may discuss with the selected offeror options for a scope and time modification and any price change associated with the modification.
- vii. If the open-enrollment charter school is unable to negotiate a contract with the selected offeror, the open-enrollment charter school shall formally end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

[Tex. Gov't Code §§2269.151-155](#)

- k. Construction Manager-Agent (CMA)

Construction Manager-Agent (CMA) is a method by which the open-enrollment charter school contracts with a CMA to provide consultation or administrative services during the design and construction phase and to manage multiple contracts with various construction prime contractors. The CMA serves as the agent for the open-enrollment charter school for such services and the CMA represents the open-enrollment charter school in a fiduciary capacity.

- i. The contract between the CMA and the open-enrollment charter school may require the CMA to provide:
  - (1) administrative personnel;
  - (2) equipment necessary to perform duties;
  - (3) on-site management; and
  - (4) other services specified in the contract.
- ii. The CMA may not:
  - (1) Self-perform any aspect of the construction, rehabilitation, alteration or repair of the facility; or
  - (2) Be a party to a construction subcontract for the construction, rehabilitation, alteration or repair of the facility;
  - (3) Provide or be required to provide performance and payment bonds for the construction, rehabilitation, alteration or repair of the facility.
- iii. On or before the selection of a CMA, the open-enrollment charter school shall select or designate an architect or engineer in accordance with Chapter §1051 or §1001, Occupations Code, as applicable to prepare the construction documents for the project.
- iv. The open-enrollment charter school shall select a CMA on the basis of demonstrated competence and qualifications in the same manner that an architect or engineer is selected under §2254.004 of the Government Code.
- v. The open-enrollment charter school shall procure, in accordance with applicable law, a general contractor, trade contractor or subcontractor who will serve as the prime contractor for their specific portion of the work and provide performance and payment bonds to the open-enrollment charter school in accordance with applicable laws.
- vi. The CMA shall maintain professional liability or errors and omissions insurance in the amount of at least \$1 million for each occurrence.
- vii. The open-enrollment charter school's architect or engineer may not serve,

alone or in combination with another person, as the CMA unless the architect or engineer is hired to serve as the construction manager-agent under a separate or concurrent selection process conducted in accordance with Subchapter E of Texas Government Code. The architect or engineer may provide customary construction phase services under an original professional services agreement in accordance with applicable licensing laws.

[Tex. Gov't Code §§2269.201 - 206](#)

I. Construction Manager-at-Risk (CMR)

The Construction Manager-at-Risk (CMR) is a procurement method by which the open-enrollment charter school contracts with an architect or engineer for design and construction phase services and contracts separately with a CMR to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration or repair of a facility. The CMR assumes the risk for the construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the open enrollment charter school regarding construction during and after the design of the facility. The contracted price may be a guaranteed maximum price.

- i. On or before the selection of a CMR, the open-enrollment charter school shall select or designate an architect or engineer to prepare the construction documents for the project.
- ii. The open-enrollment charter school's architect or engineer, or any entity related to the charter school's architect or engineer, may not serve, alone or in combination with another person, as the CMR.
  - (a) An entity is related to the charter school's architect or engineer if the entity is a sole proprietorship, corporation, partnership, limited liability company, or other entity that is a subsidiary, parent corporation, or partner or has any other relationship in which the charter school's architect or engineer has an ownership interest, or is subject to common ownership or control, or is party to an agreement by which it will receive any proceeds of the construction manager-at-risk's payments from the charter school.
  - (b) The architect or engineer may provide customary construction phase services under an original professional services agreement in accordance with applicable licensing laws.
- iii. The CMR shall be selected in a one-step or two-step process.
  - (1) One Step Process. The open-enrollment charter school shall prepare an RFP that includes:
    - (a) a statement that the selection process is a one-step process

- (b) general information on the project site
  - (c) project scope
  - (d) schedule
  - (e) selection criteria and the weighted value for each criterion
  - (f) estimated budget
  - (g) time and place for receipt of proposals
  - (h) proposed fees and prices for fulfilling the general conditions; and
  - (i) other information that may assist the open-enrollment charter school in its selection of an CMR.
- (2) Two Step Process. The open-enrollment charter school shall prepare an RFP that includes:

Step One:

- (a) a statement that the selection process is a two-step process
- (b) general information on the project site
- (c) project scope
- (d) schedule
- (e) election criteria and the weighted value for each criterion
- (f) estimated budget
- (g) time and place for receipt of proposals; and
- (h) other information that may assist the open-enrollment charter school in its selection of an CMR.

