

South San Antonio ISD
Corrective Action Plan
Forensic External Audit Relating to
2010 Bond Program Expenditures




August 23, 2016

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Board Meeting Minutes
approved by the Board of Trustees on
August 17, 2016

This section pertains to agenda items regarding board meeting minutes that have been reviewed or approved by the Board of Trustees.





OFFICE OF THE SUPERINTENDENT

SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

5622 Ray Ellison Drive

San Antonio, Texas 78242

(210) 977-7000

Fax (210) 977-7021

Minutes of Regular Meeting

The Board of Trustees
South San Antonio ISD

A Regular Meeting of the Board of Trustees of South San Antonio ISD was held Wednesday, August 17, 2016, beginning at 6:30 PM in the ADMINISTRATION BUILDING.

CALL TO ORDER AND ROLL CALL

The meeting was called to order at 6:30 p.m.

Table with 4 columns: Trustee, Present, Absent, Late Arrival. Lists names of trustees and their attendance status.

DISCUSSION / POSSIBLE ACTION

1. Discussion and possible action to approve, as required in TEA Special Accreditation Investigation No. 2014-01-010, policies, regulations and procedures that implement corrective actions and recommendation of all findings identified in the external auditor's forensic audit report.

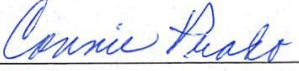
Dr. Abelardo Saavedra and Mr. Jesus Salazar were called to present and answer questions related to this item.

Upon motion by Mrs. Madla-Prather, seconded by Mr. Mata, the Board of Trustees moved to approve the TEA Special Accreditation Investigation Corrective Action Plan as presented. 7/0 Motion passed.

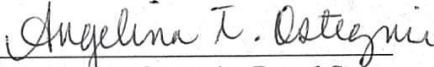
This item includes: Acceptance and/or Approval of CV(LEGAL), CVB(LEGAL), CVD(LEGAL), CVE(LEGAL), CV(LOCAL), CV(REGULATION) CVA(REGULATION), CVE(REGULATION), CVF(REGULATION), deletion of CVB(LOCAL) and CVD(LOCAL), amended CVA(LOCAL); and approval of Purchasing, Construction Management, Management and Internal Control Processes and Procedures as presented in the South San Antonio ISD Corrective Action Plan

Forensic Audit Relating to 2010 Bond Program Expenditures manual.

ATTEST



Connie Prado, Board President



Angelina Osteguín, Board Secretary

Division of Finance & Business Operations
Constructions Procurement, Management &
Internal Control Process

Training Agenda

&

Staff Training Sign In Sheet



Division of Finance and Business Operations
Construction Procurement, Management and Internal Control
Processes
Training Agenda
August 18, 2016

Time:

Training: 8:30am - 12:00pm

Lunch: 12:00pm - 12:30pm




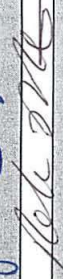




Training: 12:30pm - 4:00pm

Location: School Board Conference Room


CONSTRUCTION TRAINING SESSIONS:	Corrective Action Plan
Procurement Process	REFERENCE PAGES
School Construction Basics	
District Construction Regulations	pages 50-80
District Construction Policies	pages 81-89
District Construction Procurement, Management and Internal Control Process	pages 91-132

Division of Finance and Business Operations Construction Procurement, Management and Internal Control Processes Training

August 18, 2016

Name	Title	Signature
Hectorberto Martinez	Director of Facilities	
Ruperto Baserra Jr.	Executive Director of Operations	
Jesus G. Salazar	C.F.O.	
Amanda Martinez	Accounts Payable Accountant	
Martinez, Jesus L	Director of Budget & Fiscal Services	
Stephanie Muroben	General Accountant	
Peggy Lee Gonzalez	Director of Purchasing	
Michael Balderrama	Chief of Staff	

Corrective Action Plan
Findings, Required Corrective Actions
&
Evidence of Compliance



SSAISD Corrective Action Plan

Forensic External Audit Relating to 2010 Bond Program Expenditures


Findings:	Required Corrective Actions:	Evidence of Compliance
<p>Finding 1: Payment Application <i>Observation:</i> The internal payments made by SSAISD related to the 2010 Bond/Construction project had proper and acceptable authorizations and reviews. However, SSAISD did not maintain adequate internal control procedures. This may have resulted in over payments.</p> <p><i>Conclusion:</i> There was adequate review of the payment application by SSAISD. In addition, the review and approval process was adequate to mitigate risks. However, the review of cost and pricing data submitted by SSAISD in negotiating the GMP resulted in over payments.</p>	<p>a. It is recommended that SSAISD document with a written policy its control structure from bid initiation to cash disbursement.</p>	<p>Develop Policies, Regulations, and Procedures approved by Board of Trustees. Pages 6- 130 Evidence of Training for all designated Business Construction Office personnel.</p> <p>Proceed to meet with CMAR contractor Joeris, Architect Garza/Bomberger, School District Attorney, Superintendent, and CFO to validate & ascertain amount due to District.</p>
<p>Finding 2: Procurement Process – Construction Selection <i>Observation:</i> The bidding process for the selection of the construction manager is flawed and possibly contributed to overpayment of construction costs. A letter dated July 9, 2010 from GBA referenced a “Competitive Sealed Proposal Process for the Selection of a Construction Manager at Risk. (“CMAR)” The combined process of a sealed bid and CMAR is inconsistent with industry standards and Texas Code.</p> <p><i>Conclusion:</i> There was not an adequate control structure regarding the bidding process. The awarded process was flawed as it was awarded based on a combination of competitive bid and CMAR procurement. The documentation would indicate that the team was not familiar with the requirements and the intent of a CMAR agreement.</p>	<p>a. It is recommended that SSAISD representatives be familiar with the intent and requirements of CMAR. Therefore, we (RSM) recommend that SSAISD receive training or have resources familiar with the CMAR requirements.</p> <p>b. It is recommended that during the selection of the architectural engineering firm and the project management firm, that the selection should consider the experience with CMAR agreements with references.</p>	<p>Develop Policies, Regulations, and Procedures approved by Board of Trustees. Evidence of Training for all designated Business Construction Office personnel. Training will include polices, regulations and procedures. Pages 6-130</p> <p>Develop Policies, Regulations, and Procedures requiring evaluation criteria of experience in the selection of Architectural and Engineering firms in the areas of types of construction Delivery Methods including CMAR. Page 9, 108</p>
<p>Finding 3: Procurement Process – Texas Code <i>Observation:</i> The Joeris’ agreement, was not executed consistent with the requirements of Texas Code Chapter 2269 and Subchapter 2269.001.</p> <p><i>Conclusion:</i> There was not an adequate control structure to address compliance with the aforementioned Texas Codes. The noncompliance with Texas Code 2269 is addressed above in Observation item 3 above. The cause for the noncompliance with Subchapter 2269.001 was the same as the bidding process. The documentation would indicate that the team was not familiar with the requirements of Subchapter 2269.001 and the intent of a CMAR agreement. In addition, there was not an adequate review of cost and pricing data to comply with such requirements.</p>	<p>a. It is recommended that SSAISD representatives be familiar with the intent and the requirements of the Texas Code.</p> <p>b. It is recommended that during the selection of the architectural engineering firm and the project management firm, that the selection should consider the experience with the Texas Code and CMAR agreements with references.</p>	<p>Evidence of Training for all designated District Business Construction Office personnel in the Areas construction compliance requirements of Texas Government Code 2269. Training will include polices, regulations and procedures. Pages. 6-130</p> <p>Develop Policies, Regulations, and Procedures requiring evaluation criteria of experience in the selection of Architectural and engineering firms in the areas of types of construction Delivery Methods including CMAR. Page 103, 104, 108</p>

Finding 3 Continued ...	c. It is recommended that SSAISD should also engage construction auditors to assist in the procurement and preconstruction process.	Develop Policies, Regulations, and Procedures approved by Board of Trustees requiring the engagement of construction auditor to assist in the procurement, preconstruction, compliance process for any approved Bond Construction Program. Page 43
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Findings:	Required Corrective Actions:	Evidence of Compliance
<p>Finding 4: Subcontractor Management – Subcontractor Bids</p> <p><i>Observation:</i> The subcontractor bidding process by Joeris was inconsistent in awarding subcontract work. There were instances where we (RSM) were unable to trace subcontract bids to the subcontract agreement.</p> <p><i>Conclusion:</i> There was inadequate documentation to support some of the subcontractor’s bids. We (RSM) were advised that the file that may have contained some of this information was no longer available.</p>	a. It is recommended that SSAISD develop procedures to examine and evaluate the subcontractor’s bids and evaluation process. The documentation should also be maintained electronically. This would include documentation related to self-performed work demonstrating compliance with Texas Code.	Develop Policies, Regulations, and Procedures to examine and evaluate subcontractor bids and buy out evaluation process, approved by Board of Trustees. Submit Evidence of Training for all designated Business Construction Office personnel. Page 62
<p>Finding 5: Subcontractor Management – Subcontractor Costs</p> <p><i>Observation:</i> The subcontractor costs claimed by Joeris was inconsistent with the bids submitted by subcontractors. There were instances where we (RSM) were unable to reconcile the amounts claimed by Joeris to the bids by the subcontractor.</p> <p><i>Conclusion:</i> There was inadequate documentation to support the sum of the subcontractor’s costs and tracing such costs to the subcontractor’s bids.</p>	<p>a. It is recommended that the contractors provide a buyout log showing the award and subcontracts, the dollar amount and the respective bids.</p> <p>b. It is recommended that SSAISD should establish procedures to obtain and review the buyout log.</p>	<p>Develop Policies, Regulations and Procedures to examine and evaluate subcontractor bids, buy out logs, and award evaluation process, approved by Board of Trustees. Submit Evidence of Training for all designated Business Construction Office personnel. Page 62, 129</p> <p>Develop Policies, Regulations and Procedures to obtain, review, examine and evaluate subcontractor bids and buy out logs. Page 62, 129</p>

Legal / Local Policies & Minutes
Presented & Accepted
by the Board of Trustees

This section pertains to agenda items regarding board policies that have been reviewed or approved by the SSAISD Board of Trustees.



FACILITIES CONSTRUCTION
COMPETITIVE SEALED PROPOSALS

CVB
(LEGAL)

“Competitive sealed proposals” is a procurement method by which the District requests proposals, ranks the offerors, negotiates as prescribed, and then contracts with a general contractor for the construction, rehabilitation, alteration, or repair of a facility. *Gov’t Code 2269.151*

If the District uses the competitive sealed proposals method as described in this policy, it must comply with applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)], which include the following steps:

1. SELECTING A CONTRACTING METHOD;
2. Giving PUBLIC NOTICE of the project;
3. Publishing CONTRACT SELECTION CRITERIA;
4. MAKING EVALUATIONS PUBLIC after the contract is awarded; and
5. Providing for INSPECTION, VERIFICATION, AND TESTING necessary for acceptance of the facility by the District.

Education Code 44.031(g); Gov’t Code 2269.052, .055, .056(a), (c), .058

Note: Terms in all capital letters, above, point to margin notes in the referenced policy.

REQUEST FOR
PROPOSALS

The District shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria and the weighted value for each criterion, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to respond to the request. *Gov’t Code 2269.153*

ARCHITECT/
ENGINEER

The District shall select or designate an architect or engineer to prepare construction documents for the project. *Gov’t Code 2269.152* [See CV]

OPENING PROPOSALS

The District shall receive, publicly open, and read aloud the names of the offerors and any monetary proposals made by the offerors. Not later than the 45th day after the date on which the proposals are opened, the District shall evaluate and rank each proposal submitted in relation to the published selection criteria. *Gov’t Code 2269.154*

SELECTION

The District shall select the offeror that submits the proposal that offers the best value for the District based on the selection criteria

FACILITIES CONSTRUCTION
COMPETITIVE SEALED PROPOSALS

CVB
(LEGAL)

in the request for proposal and the weighted value for those criteria in the request for proposal and on its ranking evaluation.

The District shall first attempt to negotiate a contract with the selected offeror. The District and its architect or engineer may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the District is unable to negotiate a satisfactory contract with the selected offeror, the District shall, formally and in writing, 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.

Gov't Code 2269.155

FACILITIES CONSTRUCTION
DESIGN-BUILD

CVE
(LEGAL)

“Design-build” is a project delivery method by which a governmental entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility. *Gov’t Code 2269.301*

This policy applies only to a facility that is a building or an associated structure, including an electric utility structure. This policy does not apply to:

1. A highway, road, street, bridge, underground utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or
2. A building or structure that is incidental to a project that is primarily a civil engineering construction project.

Gov’t Code 2269.302

The District may use the design-build method for the construction, rehabilitation, alteration, or repair of a building or associated structure. In using this method, the District shall enter into a single contract with a design-build firm for the design and construction of the building or associated structure in accordance with applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)] which include the following steps:

1. SELECTING A CONTRACTING METHOD;
2. Giving PUBLIC NOTICE of the project;
3. Publishing CONTRACT SELECTION CRITERIA;
4. MAKING EVALUATIONS PUBLIC after the contract is awarded; and
5. Providing for INSPECTION, VERIFICATION, AND TESTING necessary for acceptance of the facility by the District.

Education Code 44.031(g); Gov’t Code 2269.052, .055, .056(a), (c), .058, .303

Note: Terms in all capital letters, above, point to margin notes in the referenced policy.

DESIGN-BUILD FIRM

A design-build firm must be a sole proprietorship, partnership, corporation, or other legal entity or team that includes an architect or engineer and a construction contractor. *Gov’t Code 2269.304*

FACILITIES CONSTRUCTION
DESIGN-BUILD

CVE
(LEGAL)

ARCHITECT/
ENGINEER

The District shall select or designate an architect or engineer independent of the design-build firm to act as the District's representative for the duration of the project. *Gov't Code 2269.305* [See CV]

REQUEST FOR
QUALIFICATIONS

The District shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria and the weighted value for each criterion, and other information that may assist potential design-build firms in submitting proposals for the project. *Gov't Code 2269.306(a)*

The District may not require offerors to submit architectural or engineering designs as part of a proposal or a response to a request for qualifications. *Gov't Code 2269.306(d)*

DESIGN CRITERIA
PACKAGE

The District shall also prepare the design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires architectural or engineering services that constitute the practice of architecture within the meaning of Occupations Code Chapter 1051 or the practice of engineering within the meaning of Occupations Code Chapter 1001, those services shall be provided in accordance with the applicable law. *Gov't Code 2269.306(b)*

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 District's request for qualifications and to provide any additional information requested. The design criteria package must specify criteria the District considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirement. *Gov't Code 2269.306(c)*

EVALUATION
QUALIFICATION

For each design-build firm that responded to the request for qualifications, the District shall evaluate the firm's experience, technical competence, capability to perform, the past performance of the firm and members of the firm, and other appropriate factors submitted by the firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each firm must certify to the District 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 Government Code 2254.004. The District shall qualify a maximum of

FACILITIES CONSTRUCTION
DESIGN-BUILD

CVE
(LEGAL)

	<p>five responders to submit proposals that contain additional information and, if the District chooses, to interview for final selection. <i>Gov't Code 2269.307(a)–(c)</i></p>
PROPOSALS	<p>The District shall evaluate the additional information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview. The District may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, or costing methodology.</p> <p>“Costing methodology” means an offeror’s policies on subcontractor markup, definition of general conditions, range of cost for general conditions, policies on retainage, policies on contingencies, discount for prompt payment, and expected staffing for administrative duties. The term does not include a guaranteed maximum price or bid for overall design or construction.</p> <p><i>Gov't Code 2269.307(d)–(e)</i></p> <p>The District shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications. <i>Gov't Code 2269.307(f)</i></p>
SELECTION	<p>The District shall select the design-build firm that submits the proposal offering the best value for the District on the basis of the published selection criteria and on its ranking evaluations.</p> <p>The District shall first attempt to negotiate a contract with the selected firm. If the District is unable to negotiate a satisfactory contract with the selected firm, the District 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.</p> <p><i>Gov't Code 2269.308(a)–(c)</i></p>
NOTICE OF RANKINGS	<p>Not later than the seventh day after the date the contract is awarded, the District shall make the proposal rankings public. <i>Gov't Code 2269.308(d)</i></p>
DESIGN	<p>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 District or the District’s architect or engineer before or concurrently with construction. <i>Gov't Code 2269.309</i></p>

FACILITIES CONSTRUCTION
DESIGN-BUILD

CVE
(LEGAL)

FINAL CONSTRUCTION
DOCUMENTS

The design-build firm shall supply a set of construction documents for the completed project to the District at the conclusion of construction. The documents must note any changes made during construction. *Gov't Code 2269.310*

PAYMENT OR
PERFORMANCE BOND

A payment or performance bond is not required and may not provide coverage for the design portion of the design-build contract with the design-build firm. [See CV for more information on payment and performance bonds]

AMOUNT

If a fixed contract amount or guaranteed maximum price has not been determined at the time the design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the District must each be in an amount equal to the construction budget, as specified in the design criteria package. The design-build firm shall deliver the bonds not later than the tenth day after the date the design-build firm executes the contract, unless the design-build firm furnishes a bid bond or other financial security acceptable to the District to ensure that the design-build firm will furnish the required performance and payment bonds before construction begins.

Gov't Code 2269.311



OFFICE OF THE SUPERINTENDENT

SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

5622 Ray Ellison Drive • San Antonio, Texas 78242 • (210) 977-7000 • Fax (210) 977-7021

Minutes of Special Called Meeting

The Board of Trustees
South San Antonio ISD

A Special Called Meeting of the Board of Trustees of South San Antonio ISD was held Wednesday, July 10, 2013, beginning at 6:00 PM in the ADMINISTRATION BUILDING.

