



Audit of the Procurement Process for Bond Program Management Advisory Services (RFQ #17-069)

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Audit Plan Code: 18-01.01.1

No District or state violations were found. However, we identified practices and indicators that, based on procurement best practices, give the appearance the pre-solicitation and evaluation phases were not conducted in a strategic, transparent, ethical, and/or impartial manner.



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Abbreviations

ACFE	Association of Certified Fraud Examiners
BOT	Board of Trustees
CAP	Corrective Action Plan
CBAC	Citizens' Bond Advisory Committee
COS	Chief of Staff
DSFO	Deputy Superintendent of Finance and Operations
EPISD	El Paso Independent School District
FASRG	Financial Accountability System Resource Guide
IIA	Institute of Internal Auditors
NIGP	National Institute of Government Purchasing
ORR	Open Records Request
RFQ	Request for Qualifications
SOP	Standard Operating Procedures
TASBO	Texas Association of School Business Officials
TEA	Texas Education Agency
TEC	Texas Ethics Commission
TS	Technology Services

Refer to Exhibit B for definitions of key words used in this report.



Executive Summary

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We have completed the Audit of the Procurement Process for the Bond Program Management Advisory Services (RFQ #17-069). The objective of the audit was to provide reasonable assurance to the Board of Trustees the procurement process for RFQ #17-069 was conducted in a strategic, transparent, ethical, and impartial manner in accordance with local/state laws and regulations, and best practices. The scope covered the procurement process for RFQ #17-069 from the pre-solicitation phase to the award phase.

The Executive Summary provides, on a summarized basis, the findings discussed throughout the body of the Internal Audit Report that follows. The Internal Audit Report includes background information, detailed findings, recommendations, and exhibits.

Summary of Results

Pre-Solicitation Phase

Finding (#01) We identified some practices that were not in accordance with public procurement best practices, which give the appearance the pre-solicitation phase of the Bond Program Management Advisory Services (RFQ #17-069) was not conducted in a strategic and transparent manner. We found the following:

- 1.1 A needs assessment was not performed or documented for RFQ #17-069.
- 1.2 Key stakeholders were not included or asked to participate in determining whether the District needed Bond Program Management Advisory Services.

Finding (#02) During our audit, we found indicators associated with vendor favoritism, insider information, and bid tailoring which give the appearance the pre-solicitation phase of RFQ #17-069 was not conducted in an impartial and ethical manner. These indicators are a warning of a potential risk and not a certain sign of improprieties.

- 2.1 On April 24, 2017, approximately two and a half weeks before the release of RFQ #17-069, the Superintendent organized and attended a meeting titled "Meeting... (interview of oversight firm)" along with two Gafcon (RFQ #17-069 awarded vendor) representatives, a Board member, the Citizens Bond Advisory Committee (CBAC) chair, and a community member. A meeting with a vendor prior to the release of the RFQ can compromise the appearance of fair treatment and equal opportunity for other vendors who would like to do business with the District.

The Superintendent stated, "I consult with vendors across many sectors about their products and services to determine how and if they will generally fit in our infrastructure and with our framework. In this particular instance, I felt it was appropriate to educate myself to specifically understand the role an oversight company would play with Jacobs and with EPISD staff."

- 2.2 When asked if there were any discussions of a potential contract for oversight services for the EPISD Bond during this meeting, the Superintendent stated, "not that I recall, it was...generally what would a statement of work look like...what would the scope...what would they have to do to be successful...what kind of authority would they have to have...what would it look like...to try to do an oversight right...what would a day to day look like." The April 24, 2017 meeting gives the appearance that the vendor was

avored, had insider information, and was given the opportunity to get a head start on planning and preparing their proposal for this RFQ.

Solicitation Phase

Our audit found the solicitation phase for RFQ #17-069 was conducted in a transparent, ethical, and impartial manner in accordance with District policies and state laws/regulations.

Evaluation Phase

Finding (#03) The internal controls in place, outlined in the District's Procurement Services Purchasing Manual, did not identify risks which give the appearance the evaluation phase of RFQ #17-069 was not conducted in a transparent and impartial manner in accordance with best practices.

- 3.1 An evaluation committee member, the CBAC chair, did not disclose s/he had met with one of the bidding vendors approximately seven weeks prior to the bid evaluation (i.e. the April 24, 2017 meeting). According to Procurement Services and other evaluation committee members, if s/he had disclosed that information, they would have disqualified him/her from scoring or being part of the evaluation committee.
- 3.2 By participating in the evaluation committee, the CBAC chair helped in the selection of a professional service firm. According to their charter, the CBAC can provide counsel and input to administration and the Board. However, the CBAC does not have management responsibilities and is not responsible for the selection of architects, engineers, construction managers, and such other professional service firms.

Finding (#04) We noted a deficiency in an internal control (i.e. procedures, procurement practices) that does not violate District policies and state laws/regulations, but worth mentioning to administration in order to determine as to whether it should be addressed. The current practice does not require Procurement Services staff to inquire as to the role of an interested party (listed on Form 1295 Certificate of Interested Parties) prior to the award phase of the procurement process. Early identification (e.g. during the evaluation phase) of interested parties can help identify indicators of potential procurement improprieties.

Award Phase

Our audit found that the award phase for RFQ #17-069 was conducted in a transparent, ethical, and impartial manner in accordance with District policies and state laws/regulations.

Management's Corrective Action Plan

A Corrective Action Plan (CAP) outlining the activities to be implemented and signed by District management, leadership, and the Superintendent was submitted to Internal Audit. All nine (9) recommendations made by Internal Audit were incorporated into the CAP. The CAP appears to be sufficient to address the findings outlined in this report.

Internal Audit will conduct follow-up reviews to validate CAP activities have been implemented.

Conclusion

Public procurement practices are founded on principles that require open, fair, transparent, and impartial competition and are generally controlled by legislative statutes/codes, such as the Texas Education Code and the Texas Ethics Commission. Acting properly in fact is not sufficient, avoiding the appearance of impropriety is also required. District employees/representatives should constantly be aware of how their actions during the procurement process appear to outside observers to ensure they are not misconstrued as improper.

