

Depository Contracts Frequently Asked Questions

1. When are the depository contract documents due to the TEA?

The Texas Education Code (TEC), §45.208(e), was amended by Senate Bill 1376. As a result, as of June 4, 2019, a school district is not required to submit its Depository Contract for Funds of Independent School Districts and its Texas Surety Bond form, if applicable, to TEA.

All remaining depository contract rules are still in effect. If a school district makes changes to its direct deposit account, the district still must electronically submit a Direct Deposit Authorization form to TEA.

2. May our district send the bid or request for proposal notice to a bank by email?

Yes, your district may send the bid or request for proposal forms by email in addition to mailing the forms to the banks. In accordance with the Texas Education Code (TEC), §45.206, your district must mail to each bank located in the district, and, if desired, to other banks, a notice stating the time and place in which bid applications or proposals will be received. The notice must include a uniform bid blank or proposal blank in the form prescribed by State Board of Education rule.

3. Are we required to advertise in the newspaper?

Your district may advertise in the newspaper; however, it is not required to do so.

4. Is our district required to use the bid or proposal for depository services form and depository contract form provided by the TEA, or may our district develop its own?

Your district must use the bid or proposal form and depository contract form provided by the TEA, as required by the TEC, §45.206 and §45.208, and the State Board of Education (SBOE) rules found in 19 Texas Administrative Code (TAC) §109.51 and §109.52. Your district may **add** to the uniform bid or proposal form other terms that do not unfairly restrict competition between banks as stated in the TEC, §45.206(b).

5. Are there any special considerations when using a request for proposals instead of bids?

Yes, the TEC, §45.206(d), requires a district that uses a request for proposals to state the selection criteria (including the factors specified under §45.207[c]) in the request for proposals. When the proposals are received, the district must select the proposal that offers the best value based on the evaluation and ranking of each submitted proposal in relation to the previously stated selection criteria. In other words, the selection criteria may not be changed after the proposals are received.

6. The district must specify an amount for the cashier's check in the Bid Form for Depository Services or Proposal Form for Depository Services. What is an appropriate amount to request?

Your district determines the amount of the cashier's check. The amount of the cashier's check must cover bidding or proposal costs and any additional costs the district will incur in seeking new bids or proposals should the bank with the initial winning bid or proposal fail to enter into the depository contract.

8. Do we still have to go through the bidding or proposal process if there is only one bank located in the district?

Yes, your district must submit a bid or proposal notice and form to at least two banks, the one bank within the district and at least one bank outside the district.

9. How do I determine which banks to send the bank bid or request for proposal to? I know every bank in the district needs to receive it, but how do I ensure that I have included all banks?

You can do a search for bank offices within your district's boundaries on the following website:

<https://research.fdic.gov/bankfind/>.

The website allows you to limit your search by entering criteria specific to your district.

10. What if our school district decides to use a different method to select its depository?

As long as at least 60 days remain before the date your school district's current depository contract expires, your district can use the standard form used for documenting the method chosen to revoke its previous choice. Then your district must elect to use the other option and mail the appropriate forms to each bank located in the district, and, if desired, to other banks.

11. What if our school district sends the wrong forms to the banks (bid forms instead of proposal forms)?

If your school district has elected to use one method and sends forms for another method to banks, the district may mail the correct forms to all banks that received the incorrect forms. Your district must clarify which method will be used in the second mailing.

12. Our district went out for bids or proposals; however, our district was not satisfied with the initial bids or proposals received. May our district go out a second time for bids or proposals?

Yes, per the TEC, §45.207(d), "the board of trustees of the school district has the right to reject any and all bids or proposals." Please note that your district must allow sufficient time to accommodate any unexpected delays to ensure that district funds are received in a timely manner.

13. Is there a guideline anywhere on how to evaluate bank depository bids or proposals that is similar to the TEC, §44.031, which lists all the factors that must be considered in determining to whom to award a contract?

The TEC does not provide a guideline for the evaluation of a bank depository. However, your district should develop criteria in order of importance to be used in the evaluation process. The criteria developed should be based on the district's specific needs and concerns. Your district can use *Attachment A* to assist the district in making bank comparisons.

Please note that the bid and proposal forms refer to *Attachment A* as alternately "Bank Historical Information," "proposed fee schedule," and "Volumes for Pricing Transactions."

14. What are the beginning and ending dates that must be included on the bid or proposal form, contract form, and extension form?