CALL TO ORDER AND ROLL CALL

The meeting was called to order at 6:01 p.m.

Roll Call table with columns: Member, In Attendance, Absent, Late Arrival. Rows include Mr. Carlos G. Longoria, Ms. Julie Ponce, Mr. JoeJo Savage, Ms. Connie Prado, Ms. Rose Marie Martinez, Mr. Trinidad T. Mata, Ms. Helen Madla.

Staff Present table with columns: Staff Present. Rows include Rebecca Robinson, Ben Davis, Pablo Escamilla, Luz Elena Ramirez, Ed Suarez, Pete Alaniz.

PLEDGE OF ALLEGIANCE

Led by Julie Ponce.

Upon motion by Mr. Savage, seconded by Mr. Longoria, the Board of Trustees moved to change the order of the day moving the Discussion/Possible action items ahead of Closed Session. 7/0 Motion carried.

DISCUSSION/POSSIBLE ACTION

1. Discussion and possible action to approve the TASB recommended (LOCAL) policies from sections D, E and F.

2. Discussion and possible action to approve the additional (LOCAL) policy recommendations from Update 91, Update 93, Update 95 and Update 97.

Jen Cooper from TASB was called upon to present and answer questions related to item one and two.

Upon motion by Mr. Savage, seconded by Mr. Longoria, the Board of Trustees moved to table Discussion/Possible Action items one and two for a future meeting to be selected by the Superintendent and Board President. 7/0 Motion carried.

CLOSED/EXECUTIVE SESSION

Closed session began at 6:15 p.m.
Returned to open session at 7:17 p.m.

NOTICE: The Board of Trustees may elect to go into Closed Meeting any time during the meeting to discuss matters listed on the Agenda when authorized by the provisions of the Open Meetings Act, Chapter 551 of the Texas Government Code. In the event the Board of Trustees elects to go into Closed Meeting regarding an Agenda Item, the Board of Trustees will hold a Closed Meeting to discuss individual personnel matters including termination, litigation and other matters the Board deems necessary. Upon completion of Closed Meeting, the Board of Trustees may, in the open session, take such action as appropriate on items discussed in a Closed Meeting. If, during the course of the meeting, any discussion of any item listed on the agenda should be held in Closed Meeting, the Board will convene in such Closed Meeting in accordance with Texas Government Code Sections 551.001 - 551.088. The Board members may take action in the open portion of the meeting on items discussed in the Closed Meeting but no action will be taken in closed session. The Board will consider and discuss, the following items:

Closed Meeting pursuant to the Texas Open Meetings Act, Texas Government Code § 551.071, 551.072, 551.074, 551.082, and 551.0821

1. Consultation with attorney and discussion regarding the superintendent’s evaluation. (Tex. Gov’t Code section 551.071 and 551.074)

Upon motion by Mr. Savage, seconded by Mr. Longoria, the Board of Trustees moved to adopt the Superintendent’s evaluation instrument as amended and authorized legal counsel to proceed as discussed in closed session. 7/0

Roll Call Vote:	Yes	No
Trinidad T. Mata	X	
Connie Prado	X	
Julie Ponce	X	
JoeJo Savage	X	
Carlos G. Longoria	X	
Rose Marie Martinez	X	
Helen Madla	X	

ADJOURNMENT

Upon motion by Mr. Savage, seconded by Mr. Longoria, the Board of Trustees voted unanimously to adjourn the meeting at 7:18 p.m. 7/0 Motion carried.

ATTEST


Rose Marie Martinez, President


Joe Jo Savage, Secretary

FACILITIES CONSTRUCTION

CV
(LOCAL)

COMPLIANCE WITH LAW	The Superintendent shall establish procedures that ensure that all school facilities within the District comply with applicable laws and local building codes.
CONSTRUCTION CONTRACTS	<p>Prior to advertising, the Board shall determine the project delivery/contract award method to be used for each construction contract valued at or above \$50,000. To assist the Board, the Superintendent shall recommend the project delivery/contract award method that he or she determines provides the best value to the District. [See CV series]</p> <p>For construction contracts valued at or above \$25,000, the Superintendent shall also submit the resulting contract to the Board for approval. Lesser expenditures for construction and construction-related materials or services shall be at the discretion of the Superintendent and consistent with law and policy. [See also CH]</p>
CHANGE ORDERS	Change orders permitted by law shall be approved by the Board or its designee prior to any changes being made in the approved plans or the actual construction of the facility.
PROJECT ADMINISTRATION	<p>All construction projects shall be administered by the Superintendent or designee.</p> <p>The Superintendent shall keep the Board informed concerning construction projects and also shall provide information to the general public.</p>
FINAL PAYMENT	The District shall not make final payments for construction or the supervision of construction until the work has been completed and the Board has accepted the work.



OFFICE OF THE
SUPERINTENDENT

SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

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Minutes of Regular Meeting

**The Board of Trustees
South San Antonio ISD**

A Regular Meeting of the Board of Trustees of South San Antonio ISD was held Wednesday, January 21, 2015, beginning at 6:30 PM in the ADMINISTRATION BUILDING.

CALL TO ORDER AND ROLL CALL

Trustee	Present	Absent	Late Arrival
Mrs. Connie Prado	X		
Mrs. Stacey Estrada			6:37
Mrs. Angelina Osteguín	X		
Mr. Trinidad Mata		X	
Mr. Carlos Longoria	X		
Mrs. Leticia Guerra	X		
Mrs. Helen Madla	X		

PLEDGE OF ALLEGIANCE led by Mrs. Connie Prado.

RECOGNITIONS / DONATIONS

- 1. Recognition of "I Am A Future Aggie" Essay Contest 4th Grade winners from Palo Alto Elementary.**
- 2. Recognition of Bexar County Kutz Barbershop.**
- 3. Discussion and possible action to accept the donation in the amount of \$500 from Richard J Garcia, CPA for Zamora Middle School.**

Upon motion by Mr. Longoria, seconded by Mrs. Guerra, the Board of Trustees move to approve the donation in the amount of \$500 from Richard J Garcia, CPA for Zamora Middle School. 6/0 Motion Carried.

CITIZENS TO BE HEARD

Belinda Zapata	Thank you for all the success and Happy Board Recognition.
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SUPERINTENDENT'S REMARKS (NO ACTION / REPORT ONLY)

PRESENTATIONS / REPORTS / UPDATES

1. Report: School Safety District Audit

DISCUSSION / POSSIBLE ACTION

- 1. Discussion and possible action to approve the revised design for the War**

Heroes Memorial.

Upon motion by Mr. Longoria, seconded by Mrs. Osteguin, the Board of Trustees move to approve the revised design for the War Heroes Memorial. 6/0 Motion Carried.

2. Discussion and possible action to approve the 2015 -2016 District Calendar.

Upon motion by Mr. Longoria, seconded by Mrs. Guerra, the Board of Trustees move to approve the 2015-2016 District Calendar. 6/0 Motion Carried.

3. Discussion and possible action to approve and accept the 2013-2014 District Annual Financial Report submitted by Alonzo, Bacarisse, Irvine, & Palmer (ABIP Certified Public Accountants).

Upon motion by Mr. Longoria, seconded by Mrs. Osteguin, the Board of Trustees move to approve and accept the 2013-2014 District Annual Financial Report submitted by Alonzo, Bacarisse, Irive, & Palmer (ABIP Certified Public Accountants). 6/0 Motion Carried.

Roll Call Vote:	Yes	No	Abstained
Mrs. Connie Prado	X		
Mrs. Stacey Estrada	X		
Mrs. Angelina Osteguin	X		
Mr. Trinidad Mata			
Mr. Carlos Longoria	X		
Mrs. Leticia Guerra	X		
Mrs. Helen Madla	X		

4. Discussion and possible action to renew the contract with JI Companies for Third Party Administrator for self-insured workers compensation claims for year five(5) as allowed by RFQ #11-06.

Upon motion by Mr. Longoria, seconded by Mrs. Osteguin, the Board of Trustees move to renew the contract with JI Companies for Third Party Administrator for self-insured workers compensation claims for year five (5) as allowed by RFQ#11-06. 6/0 Motion Carried.

5. Discussion and possible action to approve the device purchase to support 1:1 Device Initiative.

Upon motion by Mr. Longoria, seconded by Mrs. Osteguin, the Board of Trustees move to approve the device purchase to support 1:1 Device Initiative. 6/0 Motion Carried.

Roll Call Vote:	Yes	No	Abstained
Mrs. Connie Prado	X		

Mrs. Stacey Estrada	X		
Mrs. Angelina Osteguín	X		
Mr. Trinidad Mata			
Mr. Carlos Longoria	X		
Mrs. Leticia Guerra	X		
Mrs. Helen Madla	X		

6. Discussion and possible action to approve the Head Start budget amendment.

Upon motion by Mr. Longoria, seconded by Mrs. Guerra, the Board of Trustees move to approve the Head Start budget amendment. 6/0 Motion Carried.

Roll Call Vote:	Yes	No	Abstained
Mrs. Connie Prado	X		
Mrs. Stacey Estrada	X		
Mrs. Angelina Osteguín	X		
Mr. Trinidad Mata			
Mr. Carlos Longoria	X		
Mrs. Leticia Guerra	X		
Mrs. Helen Madla	X		

CONSENT

- 1. Contract with Lemons Auctioneers to handle our online auction.**
- 2. Local Policy Series A, B, C, G and DBB.**
- 3. Purchase of seven (7) playground sets for Head Start program from Fun Abounds utilizing the TCPN contract #R123456.**
- 4. Purchase of 152 cafeteria tables for South San Middle and Elementary campuses.**
- 5. Purchase of small equipment for all campus cafeteria kitchens utilizing the Texas 20 Purchasing Cooperative #2120 in the amount of \$69,497.24.**
- 6. December 4th, 6th, and 17th, 2014 Board Meeting minutes.**

Upon motion by Mr. Longoria, seconded by Mrs. Guerra, the Board of Trustees move to approve via consent items 1 through 6. 6/0 Motion Carried.

**Closed executive session began at 7:48pm.
Returned from closed executive session at 9:03pm.**

CLOSED / EXECUTIVE SESSION

NOTICE: The Board of Trustees may elect to go into Closed Meeting any time during the meeting to discuss matters listed on the Agenda when authorized by the

provisions of the Open Meetings Act, Chapter 551 of the Texas Government Code. In the event the Board of Trustees elects to go into Closed Meeting regarding an Agenda Item, the Board of Trustees will hold a Closed Meeting to discuss individual personnel matters including termination, litigation and other matters the Board deems necessary. Upon completion of Closed Meeting, the Board of Trustees may, in the open session, take such action as appropriate on items discussed in a Closed Meeting. If, during the course of the meeting, any discussion of any item listed on the agenda should be held in Closed Meeting, the Board will convene in such Closed Meeting in accordance with Texas Government Code Sections 551.001 - 551.088. The Board members may take action in the open portion of the meeting on items discussed in the Closed Meeting but no action will be taken in closed session. The Board will consider and discuss, the following items:

Closed Meeting pursuant to the Texas Open Meetings Act, Texas Government Code §§ 551.071, 551.072, 551.074, 551.076, 551.082, and 551.0821

1. Discussion and update concerning personnel matters pursuant to Government Code Section 551.074.

NO ACTION

2. Discussion and update on pending litigation pursuant to Government Code Section 551.071.

NO ACTION

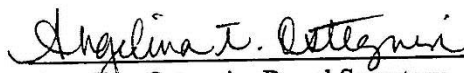
The Board will return to open session and take appropriate action, if any, on items discussed in closed session. No Action will be taken in closed session. Further, Board Members are reminded that all items discussed in closed session must remain confidential so as to avoid liability to the district.

ADJOURNMENT

ATTEST

Upon motion by Mr Longoria, seconded by Mrs. Estrada, the Board of Trustees voted unanimously to adjourn the meeting at 9:04p.m. 6/0 Motion Carried.


Connie Prado, Board President


Angelina Osteguin, Board Secretary

Note: For information on procuring goods and services under Education Code Chapter 44, see CH(LEGAL).

BOARD AUTHORITY	A district may adopt rules as necessary to implement Government Code Chapter 2269. <i>Gov't Code 2269.051</i>
DELEGATION OF AUTHORITY	<p>The board may delegate its authority under Government Code Chapter 2269 regarding an action authorized or required by Chapter 2269 to a designated representative, committee, or other person.</p> <p>The board shall provide notice of the delegation, the limits of the delegation, and the name or title of each designated person by rule or in the request for bids, proposals, or qualifications or in an addendum to the request.</p> <p><i>Gov't Code 2269.053</i></p>
CONTRACTS VALUED AT OR ABOVE \$50,000	<p>All district contracts valued at \$50,000 or more in the aggregate for each 12-month period shall be made by the method that provides the best value for a district [see also CH]:</p> <ol style="list-style-type: none">1. An interlocal contract. [See CH]2. Competitive bidding. [See CVA]3. Competitive sealed proposals. [See CVB]4. Construction manager-agent method. [See CVC]5. Construction manager-at-risk method. [See CVD]6. Design-build method. [See CVE]7. Job order contract. [See CVF]8. The reverse auction procedure as defined by Government Code 2155.062(d). [See CH] <p><i>Education Code 44.031(a); Gov't Code Ch. 2269</i></p> <p>[For information on contract-related fees, see CH.]</p>
SELECTING A CONTRACTING METHOD	A board that considers a construction contract using a method authorized by Government Code Chapter 2269 other than competitive bidding must, before advertising, determine which method provides the best value for the district. <i>Gov't Code 2269.056(a)</i>

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EXCEPTIONS EMERGENCY DAMAGE OR DESTRUCTION	If school equipment, a school facility, or a part of a school facility or personal property is destroyed or severely damaged or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and a board determines that the delay posed by the methods provided for in Education Code 44.031 would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment, school facility, or the part of the school facility may be made by methods other than those required by Education Code 44.031. <i>Education Code 44.031(h)</i>
CONTRACTS REQUIRING A BOND	A reverse auction procedure, whether the same or similar to that described by Government Code 2155.062, may not be used to obtain services related to a public work contract for which a bond is required under Government Code 2253.021 [see PAYMENT AND PERFORMANCE BONDS, below]. <i>Gov't Code 2253.021(h)</i>
PUBLIC NOTICE	Notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened shall be published in the county in which a district's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which a district's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately. <i>Education Code 44.031(g); Gov't Code 2269.052(a)-(b)</i>
CONTRACT SELECTION CRITERIA	In determining the award of a contract, the district shall consider and apply: <ol style="list-style-type: none"><li data-bbox="492 1284 1248 1342">1. Any existing laws, including any criteria, related to historically underutilized businesses; and<li data-bbox="492 1362 1248 1458">2. Any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses. In determining the award of a contract, the district may consider: <ol style="list-style-type: none"><li data-bbox="492 1526 621 1555">1. Price.<li data-bbox="492 1574 1006 1603">2. The offeror's experience and reputation.<li data-bbox="492 1622 1063 1651">3. The quality of the offeror's goods or services.

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4. The impact on the ability of the district to comply with rules relating to historically underutilized businesses.
5. The offeror's safety record.
6. The offeror's proposed personnel.
7. Whether the offeror's financial capability is appropriate to the size and scope of the project.
8. Any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

Gov't Code 2269.055

OUT-OF-STATE
BIDDERS

A board shall not award a contract for general construction, improvements, services, or public works projects or for purchase of supplies, materials, or equipment to a bidder whose principal place of business is not in this state, unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the amount by which a resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located or a state in which a majority of the manufacturing relating to the contract will be performed. *Gov't Code 2252.001–.002*

This requirement shall not apply to a contract involving federal funds. A district shall rely on information published by the comptroller in evaluating the bids of a nonresident bidder. *Gov't Code 2252.003–.004*

PUBLISHING
CRITERIA

A district shall publish in the request for proposals or qualifications the criteria that will be used to evaluate the offerors and the applicable weighted value for each criterion. *Gov't Code 2269.056(b)*

SUBMISSION

A person who submits a bid, proposal, or qualification to a governmental entity shall seal it before delivery. *Gov't Code 2269.059*

SELECTION

A district shall base its selection among offerors on applicable criteria listed for the particular method used. *Gov't Code 2269.056(b)*

MAKING EVALUATIONS
PUBLIC

A district shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded. *Gov't Code 2269.056(c), .105*

CHANGE ORDERS

If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the district may approve

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change orders making the changes. The district may grant general authority to an administrative official to approve the change orders.

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

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

Education Code 44.0411

INSPECTION,
VERIFICATION AND
TESTING

Independently of the contractor, construction manager-at-risk, or design-build firm, a district shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the district. The district shall select the services for which it contracts in accordance with Government Code 2254.004. *Gov't Code 2269.058*

IMPACT FEES

A district is not required to pay impact fees imposed under Local Government Code Chapter 395 unless the board consents to the payment of the fees by entering a contract with the political subdivision that imposes the fees. The contract may contain terms the board considers advisable to provide for the payment of the fees. *Local Gov't Code 395.022*

ENERGY SAVINGS
PERFORMANCE
CONTRACTS

The contracting and delivery procedures for construction projects described at Government Code Chapter 2269 do not apply to energy savings performance contracts described at Education Code 44.901. *Education Code 44.901(j)* [See CL]

PROFESSIONAL
SERVICES

ARCHITECTS AND
ENGINEERS

An architect or engineer required to be selected or designated under Government Code Chapter 2269 has full responsibility for complying with Occupations Code Chapter 1051 or 1001, as applicable.

If the selected or designated architect or engineer is not a full-time employee of the district, the district shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Government Code 2254.004 [see PROCURING PROFESSIONAL SERVICES, below].