Our audit found the procurement process for RFQ #17-069 was conducted in accordance with District policies and state laws/regulations. However, we identified practices that give the appearance the pre-solicitation phase was not conducted in a strategic or transparent manner. In addition, we found indicators of vendor favoritism, insider information, and bid tailoring. These indicators, based on procurement best practices, give the appearance the pre-solicitation and evaluation phases were not conducted in a transparent, ethical, and/or impartial manner. To be clear, these indicators are a warning of a potential risk and not a certain sign of improprieties.

“Expenditure of public money requires a strong control environment,” according to the Texas Education Agency. A strong control environment requires an organization actively set an ethical tone at the top around procurement procedures and expectations. The recommendations made in this report, if implemented, will help strengthen the District’s control environment by setting expectations that all District employees and representatives must adhere to the procurement key values of ethics, transparency, impartiality, and accountability.



Internal Audit Report

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Background

On November 8, 2016, El Paso voters approved a \$668.7 million bond aimed at modernizing and right-sizing the District. The Board of Trustees adopted the “Voter Compact” as a resolution to provide voters assurance of the Board’s intent (i) with respect to the use of the proceeds of bonds and (ii) to establish a bond accountability committee to monitor the implementation of the 2016 Bond Projects. Subsequently, the Citizens Bond Advisory Committee (CBAC) was created to provide oversight and make recommendations related to the bond. The CBAC is made up of community members and stakeholders “working on behalf of the community and tax payers.”

On May 10, 2017, a request for qualifications for Bond Program Management Advisory Services (RFQ #17-069) was published seeking various services including oversight of the bond program manager (Jacobs Engineering). During the June 21, 2017 Board meeting, the Board of Trustees approved the award of RFQ #17-069 and authorized Administration to enter into contract negotiations with Gafcon (a construction management company based out of San Diego, California). On August 30, 2017, the District sent a letter to Gafcon stating “in the best interest of the District it has been determined that the solicitation will not be awarded. The District is hereby formally ceasing all negotiations with your firm in regards to this RFQ.” The timeline in **Exhibit A** includes events related to RFQ #17-069 from the pre-solicitation phase to the award phase as well as other significant procurement events with Gafcon that occurred prior to RFQ #17-069.

In September 2017, the El Paso Times published articles raising concerns related to RFQ #17-069. During the September 12, 2017 Board meeting, the Board of Trustees directed Internal Audit to conduct an audit related to the award of Bond Program Management Advisory Services RFQ #17-069. Internal Audit was asked to “deliver on the reality and the facts” of the concerns raised by the local media.

Objective and Scope

The objective of the audit was to provide reasonable assurance to the Board of Trustees the procurement process for the Bond Program Management Advisory Services (RFQ #17-069) was conducted in a strategic, transparent, ethical, and impartial manner in accordance with local/state laws and regulations, and best practices. The scope covered the procurement process for RFQ #17-069 from the pre-solicitation phase to the award phase.

Methodology

To achieve our audit objective, we:

- Researched relevant state laws/regulations, District policies, Procurement Services Purchasing Manual, and procurement best practices.
- Performed a risk assessment over the different procurement phases (pre-solicitation to award) related to RFQ #17-069 based on our understanding of the procurement process and controls in place.
- Performed electronic discovery procedures over thousands of emails and documentation related to RFQ #17-069.

- Reviewed relevant documents submitted as part of various existing open records requests (ORR).
- Interviewed District employees, third-parties, and Board of Trustees who, based on our professional judgement, may have been directly or indirectly involved in any of the procurement phases for RFQ #17-069.
- Analyzed documentation to corroborate statements made by individuals interviewed.
- Tested the solicitation phase to award phase for RFQ #17-069 for compliance with state laws/regulations, District policies, Procurement Services Purchasing Manual, and procurement best practices.

Limitations

Inherent Limitations

The Institute of Internal Auditors Performance Standard 1220 - Due Professional Care states internal auditors, "must exercise due professional care by considering the:

- Extent of work needed to achieve the engagement's objectives,
- Relative complexity, materiality, or significance of matters to which assurance procedures are applied,
- Adequacy and effectiveness of governance, risk management, and control procedures,
- Probability of significant errors, fraud, or noncompliance, and
- Cost of assurance in relation to potential benefits."

"*Due professional care*" implies reasonable care and competence, not infallibility, or extraordinary performance. As such, due professional care requires the internal auditor to conduct examinations and verifications to a reasonable extent. Accordingly, internal auditors cannot give absolute assurance that noncompliance or irregularities do not exist.

Scope Limitation

Our Internal Audit Charter Board Policy CFC (Exhibit) gives us the following authority, "The internal audit activity, with strict accountability for confidentiality and safeguarding records and information, is authorized full, free, and unrestricted access to any and all of the District's records, physical properties, and personnel pertinent to carrying out any engagement. All employees are required to assist the internal audit activity in fulfilling its roles and responsibilities...."

The following represent scope limitations encountered during our audit; however, they did not significantly impact our ability to achieve our audit objective.

1. As part of our electronic discovery procedures, we found instances where personal email accounts and personal file sharing/cloud service storage providers like Google Docs and Dropbox were used to share, communicate, or store District-related information. Administration indicated all records were provided to us. We cannot determine for certain if "any and all" documents/records we requested as part of our testing were provided to us. It is important to note that Internal Audit does not have the authority to subpoena these records.
2. District Technology Services (TS) staff ran email queries on the District's email database using our parameters and provided us the email results. We relied

on the completeness and accuracy of these results based on us providing related parameters, but we did not perform further tests to gain additional comfort.

Results for Pre-Solicitation Phase (1 of 4)

We did not identify District policies or state laws/regulations related to the pre-solicitation phase of the procurement process. As such, we could not determine whether activities performed within this phase were performed in compliance with such criteria.

Finding 01

We identified some practices that were not in accordance with public procurement best practices, which give the appearance the pre-solicitation phase of the Bond Program Management Advisory Services (RFQ #17-069) was not conducted in a strategic and transparent manner.

We found the following:

- A needs assessment was not performed or documented for RFQ #17-069.
- Key stakeholders were not included or asked to participate in determining whether the District needed bond program management advisory services.

1. **Needs Assessment** – According to best practices, strategic procurement should be a District-wide process and involve key stakeholders in the organization to ensure the needs of the District are clearly identified. A needs assessment is an important part of the pre-solicitation phase and is a systematic process for determining and addressing needs.