In a two-step process, the open-enrollment charter school may NOT request fees or prices in step one.

Step Two:

The open-enrollment charter school may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the CMR's proposed fee and prices for fulfilling the conditions.

- iv. At each step, the open-enrollment charter school shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, the open-enrollment charter school shall also read aloud the fees and prices, if any, stated in each proposal as it is opened.
- v. Not later than 45 days after the date on which the final proposals are opened, the open-enrollment charter school shall evaluate and rank each proposal submitted in relation to the criteria set forth in the RFP.
- vi. The open-enrollment charter school shall select the proposal that offers the best value for the school based on the published selection criteria and on its ranking evaluation.
- vii. The open-enrollment charter school shall first attempt to negotiate a contract with the selected offeror. If the open-enrollment charter school is unable to negotiate a satisfactory contract with the selected offeror, the open-enrollment charter school shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.
- viii. Not later than the seventh (7th) day after the date the contract is awarded, the open-enrollment charter school shall make the rankings public.
- ix. The CMR shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions.
- x. The CMR may seek to perform portions of the work itself if (1) the CMR submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors; and (2) the open-enrollment charter school determines that the CMR's bid or proposal provides the best value for the school.
- xi. The CMR shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the CMR, architect, engineer, or open-enrollment charter school.
- xii. All bids or proposals shall be made available to the open-enrollment charter school on request and to the public after the later of the award of the contract or the seventh (7th) day after the date of final selection of bids or proposals.
- xiii. The open-enrollment charter school shall compensate the CMR by a change in price, time or guaranteed maximum cost for any additional cost and risk that the CMR occurs because of the open-enrollment charter school's requirement that another bid or proposal be accepted.

### **M. Design-Build Contract**

Design-build is a method by which an open-enrollment charter school contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility. The open-enrollment charter school shall enter into a single contract with a design-build firm for the design and construction of a building or associated structure. The design-build firm must include an architect or engineer and a construction contractor.

- i. The open-enrollment charter school shall select or designate an architect or engineer independent of the design-build firm to act as the school's representative for the duration of the project.
- ii. The open-enrollment charter school shall prepare a request for qualifications that includes:
  - (1) General information on the project site;
  - (2) project scope;
  - (3) budget;
  - (4) special systems;
  - (5) selection criteria and the weighted value for each criterion; and
  - (6) other information that may assist potential design-build firms in submitting proposals for the project.
- iii. The open-enrollment charter school shall also prepare a design criteria package that includes more detailed information on the project. The design criteria package must include a set of documents that provides sufficient information, including criteria for selection, to permit a design-build firm to prepare a response to the open-enrollment charter school's request for qualifications and to provide any additional information requested. The design criteria package must specify criteria the open-enrollment charter school considers necessary to describe the project and may include, as appropriate:
  - (1) the legal description of the site;
  - (2) survey information concerning the site;
  - (3) interior space requirements;
  - (4) special material requirements;
  - (5) material quality standards;
  - (6) conceptual criteria for the project;