Gov't Code 2269.057

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REGISTERED
ARCHITECT

An architectural plan or specification for any of the following may be prepared only by an architect registered in accordance with Occupations Code, Title 6, Chapter 1051:

1. A new building constructed and owned by a district that will be used for education, assembly, or office occupancy when the total projected construction costs at the commencement of construction exceed \$100,000.
2. Any alteration or addition to an existing building owned by a district that is, or will be, used for education, assembly, or office occupancy when the total projected construction costs of alteration or addition at the commencement of construction exceed \$50,000 and the alteration or addition requires the removal, relocation, or addition of any walls or partitions or the alteration or addition of an exit.

This section does not prohibit a district from choosing a registered architect or a registered professional engineer as the prime design professional for a building construction, alteration, or addition project. Designation as the prime design professional does not expand, limit, or otherwise alter the scope of a design professional's practice nor does it allow a design professional to prepare an architectural plan or specification described above.

Occupations Code 1051.703; 22 TAC 1.212

REGISTERED
ENGINEER

Electrical or mechanical engineering plans, specifications, and estimates for a district construction project whose contemplated cost at completion is more than \$8,000 and that involves public health, welfare, or safety must be prepared by a registered professional engineer, and the engineering construction executed under the supervision of such an engineer. *Occupations Code 1001.053; Atty. Gen. Op. C-791 (1966)*

A district is not required to secure the services of a registered professional engineer to prepare plans for or supervise a construction project that does not involve electrical or mechanical engineering and for which the contemplated cost does not exceed \$20,000. *Occupations Code 1001.053*

CERTIFICATION
FOR PURCHASES
THROUGH
PURCHASING
COOPERATIVES

A district may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative in an amount greater than \$50,000 unless a person designated by the district certifies in writing that:

1. The project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Chapter 1001 or 1051, Occupations Code; or

2. The plans and specifications required under Chapters 1001 and 1051, Occupations Code, have been prepared.

“Purchasing cooperative” means a group purchasing organization that governmental entities join as members and the managing entity of which receives fees from members or vendors.

Gov’t Code 791.011(j)

PROCURING
PROFESSIONAL
SERVICES

The purchasing requirements of Education Code 44.031 do not apply to a contract for professional services rendered, including the services of an architect. A district may contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Government Code 2254.003, in lieu of the methods provided by Education Code 44.031. *Education Code 44.031(f)*

Competitive bids shall not be solicited for professional services of any architect, landscape architect, land surveyor, professional engineer, or state-certified or state-licensed real estate appraiser. Contracts for these professional services shall be made on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price. *Gov’t Code 2254.002, .003(a)*

In procuring architectural, engineering, or land-surveying services, a district shall:

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

If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land-surveying services, a district shall formally end negotiations with that provider, select the next most highly qualified provider, and attempt to negotiate a contract with that provider at a fair and reasonable price. A district shall continue this process until the parties enter into a contract.

Gov’t Code 2254.004

An interlocal contract between a district and a purchasing cooperative may not be used to purchase engineering or architectural services. *Gov’t Code 791.011(h)*

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CONTRACTS FOR
ENGINEERING OR
ARCHITECTURAL
SERVICES
INDEMNIFICATION

A covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which the district is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must indemnify or hold harmless the district against liability for damage, other than liability for damage to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the indemnitor or the indemnitor's agent, consultant under contract, or another entity over which the indemnitor exercises control.

DUTY TO
DEFEND

Except as provided below, a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which the district is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must defend a party, including a third party, against a claim based wholly or partly on the negligence of, fault of, or breach of contract by the district, the district's agent, the district's employee, or other entity, excluding the engineer or architect or that person's agent, employee, or subconsultant, over which the district exercises control. A covenant or promise may provide for the reimbursement of the district's reasonable attorney's fees in proportion to the engineer's or architect's liability.

DISTRICT AS
ADDITIONAL
INSURED

The district may require in a contract for engineering or architectural services that the engineer or architect name the district as an additional insured under the engineer's or architect's general liability insurance policy and provide any defense provided by the policy.

STANDARD OF
CARE

A contract for engineering or architectural services to which a governmental agency is a party must require a licensed engineer or registered architect to perform services:

1. With the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license; and
2. As expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

In a contract for engineering or architectural services to which the district is a party, a provision establishing a different standard of care than a standard described above is void and unenforceable. If a contract contains a void and unenforceable provision, the standard of care described above applies.

Local Gov't Code 271.904

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RIGHT TO WORK

While engaged in procuring goods or services, awarding a contract, or overseeing procurement or construction for a public work or public improvement under Government Code Chapter 2269, a district:

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

Gov't Code 2269.054

ACCESSIBILITY

Each facility or part of a facility constructed by, on behalf of, or for the use of a district shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities. Alterations of facilities that affect or could affect their usability shall, to the maximum extent feasible, be altered in such manner that the altered portion is readily accessible to and usable by individuals with disabilities. 28 C.F.R. 35.151, 34 C.F.R. 104.23

PAYMENT AND
PERFORMANCE
BONDS

When a board makes a public work contract for constructing, altering, or repairing a public building or carrying out or completing any public work, it shall require the contractor, before beginning the work, to execute payment and/or performance bonds as specified below. The bonds shall be executed by a corporate surety in accordance with Insurance Code 7.19-1. The bond shall be payable to the board and in a form approved by the board. *Gov't Code 2253.021(a), (d)-(e)*

For a contract in excess of \$100,000, a performance bond shall be executed in the amount of the contract conditioned on the faithful performance of the work according to the plans, specifications, and contract documents. The bond is solely for the protection of a district. *Gov't Code 2253.021(b)*

For a contract in excess of \$25,000, a payment bond shall be executed in the amount of the contract solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material. *Gov't Code 2253.021(c)*

FAILURE TO OBTAIN
PAYMENT BOND

If a board fails to obtain a payment bond covering a contract in excess of \$25,000 from the prime contractor, it is subject to the same liability as a surety would be, and a payment bond beneficiary is entitled to a lien on money due to the prime contractor in the same

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	<p>manner and to the same extent as if the contract were subject to Subchapter J, Chapter 53, Property Code. <i>Gov't Code 2253.027</i></p>
<p>NO BOND FOR DESIGN SERVICES ONLY</p>	<p>A payment or performance bond is not required and may not provide coverage for the design portion of the design-build contract with the design-build firm. <i>Gov't Code 2269.311(a)</i> [See CVE for more information on design/build contracts, including bond amounts.]</p>
<p>BOND FOR INSURED LOSS</p>	<p>A board shall ensure that an insurance company that is fulfilling its obligation under a contract of insurance by arranging for the replacement of a loss, rather than by making a cash payment directly to the governmental entity, furnishes or has furnished by a contractor:</p> <ol style="list-style-type: none">1. A performance bond for the benefit of a district, as described above; and2. A payment bond, as described above. If the payment bond is not furnished, a district is subject to the same liability that a surety would have if the surety had issued the payment bond and the district had required the bond to be provided. <p>These bonds shall be furnished before the contractor begins work. It is an implied obligation under a contract of insurance for the insurance company to furnish these bonds.</p>
<p>EXCEPTION TO BOND REQUIREMENT</p>	<p>The requirement that a district secure a performance or payment bond from an insurance company, above, does not apply when a surety company is complying with an obligation under a bond that had been issued for the benefit of the district.</p> <p><i>Gov't Code 2253.022</i></p>
<p>PREVAILING WAGE ON PUBLIC WORKS</p>	<p>A worker, laborer, or mechanic employed on a public work, exclusive of maintenance work, by or on behalf of a district shall be paid not less than the general prevailing rate of per diem wages. The general prevailing rate of per diem wages is the rate of per diem wages for work of a similar character in the locality in which the work is performed, and also includes the rate of per diem wages for legal holiday and overtime work. A worker is employed on a public work if the worker is employed by a contractor or subcontractor in the execution of a contract for public work with a district. <i>Gov't Code 2258.001, .021</i></p> <p>A board shall determine, as a sum certain, the general prevailing rate of per diem wages in a district for each craft or type of worker needed to execute the contract and also for legal holiday and overtime work. To ascertain the general prevailing rate of per diem wages, a board shall either conduct a survey of the wages re-</p>

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	<p>ceived by classes of workers, laborers, and mechanics employed on projects of a character similar to the contract work in a district or adopt the prevailing wage rate as determined by the U.S. Department of Labor. A board shall specify the prevailing rate of per diem wages in the call for bids and in the contract itself. A board's determination of the general prevailing rates of per diem wages shall be final. <i>Gov't Code 2258.001, .022</i></p>
ENFORCEMENT	<p>A board, and an agent or officer of the board, shall receive complaints regarding violations of the prevailing wage requirements of Chapter 2258, and withhold money from the contractor as required by statute. Upon receipt of a complaint, a board shall determine, before the 31st day after the date the information is received, whether good cause exists to believe that a contractor or subcontractor has failed to pay the prevailing wage and shall provide written notice of its determination to the contractor or subcontractor and any affected laborer, worker, or mechanic of its initial determination. <i>Gov't Code 2258.051-.052</i></p>
RETAINAGE AND REIMBURSEMENT	<p>A board shall retain any amounts due under the contract pending a final determination of the violation. Upon a final determination that violations have occurred, a board shall use those retained amounts to pay the laborer, worker, or mechanic the difference between the amount the worker received in wages and the amount the worker would have received at the prevailing rate of per diem wages provided in the arbitrator's award. A board may adopt rules, orders, or ordinances relating to the manner in which the reimbursement is made. <i>Gov't Code 2258.052(d), .056</i></p>
PENALTY FOR NONCOMPLIANCE	<p>The contractor to whom the contract is awarded or any subcontractors of the contractor shall pay not less than the specified rates to all laborers, workers, and mechanics employed in the execution of the contract. A contractor or subcontractor who fails to pay the specified rates as required shall pay to a district \$60 for each worker, laborer, or mechanic employed for each calendar day or part of a calendar day the worker is paid less than the wage rates specified in the contract. A board must specify this penalty in the contract. If a district does not determine the prevailing wage rates and specify them in the contract, the contractor or subcontractor may not be fined. A board shall use any penalty money collected to offset the costs incurred in administering Government Code Chapter 2258. <i>Gov't Code 2258.023</i></p>
REQUIRED WORKERS' COMPENSATION COVERAGE	<p>When a district enters into a building or construction contract on a project, it shall fulfill the following requirements regarding required workers' compensation coverages. A project includes the provision of all services related to a building or construction contract for a district. A district shall:</p>

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1. Include in the bid specifications all the duties and responsibilities of contractors pertaining to required workers' compensation coverages. [See CV(EXHIBIT)]
2. As part of the contract, using the language required by 28 Administrative Code 110.110(c)(7), require the contractor to perform the duties and responsibilities pertaining to required workers' compensation coverages. [See CV(EXHIBIT)]
3. Obtain from the contractor a certificate of coverage for each person providing services on the project, prior to that person's beginning work on the project. This provision includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracts directly with the contractor and regardless of whether that person has employees. This includes, but is not limited to, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity furnishing persons to perform services on the contract. Services include, but are not limited to, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to a project. Services do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
4. Obtain from the contractor a new certificate of coverage showing extension of coverage:
 - a. Before the end of the coverage period, if the contractor's current certificate shows that the coverage period ends during the duration of the project; and
 - b. No later than seven days after the expiration of the coverage for each other person providing services on the project whose current certificate shows that the coverage period ends during the duration of the project.
5. Retain certificates of coverage on file for the duration of the project and for three years thereafter.
6. Provide a copy of the certificate of coverage to the Texas Department of Insurance upon request and to any person entitled to a copy by law.
7. Use the prescribed language for bid specifications and contracts without any additional words or changes, except those required to accommodate the specific document in which they

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are contained or to impose stricter standards of documentation. [See CV(EXHIBIT) for prescribed language]

Labor Code 406.096; 28 TAC 110.110(a)(7)(8), (c)

EXCEPTION	This coverage requirement does not apply to sole proprietors or partners of a covered business entity or corporate officers, if the sole proprietor, partner or officer is explicitly excluded from the coverage of their business entity through an endorsement to the insurance policy or certificate of authority to self insure. <i>Labor Code 406.097; 28 TAC 110.110(i)</i>
CRIMINAL HISTORY	For provisions pertaining to criminal history record information on contractors, see CJA(LEGAL).
IMPERMISSIBLE PRACTICES	A board member, employee, or agent of a district who knowingly or with criminal negligence violates the purchasing laws found in Education Code Chapter 44 as described at Education Code 44.032 is subject to criminal penalties. <i>Education Code 44.032</i> [See CH]
ENFORCEMENT ACTIONS	Government Code Chapter 2269 may be enforced through an action for declaratory or injunctive relief filed not later than the tenth day after the date on which the contract is awarded. <i>Gov't Code 2269.452</i>
DEFECTS IN INSTRUCTIONAL FACILITIES	<p>A district that brings an action for recovery of damages for the defective design, construction, renovation, or improvement of an instructional facility financed by bonds for which the district receives state assistance under Education Code Chapter 46, Subchapter A (Instructional Facilities Allotment) shall provide the Commissioner with written notice of the action. The Commissioner may join in the action on behalf of the state to protect the state's share.</p> <p>The district shall use the net proceeds from the action to repair the defect or to replace the facility. <i>Education Code 46.008</i> applies to the repair.</p> <p>The state's share is state property. The school district shall send to the comptroller any portion of the state's share not used by the school district to repair the defect or to replace the facility. <i>Education Code 42.258</i> applies to the state's share.</p>
"NET PROCEEDS"	"Net proceeds" means the difference between the amount recovered by or on behalf of a school district in an action, by settlement or otherwise, and the legal fees and litigation costs incurred by the district in prosecuting the action.
"STATE'S SHARE"	"State's share" means an amount equal to the district's net proceeds from the recovery multiplied by a percentage determined by dividing the amount of state assistance under Education Code

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Chapter 46, Subchapter A used to pay the principal of and interest on bonds issued in connection with the instructional facility that is the subject of the action by the total amount of principal and interest paid on the bonds as of the date of the judgment or settlement.

Education Code 46.0111

ATTORNEY FEES

A governmental contract for general construction, an improvement, a service, or a public works project may not provide for the award of attorney's fees to a district in a dispute in which the district prevails unless the contract provides for the award of attorney's fees to each other party to the contract if that party prevails in the dispute. *Gov't Code 2252.904*

FACILITIES CONSTRUCTION
CONSTRUCTION MANAGER-AT-RISK

CVD
(LEGAL)

“Construction manager-at-risk method” is a delivery method by which a district contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility. *Gov’t Code 2269.251(a)*

A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repairs of a facility at a contracted price as a general contractor and provides consultation to a district regarding construction during and after the design of the facility. The contracted price may be a guaranteed maximum price. *Gov’t Code 2269.251(b)*

A district may use the construction manager-at-risk method for the construction, rehabilitation, alteration, or repair of a facility. In using this method, a district must comply with applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)], which include the following steps:

1. SELECTING A CONTRACTING METHOD;
2. Giving PUBLIC NOTICE of the project;
3. Publishing CONTRACT SELECTION CRITERIA;
4. MAKING EVALUATIONS PUBLIC after the contract is awarded; and
5. Providing for INSPECTION, VERIFICATION, AND TESTING necessary for acceptance of the facility by the district.

Education Code 44.031(g); Gov’t Code 2269.052, .055, .056(a), (c), .058, .251(c)

Note: Terms in all capital letters, above, point to margin notes in the referenced policy.

ARCHITECT /
ENGINEER

On or before the selection of a construction manager-at-risk, the district shall select or designate an architect or engineer or architect to prepare the construction documents for the project. *Gov’t Code 2269.252(a)* [See CV]

The district’s architect or engineer for a project, or an entity related to the district’s architect or engineer, may not serve, alone or in combination with another, as the construction manager-at-risk. The engineer or architect is not prohibited from providing customary construction phase services under the architect’s or engineer’s

FACILITIES CONSTRUCTION
CONSTRUCTION MANAGER-AT-RISK

CVD
(LEGAL)

original professional service agreement in accordance with applicable licensing laws.

An entity is related to the district'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 district'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 district.

Gov't Code 2269.252(b), (c)

SELECTION PROCESS

A district shall select the construction manager-at-risk in either a one-step or two-step process. A district shall prepare a single request for proposals, in the case of a one-step process, and an initial request for qualifications, in the case of a two-step process that includes:

1. A statement as to whether the selection process is a one-step or two-step process;
2. General information on the project site, project scope, schedule, selection criteria and the weighted value for each criterion, and estimated budget and the time and place for receipt of the proposals or qualifications; and
3. Other information that may assist a district in its selection of a construction manager-at-risk.

A district shall state the selection criteria in the request for proposals or qualifications.

If a one-step process is used, a district may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions. If a two-step process is used, a district may not request fees or prices in step one. In step two, a district may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions.