Superintendent's Response: "To my knowledge, school districts do not utilize a formal needs assessment [related to the procurement process] and EPISD has never used one in my four years at the district. For district wide issues, our process usually includes at least two cabinet members analyzing and deciding whether or not to move forward with a procurement. In this instance, I relied on my discussions with the CBAC chair and Board Member and concluded that we needed additional oversight of employees and Jacob [sic]."

2. **CBAC Involvement** – According to the Superintendent, the CBAC chair was the first one to voice the need for additional oversight. According to the CBAC chair, s/he voiced the need for oversight to the Superintendent based only on personal work experience. S/he stated s/he did not make the recommendation to have oversight on behalf of the CBAC members.

- 2.1 The CBAC chair is the sole spokesperson for the committee; however, according to the CBAC Charter, "Members shall attempt to reach recommendations by consensus. ... if a clear consensus cannot be obtained, recommendations shall be reached by a majority vote of members present." The Superintendent stated that he assumed the CBAC chair had spoken to the CBAC members.

- 2.2 During the October 2017 CBAC meeting, some members expressed concerns the committee was not made aware of RFQ #17-069 (even if this was after-the-fact during the August 2017 meeting). The concern the members raised was they could not respond to questions about RFQ #17-069 from community members.

- 2.3 According to the CBAC website, the committee is responsible for creating a transparent relationship with the public, ensuring all Bond decisions meet the standards voters and taxpayers have come to expect. Although the CBAC does not have decision-making authority, they do have a responsibility to, "...communicate information to the public, and in gathering and assessing public input."
3. **Board of Trustees Involvement** – On April 4, 2017, one Board member expressed his/her desire to "explore the option to have someone independent (internal or contractor) to oversee Jacob's Construction costs projections, project progress, and budget..." and "provide cost updates directly to the BOT...."
- 3.1 One Board member indicated s/he recalls another Board member, the CBAC chair, and a community member brought up discussions about "oversight", but s/he was not involved in any meetings or further discussions about a potential RFQ.
- 3.2 The remaining five Board members became aware of the procurement for bond program management advisory services during the award phase of the related RFQ.
- 3.3 According to the Superintendent, he could foresee the bond program management advisory services vendor reporting to him and the Board and as such, agreed he should have "talked more to the Board" about this RFQ.
4. **Administration Involvement** – The Superintendent stated that after the Board member and CBAC chair identified the need, he did more research and contacted friends in the business. According to the Superintendent, he found that it was not uncommon and "it just made sense" to do the RFQ. The Superintendent communicated another reason for the need for the bond program management advisory services was due to his concerns over "continuity" after the Jacobs Project Manager assigned to the District left the project.

Superintendent's Response: "In early April, Jacobs informed us they were replacing their EPISD project manager. This was within three months of their selection as Program Manager. This alarming development, together with discussions with a Board member and the CBAC chair, led me to strongly believe we needed additional oversight (i.e., continuity of staffing and extra layer of protection for taxpayers.) I called a meeting with Jacobs to discuss our concerns and made it clear I would recommend termination if there was further instability. I also explained I would be making a recommendation for additional oversight."

- 4.1 The Superintendent said he spoke to the Deputy Superintendent of Finance and Operations a few times about it (the RFQ), but admitted "they didn't want it" and "they were very much against it."

Superintendent's Response: "I was not influenced by the Deputy Superintendent of Finance and Operations statements against the RFQ, because I believed she was resistant to the additional oversight of her department. I explained to her that this was not a statement on her ability, rather it was to promote continuity if she left EPISD or could not fulfill her

duties, provided an extra set of eyes on Jacobs and staff and set of engineers that could report directly to the Superintendent and Trustees. I believe this rationale was compelling to her once she realized it was not a statement about her work product or caliber.”

- 4.2 Key members of administration stated they did not feel the oversight services were needed. In addition, the in-house subject matter experts did not participate in any needs assessment or the development of scope of work.

Superintendent’s Response: “As I believed that this was in part to provide for administrative/key stakeholder oversight, I did not believe it was necessary to seek internal approval. Further, as my expectation was that I would serve as the liaison for the Additional Oversight [sic] of the Program Manager I did not believe I needed internal subject matter experts in order to make the decision to begin the RFQ process.”

Refer to Exhibit C for the criteria relevant to this finding.

Finding 02

During our audit, we found indicators associated with vendor favoritism, insider information, and bid tailoring which give the appearance the pre-solicitation phase of the Bond Program Management Advisory Services RFQ #17-069 was not conducted in an impartial and ethical manner. These indicators are a warning of a potential risk and not a certain sign of improprieties.

According to the Texas Education Agency’s (TEA) Financial Accountability System Resource Guide (FASRG), “The competitive nature of the public purchasing arena and the expenditure of significant amounts of public funds require that ethical standards be incorporated into the foundation of all purchasing functions. Purchasing personnel and school district staff face the difficult task of developing good vendor relations and encouraging vendor competition while avoiding even the appearance of favoritism or other ethical misconduct.”

1. On April 24, 2017, approximately two and a half weeks before the release of RFQ #17-069 (May 10, 2017), the Superintendent set up a meeting titled “Meeting... (interview of oversight firm)”. Two Gafcon (RFQ #17-069 awarded vendor) representatives, the Superintendent, a Board member, the CBAC chair, and a community member also attended this meeting. According to the NIGP-The Institute for Public Procurement under Transparency in Public Procurement, “an example of ‘insiders’ would be a department holding a pre-meeting with selected vendors prior to a bid or request for proposals being issued.”

- 1.1 According to the Superintendent, there were no meetings with other vendors bidding for RFQ #17-069. A meeting with a vendor prior to the release of the RFQ can compromise the appearance of fair treatment and equal opportunity for other vendors who would like to do business with the District. The April 24, 2017 meeting gives the appearance the vendor was favored, had insider information, and was given the opportunity to get a head start on planning and preparing their proposal for RFQ #17-069.

- 1.2 When the Superintendent was asked if there were any discussions of a potential contract for oversight services for the EPISD Bond during this meeting, he stated, “not that I recall, it was...generally what would a statement of work look like...what would the scope...what would they

have to do to be successful...what kind of authority would they have to have...what would it look like...to try to do an oversight right...what would a day to day look like.”

1.3 On April 25, 2017 (day after meeting with Gafcon), the Superintendent sent a text to a District consultant stating “...have a new structure/idea for G. I think it will work....” When asked about this text he stated he didn’t remember what it was and his guess was “G” was Gafcon.