The TEC, §45.205(c), requires that a contract term and any extension coincide with the school district's fiscal year. The two-year contract term also, begins and ends in odd-numbered years and is from either July 1 of one year through June 30 two years later or September 1 of one year through August 31 two years later; for example, July 1, 2021, through June 30, 2023, or September 1, 2021, through August 31, 2023.

15. Is there a form to document the selection of the method for choosing the depository?

To assist school districts, the TEA developed the *Depository Contract Data Sheet for Independent School Districts*, which can be used to document the method chosen. This form is optional.

16. Our district went out for bids in the 2015-2017 biennium and filed extensions during the 2017-2019 biennium and the 2019-2021 biennium's. Does our district qualify for another extension for the 2021-2023 biennium?

Yes, a district qualifies to extend its depository contract for three (3) additional two-year terms provided that the bank agrees as well (refer to the TEC, §45.205[b], as amended by Senate Bill 754, effective September 1, 2017).

17. If a district files an extension what forms must the district use?

If the district and the bank agree to extend the depository contract for an additional two-year term, then the district must complete the *Board Resolution Extending Depository Contract for Funds of Independent School Districts* form

18. Is there a form our district must use if its deposits will be secured by a surety bond?

Yes, the district must complete a *Texas School Depository Surety Bond Form* as required by the TEC, §45.208(a). That section states that "the bank or banks selected as school depository or depositories and the school district shall enter into a depository contract or contracts, bond or bonds, or other necessary instruments setting forth the duties and agreements pertaining to the depository, in a form and with the content prescribed by the State Board of Education." The applicable SBOE rule is 19 TAC §109.52.

19. What percentage of the district's funds must be covered by eligible securities?

According to the Texas Government Code, §2257.022(a), the total value of eligible security to secure a deposit of public funds must be in an amount not less than the amount of the deposit of public funds. However, please note that if a district agrees to the use of reducing principal securities to secure the deposit, then the amount of collateral must comply with §2257.022(b), which states that "the total value of eligible security described by Section 45.201(4)(D), Education Code, to secure a deposit of public funds of a school district must be in an amount not less than 110 percent of the amount of the deposit as determined under Subsection (a)."

20. How do I determine the Federal Deposit Insurance Corporation (FDIC) coverage limits?

Your school district can use the FDIC's Electronic Deposit Insurance Estimator (EDIE) to calculate the insurance coverage on school district deposits. EDIE is available on the following website: <https://www.fdic.gov/edie/index.html>.

21. May our district use a credit union for banking?

No, only institutions covered by FDIC insurance are eligible to serve as depositories. Credit Unions are not FDIC insured. The TEC, §45.201(2) defines “bank” as a bank, a savings and loan association, or a savings bank organized under the laws of this state, another state, or federal law that has its main office or a branch office in this state. The term does not include any bank the deposits of which are not insured by the Federal Deposit Insurance Corporation.

22. Our district has selected a new depository bank for the 2021-2023 biennium. May our district still keep the certificates of deposit (CDs) with the old depository bank?

Yes, your district may keep with the "old" bank any CDs that mature after the ending date of the depository contract. Please refer to Article IV.D. of the *Depository Contract for Funds of Independent School Districts* form.

23. May our school district select another depository in the event a bank is closed?

Yes, the Texas Local Government Code, §131.001, allows the local government authority of a county, municipality, or district to select by contract a special depository if the original depository bank suspends business or is taken charge of by a state or federal bank regulatory agency. When a bank fails, and is reopened, the FDIC usually negotiates a contract with the new bank. The contract will specify if or under what conditions the new bank will honor preexisting depository contracts. As soon as feasible, all safekeeping receipts should be reissued, showing the name of the new bank and the securities pledged to the district. Also, when a failed bank is reopened, the transit routing number, the bank address, the type of account, or the account number may change. The district must notify the TEA immediately of any changes that could affect the receipt of school funds and complete a new *Direct Deposit Authorization* form.

A list of failed banks and useful information for the customers and vendors of these banks are available on the following website: <http://www.fdic.gov/bank/individual/failed/banklist.html>.

24. Our district has elected to remain with its current depository, where the district funds are directly deposited. Is a Direct Deposit Authorization form still required?

No, the Direct Deposit Authorization form is required **only** if a district is changing the direct deposit account information. Please note that this form is not required if a district selects a new depository and the state funds received will continue to be directly deposited into an investment pool.