Gov't Code 2269.253(a)-(e)

OPENING AND
EVALUATING
PROPOSALS

At each step, a district shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, a district shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened. Not later than the 45th day after the date on which the final proposals are opened, a district shall evalu-

FACILITIES CONSTRUCTION
CONSTRUCTION MANAGER-AT-RISK

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(LEGAL)

	<p>ate and rank each proposal submitted in relation to the criteria set forth in the request for proposals. <i>Gov't Code 2269.253(f)-(g)</i></p>
SELECTION	<p>A district shall select the offeror that submits the proposal that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district 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. <i>Gov't Code 2269.254(a)-(c)</i></p>
NOTICE OF RANKINGS	<p>Not later than the seventh day after the date the contract is awarded, the district shall make the proposal rankings public. <i>Gov't Code 2269.254(d)</i></p>
TRADE CONTRACTORS / SUBCONTRACTORS	<p>A construction manager-at-risk 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. A construction manager-at-risk may seek to perform portions of the work itself if:</p> <ol style="list-style-type: none">1. The construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors; and2. The district determines that the construction manager-at-risk's bid or proposal provides the best value for the district. <p><i>Gov't Code 2269.255</i></p>
BIDS OR PROPOSALS	<p>The construction manager-at-risk 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 construction manager-at-risk, architect, engineer, or district. All bids or proposals shall be made available to the district on request and to the public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals. <i>Gov't Code 2269.256(a)</i></p> <p>If the construction manager-at-risk reviews, evaluates, and recommends to the district a bid or proposal from a trade contractor or subcontractor but the district requires another bid or proposal to be accepted, the district shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk incurs because of the district's requirement that another bid or proposal be accepted. <i>Gov't Code 2269.256(b)</i></p>

FACILITIES CONSTRUCTION
CONSTRUCTION MANAGER-AT-RISK

CVD
(LEGAL)

DEFAULT

If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this policy, the construction manager-at-risk may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. *Gov't Code 2269.257*

PAYMENT AND
PERFORMANCE BOND
AMOUNTS

If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the district must each be in an amount equal to the project budget, as specified in the request for proposals or qualifications. The construction manager shall deliver the bonds not later than the tenth day after the date the construction manager-at-risk executes the contract, unless the construction manager-at-risk furnishes a bid bond or other financial security acceptable to a district to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established. *Gov't Code 2269.258* [See CV for more information on payment and performance bonds.]



OFFICE OF THE SUPERINTENDENT

SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

5622 Ray Ellison Drive • San Antonio, Texas 78242 • (210) 977-7000 • Fax (210) 977-7021

Minutes of Regular Meeting

The Board of Trustees
South San Antonio ISD

A Regular Meeting of the Board of Trustees of South San Antonio ISD was held Wednesday, February 17, 2016, beginning at 6:30 PM in the ADMINISTRATION BUILDING.

CALL TO ORDER AND ROLL CALL

The meeting was called to order at 6:30 p.m.

Table with 4 columns: Trustee, Present, Absent, Late Arrival. Rows include Mrs. Connie Prado, Mrs. Stacey Estrada, Mrs. Angelina Osteguín, Mr. Trinidad Mata, Mr. Carlos Longoria, Mrs. Leticia Guerra, Ms. Helen Madla.

PLEDGE OF ALLEGIANCE

Led by Mr. Longoria.

INTRODUCTIONS

1. Introduction of Texas Education Agency representatives and Conservator.

Dr. Saavedra introduced Mr. Ronald Rowell, Director of School Governance with the Texas Education Agency and Dr. Judy Castleberry, Conservator of the District.

Mr. Rowell addressed the Board and audience regarding the appointment of a Conservator and Dr. Castleberry addressed the Board with appreciation for the warm welcome.

CITIZENS TO BE HEARD

- 1. James Torres, High School Senior, Band and Mariachi member, addressed the Board and community regarding the necessary purchase of High School Band

Uniforms.

2. *Joaquin Obrego*, Southwest Workers Union, addressed the Board and community regarding working conditions and salaries for cafeteria and custodial workers and paraprofessionals.
3. *Chavel Lopez on behalf of Maria Garcia*, Member of the Southwest Workers Union, addressed the Board and audience regarding staffing, a hostile working environment, favoritism and harassment.
4. *Debra Hernandez*, addressed the Board regarding the Superintendent's evaluation and credentials.
5. *Angelita Olvera*, addressed the Board regarding the Conservator appointed to the District.

RECOGNITION

1. **Recognize The Mission Continues, Team RWB and Wounded Warriors Project for their assistance in renovating and upgrading the Athens Elementary playground.**

Mr. David Abundis was called upon to recognized The Mission Continues, Team RWB and Wounded Warriors Project.

SUPERINTENDENT'S REMARKS (NO ACTION / REPORT ONLY)

Dr. Saavedra addressed the Board with comments of appreciation to the volunteers that helped with the Athens Elementary Playground, welcomed Dr. Castleberry, announced the Boys Basketball Team making the playoffs and progress of mid-year reviews.

PRESENTATIONS / REPORTS

1. **Report of Superintendent's approved functional Budget Amendments not exceeding \$25,000 in accordance with Policy CE (LOCAL).**

Dr. Saavedra was called to present and answer questions related to this item.

2. **Report on district support of extracurricular/co-curricular student activities.**

Mr. Henry Yzaguirre was called to present and answer questions related to this item.

3. **Report on End of Course exams.**

Dr. Lee Hernandez was called to present and answer questions related to this item.

4. **Report on the possible realignment of campus attendance zones.**

Dr. Saavedra, Mr. Henry Yzaguirre and Dr. Harner were called to present and

answer questions related to this item.

DISCUSSION / POSSIBLE ACTION

1. Discussion and possible action to approve construction change orders to the High School Auditorium Renovation project using construction contingency money as presented by Garza Bomberger and Associates.

Dr. Saavedra and Mr. Davis were called to present and answer questions related to this item.

Upon motion by Mr. Mata, seconded by Mr. Longoria, the Board of Trustees moved to approve as presented. 7/0 Motion passed.

This item pertained to a change order in the amount of \$15,500 to address damage to the stage floor caused by heat and humidity in the auditorium.

2. Discussion and possible action to request approval of proposal to replace 23 Trane rooftop units at Price Elementary from Trane utilizing the TASB Buyboard Cooperative contract #384-11 in the amount of \$194,502.00.

Dr. Saavedra, Mrs. Jenny Arredondo and Mr. Andy Rocha and were called to present and answer questions related to this item.

Upon motion by Mr. Mata, seconded by Mr. Longoria, the Board of Trustees moved to approve as presented. 7/0 Motion passed.

3. Discussion and possible action to approve the purchase of band uniforms from Fred J. Miller utilizing the TASB Buyboard Cooperative contract #416-12 in the amount of \$85,057.35.

Dr. Saavedra and Mr. Alex Sanchez were called to present and answer questions related to this item.

Upon motion by Ms. Madla, seconded by Mrs. Estrada, the Board of Trustees moved for approval. 7/0 Motion passed.

4. Discussion and possible action to change the March regular board meeting from March 16th to March 23, 2016.

Dr. Saavedra was called to present and answer questions related to this item.

Upon motion by Mr. Mata, seconded by Mr. Longoria, the Board of Trustees moved to approve as presented. 7/0 Motion passed.

CONSENT

- 1. Approve the addition to CRD (LOCAL) to include the definition of a Variable Hour Employees as per the Affordable Health Care Act (ACA).**
- 2. Approve the amendment of \$29,684.00 from function 11 Instruction to function 61 Community Services for the Parent Center Clerk at Dwight Middle School.**
- 3. Approve Jesus Salazar, Chief Financial Officer, as an authorized District Officer for daily bank transactions and investment transfers with Wells Fargo Bank.**
- 4. Approve Jesus Salazar, Chief Financial Officer, as the First Public Lone Star Investment Pool Authorized District Representative.**
- 5. Approve Jesus Salazar, Chief Financial Officer, as the TexPool Government Investment Authorized District Representative.**
- 6. Approve Board Policies: Update 103.**
- 7. Approve Board Meeting Minutes:**
 - A. January 20, 2016 Regular Called Meeting**
 - B. January 25, 2016 Special Called Meeting**
 - C. February 9, 2016 Special Called Meeting**

Upon motion by Mrs. Madla, seconded by Mr. Mata, the Board of Trustees moved to approve consent agenda items 1 through 7. 7/0 Motion passed.

CLOSED/ EXECUTIVE SESSION

Closed session began at 8:22 p.m.

Returned to open session at 12:23 a.m.

NOTICE: The Board of Trustees may elect to go into Closed Meeting any time during the meeting to discuss matters listed on the Agenda when authorized by the provisions of the Open Meetings Act, Chapter 551 of the Texas Government Code. In the event the Board of Trustees elects to go into Closed Meeting regarding an Agenda Item, the Board of Trustees will hold a Closed Meeting to discuss individual personnel matters including termination, litigation and other matters the Board deems necessary. Upon completion of Closed Meeting, the Board of Trustees may, in the open session, take such action as appropriate on items discussed in a Closed Meeting. If, during the course of the meeting, any discussion of any item listed on the agenda should be held in Closed Meeting, the Board will convene in such Closed Meeting in accordance with Texas Government Code Sections 551.001 - 551.088. The Board members may take action in the open portion of the meeting on items discussed in the Closed Meeting but no action will be taken in closed session.

The Board will return to open session and take appropriate action, if any, on items discussed in closed session. No Action will be taken in closed session. Further,

Board Members are reminded that all items discussed in closed session must remain confidential so as to avoid liability to the district. The Board will consider and discuss, the following items:

Closed Meeting pursuant to the Texas Open Meetings Act, Texas Government Code §§ 551.071, 551.072, 551.074, 551.076, 551.082, and 551.0821

1. Report on pending personnel investigation related to the handling of fund accounts and fundraising activities in accordance with district requirements.

No action taken.

2. Conduct a Formative Evaluation of the Superintendent.

No action taken.

ADJOURNMENT

Upon motion by Ms. Madla, seconded by Mr. Mata, the Board of Trustees voted unanimously to adjourn the meeting at 12:24 a.m.

ATTEST




Connie Prado, Board President



Angelina Osteguin, Board Secretary

Regulations

This section pertains to agenda items regarding administrative regulations that have been reviewed or approved by the SSAISD Board of Trustees.



DELEGATION OF
AUTHORITY

The school board has delegated the Superintendent or designee to determine the project delivery method/contract award method to be used for each construction contract value at or below \$25,000.

Any expenditures not previously approved or authorized by the board, e.g., Change Orders, also must be approved by the board. But the law does allow the board to grant general authority to an administrative official to approve change orders.

CONTRACTS VALUED AT
OR ABOVE \$25,000

For construction contracts over \$25,000 in the aggregate Government Code Chapter 2269, the board shall determine the project delivery/contract award method. To assist the Board, the Superintendent shall recommend the project delivery/contracts award method that he or she determines provides the best value to the District.

AVAILABLE DELIVERY
METHODS FOR
CONSTRUCTION
CONTRACTS BELOW
\$50,000

The law specifies the following available methods for construction contracts below \$50,000:

1. Competitive Bidding;
2. Competitive Sealed Proposals;
3. Job Order Contracts for minor construction, repair, rehabilitation or alteration of a facility; and
4. An inter-local contract.

CONSTRUCTION
DELIVERY METHODS
FOR REPAIRS,
RENOVATIONS OR NEW
CONSTRUCTIONS
EXCEEDING \$50,000

The Facilities Department will identify construction needs District wide. If the amount of work for repairs and renovation exceeds \$50,000, or new construction exceeds \$100,000, the Superintendent or designee will make recommendations to the Board of Trustees. The district may require the engagement of a construction auditor to ensure procurement, pre-construction, compliance and accounting of Bond Construction Projects. The selected method will be advertised. Methods include Texas Government Code 2269:

1. Competitive Bidding
2. Competitive Sealed Proposals
3. Construction Manager – Agent
4. Construction Manager – at Risk
5. Design / Build

Below is a brief description of each delivery method.

1. **Competitive Bidding** involves (1) preparing a request for bids, (2) opening the bids and (3) award a contract

to the lowest responsible bidder.

2. **Competitive Sealed Proposals** involves (1) preparing a request for sealed proposals, (2) opening and ranking proposals received, and then (3) selecting a contractor who offers best value according to the selection criteria adopted to the district. The district attempts to negotiate a contract with the first-ranked contractor; if the district is unsuccessful, it ends negotiations with the contractor and attempts to negotiate with the second ranking contractor, and so on, until a contract is reached or all proposals are rejected.
3. **Design-Build Contract** is a single contract with a design-build firm for the design and construction of a facility. A design-build firm is a sole partnership, corporation, or other legal entity or team that includes an architect or engineer and or a construction contractor.
4. **Construction Manager-Agent** is a sole proprietorship, partnership, corporation, or other legal entity that serves as the agent for the governmental entity by providing construction administration and management services for the construction, rehabilitation, alteration, or repair of a facility. After selecting a construction manager-agent, the district then hires a general contractor or trade contractors who will serve as the prime contractor for their specific portion of the work. The district may hire a general contractor or the district may assume the role of the general contractor by hiring multiple prime contractors to perform portions of the work.
5. **Construction Manager-At-Risk** is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the district regarding construction during and after the design of a facility.
6. **Job Order Contract** may be awarded by the district

for the 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. Thus, this method by itself is not suited for major school construction projects. Chapter 44 list these contracts as a permissible delivery method, nothing in the Education Code specifically addresses the use of such contracts for construction services. The Attorney General has concluded that neither the Education Code nor the Inter Local Cooperation Act, Chapter 791 of the Government Code, require inter-local contracts to be competitively bid.

7. Inter-local Contract are board approved agreements with other state political subdivision regarding contracts for construction, repairs or improvements.

SELECTION CRITERIA AND RELATIVE WEIGHTS

Under each of the delivery methods, the District must determine the criteria to be used in choosing among the competing vendors for the construction services under the construction method determined to represent the best value for the district. Also, the district must choose the relative weights given to each criteria.

Both the selection criteria and the relative weights must be determined by the district before publishing its request for bids, proposals, or qualifications because the selection criteria and their relative weights must be included in the request for bids, proposals, or qualifications. The determination of the selection criteria, or the delegation of that responsibility, requires board action, the subject should appear as an agenda item and the minutes should contain a resolution passed by the board in which the board either sets forth the selection criteria and weights that will be used to evaluate the offers received for construction services, or sets forth the board's delegation of that authority to Superintendent or Designee. In the event of delegation, both the fact of the delegation and the extent of the delegation should appear in the minutes.

Chapter 2269 lists the following factors as factors that the district will consider. The superintendent or designee may assign whatever weight it chooses for each criterion. Chapter 2269 lists the following factors as criterion that the district will consider:

1. the price;
2. the offeror's experience and reputation;
3. the quality of the offeror's goods or services;

4. the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses;
5. the offeror's safety record;
6. the offeror's proposed personnel;
7. whether the offeror's financial capability is appropriate to the size and scope of the project;
8. whether an apparent low bidder or successful proposer is indebted to the district; and
9. any other relevant factor specifically listed in the request for bids, proposals or qualifications.

The Education Code also recognizes a final factor the district may consider. Such regulations permit a district to refuse to award a contract or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the school district.

The district shall publish the desired selection criteria in the request for bids or sealed proposals.

LABOR CODE
406.096; 28 TAC
110.110(a)(7)(8), (c)

The Attorney General has made clear that the workers' compensation statute, section of the Labor Code, applies to every building or construction contract' no matter how small the subject matter of the contract may be.

CERTIFICATION OF
DESIGN AND
CONSTRUCTION

Whenever the district is going to perform new construction or a major space renovation, it will be required to develop an Educational Program and Educational Specifications approved by the Superintendent. It will also need to adopt a building code and at the end of the project obtain a certification of design and construction. Major space renovations to all or part of the facility's instructional space where the scope of the work in the affected part of the facility involves substantial renovations to the extent that most existing interior walls and fixtures are demolished and then subsequently rebuilt in a different configuration and or function.

EDUCATIONAL
PROGRAM FOR
CONSTRUCTION
PROJECTS

The Educational Program is a written document that essentially sets forth how you will achieve your district's educational philosophy, mission, and goals through your construction project.

The Texas Administrative Code sets out the following requirements:

1. Summary of the school district's educational philosophy, submission, and goals.
2. A description of the general nature of the district's instructional program in accordance with § 74.1 of this title (relating to Essential Knowledge and Skills).

The written educational program should describe:

- the learning activities to be housed, by instructional space;
- how the subject matter will be taught (methods of instructional delivery);
- the materials and equipment to be used and stored;
- utilities and infrastructure needs; and
- the characteristics of furniture needed to support instruction.

EDUCATIONAL
SPECIFICATIONS

The Educational Specifications will be developed detailed analysis of the district's intended use of the facilities. When developing the Educational Specifications, the district must use a design professional or consultant experienced in school planning and design. The rules also require the district to allow input from teachers and other campus staff and district program staff.

The administrative code requires the district to hire a design professional or consultant experienced in the area of school planning and design to develop the Educational Specifications.

The district may use the same architect to develop the Educational Specifications and to design the project as a whole.

The Educational Program and Educational Specifications must be approved by the Board of Trustees. This authority cannot be delegated to administration.

Once the project is complete the district will present the architect with the Educational Program, Educational Specifications and adopted code so that the architect can certify that project was completed in accordance with the Educational Program, the Educational specifications and the applicable codes.

ADOPTION OF A
BUILDING CODE

The Texas Administrative Code requires also that school districts adopt a building code for their projects, if the district is located in an area that has not already adopted a building code.

PAYMENT AND
PERFORMANCE BONDS

A school district's Board Policy CV (LEGAL) also concisely summarizes a district's duty to require a contractor to provide payment or performance bonds. We have directly quoted the policy below.

When the Board makes a public work contract for constructing, altering, or repairing a public building or carrying out or completing any public work, it shall require the contractor, before beginning the work, to execute payment and/or performance bonds as specified below. The bonds shall be executed by a corporate surety in accordance with Insurance

Code 7.19-1. The bond shall be payable to the Board and in a form approved by the Board. *Gov't Code 2253.021(a), (d), (e)*

For a contract in excess of \$100,000, a performance bond shall be executed in the amount of the contract conditioned on the faithful performance of the work according to the plans, specifications, and contract documents. The bond is solely for the protection of the District. *Gov't Code 2253.021(b)*

For a contract in excess of \$25,000, a payment bond shall be executed in the amount of the contract solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material. *Gov't Code 2253.021(c)*

FAILURE TO OBTAIN
PAYMENT BOND

If the Board fails to obtain a payment bond covering a contract in excess of \$25,000 from the prime contractor, it is subject to the same liability as a surety would be, and a payment bond beneficiary is entitled to a lien on money due to the prime contractor in the same manner and to the same extent as if the contract were subject to Subchapter J, Chapter 53, Property Code. *Gov't Code 2253.027*

NO BOND FOR DESIGN
SERVICES ONLY

A payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract that includes design services only. *Education Code 44.036(j)* Now *Gov't Code 2269.311(a)* See CVC (LEGAL) for more information on design/build contracts, including bond amounts.