1.4 According to the Superintendent:

1.4.1 He “...talks to a lot of vendors on a lot of issues...” in order to “educate” himself, to find out what they can do for the District, and to “know who they are, that’s just the way I do business.”

Superintendent’s Response: “I consult with vendors across many sectors about their products and services to determine how and if they will generally fit in our infrastructure and with our framework. In this particular instance, I felt it was appropriate to educate myself to specifically understand the role an oversight company would play with Jacobs and with EPISD staff.”

1.4.2 He does not “...wine and dine with vendors...I don’t do any of that. No gifts, nothing like that.”

1.4.3 He feels it was appropriate to meet with vendors since he is “...not involved in the procurement process...not involved in selecting the people...not involved in scoring...” and doesn’t “...talk to anyone during the quiet period.”

2. On May 5, 2017, the Superintendent emailed a Scope of Work document to the Chief of Staff. During our interview with the Superintendent, he stated his intent was not to develop the scope of work, but instead “...to give some parameters” and have the Chief of Staff and the Deputy Superintendent Finance and Operations “...work on whatever they thought was best and I don’t think I clarified that with them.” He said the Scope of Work document he prepared was “pretty bare bones,” “pretty generic,” “a starting point,” and that he did not look at it again once he sent it to the Chief of Staff.

2.1 There was confusion among key members of administration as to who developed the scope of work for RFQ #17-069.

2.2 We compared the version of the Scope of Work document for RFQ #17-069 developed by the Superintendent that he emailed to the Chief of Staff to the version sent to Procurement Services to use as the published scope of work for RFQ #17-069. We noted insignificant changes (mainly on formatting).

2.3 We found the Scope of Work document emailed by the Superintendent was nearly identical to what was published by Procurement Services.

3. In the recording of the interview with the El Paso Times, the Superintendent states he obtained information from Gafcon, the CBAC chair, and another member of the community to develop the scope of work.

According to the Association of Certified Fraud Examiners, bid tailoring occurs during the pre-solicitation phase. In bid tailoring, "...an employee with procurement responsibilities drafts bid specifications in a way that gives an unfair advantage to a certain contractor." Common indicators of bid tailoring include (i) socialization or personal contacts among contracting personnel and bidders and (ii) specifications developed by or in consultation with a contractor who is permitted to compete in the procurement.

- 3.1 The Superintendent told us he prepared the Scope of Work document on his own and spent about 30-45 minutes working on it.
- 3.2 In our opinion, it was not clear how the Scope of Work document was developed. When we asked what sources of information were referenced to develop the Scope of Work document, the Superintendent stated he (i) "Googled some stuff on bond oversight," (ii) "looked at a couple of bond program manager contracts," (iii) "started with the Jacobs one... changed a few words...80 plus percent of the words are from our Jacobs RFQ [RFQ 17-001]."
- 3.3 When we asked whether he received anything from Gafcon to help develop the specifications, the Superintendent said he may have "...gotten something on an email...Maybe I got the Gafcon response [to a prior bid], because I remember asking them [District staff] for packets from our specification and some of the responses...I just don't remember."
- 3.4 Internal Audit performed the following comparisons and based on our professional judgment we concluded the following:
 - 3.4.1 We compared the Scope of Work document for RFQ 17-069 developed by the Superintendent to the Bond Program Management Services RFQ #17-001. The terminology between RFQ #17-069 and RFQ #17-001 was materially different. An insignificant number of the words in the Scope of Work document for RFQ #17-069 came from RFQ #17-001.
 - 3.4.2 We compared the Scope of Work document for RFQ #17-069 developed by the Superintendent to a Scope of Services Proposal document provided by Gafcon in 2016, related to a pre-bond General Services Agreement for Program Advisory Services (note that this agreement was never fully executed). We noted that the Scope of Work document for RFQ #17-069 had sections with the same non-standard font and bullet points with similar styles as those used in the Scope of Services Proposal document provided by Gafcon.

Refer to Exhibit C for the criteria relevant to this finding.

Results for Solicitation Phase (2 of 4)

Our audit found the solicitation phase for RFQ #17-069 was conducted in a transparent, ethical, and impartial manner in accordance with District policies and state laws/regulations.

Results for Evaluation Phase (3 of 4)

Finding 03

Procurement activities for RFQ #17-069 related to the evaluation phase were conducted in accordance with District policies and state laws/regulations. However, the internal controls in place (outlined in the District's Procurement Services Purchasing Manual) did not identify risks which give the appearance the evaluation phase of RFQ #17-069 was not conducted in a transparent and impartial manner in accordance with best practices.

1. An evaluation committee member, the CBAC chair, did not disclose s/he had met with one of the bidding vendors approximately seven weeks prior to the bid evaluation (i.e. the April 24, 2017 meeting). According to Procurement Services and other evaluation committee members, if s/he had disclosed that information, they would have disqualified him/her from scoring or being part of the evaluation committee.
2. The Deputy Superintendent of Finance and Operations (DSFO) stated s/he thought s/he and the Chief of Staff (COS) discussed who would serve in the evaluation committee. The COS stated the DSFO selected the members of the evaluation committee. The CBAC chair was selected to be part of the evaluation committee for RFQ #17-069. According to the DSFO and the COS, they were not aware of the April 24, 2017 meeting or that the CBAC chair had attended said meeting.
3. By participating in the evaluation committee, the CBAC chair helped in the selection of a professional service firm.
 - 3.1. The CBAC chair is the sole spokesperson for the CBAC members and thus represented the CBAC when selecting a vendor for RFQ #17-069.
 - 3.2. In working for the general interest of the public, the CBAC is responsible for creating a transparent relationship with the public and ensuring all Bond decisions meet the standards of the voters and taxpayers. According to their charter, the CBAC can provide counsel and input to administration and the Board. However, the CBAC:
 - Does not have management or policy-setting responsibilities,
 - Does not have a fiduciary responsibility to the District, nor are committee members personally liable to the District, and
 - Is not responsible for the selection of architects, engineers, construction managers, and such other professional service firms.
 - 3.3. Ultimately, the District is and will be held accountable for procurement decisions. The District can hold employees accountable for their actions, but cannot do the same for non-employees.

Refer to Exhibit C for the criteria relevant to this finding.