- (7) special equipment requirements;
  - (8) cost or budget estimates;
  - (9) time schedules;
  - (10) quality assurance and quality control requirements;
  - (11) site development requirements;
  - (12) applicable codes and ordinances;
  - (13) provisions for utilities;
  - (14) parking requirements; and
  - (15) any other requirement.
- iv. The open-enrollment charter school may not require offerors to submit architectural or engineering designs as part of a proposal or a response to a request for qualifications.
  - v. For each design-build firm that responded to the request for qualifications, the open-enrollment charter school shall evaluate:
    - (1) the firm's experience;
    - (2) technical competence, and capability to perform;
    - (3) the past performance of the firm and members of the firm; and
    - (4) other appropriate factors submitted by the firm in response to the request for qualifications.
  - vi. The open-enrollment charter school may not use cost-related or price-related evaluation factors to evaluate the design-build firm.
  - vii. Each firm must certify to the open-enrollment charter school that each architect or engineer that is a member of the firm was selected based on demonstrated competence and qualifications, in the manner provided by §2254.004, Government Code.
  - viii. The open-enrollment charter school shall qualify a maximum of five responders to submit proposals that contain additional information and, if the open-enrollment charter school chooses, to interview for final selection.
  - ix. The open-enrollment charter school shall evaluate the additional information

submitted by the offerors on the basis of the selection criteria stated in the RFQ and the results of any interview.

- x. The open-enrollment charter school may request additional information regarding
  - (1) demonstrated competence and qualifications,
  - (2) considerations of the safety and long-term durability of the project,
  - (3) the feasibility of implementing the project as proposed,
  - (4) the ability of the offeror to meet schedules, or costing methodology (which is defined in §2269.307(e) and does not include a guaranteed maximum price or bid for overall design or construction).
- xi. The open-enrollment charter school shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications.
- xii. The open-enrollment charter school shall select the design-build firm that submits the proposal offering the best value for the open-enrollment charter school on the basis of the published selection criteria and on its ranking evaluations.
- xiii. The open-enrollment charter school shall first attempt to negotiate a contract with the selected firm. If the school is unable to negotiate a satisfactory contract with the selected firm, the open-enrollment charter school shall, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.
- xiv. Not later than the seventh (7th) day after the date the contract is awarded, the open-enrollment charter school shall make the rankings public.
- xv. After selection of the design-build firm, that firm's architects or engineers shall submit all design elements for review and determination of scope compliance to the open-enrollment charter school or the open-enrollment charter school's architect or engineer before or concurrently with construction.

[Tex. Gov't Code §§2269.301-309](#)

- n. 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.
- i. The open enrollment charter school may award job order contracts for the maintenance, repair, alteration, renovation, remediation, or minor construction

of a facility if:

- (1) the work is of a recurring nature but the delivery times are indefinite; and
  - (2) indefinite quantities and orders are awarded substantially on the basis of prescribed and prepriced tasks.
- ii. The open-enrollment charter school shall establish the maximum aggregate contract price when it advertises the proposal.
  - iii. The governing body of a open-enrollment charter school shall approve each job, task, or purchase order that exceeds \$500,000.
  - iv. The open-enrollment charter school may establish contractual unit prices for a job order contract by:
    - (1) specifying one or more published construction unit price books and the applicable divisions or line items; or
    - (2) providing a list of work items and requiring the offerors to propose one or more coefficients or multipliers to be applied to the price book or prepriced work items as the price proposal.
  - v. An open-enrollment charter school may use the competitive sealed proposal method for job order contracts.
  - vi. The open-enrollment charter school shall advertise for, receive, and publicly open sealed proposals for job order contracts.
  - vii. The open-enrollment charter school may require offerors to submit information in addition to rates, including experience, past performance, and proposed personnel and methodology.
  - viii. The open-enrollment charter school may award job order contracts to one or more job order contractors in connection with each solicitation of proposals.
  - ix. A job order contract may be used to accomplish work only for the open-enrollment charter school that awards the contract unless:
    - (1) the solicitation for the job order contract and the contract specifically provide for use by other persons; or
    - (2) the open-enrollment charter school enters into an interlocal agreement that provides otherwise.
  - x. If a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of architec-

ture within the meaning of Chapter 1051, Occupations Code, or the practice of engineering within the meaning of Chapter 1001, Occupations Code, the open-enrollment charter school shall select or designate an architect or engineer to prepare the construction documents for the project. Subsection (a) does not apply to a job order contract or an order issued under the contract for industrialized housing, industrialized buildings, or relocatable educational facilities subject to and approved under Chapter 1202, Occupations Code, if the contractor employs the services of an architect or engineer who approves the documents for the project.