BOND FOR INSURED
LOSS

The Board shall ensure that an insurance company that is fulfilling its obligation under a contract of insurance by arranging for the replacement of a loss, rather than by making a cash payment directly to the governmental entity, furnishes or has furnished by a contractor:

1. A performance bond for the benefit of the District, as described above; and
2. A payment bond, as described above. If the payment bond is not furnished, the District is subject to the same liability that a surety would have if the surety had issued the payment bond and the District had required the bond to be provided.

These bonds shall be furnished before the contractor begins work. It is an implied obligation under a contract of insurance for the insurance company to furnish these bonds.

ADVERTISING FOR
RECEIVING AND
OPENING BIDS,
PROPOSALS OR
REQUEST FOR
QUALIFICATIONS

The district will follow adopted rules and procedures for advertising, receiving, and opening of bids, proposals, and requests for qualifications. The statutory publication requirement is that a district must publish, in a newspaper in the county in which the district's central administrative office is located, notice of the time by when and place where the bids, proposals, or responses to a request for qualifications, will be received and opened. The notice must appear once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications.

One exception to publication exists. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately.

MAKING SELECTIONS
PUBLIC

The district shall base its selection among offerors on applicable criteria listed for the particular method used. Once a selection is made based on these selection criteria, the district must document the basis of its selection and shall make its evaluations public not later than the seventh day after the date the contract is awarded.

RIGHT TO WORK

The district, in procuring goods or services; awarding a contract; or overseeing procurement or construction for a public work or public improvement may not consider whether a vendor is a member of or has another relationship with any organization. The district is further prohibited from preparing bid specifications or entering into contracts that deny or diminish the right of a person to work because of that person's membership or other relationship status to any organization.

CONTRACT
DOCUMENTS

The legal vehicle for each construction delivery method is a written, legally binding contract for construction services developed and approved by the school district's attorney. The form of the contract will vary according to the delivery method chosen. District will consult School attorney in developing, modifying, and negotiating the contract or contracts used for the project.

SEPARATE CONTRACT
FOR INSPECTION AND
TESTING SERVICES

The district shall provide or contract for the construction materials engineering, Geo testing, inspection services and the verification testing services necessary for acceptance of the facility independently of its contractor, construction manager, or design-builder.

REQUIREMENTS FOR
DELIVERY METHODS

This section outlines the step-by step procedures for each delivery method.

THE DESIGN-BUILD
CONTRACT

A design-build contract is a contract with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility. A design-build firm is a sole proprietorship, partnership, corporation, or other legal entity or team that includes an engineer or architect and a construction contractor. It is important to recognize that the statutory procedure for a design-build contract is unique. Remember, even when using the Design-Build method, the district must still engage an independent design professional.

Procedures:

Step 1. Board Approves Delivery Method

Step 2. Adopt Design-Build as Method of
Delivery

Step 3. Hire an Independent Engineer or Architect

The district is required to designate an architect or engineer independent of the design-build firm to act as its representative for the duration of the project. If this design professional is not a full-time employee of the district, the selection process must be in accordance with section 2254.004 of the Government Code.

Step 4. Prepare Selection Criteria and Weights for Hiring Design-Build Firm

Step 5. Prepare the Design Criteria Package

The district must prepare a design criteria package, which is a set of documents that provides sufficient information, including criteria for selection, to permit a design-build firm to prepare a response to a governmental entity's request for qualifications and to provide any additional information requested. The district should rely on its independent engineer or architect (see step 3) to assist it in the preparation of the design criteria package, and must do so if the preparation requires the practice of engineering or architecture.

The design criteria package must specify criteria the district considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirement.

Step 6. Prepare Request for Qualifications

The district must prepare a request for qualifications addressed to potential design-build firms. The project engineer or architect ideally will prepare the RFQ. This request for qualifications will include general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project.

Step 7. Set a Prevailing Wage Rate

Step 8. Give Notice of Worker's Compensation Coverage

Step 9. Require Payment and Performance Bonds

Note that a payment or performance bond is not required for, and may not provide coverage for the portion of the design-build contract with the design-build firm as to the amount of the bonds:

If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the district must each be in an amount equal to the project budget, as specified in the design criteria package. The design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the district to ensure that the design-build firm will furnish the required performance and payment bonds before construction begins.

Step 10. Publish Request for Qualifications

Step 11. Evaluate Responses and Select Design-Build Firm

The district must evaluate statements of qualifications and select a design-build firm in two phases. Each phase of the two-step procedure is discussed below.

Phase One

Under this phase of the selection process, the district evaluates the proposals submitted on the basis of each firm's experience, technical competence, and capability to perform, the past performance of the firm and members of the firm, and other appropriate factors submitted by the firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted.

In addition, each firm must certify to the governmental entity 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 Section 2254.004[Government Code]. The district is required to qualify a maximum of five responders to submit proposals that contain additional information, and, if the governmental entity chooses, to interview for final selection.

Phase Two

In this second and final phase, the district is required to evaluate the additional information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview.

Prior to making a final selection, the district will request additional information regarding demonstrated competence, experience, qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, or costing methodology.

The district then is required to rank each proposal submitted on the basis of the criteria set for the in the request for qualifications. Next, the district shall select the design-build firm that submits the proposal offering the best value for the governmental entity on the basis of the published selection criteria and on its ranking evaluations.

After selecting the top firm, the district must attempt to negotiate a contract with the selected firm. If negotiations are unsuccessful, the district must, 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.

Step 12. Make the Selection Public no later than the 7th day after the date the contract is awarded.

THE CONSTRUCTION
MANAGER-AGENT
CONTRACT

A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that provides consultation to the district regarding construction, rehabilitation, alternation, or repair of the facility. Also, the district may require that the construction manager-agent provide administrative personnel, equipment necessary to perform duties under this section, and on-site management and other services specified in the contract. No matter the construction manager-agent's specific duties, it represents the district in a fiduciary capacity.

Fiduciary capacity, means that the construction-manager acts on behalf of the district and is obligated, when so acting to put the school district's interest ahead of any personal interest of the fiduciary. Therefore, the fiduciary duty encompasses at the very minimum a duty of good faith and fair dealing recognized by law. A district should take great care that its contract with a construction manager-agent does not erode or lessen the manager-agent's responsibility under the statute.

Fiduciary capacity notwithstanding, the district must understand that the construction manager-agent does NOT serve as the prime contractor for any portion of the work, but merely serves as a consultant or Project manager owing an extremely high duty to the school district. In other words, a construction manager-agent is not a contractor ultimately responsible as such for defectively-constructed work.

The construction manager-agent may not:

1. Self-perform any aspect of the construction, rehabilitation, alteration, or repair of the facility;
2. Be a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility; or
3. Provide or be required to provide performance and payment bonds for the construction, rehabilitation, alteration or repair of the facility.

Procedures:

Step 1. Board Approves Delivery Method

Step 2. Adopt Construction Manager-Agent as Method of Delivery

Step 3. Hire an Engineer or Architect

Before or concurrently with selecting a construction manager-agent, the district must select or designate an engineer or architect who shall prepare the construction documents for the project. The district must select or designate an architect or engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code.

The district's engineer or architect hired for the project cannot serve alone or in combination with another person, as the construction manager-agent 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 Texas Government Code Chapter 2269, Subchapter E. The Government Code, however, does not prohibit the engineer or architect from providing customary construction phase services under the architect's or engineer's original professional services agreement.

Therefore, a construction manager-agent's contract, as such, would not include any engineering or architectural services for the project. Those responsibilities would be found in the agreement between the district and the engineer or architect. Nevertheless, provided separate contracts are used, and provided the statutory procedures are followed as to each contract, the statute permits the construction manager-agent to be one and the same as the project engineer or architect.

The standard-form architect agreement provides for supervision of the work during the construction phase, and also permits the district to contract with the architect for additional supervisory responsibilities that may be similar to services that would be provided by a construction manager-agent. The district, working with its school attorney, should ensure that the construction manager-agent's contractual responsibilities do not overlap with those of the architect.

Step 4. Select the Construction Manager-Agent

The district selects a construction manager-agent in the same manner as it would hire an engineer or architect, on the basis of demonstrated competence and qualifications under Section 2254.004, Government Code. Again, the hiring of the construction manager-agent cannot occur *prior to* the hiring of the engineer or architect.

Step 5. Make the Selection Public

Step 6. Set a Prevailing Wage Rate

Step 7. Give Notice of Worker's Compensation Coverage

Step 8. Require Payment and Performance Bonds for the General Contractor or Contractors Hired under Step 9.

Step 9. Hire a General Contractor or Multiple Trade Contractors

The district hires, in accordance with applicable law and in any manner authorized by Chapter 2269, a general contractor or trade contractors who will serve as the prime contractor for their specific portion of the work. This procurement would be through a method such as competitive sealed proposals or competitive bidding. This procurement should be treated as its own procurement under Chapter 2269 and the district shall follow all procedural steps for that delivery method.

DISTRICT SERVING AS
ITS OWN GENERAL
CONTRACTOR

Although potential cost savings exist for the district serving as general contractor with the assistance of a construction manager-agent. All contract forms approved by school district's attorney and published by AIA (American Institute of Architects), describe the duties of the construction manager-agent as that of a Consultant.

Moreover, if the district acts as its own general contractor the District must issue requests for proposals, evaluate, award, and separately contract with each of the trades and suppliers of goods or services valued at less than \$50,000.

Bonding requirements are also applicable to each such contract. Except for relatively small projects, these requirements have been known to significantly delay the completion of the project, and have many times resulted in large cost overruns. Also, if defects are present in the project, the district can expect a trade contractor to blame another trade contractor for the problems, leaving the district to prove who is responsible for the defect between possibly multiple contractors.

CONSTRUCTION
MANAGER-AT-RISK
CONTRACT

A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the district regarding construction during and after the design of a facility.

Selection Procedures:

Step 1. Board Approves Delivery Method

Step 2. Adopt Construction Manager-At-Risk as Method of Delivery

Step 3. Hire an Engineer or Architect

On or before the selection of a construction manager-at-risk, the district shall select or designate an architect or engineer to prepare the construction documents for the project. If the District selects architect or engineer is not a full-time employee of the district, the district shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004. The school district's engineer or architect hired for the project cannot serve alone or in combination with another person, as the construction manager-at-risk unless the architect or engineer is hired to serve as the construction manager-at-risk under a separate or concurrent selection process conducted in accordance with Chapter 2269.

The Government Code, however, does not prohibit the district's architect or engineer from providing customary construction phase services under the architect's or engineer's original professional services agreement.

Step 4. Prepare Selection Criteria and Weights for Hiring
Construction Manager-At- Risk

Step 5. Select the Construction Manager-at-Risk

The Government Code allows the construction manager-at-risk to be chosen by either a one or two-step process:

One-Step Process

1. *Prepare Request for Proposals*

In a one-step selection process, the district prepares a request for proposals, including general information on the project site, project scope, schedule, selection criteria and the weighted value for each criterion, and estimated budget and the time and place for receipt of the proposals. The district must also prepare a statement that the selection process is a one-step process, and other information that may assist the district in its selection of a construction manager- at-risk. The district shall state the selection criteria in the request for proposals. Also, if a one-step process is used, the district may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions.

2. *Set a Prevailing Wage Rate*

3. *Give Notice of Worker's Compensation Coverage*

4. *Require Payment and Performance Bonds*

If a fixed contract amount or guaranteed maximum price has not been determined at the time a contract is awarded, the penal sums of the performance and payment bonds delivered to the district must each be in an amount equal to the project budget, as specified in the request for qualifications. The construction manager shall deliver the bonds not later than the 10th day after the date the construction manager executes the contract unless the construction manager furnishes a bid bond or other financial security acceptable to the district to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

- *Publish Request for Proposals*
- *Open Proposals*

On the advertised date, time, and place, that the district must receive, publicly open, and read aloud the names of the offerors, as well as the fees and prices, if any, stated in each proposal as the proposal is opened.

- *Evaluate and Rank Proposals*

Not later than the 45th day after the dated on which the final proposals are opened, the district shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals. The district shall select the offeror that submits the proposal that offers the best value for the district based on the published selection criteria and on its ranking evaluation.

- *Negotiate with Offerors*

The district is required to first attempt to negotiate a contract with the selected offeror. If negotiations are unsuccessful, the district must, 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.

- *Make the Selection Public*

Two-Step Process

First Step: Requests for Qualifications

6. *Prepare Request for Qualifications*

In a two-step selection process, the district prepares a request for qualifications including general information on the project site, project scope, schedule, selection criteria, estimated budget, and the time and place for receipt of . . . qualifications and a statement that the selection process is a two-step process, and other information that may assist the district in its selection of a construction manager-at-risk. The district shall state the selection criteria in the request for qualifications. The district may not request fees or prices in step one.

- *Set a Prevailing Wage Rate*
- *Give Notice of Worker's Compensation Coverage*
- *Require Payment and Performance Bonds*

If a fixed contract amount or guaranteed maximum price has not been determined at the time a contract is awarded, the penal sums of the performance and payment bonds delivered to the district must each be in an amount equal to the project budget, as specified in the

request for qualifications. The construction manager shall deliver the bonds not later than the 10th day after the date the construction manager executes the contract unless the construction manager furnishes a bid bond or other financial security acceptable to the district to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

- *Publish Request for Qualifications*
- *Open Submissions*

On the advertised date, time, and place, that the district must receive, publicly open, and read aloud the names of the offerors.

SELECT FIVE OR
FEWER OFFERORS
BASED ON
QUALIFICATIONS

The district must evaluate the offerors on the basis of the qualifications stated in the responses to the requests for qualifications, and then it must select five or fewer offerors as the leading candidates for construction manager-at-risk.

Second Step Process:

- *Request Additional Information*

In this second step, the district may request that the five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and prices for fulfilling the general conditions.

- *Open Proposals*

On the advertised date, time, and place, the district must receive, publicly open, and read aloud the names of the offerors, as well as the fees and prices stated in each proposal as the proposal is opened.

- *Evaluate and Rank Finalists*

Not later than the 45th day after the dated on which the final proposals are opened, the district shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals. The district shall select the offeror that submits the proposal that offers the best value for the district based on the published selection criteria and on its ranking evaluation.

- *Negotiate with Offerors*

The district is required to first attempt to negotiate a contract with the selected offeror. If negotiations are unsuccessful, the district must, 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.

- *Make Selection Public*

GUARANTEE MAXIMUM
PRICE (GMP)

The district will request that the selected contractor submit a Guarantee Maximum Price (GMP) on or before 75% of the completed architectural specifications and drawings.

All major elements as defined in the schedule of values of the project that equals to the Guarantee Maximum Price (GMP) submitted and approved by the district.

SUBCONTRACTOR
BIDDING PROCESS

The construction manager-at-risk must 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. Any CMAR contractor self-performed work shall follow subcontractor bidding process. The statutory publication requirement applying here is that the construction manager must publish, in a newspaper in the county in which the district's central administrative office is located, notice of the time by when and place where the bids or proposals will be received and opened. The notice must appear once a week for at least two weeks before the deadline for receiving bids or proposals. The construction manager-at-risk and the assigned Superintendent designee must 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 construction manager-at-risk, architect, engineer, or district. All bids or proposals shall be made available to the district and to the public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals. The district will validate the subcontractor bids in accordance with the GMP and schedule of values to determine the "buy out" amounts in the final payment to CMAR.

District may decide to reject a construction manager's recommendation on a particular subcontractor bid, but it may be required to pay for this choice.

The construction manager-at-risk reviews, evaluates, and recommends to the district a bid or proposal from a trade contractor or subcontractor but the district requires another bid or proposal to be accepted, the district shall compensate the construction manager-at-risk by a change in price, time or guaranteed maximum cost for any additional cost and risk that the construction manager-

at-risk incurs because of the district's requirement that another bid or proposal be accepted.

CONSTRUCTION
MANAGER
PERFORMING PART OF
THE WORK

The construction manager-at-risk may perform portions of the work itself with the approval of the Superintendent of designee if the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors; and if the district determines that the construction manager-at-risk's bid or proposal provides the best value for the district. Additionally, the construction manager-at-risk may itself fulfill; without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements when a trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with the applicable bidding process with the approval of the Superintendent or designee.

CONSTRUCTION
MANAGER-AT-RISK
CONTRACT

The District will use a form contract approved by District's school attorney that includes a Guaranteed Maximum Price (GMP); schedule of values and not to exceed subcontractor "buy out" amounts to be set for the project, beyond which the district is not responsible for paying subject to certain exceptions.

COMPETITIVE SEALED
PROPOSALS

Competitive Sealed Proposals is a procurement method by which a governmental entity requests proposals, ranks the offerors, negotiates as prescribed, and then contracts with a general contractor for the construction, rehabilitation, alteration, or repair of a facility.

Procedures:

- Step 1. Board Approves Delivery Method
- Step 2. Adopt Competitive Sealed Proposals as Method of Delivery
- Step 3. Hire an Engineer or Architect
- Step 4. Prepare Selection Criteria and Relative Weights for Hiring Contractor
- Step 5. Prepare Request for Competitive Sealed Proposals

The district must prepare a request for competitive sealed proposals that includes construction documents, selection criteria and the weighted value for each criterion, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to respond to the request.