Finding 04

During the course of our audit, we noted a deficiency in an internal control (i.e. procedures, procurement practices) that does not violate District policies and state, laws/regulations, but worth mentioning to administration in order to determine as to whether it should be addressed. Procurement practices do not require Procurement staff to inquire as to the role of an interested party (listed on Form 1295 Certificate of Interested Parties) prior to the award phase of the

procurement process. Early identification of interested parties can help identify indicators of potential procurement improprieties.

1. According to Procurement Services' staff, a detailed review of vendor documents is performed after the award to the vendor has been approved, but prior to executing a contract in accordance with the Texas Government Code.
2. The disclosure of an interested party (i.e. intermediary) by Gafcon on Form 1295 submitted for RFQ #17-069, was only reviewed in more detail by Procurement Services after it was questioned by a Board member.
3. Prior to the Board member's request, no inquiry was made on the person named as an intermediary, and there was a risk the intermediary and its relationship with the vendor could have been overlooked.

Refer to Exhibit C for the criteria relevant to this finding.

Results for Award Phase (4 of 4)

Our audit found that the award phase for RFQ #17-069 was conducted in a transparent, ethical, and impartial manner in accordance with District policies and state laws/ regulations.

Recommendations and Management Response

A Corrective Action Plan (CAP) outlining the activities to be implemented and signed by District management, leadership, and the Superintendent was submitted to Internal Audit. All nine (9) recommendations made by Internal Audit were incorporated into the CAP. The CAP appears to be sufficient to address the findings outlined in this report.

1

The District should develop a Board policy that outlines the District's commitment to procurement key values of ethics, transparency, impartiality, and accountability. The policy should include the following:

- 1.1 Outline the Board's expectations that all employees are expected to ensure all vendors are treated fairly, equally, and receive the same opportunities, so that they may all compete for the District's business on an even basis with the same information and knowledge.
- 1.2 Establish a period of silence that covers the procurement process from the pre-solicitation phase to the award phase, during which vendor visits and meetings are not allowed, to protect the integrity of the procurement process. This will help safeguard the process from undue influences prior to the recommendation of award. Also, it ensures there is no appearance of favoritism nor an opportunity to sway or obtain information on the competitive activity.
- 1.3 A statement which explains that it is not acceptable for a potential/current vendor to participate in determining the scope of work, strategic direction, technical specifications, or evaluation criteria for competitive bids/proposals for which the vendor may be bidding.
- 1.4 Outline the Board's expectations of all employees regarding interactions/communications

with vendors, especially those who may be seeking to bid or are currently going through a bid process.

- 1.5 Employees who do not meet the Board's expectations should be held accountable for their actions.

Management and Leadership Response: Agreed with recommendation and incorporated into the CAP as activities one (1) through six (6).

Person(s) Responsible: Board Policy Committee; General Counsel as Chair of the Board Policy Committee; Deputy Superintendent for Finance and Operations; and Executive Director for Procurement Services

Proposed Implementation Date: March 31, 2018

Based on the Board's expectations regarding interactions/communications with vendors, the District's Procurement Manual should include examples of when it is appropriate and not appropriate to meet with vendors for all employees.

For example (not all inclusive):

It is appropriate to meet with vendors as follows:	It is not appropriate to meet with vendors under the following circumstances:
<ul style="list-style-type: none">When the vendor has an existing contract with the District and there is a need to provide support or updates on service levels.When there are issues with existing contracts that need to be addressed.	<ul style="list-style-type: none">When a bid or competitive activity is likely or in progress.If it is a new vendor seeking to do business with the District, they should be directed to Procurement Services.When new products or information on new products is needed, meeting with a supplier for informational purposes only is acceptable (i) if it does not meet one of the criteria listed above and (ii) it does not create any perceived advantage or commitment.When a special favor or special treatment is requested or you are being pressured to make decisions that do not seem to be in the District's best interest.

Management and Leadership Response: Agreed with recommendation and incorporated into the CAP as activity seven (7).

Person(s) Responsible: Deputy Superintendent for Finance and Operations and Executive Director for Procurement Services

Proposed Implementation Date: March 31, 2018

The Board and the CBAC should have an opportunity to review and comment upon major changes in Bond-funded activities, allocations, and projects prior to final action being taken. The Board should determine the threshold for what a major change entails based on a dollar amount or percentage of the Bond funds.

Management and Leadership Response: Agreed with recommendation and incorporated into the CAP as activity eight (8).

Person(s) Responsible: Deputy Superintendent for Finance and Operations and Executive Director of Planning and Innovative Schools Construction

Proposed Implementation Date: March 31, 2018

4

Define the role, expectations, and responsibilities of a bid owner involved in the bidding process to build ownership and ensure accountability throughout the entire procurement process. This should also include the process to follow if a transfer of ownership is necessary.

Management and Leadership Response: Agreed with recommendation and incorporated into the CAP as activity nine (9).

Person(s) Responsible: Deputy Superintendent for Finance and Operations and Executive Director for Procurement Services

Implementation Date: March 31, 2018

5

A manual, similar to standard operating procedures (SOP), should be developed to support the CBAC Charter. The purpose of it is to provide assistance to CBAC committee members on how to carry out their duties and responsibilities.

Management and Leadership Response: Agreed with recommendation and incorporated into the CAP as activity 10.

Person(s) Responsible: Deputy Superintendent for Finance and Operations and Executive Director for Procurement Services

Implementation Date: March 31, 2018

6

We recommend the District develop procurement ethics training for all employees involved in the procurement process. The following components should be included:

- 6.1 The training should be phase-specific (pre-solicitation, solicitation, evaluation, and award phases).
- 6.2 Training for employees should be tracked using the District's Professional Development System to ensure records are in a central location and available for future audit purposes.
- 6.3 Appropriate and not appropriate District-vendor interactions/communications should be covered in the training, including socialization with vendor scenarios.
- 6.4 Procurement Services' staff should receive procurement ethics training at least on a yearly basis.
- 6.5 Procurement ethics training should be provided to all District employees involved in any of the procurement phases. The frequency of training should be established by administration.
- 6.6 Non-employees should also receive ethics training prior to them serving on any District's evaluation committee. The frequency of training should be established by administration.

Management and Leadership Response: Agreed with recommendation and incorporated into the CAP as activities 11 through 16.