- xi. The base term for a job order contract may not exceed two years. The open-enrollment charter school may renew the contract annually for not more than three additional years.
- xii. An order for a job or project under a job order contract must be signed by the open-enrollment charter school's representative and the contractor. The order may be:
  - (1) a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities; or
  - (2) a unit price order based on the quantities and line items delivered.

[Tex. Gov't Code §§2269.401-11](#)

## **B. Professional Services**

The following provisions apply to the purchase of professional services unless a charter specifies alternative procedures which are approved by the State Board of Education and the open-enrollment charter is amended by the Commissioner of education to adopt the approved procedures.

[Tex. Educ. Code § 12.1053\(a\); 19 Tex. Admin. Code § 100.1205\(a\).](#)

- 1. "Professional services" means services:
  - a. Within the scope of the practice, as defined by state law, of:
    - i. Accounting;
    - ii. Architecture;
    - iii. Landscape architecture;
    - iv. Land surveying;
    - v. Medicine;

- vi. Optometry;
  - vii. Professional engineering;
  - viii. Real estate appraising; or
  - ix. Professional nursing
- b. Provided in connection with the professional employment or practice of a person who is licensed or registered as:
- i. A certified public accountant;
  - ii. An architect;
  - iii. A landscape architect;
  - iv. A land surveyor;
  - v. A physician, including a surgeon;
  - vi. An optometrist;
  - vii. A professional engineer;
  - viii. A state certified or state licensed real estate appraiser; or
  - ix. A registered nurse.

[Tex. Gov't Code § 2254.002\(2\); 19 Tex. Admin. Code § 100.1205\(c\).](#)

2. Selection of Provider

The charter holder/school shall select a provider of professional services on the basis of:

- a. Demonstrated competence and qualifications to perform the services; and
- b. For a fair and reasonable price.

[Tex. Gov't Code § 2254.003\(a\).](#)

3. Fees

Professional fees under a contract

- a. Must be consistent with, and not higher than the recommended practices and fees published by the applicable professional associations; and

- b. May not exceed any maximum provided by law.

[Tex. Gov't Code § 2254.003\(b\).](#)

4. Award of Certain Contracts

a. Most Highly Qualified Provider

In procuring architectural, engineering, or land surveying services, the school shall:

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

b. Next Most Highly Qualified

If a satisfactory contract cannot be negotiated with the most highly qualified provider, the school shall:

- i. Formally end negotiations with that provider;
- ii. Select the next most highly qualified provider; and
- iii. Attempt to negotiate a contract with that provider at a fair and reasonable price.

c. Subsequent Negotiations

The school shall continue the process described in subparagraph (B) above, to select and negotiate with providers, until a contract is entered into.

[Tex. Gov't Code § 2254.004.](#)

5. Void Contract

A contract entered into, or an arrangement made in violation of Section 2254 of the Texas Government Code is void.

[Tex. Gov't Code § 2254.005.](#)

**C. Cooperative Purchasing Programs**

1. State Purchasing Programs

- a. If a school has amended its charter to provide for cooperative purchasing, the school may participate in the state cooperative purchasing program.

[19 Tex. Admin. Code § 100.1201\(1\).](#)

b. TBPC Program and Services

The Texas Building and Procurement Commission (TBPC) shall establish a program by which it performs purchasing services for local governments. The services

must include:

- i. The extension of state contract prices to participating local governments when the TBPC considers it feasible;
  - ii. Solicitation of bids on items desired by local governments if the solicitation is considered feasible by the TPBC and is desired by the school; and
  - iii. Provision of information and technical assistance about the purchasing program.
- c. Participation
- The school may participate in the purchasing program of the TBPC, including reverse auction procedures as defined by Texas Gov't Code § 2155.062(d), by filing with the TBPC a resolution adopted by the board requesting that the school be allowed to participate on a voluntary basis, and to the extent TBPC deems feasible, and stating that the school will:
- i. Designate an official to act for the school in all matters relating to the program, including the purchase of items from the vendor under any contract, and that the board will direct the decisions of the representative;
  - ii. Be responsible for:
    - (1) Submitting requisitions to the TBPC under any contract; or
    - (2) Electronically sending purchase orders directly to vendors, or complying with TBPC procedures governing a reverse auction purchase, and electronically sending to the commission reports on actual purchases made under these procedures;
    - (3) Be responsible for making payment directly to the vendor;
    - (4) Be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.
- d. Effect of TBPC Purchases
- Purchasing an item through the TBPC satisfies any state law requiring competitive bidding.

[Tex. Loc. Gov't Code §§ 271.082–271.083.](#)

## 2. Local Purchasing Programs

If a school has amended its charter to provide for cooperative purchasing, the school may participate in cooperative purchasing programs with local governments.

[19 Tex. Admin. Code § 100.1201\(2\).](#)

- a. Definitions:
  - i. Local cooperative organization: An organization of governments established to provide local governments access to contracts with vendors for the purchase of materials, supplies, services, or equipment.
  - ii. Local government: A county, municipality, special district, school district, junior college district, a local workforce development board, or other legally constituted political subdivision of the state.
- b. Cooperating Purchasing Program
 

The school may participate in a cooperative purchasing program with a local government or a local cooperative organization. If the school participates in such a program, it may sign an agreement with a local government or a local cooperative organization stating that the signing parties will:

  - i. Designate a person to act under the direction of, and on behalf of, that entity in all matters relating to the program;
  - ii. Make payments to a participating entity or directly to a vendor under the cooperative purchasing contract, as provided in the agreement; and
  - iii. Be responsible for a vendor's compliance with provisions relating to the quality of items and terms of delivery, to the extent provided by the agreement.
- c. Effect of Agreement
 

A school that enters into a contract described in this policy satisfies any state law requiring competitive bidding for the purchase of goods or services.

[Tex. Loc. Gov't Code §§271.101-.102.](#)

3. Federal Purchasing Program
 

If a school has amended its charter to provide for purchasing through the federal General Services Administration (GSA), the school may participate in GSA programs.

[19 Tex. Admin. Code §100.1201\(3\).](#)

To the extent permitted by federal law, the school may purchase goods or services under federal supply schedules of the United States GSA.

[Tex. Loc. Gov't Code §271.103.](#)

4. Intercept Agreements
 

If the school has amended its charter to provide for intercept agreements, the school may enter into such an agreement with the Texas Bond Review Board and the Comptroller of Public Accounts to increase its credit rating.

[Tex. Admin Code §100.1201\(4\).](#)

#### **D. Federal Purchasing Requirements**

When using federal grant funds for purchasing goods and services, the charter school shall follow the policy adopted by the Board, reflected in Board Policy Section 100.080, Federal Fiscal Compliance.

#### **E. State's Travel Services Contracts Program**

An officer or employee of an open-enrollment charter school who is engaged in official business may participate in the Texas Comptroller's State Travel Management Program.

[Tex. Gov't Code §2171.055\(f\).](#)

#### **F. Additional Purchasing Options**

1. Interlocal Contracting Authority
  - a. An open-enrollment charter school is considered to be a local government for purposes of Chapter 791, Texas Government Code. TEX. EDUC. CODE § 12.1058 (a); [84th Leg., R. S. HB1170](#)
  - b. A local government may contract or agree with another local government or federally recognized Indian tribe whose reservation is located within the boundaries of the State of Texas to perform governmental functions and services. [TEX. GOV'T CODE §791.011 \(a\)](#).
  - c. A party to an interlocal contract may contract with a state agency or a similar agency of another state. [TEX. GOV'T CODE §791.011 \(b\)](#).
  - d. An interlocal contract must be (1) authorized by the governmental body of each party to the contract, (2) state the purpose, terms, rights, and duties of the contracting parties; and (3) specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party. [TEX. GOV'T CODE §791.011 \(d\)](#).
  - e. An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract. [TEX. GOV'T CODE §791.011 \(e\)](#).
  - f. To supervise the performance of an interlocal contract, the parties to the contract may (1) create an administrative agency, (2) designate an existing local government, or (3) contract with a third party organization that qualifies for federal tax exemption and meets additional criteria under state law. [TEX. GOV'T CODE §791.013](#).
  - g. A local government and an institution of higher education or university system may contract with one another to perform any governmental functions and services. [TEX. GOV'T CODE §791.035](#).