- Step 6. Set a Prevailing Wage Rate
- Step 7. Give Notice of Worker's Compensation Coverage

Step 8. Require Payment and Performance Bonds

Step 9. Publish Request for Competitive Sealed Proposals

Step 10. Open Proposals

The district must receive, publicly open, and read aloud the names of the offerors, and any monetary proposals made by the offerors.

Step 11. Evaluate and Rank Proposals

Within 45 days after the date of opening the proposals, the district must evaluate and rank each proposal submitted by applying the published selection criteria.

Step 12. Select a Contractor

The district must select the offeror that submits the proposal that offers the best value for the governmental entity based on: (1) the selection criteria in the request for proposal and the weighted value for those criteria in the request for proposal; and (2) its ranking evaluation.

Step 13. Negotiate with the Selected Offeror

The district shall first attempt to negotiate a contract with the selected offeror. The district and its architect or engineer may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification.

If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, 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.

Step 14. Make the Selection Public

COMPETITIVE BIDDING

Competitive Bidding is a procurement method by which a school district contracts with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder. The district may contract for the construction, alteration, rehabilitation, or repair of a facility only after it advertises for bids for the contract in a manner prescribed by law, receives competitive bids, and awards the contract to the lowest responsible bidder.

Procedure:

- Step 1. Delegate Authority
- Step 2. Hire an Engineer or Architect
- Step 3. Prepare Selection Criteria and Relative Weights for Hiring Contractor
- Step 4. Prepare Request for Competitive Bids

The district must prepare a request for competitive bids that includes construction documents, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to submit a bid.

- Step 5. Set a Prevailing Wage Rate
- Step 6. Give Notice of Worker's Compensation Coverage
- Step 7. Require Payment and Performance Bonds
- Step 8. Publish Request for Competitive Bids
- Step 9. Open Bids

The district shall receive, publicly open, and read aloud the names of the offerors and their bids. Bids may be opened only by the board at a public meeting, or by an officer or employee of the district at or in an office of the district. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. However, the bidding statute does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

- Step 11. Evaluate and Rank Bidders

CONSIDERATION OF BIDDER'S SAFETY RECORD

As part of the selection process, the district may consider the bidder's safety record. In determining who is a responsible bidder, the district may take into account the safety record of the bidder, of the firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such firm, corporation, partnership, or institution if:

- (a) the board will adopted a written definition and criteria for accurately determining the safety record of a bidder;
- (b) 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
- (c) the determinations are not arbitrary and capricious.

- Step 12. Select a Contractor

Keep in mind that the district is entitled to reject any and all bids.

Step 13. Document Basis for Selection and Make Selection Public

Not later than the seventh day after the date the contract is awarded, the district shall document the basis of its selection and shall make the evaluations public.

**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. This method is only available for work on a facility that is a building, the design and construction of which is governed by accepted building codes, or a structure or land, whether improved or unimproved, that is associated with a building. This method is not suited for major school construction projects.

Procedures:

Step 1. Board Approved Delivery Method

Step 2. Adopt Job Order Contracting as Method of Delivery

Step 3. Hire an Engineer or Architect

If a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of architecture within the meaning of Chapter 1051, Occupations Code, or the practice of engineering within the meaning of Chapter 1001, Occupations Code, the district shall select or designate an architect or engineer to prepare the construction documents for the project.

Step 4. Prepare Selection Criteria and Relative Weights for Hiring Contractor

Step 5. Prepare Request for Sealed Proposals

The district must advertise for, receive, and publicly open sealed proposals for job order contracts. The district may require offerors to submit information in addition to rates, including experience, past performance, and proposed personnel and methodology.

Step 6. Set a Prevailing Wage Rate

As stated above, the prevailing wage law discussed applies only to the construction of a public work, including a building, highway, road, excavation, and repair work or other project development or

improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction. However, this requirement does not apply to maintenance work.

Step 7. Give Notice of Worker's Compensation Coverage

Step 8. Require Payment and Performance Bonds

The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.

Step 9. Publish Request for Sealed

Proposals

Step 10. Open Proposals

Next, the district must publicly open the sealed proposals.

Step 11. Evaluate and Rank Proposals

Step 12. Select a Contractor

The district may award job order contracts to one or more job order contractors in connection with each solicitation of proposals.

Step 13. Enter a Job Order Contract(s) with the Selected Offeror(s)

The base term for a job order contract may not exceed two years. The district may renew the contract annually for not more than three additional years.

ORDER UNDER A JOB
ORDER CONTRACT

After it enters into a job order contract, the district may make orders for work under the contract. To do so, the order must be signed by the district's representative and the contractor. The order may be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities, or may be a unit price order based on the quantities and line items delivered.

Thus, an order under a job order contract should always be in writing, signed by a representative authorized by the board, and should have either a lump-sum price or a price based on the previously-established unit price.

The statute seems to imply that the district may make an unlimited number of orders with a particular job order contractor during the term of a job order contract.

INTERLOCAL
AGREEMENTS

The district may also choose to procure construction services through the use of an interlocal agreement. Under this method of delivery, the district contracts with another Local government, a state agency, or nonprofit corporation that is created and operated to provide one or more governmental functions and services. Districts commonly enter into such Cooperative Purchasing agreements with Education Service Centers, Cities, Counties, Community College Districts and other nonprofit corporations.

The District may not procure architecture or engineering services through a purchasing cooperative. According to the Financial Accountability Resource Guide (Update 14) published by the Texas Education agency, the benefits of utilizing cooperative purchasing include the following: the cost savings on products or services which is achieved by combining the purchasing power of many smaller districts to gain advantage in the market; savings on administrative costs; and accessibility to more products and services. School districts are required to document any contract-related fee and the purpose of each fee under the act.

In the traditional interlocal agreement two local government entities will jointly construct the facility that is the subject of the agreement. If one entity is simply paying another to do the work, then such payments must fairly compensate the entity that is actually performing the work.

Administration of the agreement may be done through the creation of an administrative agency or by designating one of the government entities to supervise the performance of the contract. If the district is supervising the performance of the agreement the district must comply with the bidding requirements otherwise applicable to the district. If the district is not managing the project, the bidding laws applicable to the other local government entity will then apply.

Procedures:

When Using a Purchasing Cooperative

- Step 1. Ensure that District is Party to Interlocal Contract with Cooperative
- Step 2. Adopt Interlocal Contract as Method of Delivery
- Step 3. Negotiate Contract with Contractor
- Step 4. Set a Prevailing Wage Rate

Step 5. Give notice of Worker's Compensation require Payment and Performance Bonds

Step 6. Make Purchase through the Cooperative

The fact that a particular contractor is listed with the Cooperative does not mean that the district can simply sign a contract with that contractor. The purchase must be made through the Cooperative.

Step 7. Hire an Architect or Engineer

The necessity for hiring a design professional will be governed by the Texas Occupations Code. Remember, the district may not procure an architect or engineer's services through a purchasing cooperative—this must be done independently.

Procedures when not using a Purchasing Cooperative:

Step 1. Adopt Interlocal Contract as Method of Delivery

Step 2. Authorize execution of the interlocal contract

Step 3. Create a Statement of the purpose, terms, rights and duties of the contracting parties.

Step 4. Include a specification that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

Step 5. If another agency will administer the project, then the other agency must adhere to the bidding laws applicable to it.

Step 6. If the district will administer the project then it must adhere to the Education Code Provisions governing construction by following steps 7-16.

Step 7. Set a Prevailing Wage Rate.

Step 8. Give Notice of requirement of Worker's Compensation Coverage.

Step 9. Require Payment and Performance Bonds.

Step 10. Utilize one of the construction procurement methods authorized by Texas Government Code Chapter 2269.

The Purchasing Department will comply with the Professional Services Procurement Act in the selection of Architects and Engineers and ensure the District follows a fair and transparent process. The

PROCUREMENT
PROCESS FOR
PROFESSIONAL
SERVICES

designation of an engineer and or an architect is to assist the District with construction documents for the project identified. The Facilities Department will assist the Purchasing Department with the preparation of documents for advertisement to include:

- The assignment of weights to the criteria:
 - The Director of Facilities and the Executive Director of Business Operations will be present to evaluate, score and rank proposals in order to select a qualified vendor.
 - Once a vendor is selected a fair and reasonable price will be negotiated. If a price cannot be negotiated the next most highly qualified vendor will be selected.
 - Professional fees will not exceed the maximum amount provided by law. Texas Government Code 2254
 - The selection is taken to the Board of Trustees for final approval.
 - The office of the Executive Director of Business Operations will include all evaluation tools used in the selection process as back up documentation to the Board of Trustees.
 - The District then enters into a contract with the selected vendor.

ADMINISTRATIVE
RESPONSIBILITIES

Any contract requiring Board action will be approved by the school district's attorney to legal counsel for review. In addition it is the responsibility of Administration to file all documents relevant to the construction project accordingly:

1. The Purchasing Department will be the repository for all bid documents, contracts and all subsequent information (advertisements, bid logs, score sheets).
2. The Executive Director of Business Operations department will be the repository for all construction bid documents, contracts, pay applications, change orders, subcontractors buyout documentation, schedule of values, education program records, drawings, spec-

ifications and all relation construction program documentation for all construction projects assigned to the department.

3. Construction Administrative Oversight responsibilities by the Office of the Executive Director of Business Operations include:

- Project progression and completion
- Pay applications in collaboration with the office of the Chief Financial Officer and Business office. (Process outlined in flowchart)
- Change orders and contract amendments will be monitored to verify the scope of work, overall project cost and each will require board approval. (CV LOCAL)
- Provide information concerning construction projects to keep the Superintendent of Schools and Board of Trustees informed.

“Design-build” is a project delivery method by which a governmental entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility. *Gov’t Code 2269.301*

This policy applies only to a facility that is a building or an associated structure, including an electric utility structure. This policy does not apply to:

1. A highway, road, street, bridge, underground utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or
2. A building or structure that is incidental to a project that is primarily a civil engineering construction project.

Gov’t Code 2269.302

The District may use the design-build method for the construction, rehabilitation, alteration, or repair of a building or associated structure. In using this method, the District shall enter into a single contract with a design-build firm for the design and construction of the building or associated structure in accordance with applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)] which include the following steps:

1. SELECTING A CONTRACTING METHOD;
2. Giving PUBLIC NOTICE of the project;
3. Publishing CONTRACT SELECTION CRITERIA;
4. MAKING EVALUATIONS PUBLIC after the contract is awarded; and
5. Providing for INSPECTION, VERIFICATION, AND TESTING necessary for acceptance of the facility by the District.

Education Code 44.031(g); Gov’t Code 2269.052, .055, .056(a), (c), .058, .303

Note: Terms in all capital letters, above, point to margin notes in the referenced policy.

DESIGN-BUILD FIRM

A design-build firm must be a sole proprietorship, partnership, corporation, or other legal entity or team that includes an architect or engineer and a construction contractor. *Gov’t Code 2269.304*

FACILITIES CONSTRUCTION
DESIGN-BUILD

CVE
REGULATION

ARCHITECT/
ENGINEER

The District shall select or designate an architect or engineer independent of the design-build firm to act as the District's representative for the duration of the project. *Gov't Code 2269.305* [See CV]

REQUEST FOR
QUALIFICATIONS

The District shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria and the weighted value for each criterion, and other information that may assist potential design-build firms in submitting proposals for the project. *Gov't Code 2269.306(a)*

The District may not require offerors to submit architectural or engineering designs as part of a proposal or a response to a request for qualifications. *Gov't Code 2269.306(d)*

DESIGN CRITERIA
PACKAGE

The District shall also prepare the design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires architectural or engineering services that constitute the practice of architecture within the meaning of Occupations Code Chapter 1051 or the practice of engineering within the meaning of Occupations Code Chapter 1001, those services shall be provided in accordance with the applicable law. *Gov't Code 2269.306(b)*

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 District's request for qualifications and to provide any additional information requested. The design criteria package must specify criteria the District considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirement. *Gov't Code 2269.306(c)*

EVALUATION
QUALIFICATION

For each design-build firm that responded to the request for qualifications, the District shall evaluate the firm's experience, technical competence, capability to perform, the past performance of the firm and members of the firm, and other appropriate factors submitted by the firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each firm must certify to the District 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 Government Code 2254.004. The District shall qualify a maximum of five

	<p>responders to submit proposals that contain additional information and, if the District chooses, to interview for final selection. <i>Gov't Code 2269.307(a)-(c)</i></p>
PROPOSALS	<p>The District shall evaluate the additional information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview. The District may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, or costing methodology.</p> <p>"Costing methodology" means an offeror's policies on subcontractor markup, definition of general conditions, range of cost for general conditions, policies on retain, policies on contingencies, discount for prompt payment, and expected staffing for administrative duties. The term does not include a guaranteed maximum price or bid for overall design or construction.</p> <p><i>Gov't Code 2269.307(d)-(e)</i></p> <p>The District shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications. <i>Gov't Code 2269.307(f)</i></p>
SELECTION	<p>The District shall select the design-build firm that submits the proposal offering the best value for the District on the basis of the published selection criteria and on its ranking evaluations.</p> <p>The District shall first attempt to negotiate a contract with the selected firm. If the District is unable to negotiate a satisfactory contract with the selected firm, the District 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.</p> <p><i>Gov't Code 2269.308(a)-(c)</i></p>
NOTICE OF RANKINGS	<p>Not later than the seventh day after the date the contract is awarded, the District shall make the proposal rankings public. <i>Gov't Code 2269.308(d)</i></p>
DESIGN	<p>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 District or the District's architect or engineer before or concurrently with construction. <i>Gov't Code 2269.309</i></p>

FACILITIES CONSTRUCTION
DESIGN-BUILD

CVE
REGULATION

FINAL CONSTRUCTION
DOCUMENTS

The design-build firm shall supply a set of construction documents for the completed project to the District at the conclusion of construction. The documents must note any changes made during construction. *Gov't Code 2269.310*

PAYMENT OR
PERFORMANCE BOND

A payment or performance bond is not required and may not provide coverage for the design portion of the design-build contract with the design-build firm. [See CV for more information on payment and performance bonds]

AMOUNT

If a fixed contract amount or guaranteed maximum price has not been determined at the time the design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the District must each be in an amount equal to the construction budget, as specified in the design criteria package. The design-build firm shall deliver the bonds not later than the tenth day after the date the design-build firm executes the contract, unless the design-build firm furnishes a bid bond or other financial security acceptable to the District to ensure that the design-build firm will furnish the required performance and payment bonds before construction begins.

Gov't Code 2269.311

JOB ORDERS
CONTRACTS

After it enters into a job order contract, a district may make orders for work under the contract. To do so, the order must be signed by the district's representative and the contractor. The order may be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities, or may be a unit price order based on the quantities and line items delivered.

Thus, an order under a job order contract should always be in writing, signed by the Superintendent for work to be performed below \$25,000. The job contract should have either a lump-sum price or a price based on the previously-established unit price with a net to exceed amount.

The statute seems to imply that a district may make an unlimited number of orders with a particular job order contractor during the term of a job order contract.

Deleted, Amended & Added Policies

This section pertains to agenda items regarding Board Policies that have been reviewed or approved by the Board of Trustees.



DELETE POLICY

Duplicated policy combined with CVA (Local)

SPECIFICATIONS	The Superintendent or designee shall prepare a request for proposals for any construction project for which competitive sealed proposals are sought.
PROCESS	All proposals shall be submitted in sealed envelopes, plainly marked with the name of the proposal and the time of the deadline for submission. Proposals shall be opened at the time specified. All offerors shall be invited to attend the proposal opening. Changes in the content of a proposal, and in prices, may be negotiated after proposals are opened.
WITHDRAWAL AND LATE PROPOSALS	Any proposal may be withdrawn prior to the scheduled time for opening. Proposals received after the specified time shall not be considered.
PROPOSAL ACCEPTANCE	The District may reject any and all proposals.
SAFETY RECORD	If the safety record of offerors is considered in selecting a proposal, the record shall be defined as an offeror's OSHA (Occupational Safety and Health Administration) inspection logs for the last three years, a loss analysis from the offeror's insurance carrier, and a loss history covering all lines of insurance coverage carried by the offeror.

AMEND POLICY

SPECIFICATIONS	The Superintendent or designee shall ensure that detailed specifications are prepared for any construction project for which competitive bids are sought.
BID PROCESS	All bids shall be submitted in sealed envelopes, plainly marked with the name of the bid and the time of the bid opening. Bids shall be opened at the time specified. All interested parties shall be invited to attend the bid opening. Any bid may be withdrawn prior to the scheduled time for opening. Bids received after the specified time shall not be considered.
SAFETY RECORD	If the District considers the safety record of bidders in determining to whom to award a contract, the safety record shall be defined as a bidder's OSHA (Occupational Safety and Health Administration) inspection logs for the last three years, a loss analysis from the bidder's insurance carrier, and a loss history covering all lines of insurance coverage carried by the bidder.
WITHDRAWAL AND LATE PROPOSALS	Any proposal may be withdrawn prior to the scheduled time for opening. Proposals received after the specified time shall not be considered.
PROPOSAL ACCEPTANCE	The District may reject any and all proposals.