Person(s) Responsible: Deputy Superintendent for Finance and Operations and Executive Director for Procurement Services

Implementation Date: July 1, 2018

7

We recommend the District develop and implement procedures and related internal controls to guide the pre-solicitation phase of the procurement process. These should be incorporated into the District's Procurement Manual. The purpose is to have a consistent procurement process that focuses on transparency and fair competition, which can minimize the risk of ethical misconduct or the appearance of it. The following components should be incorporated:

- 7.1 A formal needs assessment is a procurement best practice and should be performed and documented during the pre-solicitation phase when services/goods reach a dollar limit established by administration:
 - The purpose of the needs assessment should be to evaluate and help determine whether the proposed services/goods are aligned with the District's/Board goals and fits a strategic plan (either financial, instructional, or other).
 - In the long term, a needs assessment can promote transparency of the procurement process, which could lead to improving public confidence that District employees are good stewards of public funds.
 - Professionals, knowledgeable in the services being sought, should participate during the needs assessment in order to ensure all related variables are taken into consideration to identify the need and extent of it. For major initiatives, District key stakeholders should be involved to ensure the needs of the District are clearly identified.
- 7.2 The scope of work should be developed by professionals knowledgeable in the services being sought by the District.

Management and Leadership Response: Agreed with recommendation and incorporated into the CAP as activities 17 through 19.

Person(s) Responsible: Deputy Superintendent for Finance and Operations and Executive Director for Procurement Services

Implementation Date: March 31, 2018

8

We recommend the process followed during the evaluation phase be outlined and documented in the District's Procurement Manual. The purpose is to maintain a consistent level of transparency, fairness, and impartiality during the evaluation phase. The following components should be included:

- 8.1 Establish a period of silence for members serving in an evaluation committee. The purpose is to have members refrain from any communication with any bidder for a defined time period to maintain the integrity, confidentiality, fairness, and impartiality expected for this process.
- 8.2 Develop an evaluation committee member questionnaire for individuals to complete prior to beginning the evaluation selection process. The questionnaire should seek to identify any potential biases or disqualifying information (such as period of silence violations). Individuals should be disqualified from participating in the evaluation committee when appropriate. This questionnaire will complement the conflict of interest control form already in place.
- 8.3 Develop a form that requires bidding vendors to disclose if they have had any contact with District employees or Board members during the period of silence. Contact also includes

providing assistance in developing specifications, scope of work, presentations, or educating/training District employees/Board members. The disclosure should be submitted as part of their bid response. Vendors should be disqualified from bidding when appropriate.

- 8.4 Develop a set of criteria or requirements bid owners should follow when selecting evaluation committee members. Bid owners should select key stakeholders that possess the professional knowledge in the goods/services being sought to obtain the best value for the District.
- 8.5 Incorporate language on whether it is allowable to have non-employees serve in a bid evaluation committee, including a justification for having a non-employee serve in a bid evaluation committee as opposed to having an employee serve. If allowed, expectations, including whether non-employees will abide by same policies and procedures as District employees, should be established and documented in the District's Procurement Manual. Ultimately the District is and will be held accountable for procurement decisions. The District can hold employees/contractors accountable for their actions, but cannot do the same for non-employees.

Management and Leadership Response: Agreed with recommendation and incorporated into the CAP as activities 20 through 25.

Person(s) Responsible: Deputy Superintendent for Finance and Operations and Executive Director for Procurement Services

Implementation Date: March 31, 2018

9

Develop a process to handle filings of the relatively new form Certificate of Interested Parties (Form 1295). Procurement Services should follow-up on (to the best and reasonable extent possible) information listed on this form and share its results with all parties affected as early as possible in the evaluation procurement phase in case it may disqualify a vendor. This process should be included in the District's Procurement Manual.

Management and Leadership Response: Agreed with recommendation and incorporated into the CAP as activity 26.

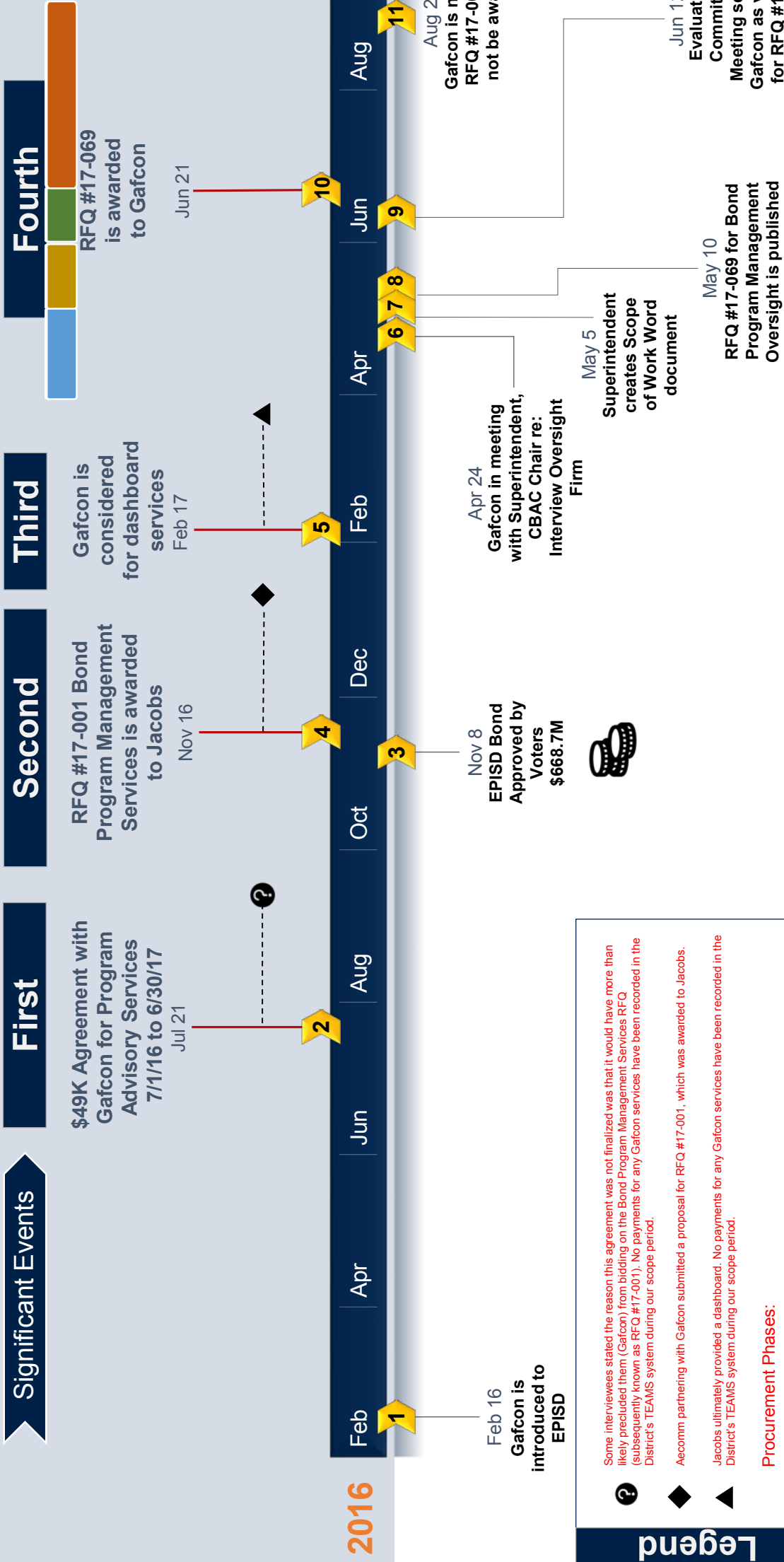
Person(s) Responsible: Deputy Superintendent for Finance and Operations and Executive Director for Procurement Services