## 2. Self-Insurance Fund

- a. An open-enrollment charter school is considered to be a local government for purposes of Chapter 2259, Texas Government Code, except that a charter school may not issue public securities as authorized in Section 2259.031(b)(1). TEX. EDUC. CODE § 12.1058 (a); [84th Leg., R. S. HB1170](#)
- b. A governmental unit may establish a self insurance fund to protect the governmental unit and its officers, employees, and agents from any insurable risk or hazard. TEX. GOV'T CODE § 2259.031 (a).
- c. An open-enrollment charter school that establishes such a self-insurance fund may
  - i. use any money available to the charter school for the fund, TEX. GOV'T CODE § 2259.031 (b)(2); and
  - ii. purchase reinsurance for a risk covered through the fund; TEX. GOV'T CODE § 2259.031 (c)
- d. Any law, including a regulation, requiring insurance may be satisfied by coverage provided through the fund. TEX. GOV'T CODE § 2259.031 (d).
- e. Any law, including a regulation, requiring a certificate of insurance or an insurance agency's signature may be satisfied by a certificate of coverage issued on behalf of the charter school demonstrating that coverage is provided through the fund. TEX. GOV'T CODE § 2259.031 (e).

## 3. Uniform Group Benefits Program.

- a. An open-enrollment charter school is considered to be a political subdivision for the purposes of Chapter 172, Texas Local Government Code. TEX. EDUC. CODE § 12.1058 (a); [84th Leg., R. S. HB1170](#)
- b. A political subdivision or a group of political subdivisions pursuant to an interlocal contract under Chapter 791, Government Code directly or through a risk pool may provide health and accident coverage for officials, employees, and retirees or for any class of officials, employees or retirees, and employees of affiliated service contractors. The types of coverage that may be provided include group health and accident, group dental, accidental death and dismemberment, and hospital, surgical, and medical expense. Dependents also may be covered. [TEX. LOC. GOV'T CODE § 172.004](#)
- c. An open-enrollment charter school that participates in such a program may pay all or part of the contributions for coverage from local funds, including federal grant or contract pass-through funds, that are not dedicated by law to some other purpose. [TEX. LOC. GOV'T CODE § 172.013](#)

- d. An open-enrollment charter school may also pay all or part of the contributions for coverage for officers, employees, retirees, and dependents, but not pay any part of the contributions for coverage for employees of affiliated service contractors or their dependents. [TEX. LOC. GOV'T CODE § 172.013](#).

#### 4. Workers Compensation Coverage

- a. An open-enrollment charter school may elect to extend workers' compensation benefits to employees of the school through any method available to a political subdivision under Chapter 504, Labor Code. An open-enrollment charter school that elects to extend workers' compensation benefits as permitted under this subsection is considered to be a political subdivision for all purposes under Chapter 504, Labor Code. An open-enrollment charter school that self-insures either individually or collectively under Chapter 504, Labor Code, is considered to be an insurance carrier for purposes of Subtitle A, Title 5, Labor Code. TEX. EDUC. CODE § 12.0158 (a); [84th Leg., R. S. HB1170](#)
- b. A political subdivision must extend workers' compensation benefits to its employees by (1) becoming a self-insurer; providing insurance under a workers' compensations insurance policy; or (3) entering into an interlocal agreement with other political subdivisions providing for self-insurance. [TEX. LABOR CODE §504.015](#)