ADD POLICY (not formerly accepted by the Board)

“Competitive sealed proposals” is a procurement method by which the District requests proposals, ranks the offerors, negotiates as prescribed, and then contracts with a general contractor for the construction, rehabilitation, alteration, or repair of a facility. *Gov’t Code 2269.151*

If the District uses the competitive sealed proposals method as described in this policy, it must comply with applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)], which include the following steps:

1. SELECTING A CONTRACTING METHOD;
2. Giving PUBLIC NOTICE of the project;
3. Publishing CONTRACT SELECTION CRITERIA;
4. MAKING EVALUATIONS PUBLIC after the contract is awarded; and
5. Providing for INSPECTION, VERIFICATION, AND TESTING necessary for acceptance of the facility by the District.

Education Code 44.031(g); Gov’t Code 2269.052, .055, .056(a), (c), .058

Note: Terms in all capital letters, above, point to margin notes in the referenced policy.

REQUEST FOR PROPOSALS

The District shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria and the weighted value for each criterion, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to respond to the request. *Gov’t Code 2269.153*

ARCHITECT/ ENGINEER

The District shall select or designate an architect or engineer to prepare construction documents for the project. *Gov’t Code 2269.152* [See CV]

OPENING PROPOSALS

The District shall receive, publicly open, and read aloud the names of the offerors and any monetary proposals made by the offerors. Not later than the 45th day after the date on which the proposals are opened, the District shall evaluate and rank each proposal submitted in relation to the published selection criteria. *Gov’t Code 2269.154*

SELECTION

The District shall select the offeror that submits the proposal that offers the best value for the District based on the selection criteria

in the request for proposal and the weighted value for those criteria in the request for proposal and on its ranking evaluation.

The District shall first attempt to negotiate a contract with the selected offeror. The District and its architect or engineer may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the District is unable to negotiate a satisfactory contract with the selected offeror, the District shall, formally and in writing, 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.

Gov't Code 2269.155

ADD POLICY (not formerly accepted by the Board)

“Design-build” is a project delivery method by which a governmental entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility. *Gov’t Code 2269.301*

This policy applies only to a facility that is a building or an associated structure, including an electric utility structure. This policy does not apply to:

1. A highway, road, street, bridge, underground utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or
2. A building or structure that is incidental to a project that is primarily a civil engineering construction project.

Gov’t Code 2269.302

The District may use the design-build method for the construction, rehabilitation, alteration, or repair of a building or associated structure. In using this method, the District shall enter into a single contract with a design-build firm for the design and construction of the building or associated structure in accordance with applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)] which include the following steps:

1. SELECTING A CONTRACTING METHOD;
2. Giving PUBLIC NOTICE of the project;
3. Publishing CONTRACT SELECTION CRITERIA;
4. MAKING EVALUATIONS PUBLIC after the contract is awarded; and
5. Providing for INSPECTION, VERIFICATION, AND TESTING necessary for acceptance of the facility by the District.

Education Code 44.031(g); Gov’t Code 2269.052, .055, .056(a), (c), .058, .303

Note: Terms in all capital letters, above, point to margin notes in the referenced policy.

DESIGN-BUILD FIRM

A design-build firm must be a sole proprietorship, partnership, corporation, or other legal entity or team that includes an architect or engineer and a construction contractor. *Gov’t Code 2269.304*

FACILITIES CONSTRUCTION
DESIGN-BUILD

CVE
(LEGAL)

ARCHITECT/
ENGINEER

The District shall select or designate an architect or engineer independent of the design-build firm to act as the District's representative for the duration of the project. *Gov't Code 2269.305* [See CV]

REQUEST FOR
QUALIFICATIONS

The District shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria and the weighted value for each criterion, and other information that may assist potential design-build firms in submitting proposals for the project. *Gov't Code 2269.306(a)*

The District may not require offerors to submit architectural or engineering designs as part of a proposal or a response to a request for qualifications. *Gov't Code 2269.306(d)*

DESIGN CRITERIA
PACKAGE

The District shall also prepare the design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires architectural or engineering services that constitute the practice of architecture within the meaning of Occupations Code Chapter 1051 or the practice of engineering within the meaning of Occupations Code Chapter 1001, those services shall be provided in accordance with the applicable law. *Gov't Code 2269.306(b)*

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 District's request for qualifications and to provide any additional information requested. The design criteria package must specify criteria the District considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirement. *Gov't Code 2269.306(c)*

EVALUATION
QUALIFICATION

For each design-build firm that responded to the request for qualifications, the District shall evaluate the firm's experience, technical competence, capability to perform, the past performance of the firm and members of the firm, and other appropriate factors submitted by the firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each firm must certify to the District 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 Government Code 2254.004. The District shall qualify a maximum of

	<p>five responders to submit proposals that contain additional information and, if the District chooses, to interview for final selection. <i>Gov't Code 2269.307(a)–(c)</i></p>
PROPOSALS	<p>The District shall evaluate the additional information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview. The District may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, or costing methodology.</p> <p>“Costing methodology” means an offeror’s policies on subcontractor markup, definition of general conditions, range of cost for general conditions, policies on retainage, policies on contingencies, discount for prompt payment, and expected staffing for administrative duties. The term does not include a guaranteed maximum price or bid for overall design or construction.</p> <p><i>Gov't Code 2269.307(d)–(e)</i></p> <p>The District shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications. <i>Gov't Code 2269.307(f)</i></p>
SELECTION	<p>The District shall select the design-build firm that submits the proposal offering the best value for the District on the basis of the published selection criteria and on its ranking evaluations.</p> <p>The District shall first attempt to negotiate a contract with the selected firm. If the District is unable to negotiate a satisfactory contract with the selected firm, the District 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.</p> <p><i>Gov't Code 2269.308(a)–(c)</i></p>
NOTICE OF RANKINGS	<p>Not later than the seventh day after the date the contract is awarded, the District shall make the proposal rankings public. <i>Gov't Code 2269.308(d)</i></p>
DESIGN	<p>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 District or the District’s architect or engineer before or concurrently with construction. <i>Gov't Code 2269.309</i></p>

FACILITIES CONSTRUCTION
DESIGN-BUILD

CVE
(LEGAL)

FINAL CONSTRUCTION
DOCUMENTS

The design-build firm shall supply a set of construction documents for the completed project to the District at the conclusion of construction. The documents must note any changes made during construction. *Gov't Code 2269.310*

PAYMENT OR
PERFORMANCE BOND

A payment or performance bond is not required and may not provide coverage for the design portion of the design-build contract with the design-build firm. [See CV for more information on payment and performance bonds]

AMOUNT

If a fixed contract amount or guaranteed maximum price has not been determined at the time the design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the District must each be in an amount equal to the construction budget, as specified in the design criteria package. The design-build firm shall deliver the bonds not later than the tenth day after the date the design-build firm executes the contract, unless the design-build firm furnishes a bid bond or other financial security acceptable to the District to ensure that the design-build firm will furnish the required performance and payment bonds before construction begins.

Gov't Code 2269.311

Forensic Audit Corrective Action Plan: Procedures

This section pertains to agenda items regarding Purchasing, Construction Procurement, Management and Internal Control Process procedures.



VI. Purchasing

South San Antonio ISD has chosen to take the two-year grace period for the implementation of the new EDGAR procurement rules on all grants awarded after December 26, 2014. The new procurement rules will take effect on July 1, 2017.

6.1 PURCHASING RESPONSIBILITY

A. Purchasing Policy

Complete purchasing policy and procedures followed by the District may be found in the Texas Education Agency Financial Accountability System Resource Guide (FASRG) in the Purchasing Module.

FASRG can be accessed through the TEA website at:

http://tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial_Accountability_System_Resource_Guide/

Board policies pertaining to purchasing can be accessed through the South San Antonio ISD website at <http://pol.tasb.org/Home/Index/177>.

All expenditures require an approved requisition and Purchase Order to ensure prompt payment.

Purchasing Department requires requestors to utilize the current vendor list before reaching out to new vendors. This promotes and builds supplier relationships.

B. Purchasing Authority

The following persons are delegated the authority to act as agents for South San Antonio ISD in carrying out the purchasing activities of the district:

- Superintendent of Schools
- Executive Director for Financial/Fiscal Services
- Director of Purchasing
- Superintendent Designee

Each Principal acts as purchasing agent for all expenditures made from his/her campus Activity Fund.

6.2 STANDARDS OF CONDUCT

A. Ethics

The District subscribes to the Code of Ethics and Standard Practices for Texas Educators, Board Policy, and DH-Exhibit which establishes proper conduct for District staff members. Principle I, Professional Ethical Conduct, clearly applies to those individuals engaged in the purchasing process. This principle includes the following standards:

- The educator shall not intentionally misrepresent official policies of his school District or educational organization and shall clearly distinguish those views from his personal attitudes and opinions.
- The educator shall honestly account for all funds committed to his charge and shall conduct his financial business with integrity.
- The educator shall not use institutional or professional privileges for personal or partisan advantage.
- The educator shall accept no gratuities, gifts, or favors that impair or appear to impair professional judgment.
- The educator shall not offer any favor, services, or thing of value to obtain special advantage.
- The educator shall not falsify records, or direct, or coerce others to do so.

All District staff members are public servants and therefore subject to Title VIII of the Penal code, regarding offenses against public administration, including bribery and corrupt influence (Chapter 36), perjury and other falsification (Chapter 37), obstructing governmental operation (Chapter 38), and abuse of office (Chapter 39). All District staff members shall perform their duties in conformity with District policy, ethical standards for professional educators, and state and federal law. Penal Code 1.07(41), Title VIII.

B. Vendor Relations

In an effort to promote transparency and impartial decision-making, the District has adopted a procedure for reporting gifts, awards, and mementos given by vendors to Board members and Senior District employees and/or entertainment expenses by vendors made on behalf of Board members and senior District employees per CHE (LOCAL).

C. Administrative Procedures for Conflict of Interest Disclosures

1. Conflict of Interest Disclosures for Board Members

- On September 1st of each calendar year, request that each member of the Board of Trustees complete and file an affidavit disclosing whether the Board member or a person related to the Board member in the first degree by either affinity or consanguinity has a substantial interest in a business entity or in real property. Additionally, request that the Board member explain in the affidavit the nature and extent of any substantial interest in a business entity or in real property. If no substantial interest exists, request that the Board member complete an affidavit to this effect. If the Board members learn of or acquires any substantial interest in a business entity or in real property at any time, then he or she shall file an updated affidavit within seven (7) days of learning of the information.

2. Conflict of Interest Disclosures for Superintendent and District Employees

The Superintendent and each District employee at a director/principal level or higher shall adhere with and comply with to the following procedures.

- On or before September 1st of each calendar year, prepare and file an affidavit disclosing the nature and extent of any substantial interest in a business entity or in real property. If a substantial interest in a business entity or in real property does not exist, an affidavit disclosing no interests must nonetheless be filed. If the Superintendent or other employee at a director/principal level or higher learns of or acquires any substantial interest in a business entity or in real property at any time, then he or she shall file an updated affidavit within seven (7) days of learning of the information.

3. Conflict of Interest Disclosures for District Vendors

The Superintendent or designee shall adhere to and comply with the following procedures.

- Upon receipt of a bid or an application from a prospective vendor, ensure that the prospective vendor filed a conflict of interest questionnaire. If the questionnaire was not filed, request that the prospective vendor file the questionnaire. If the prospective vendor contacts the District to assert that no reportable relationship or gift exists, request that the prospective vendor nonetheless file the questionnaire.
- On September 1st of each calendar year, request that vendors with a current contract or purchase order valued at \$25,000 or more file conflict of interest questionnaire. If the vendor contacts the District to assert that no reportable relationship or gift exists, request that the vendor nonetheless file the questionnaire.

- On or before September 1st of each calendar year, publish on the District website a schedule listing all vendors that filed a questionnaire and the date the questionnaire was filed. The schedule should also identify any reported relationships and gifts.
- At least quarterly after September 1st, update the schedule listing all vendors that filed a questionnaire to include any prospective vendors and the date the prospective vendor's questionnaire was filed. The schedule should also identify any reported relationships and gifts.
- The questionnaire must be in the form and include the content prescribed by the Texas Ethics Commission. Go to <https://www.ethics.state.tx.us/forms/CIQ.pdf>.

6.3 PURCHASING PRINCIPLES

- Department/Campus must utilize the current Approved Vendor List when formulating purchase requisitions to enhance the District's buying power.
- Approval for purchases must be obtained prior to purchase.
- Request for payment without an approved purchase order will become the responsibility of the person ordering the merchandise.
- Materials for preview must follow the same purchasing procedures as detailed in this section.
- Employees should not purchase materials with their own money with the intention of being reimbursed by the District. Instead, the purchasing procedures outlined in this section should be followed.

6.4 PURCHASE ORDERS

B. Purchase Order Stipulations

No purchases are authorized without issuance of a purchase order, as payment will not be made for such purchases. Anyone creating or authorizing such a commitment prior to securing a purchase order number will be held personally liable [or payment of such agreement and/or may be liable to prosecution under the Texas Penal Code Chapter 39 Abuse of Office, Section 39.01.

Purchase requisitions shall be submitted by the requestors to their Principal or department Director for approval.

- Purchase requisitions may be prepared by any employee of a school or department. (Remember: A purchase requisition is still a request until approved by the Purchasing department.)
- The Purchase Requisition will be entered into the ITTCS system by the Principal's designee.
- Orders must not be deliberately split to avoid the necessity for quotes or competitive bids. This is a violation of state law.
- Approval Authority - All Purchase Requisitions must be approved by the designated Director or School Principal before being electronically sent to Purchasing. In the event a Director or Principal is absent he may designate approval authority to another person(s). The budget authority granted to a Principal or Director in no way authorizes them to execute contracts or make purchases in the name of the District.
- Method of approval of requisitions may be at the Director or School Principal's discretion at the campus/department level with some physical evidence of approval kept at that facility.

C. General Purchase Order Procedures

1. Purchase Orders are issued on a daily basis by the Purchasing Department based on information submitted on the Purchase Requisition. When the Purchasing Department extracts the automated requisitions, they become purchase orders. The Purchase Order is computer-generated with budgeted funds being encumbered at the same time.
2. All vendors shall complete the appropriate vendor forms as required by federal or state regulations and the district. The district requires that every vendor have the following documents on file: <http://www.southsanisd.net/Page/497>
 - a. Supplier Application Packet (Form new vendors application)
 - W-9 Form (Form)
 - Conflict of Interest Questionnaire (Form CIQ)
 - b. Supplier Visitation (Form Campus Permit)
 - Computerized Criminal History (Form CCH)
 - Release of Criminal History Records (Form CHRI)
 - c. Certificate of Insurance with the district as additional insured if services will be rendered on District property.
3. A purchase order is considered to be only a purchase request until approved by the Purchasing Department.
4. The Purchasing Department extracts electronic purchase orders daily. Therefore, indicate that an order is a rush only if it is needed immediately.
5. Contracts for Purchase will be put into effect by means of a purchase order(s) executed by the Director of Purchasing after bids have been awarded to purchase goods or services.
6. The individual placing an order without a P.O. number will be responsible for payment of the invoice. (Refer to Section a Above)
7. Purchase Orders are not to be modified with the vendor or by schools or departments directly. If it becomes necessary to change the terms of a Purchase Order, the school or department must first advise the Purchasing Department. Once agreement to any price increases or modification of terms is reached, Purchasing has the responsibility to adjust the encumbrance on the Purchase Order and notify all involved parties of the changes.
8. Once a Purchase Order is issued, the same P.O. number cannot be used for reorders. Where merchandise has been returned or damaged and a reorder of replacement merchandise is desired, a new Purchase Requisition must be submitted.
9. In the event it is necessary to cancel a Purchase Order, the secretary/requester must advise the Vendor and the Purchasing Department in writing. The Purchasing Department will liquidate the encumbrance once the written form is returned to Purchasing by the vendor.
10. The Purchasing Department will:
 - a. Verify compliance with bid laws (as indicated by the comments' line of the requisition — sole source, DIR, Region 20, bid #, quote#, TCPN, etc.).
 - b. Verify correctness of coding according to the Finance Procedures, and c) Give final approval if everything is in order or reply via email to the requester if a problem exists.
11. Following final approval, the purchase order will be mailed or faxed.

D. Open Purchase Orders

Open purchase orders and/or open accounts are established with vendors by the Purchasing Department only through Board approval of competitive bids, proposals or by quotations. Purchase Orders not issued in this manner are considered to cover a one-time single purchase per each Purchase Order number assigned.

Invoices on open Purchase Orders are to be attached to a copy of the Receiving Copy of the Purchase Order, signed by the Receiver responsible for the purchases, and forwarded to Accounts Payable.

E. Reporting

Reporting of expenditures for monthly Board Meetings, eGrants, etc., is done through the Finance Office using the following criteria:

- Board Meetings – At the end of each month financial reports are created for approval at the next board meeting. Included in this financial report is:
 - Combined Statement of Revenues, Expenditures and Changes in Fund Equity
 - Investment Reports
 - Purchase Orders Over \$10,000
- Federal Grants – Reporting to eGrants is conducted at least once a month coinciding with the end of the month. After each payroll the following procedures will be followed when compiling the reports for reimbursement.
 - A current general ledger is created
 - A detail expenditure report is created from the above two reports, expenditures from each object code (i.e., 6100, 6200, etc.) is recorded.
 - Login to the eGrants system and report the appropriate year-to- date expenditures for each grant.
 - All expenditures must be incurred before a request for draw down is submitted.
- Receipts – For Local, Federal and Grant Funds
 - Cash/check deposits are conducted on a daily basis.
 - Deposits from the State Comptroller’s office are monitored every day of the week via the TEA Payment Website.

F. Specifications

Preparation of specifications shall be the responsibility of the purchasing department along with the assistance of requesting department. The responsibility of the Purchasing Office is to finalize specifications in accordance to department need. Competitive bids can be obtained and assure that board policies and state laws are followed regarding the purchase.