Implementation Date: March 31, 2018



Significant Procurement Events between EPISD and Gafcon

February 2016 to August 2017



Legend

Some interviewees stated the reason this agreement was not finalized was that it would have more than likely precluded them (Gafcon) from bidding on the Bond Program Management Services RFQ (subsequently known as RFQ #17-001). No payments for any Gafcon services have been recorded in the District's TEAMS system during our scope period.

Accomm partnering with Gafcon submitted a proposal for RFQ #17-001, which was awarded to Jacobs.

Jacobs ultimately provided a dashboard. No payments for any Gafcon services have been recorded in the District's TEAMS system during our scope period.

Procurement Phases:

Pre-solicitation Solicitation Evaluation Award

Exhibit B – Definitions

Key Words	Definition
Award Phase	Depending on applicable law, the contracting authority will make the final approval for awarding the contract and; verify that the process of evaluation of submitted documentation was conducted properly, ensure that the recommendation of award is sound and correct, and make the final award decision.
Bid Leaking	A term generally used when employees of a procuring entity can leak pre-bid information or confidential information from competing bidders to a favorable bidder, giving that bidder an unfair advantage in the bidding process. The employee does not alter the specifications to suit the vendor, instead he/she gives the favored vendor a head start on planning his bid and preparing for the job.
Bid Tailoring	An employee with procurement responsibilities, often in collusion with a contractor, drafts bid specifications in a way that gives an unfair advantage to a certain contractor.
Certificate of Interested Parties Form 1295	In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016. The commission adopted the Certificate of Interested Parties form (Form 1295) on October 5, 2015.
Citizens' Bond Advisory Committee (CBAC)	The Citizens' Bond Advisory Committee (CBAC) is established by the EPISD Board of Trustees (Trustees) as an ad hoc advisory body of the district. The CBAC is responsible to, reports to, and serves at the will of the Trustees and the Superintendent. The Committee shall inform the Superintendent, Board, and general public (in that order) concerning the District's overall project management and progress of all 2016 Bond Projects.
Evaluation Committee	A committee established to conduct evaluation of proposals during the solicitation process for a specific product or service. Usually composed of representatives from the functional area identified in the scope of work and includes a procurement facilitator.
Evaluation Phase	The evaluation process is the process by which a qualified panel or responsible individual receives, opens and evaluates the requested documentation from potential suppliers. The evaluation process is a complete review of the received proposals based on pre-defined evaluation criteria. The criteria should be comprehensive enough to determine the best value solution for the public body so that a recommendation for award can be made.
Needs Assessment	Generally, procurement actions begin with the procuring entity making a determination of its general needs. These initial determinations include assessments of the types and amounts of goods or services required to meet the entity's needs.
Pre-Solicitation Phase	In the pre-solicitation phase, the procuring entity identifies its needs, develops the bid specifications (what, how much, and how good), determines the method to use for acquiring the goods or services, and develops the criteria used to award the contract.
Procurement Phases	There are four basic phases of the procurement process. They are as follows: pre-solicitation phase, solicitation phase, bid evaluation phase, and award phase.
Solicitation Phase	The solicitation phase involves the bid solicitation, bid preparation, and bid submission. During this phase, the procuring entity prepares the solicitation document, provides notices of solicitation, and issues the solicitation document. After the procuring entity issues the solicitation document, the bidders prepare and submit their bids or proposals.

Exhibit C – Criteria

Criteria listed in order of relevant findings

Criteria No.	Criteria Source	Criteria Details	Relevant Findings
1.	National Institute of Governmental Purchasing (NIGP) Position Paper: The Strategic Value of Procurement in Public Entities	<p>“Strategic procurement planning is the transformation of an organization’s mission, goals, and objectives into measurable activities to be used to plan, budget and manage the procurement function within the organization. The ultimate goal is to bring about positive change in organization culture, systems and operational processes.”</p> <p>In a public entity, procurement strategies should be aligned with the vision, mission, values and goals of the organization. These strategies should further support the needs of the community and key stakeholders, and be designed proactively with the involvement of all levels and units of the public entity. Through a holistic procurement strategy planning process, the organization is better positioned to balance and align resources against the current and future requirements of the community and improve positive outcomes for the organization.</p>	01
2.	El Paso ISD Bond Advisory Committee Charter	<p>2016 Citizens' Bond Advisory Committee Charter</p> <p>Committee Duties and Responsibilities</p> <p>"The Committee provides counsel and input to the administration and the Trustees, but it does not have management or policy-setting responsibilities...the CBAC is not responsible for...D) Directing the activities of staff or consultants... Also, the Committee does not have a fiduciary responsibility to the district, nor are its members personally liable to the district. The CBAC is not responsible for: h) The selection of architects, engineers, construction managers, project managers, and such other professional service firms."...</p> <p>“The Chair shall act as the sole spokesperson for the CBAC.”</p>	01 and 03
3.	Association of Certified Fraud Examiners (ACFE) - Contract and Procurement Fraud	<p>Bid Tailoring</p> <p>Bid tailoring schemes (also known as specifications schemes) occur during the pre-solicitation phase. In these schemes, an employee with procurement responsibilities, often in collusion with a contractor, drafts bid specifications in a way that gives an unfair advantage to a certain Contractor... Some common red flags of bid tailoring include:</p> <ul style="list-style-type: none"> ○ Weak controls over the bidding process ○ Bid specifications and statements of work are tailored to fit the products or capabilities of a single contractor ○ Socialization or personal contacts among contracting personnel and bidders ○ Specifications developed by or in consultation with a contractor who is permitted to compete in the procurement 	02
4.	National Institute of Governmental Purchasing (NIGP): The Institute for Public Procurement Qualifications	<p>Transparency in Public Procurement</p> <p>An example of ‘insiders’ would be a department holding a pre-meeting with selected vendors prior to a bid or request for proposals being issued. Other ‘insider’ examples include refusing to meet with some vendors or failing to answer bid/proposal questions to all by addendum”</p>	02 and 03

Criteria No.	Criteria Source	Criteria Details	Relevant Findings
		Ethics In all actions, reflect the values of the public procurement profession: <ul style="list-style-type: none"> ○ Accountability ○ Ethics ○ Impartiality ○ Professionalism ○ Service ○ Transparency 	
5.	El Paso ISD Procurement Manual	Purchasing Ethics Public purchasing and the expenditure of public funds require that ethical standards be incorporated into every aspect of the District's purchasing functions. Purchasing personnel and school District employees face the difficult task of developing good vendor relations and encouraging vendor competition while avoiding even the appearance of favoritism or other ethical misconduct. In an effort to get the job done successfully and on time, one may be tempted to circumvent policies, procedures, and laws, or make their own liberal "legal" interpretations of existing policies. Such activity, although well intentioned, will cause ethical problems... In 2015, the Texas Legislature adopted House Bill 1295 (HB1295), which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (Form 1295) to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission. <ul style="list-style-type: none"> • The district shall comply with all Texas laws, regulations and Attorney General Opinions related to the purchasing of goods and services. • The district shall comply with all local policies and procedures, such as School Board Policy CH Local and these written purchasing procedures. • For all purchases with federal grant funds, the district shall comply with the federal regulations, EDGAR related to the purchasing of goods and services. [2 CFR 200.317- 200.326] effective July 1, 2018. • All relevant statutes, regulations, board policies and procedures shall be made available to all purchasing stakeholders, as appropriate, in a paper or electronic format. 	02, 03, and 04

Criteria No.	Criteria Source	Criteria Details	Relevant Findings
6.	Procurement Services Purchasing Manual	Purchasing Department Internal Code of Ethics <ol style="list-style-type: none"> 1. Avoid the intent and appearance of unethical or compromising practice in relationships, actions and communications. 2. Demonstrate loyalty to your employer by diligently following the lawful instructions of your employer, using reasonable care and only authority granted. 2. Refrain from any private business or professional activity that would create a conflict between personal interests and those of your employer. 3. Refrain from soliciting or accepting money, loans, credits, discounts, gifts entertainment, favors or services from present or potential suppliers. 4. Handle confidential or proprietary information with due care and proper consideration of ethical and legal ramifications and governmental regulations. 5. Promote positive supplier relationships through courtesy and impartiality. 6. Know and obey the letter and spirit of laws governing the purchasing function and remain alert to the legal ramifications of purchasing decisions. 7. Ensure that all segments of society have the opportunity to participate in district contracts. 8. Discourage purchasing involvement in employer-sponsored programs of personal purchases, which are not business related. 9. Enhance the stature of the purchasing profession by improving your technical knowledge and adhering to the highest ethical standards. 	02, 03, and 04
7.	Texas Education Agency Financial Accountability System Resource Guide (FASRG) 3. Purchasing	3.1.3. Purchasing Ethics The competitive nature of the public purchasing arena and the expenditure of significant amounts of public funds require that ethical standards be incorporated into the foundation of all purchasing functions. Purchasing personnel and school district staff face the difficult task of developing good vendor relations and encouraging vendor competition while avoiding even the appearance of favoritism or other ethical misconduct.	02, 03, and 04
8.	Texas Ethics Commission-Promoting Public Confidence in Government	According to the Texas Ethics Commission, a state agency or other governmental entity must acknowledge the receipt of the filed Form 1295 not later than the 30th day after the date the governing body or state agency receives the Form 1295. www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html	04
9.	Texas Government Code Chapter 2252. Contracts with Governmental Entity	Sec. 2252.908. DISCLOSURE OF INTERESTED PARTIES. (a) In this section: (1) "Business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. (2) "Governmental entity" means a municipality, county, public school district, or special-purpose district or authority. (3) "Interested party" means a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts or who actively participates in facilitating the contract or	04

Criteria No.	Criteria Source	Criteria Details	Relevant Findings
		<p>negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity.</p> <p>(4) "State agency" means a board, commission, office, department, or other agency in the executive, judicial, or legislative branch of state government. The term includes an institution of higher education as defined by Section 61.003, Education Code.</p> <p>(b) This section applies only to a contract of a governmental entity or state agency that:</p> <p>(1) requires an action or vote by the governing body of the entity or agency before the contract may be signed; or</p> <p>(2) has a value of at least \$1 million.</p> <p>(c) Notwithstanding Subsection (b), this section does not apply to:</p> <p>(1) a sponsored research contract of an institution of higher education;</p> <p>(2) an interagency contract of a state agency or an institution of higher education; or</p> <p>(3) a contract related to health and human services if:</p> <p>(A) the value of the contract cannot be determined at the time the contract is executed; and</p> <p>(B) any qualified vendor is eligible for the contract.</p> <p>(d) A governmental entity or state agency may not enter into a contract described by Subsection (b) with a business entity unless the business entity, in accordance with this section and rules adopted under this section, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.</p> <p>(e) The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission that includes:</p> <p>(1) a list of each interested party for the contract of which the contracting business entity is aware; and</p> <p>(2) the signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.</p> <p>(f) Not later than the 30th day after the date the governmental entity or state agency receives a disclosure of interested parties required under this section, the governmental entity or state agency shall submit a copy of the disclosure to the Texas Ethics Commission.</p> <p>(g) The Texas Ethics Commission shall adopt rules necessary to implement this section, prescribe the disclosure of interested parties form, and post a copy of the form on the commission's Internet website.</p>	



EL PASO INDEPENDENT SCHOOL DISTRICT

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