Specifications must contain adequate technical descriptions to clearly identify for prospective bidders the type of material, equipment, or services required. In addition to the detailed specifications, brand names or equal, model numbers, and like descriptions may be referred to as product meeting specifications to inform prospective bidders of the type of quality required. Descriptions must include quantitative data such as size, weight, or volume and qualitative data such as commercial grade, texture, finish, strength, chemical analysis, or composition where possible.

G. Approved Vendor List (AVL)

The approved vendor list is located on our District website at:

<http://www.southsanisd.net/Page/3910>. The vendor list will consist of all active vendors identified by their associated procurement category, unique vendor identification number, IRS tax identification number, phone number and up-to-date mailing and physical addresses.

South San Antonio ISD has inter-local agreements with TASB BuyBoard and The Cooperative Purchasing Network. Their website is:

- <https://www.buyboard.com/Home.aspx>
- <http://www.tepn.org>

The AVL will be updated at least annually prior to beginning a new school year.

If a vendor does not have any transactions for more than 36 months, they will be inactivated. The Director of Purchasing will be responsible for maintaining and updating the vendor list. Vendors that lose eligibility to do business with the District for any reason will be removed from the active vendor list by the Director of Purchasing no later than the following school year.

H. Equipment Warranty, Maintenance and Repair

For repair of equipment that has been received and paid, a School or Department has one of the following options:

1. If the equipment is under warranty, contact the vendor from whom it was purchased. If the product was purchased through a District bid, contact the Purchasing Department (warranties start the day the equipment is received even if school is not in session.)
2. If the equipment is no longer under warranty, contact the Maintenance Department for repair assistance.
3. For those items covered by outside maintenance contracts such as typewriters, duplicating equipment and some copiers, contact the appropriate service company holding a maintenance agreement with the District.
4. For all computer equipment, contact the Technology Department.

I. Requirements of Purchase of Record Document

- All information collected, assembled or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public during normal business hours of any governmental body with certain exceptions.

Three exceptions clearly concern the purchasing operation found in: Texas Education Code Title 110A, 6252-17a, Section3

- Information, which if released, would give advantage to competitors or bidders;
- Information pertaining to the location of real or personal property for public purposes prior to public announcement of the project, and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefore;
- Trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision;
The concern is that information is not disclosed at inappropriate times leaving the District unprotected.

J. Sales Taxes

1. South San Antonio Independent School District is exempt from the payment of state sales taxes by the fact it is a political subdivision of the State of Texas.
2. Staff members may not use the District's tax-exempt status for purchases of personal property. Anyone avoiding the payment of sales tax by using this exemption may be liable for prosecution under Texas Penal Code, Chapter 39, Abuse of Office, and Section 39.01.

(This also applies to booster clubs, PTOs and other outside organizations – they must apply and receive their own tax-exempt status.)

3. All Purchase Orders notify vendors of the District's tax-exempt status. When placing a confirming Purchase Order with a vendor, the school or department should indicate to the vendor that the District holds this exempt status and should not be charged tax.

K. Delivery and Receipt of Orders

1. Orders will be delivered to the appropriate campus/office.
2. Do not allow vendors to deliver goods to a campus if the purchase order states otherwise. If they try to do so, direct them to the appropriate campuses.
3. All orders must be inspected within five (5) days. Claims for damages or incorrect orders need to be submitted promptly to the vendor.
4. Returning orders - Contact that vendor directly for pickup instructions.

L. Verification of District Data

1. Before checks are processed, purchase orders are matched against invoices for amounts, vendor information and expenditure coding. Once the checks are processed, the invoices are matched against the check before they are inserted in an envelope.
2. The Finance Office makes available budget activity printouts to each principal/department head. This helps detect any coding errors on individual budgets. The administrator in charge of the federal grants, as well as the Federal Programs Accountant, is responsible for verifying data for accuracy for any federal grants.

6.5 CONTRACTS (other than Construction Contracts)

A. Contracts

A District Purchase Order is an offer. A contract is created between the District and the vendor only when the vendor accepts the terms of the Purchase Order by causing the goods or services requested on the order to be delivered. In other words, the District's offer (Purchase Order) is a presentation to the vendor of what the District wants from the vendor and under what conditions (terms). Purchase Orders provide a uniform way for the District to make offers to vendors with all terms in writing. This is why it is critical to the purchasing process that the school or department receiving the goods or services immediately compares the delivery of it with the Purchase Order. If the vendor has altered the terms of the Purchase Order to the point where the recipient is dissatisfied, then a possible breach of the contract has occurred. In such a situation, Purchasing should be notified at once.

In the case of bids and request for proposals (all types), a different set of circumstances exists. Here, the offer is the vendor's bid or proposal. This is the vendor's offer to the District of what the vendor will sell the District and under what terms. The acceptance of an offer occurs when the Board of Trustees awards a bid or selects a proposal. (Note: the vendor may withdraw his offer [bid/proposal] at any time up until the offer is accepted [award made] by the Board.)

A contract is created between the District and the vendor after the bid is accepted by the Board and a District signatory signs a contract. A Purchase Order for the goods or services may be withheld or amounts substantially reduced by the Purchasing Agent if the needs of the District change and the materials or services are no longer needed even though the Board has accepted the offer.

B. Contract Signatories

Contracts exceeding \$25,000 (after approval by the Board of Trustees) may only be signed by the following:

- The Superintendent of Schools may sign any authorized and lawful contract on behalf of the Board of Trustees.
- The Executive Director of Financial/Fiscal Services may sign any authorized and lawful contracts on behalf of the Board of Trustees in absence of the Superintendent or the Director of Purchasing.
- The Director of Purchasing is authorized to sign all contracts for the purchase of goods and services.
- The budget authority granted to a Principal or Director in no way authorizes them to execute contracts or make purchases in the name of the District.

C. Lease Rental Contracts

Any contracts for rental, lease, lease purchase, or any other provisions that will extend passed the fiscal year must:

- Have cancellation provisions and must be renewed by the issuance of a new Purchase Order for each fiscal year (Attorney General of Texas Opinion No. M-950 dated September 14, 1971.)
- Be approved by the Director of Purchasing or the Executive Director of Financial/Fiscal Services.

D. Consultants Contracts

Any contract for construction services will follow provided set in under construction procurement management and required process.

A consultant is an independent contractor, not an employee, which offers services to the public. A consultant usually maintains an office and usually provides the equipment and materials necessary for completing or performing a service. A consultant is paid on a fee basis for specialized services that are usually considered to be temporary or short-term in nature, normally in areas beyond the expertise of the employing entity's employees.

Consultants hired to perform a service will execute a written contract acceptable to the District, prior to the performance of the service. A request to pay a consultant must be submitted with a copy of the signed contract. (Please visit Eduphoria to complete the approved consultant contract).

Consultants' whose services will be utilized on campus, are required to undergo a background check. Forms are located at the following link under Supplier Visitation <http://www.southsanisd.net/Page/497>.

E. Depository Contract

Depository Bid – The district uses a uniform bid blank form as specified in Texas Education Code, §45.206. As necessary, the District may add other terms to the uniform bid blank form based on additional identified needs. This form is mailed to each bank located in the school District at least 30 days before the termination of the current depository contract. This form is also filed with the Texas Education Agency in accordance with that agency's specified filing instructions. House Bill 2411 from the 80th Legislative Session provided school districts with the option to extend a depository contract for two (2) additional two-year terms provided the bank agrees as well (refer to TEC Section 45.205). The District and the bank may mutually extend the contract with a Board approved resolution.

6.6 LEGAL BASIS FOR COMPETITIVE BIDS, PROPOSALS & QUOTATIONS

A. Bids, Proposals and Quotations (other than Construction Contracts)

Purchases less than \$50,000. The following limits apply to the TOTAL requisition amount, not the cost of a particular item. Requisitions cannot be split to avoid obtaining quotes.

- Requisitions totaling less than \$5,000— no quotes required
- Requisitions totaling \$5,000-\$49,999 — you must contact the Purchasing Department to assist with sourcing a vendor for the requested product or service.
 - The requesting Department may request 3 quotes in lieu of contacting the Purchasing Department. The 3 quotes must be submitted to the Purchasing Department
- Requisitions above \$5,000 purchased through approved Co-op do not require 3 quotations.
- Exceptions:
 - Textbooks
 - Books and encyclopedias purchased directly from the publisher
 - Component repair parts (parts made by the same manufacturer as the item being repaired and no comparable parts available)
 - Sole Source items with letter on file in the Purchasing Department purchases greater than \$25,000 (Requires Board Approval)

Purchases greater than \$50,000 (Requires Board Approval)

- All school district contracts for the purchase of goods and services valued at \$50,000 or more in the aggregate during a 12-month period must be competitively bid. TEC 44.031
 - Exceptions to 3a:
 - Professional Services - architect, physician, certified public accountant, attorney, surveyor, engineer, or state certified real estate appraiser TEC44.031 F
 - Sole Source Goods - items only available from one source covered by a patent, copyright, or monopoly; films, books, manuscripts; utility services; and captive replacement or component parts for equipment repair. TEC 44.031 J
 - Emergency repair or replacement of school equipment that has been damaged or destroyed with the approval of the Board of Trustees. TEC44.031 H
 - Computers with an annual aggregate value above \$25,000. TEC 44.031K
 - School buses with an annual aggregate value greater than \$20,000 TEC 44.031 I
- These contracts must be preceded by a competitive pricing mechanism. TEC 44.31 I

Competitive bids

- Competitive sealed proposals
- Request for proposals for services other than construction services
- An interlocal contract
- The reverse auctions procedure as defined by Government Code 2155.062
- The formation of a political subdivision corporation under Local Government Code 304.001

- Notice is required for bids and requests for proposal:
 - To be published once a week for at least two weeks prior to the deadline for receiving responses.
 - In a newspaper for the county in which the school district's central office is located. TEC 44.031 g

B. Awarding Contracts (other than Construction Contracts)

Costs

- Purchase price
- Long term costs (service, supplies, maintenance, etc.)

Product or services

- Quality
- Extent to which the good or service meets district needs

Vendor

- Reputation
- Safety record Texas Local Government (LGC) 271.0275
- Past relationship with the district
- Historically Under Utilized Business (HUB) status
- Any other relevant factor TEC 44.031b

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion

The District must not award a contract to a vendor which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal grant award programs.

The purchasing department shall monitor ongoing contracts to verify the contractor's compliance with the debarment, suspension, ineligibility and voluntary exclusion provisions. In the event that a vendor is suspended or debarred during a contract, the District shall continue the contract in force until the contract lapses. The contract term shall not include any extensions to the original term of the contract. Use this link for most recent list: http://comptroller.texas.gov/procurement/prog/vendor_performance/debarred/

C. Enforcement

District staff members commit a criminal offense if they make or authorize separate, sequential, or component purchases to avoid using competitive pricing mechanisms when required. EC 44.032b

District staff members commit a criminal offense if they fail to use competitive pricing mechanisms when required or award contracts for reasons other than those cited. EC 44.032c

Conviction of an offense results in an individual's:

- Immediate removal from office,
- Inability to serve in any public office in Texas for four years, and
- Ineligibility to receive any compensation through state or local government contracts. EC 44.032c

D. Bid and CSP/RFP Guidelines

Bid and proposal openings shall be conducted in a District office. LGC 271 .026a

A bidder may withdraw a bid due to a material mistake in the bid. (Common Law)

Bids may not be changed for the purpose of correcting errors after they have been opened. LGC 271 .026a

The Board of Trustees has the right to reject any and all bids. LGC 271.027a

Contract Length

- Contracts obligate current District revenue only for the year in which they are awarded.
- Multi-year agreements are permissible if they contain:
 - The right of the Board to terminate the contract at the end of each budget,
 - An appropriate funding-out clause to allow termination should funds become unavailable to pay for the contract. LGC 271.903

Tie Bids

- If the District receives two or more low bids that are identical, the selection of the winner shall be by the casting of lots.
- If only one of the bidders submitting identical bids is a resident of the District, that vendor will receive the award. LGC 271.901

Non-resident bidders must underbid resident bidders by not less than an amount (percentage) by which a resident vendor would be required to underbid in the non-resident bidder's state (reciprocity).

GC 2252.001; 2252.002

Inter-local Agreements between school districts, other local governments, and state agencies for the purchase of goods and services satisfies the requirement that contracts be preceded by a competitive pricing mechanism. GC 791 .025 b, c

Texas General Services Commission may provide and the District may use state contract prices and vendors to satisfy the requirement that contracts be preceded by a competitive pricing mechanism.

LGC 271.082

Purchasing Cooperatives

- Cooperatives may be established by school districts, regional education service centers, county departments of education and other local governments to pool goods and services needs in order to obtain optimal pricing.
- The Board of Trustees must approve a contract with the governmental unit operating the cooperative designating a person to act for the District in all matters pertaining to the cooperative.
- The governmental unit operating the cooperative may collect fees from the participating Districts or governments to cover the cost of operating the cooperative. LGC 271.102

Food Service purchases for personal property exceeding \$25,000 must utilize a bid, proposal, state or federal contract, cooperative purchasing agreement, or inter-local purchasing arrangement due to federal school lunch program requirements.

E. Law Code Abbreviations:

EC - Education Code

GC - Government Code

LGC - Local Government Code H&SC - Health and Safety Code

AC - Agriculture Code

TAC - Texas Administrative Code

PC - Penal Code

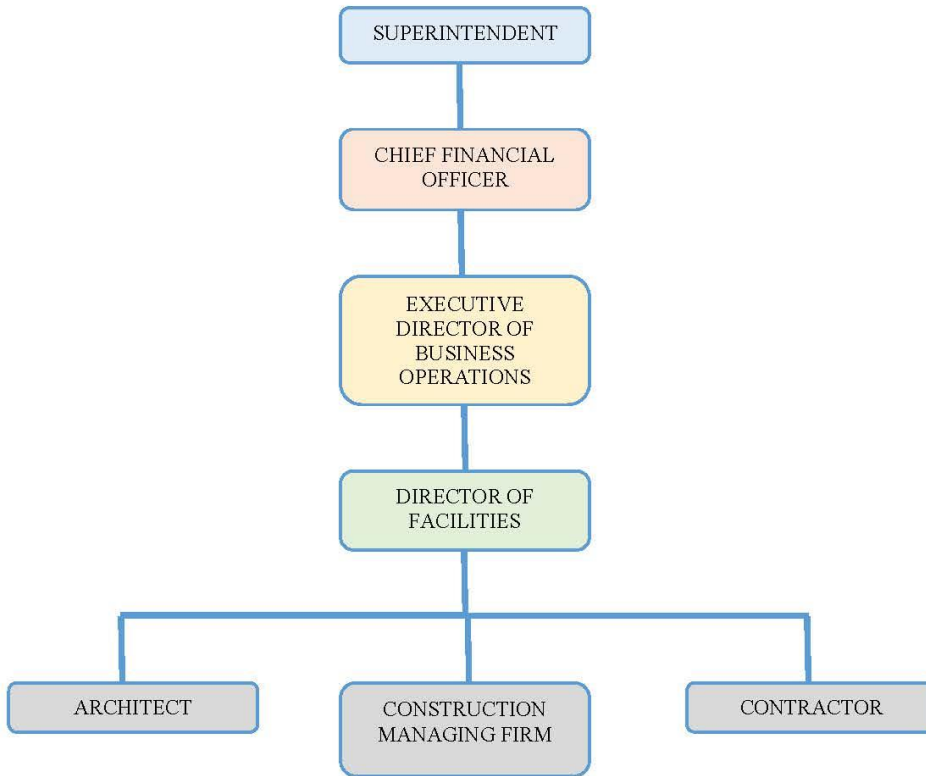
VATS -Vernon's Annotated Texas Statutes

6.7 BOARD POLICY CONCERNING PURCHASING

Board Policy can be found at the following links: <http://pol.tasb.org/Policy/Code/177?filter=CH>
Covers both CH (Legal) and CH (Local)

VII.
Construction Procurement, Management
and Internal Control Process

Construction Projects Authority / Responsibility



Superintendent	Chief Financial Officer	Executive Director of Business Operations	Director Of Facilities
Final authority on construction projects.	Responsible for the Administration delegation and accountability for all construction projects.	Responsible for the Administration delegation and accountability for all construction projects.	District representative and responsible administrator for the supervision, oversight, accountability for the Architect Construction Management Firm and Contractor.

Chapter 2269 of the Texas Government Code

Chapter 2269 of the Texas Government Code is a special body of law that exists for governmental construction projects, including school districts. If a contract is subject to Section 44.031 the next question to answer is whether the proposed contract is subject to Chapter 2269, or, alternatively, whether it will be governed by the general purchasing law contained in Chapter 44 of the Texas Education Code. This question is answered by determining whether the contract is one for construction services. In other words, all school district purchasing contracts start off governed by Education Code Ch. 44. If, however, a proposed contract is one for construction services Chapter 44 kicks that contract into the special law for governmental construction projects, Government Code Chapter 2269.

Chapter 2269 applies to a public work contract. That phrase is defined as a contract for constructing, altering, or repairing a public building or carrying out any public work the phrase carrying out any public work.

§ 2269 Use of Architect or Engineer

The governmental entity shall select or designate an architect or engineer to prepare construction documents for the project.

The law requires that the school district hire a design professional (i.e., an architect or engineer) for the construction project.

If a project is governed by the Chapter 2269 of the Texas Government Code and is using any of these methods:

- Competitive Bidding
- Competitive Sealed Proposals
- Construction Manager-Agent
- Construction Manager-at Risk
- Design/Build

then the school district is required by law to hire a design professional, regardless of the nature of the work to be done. This is because the Government Code's provisions governing each of these delivery methods specifically requires that a design professional each of the first four), or (2) act as an independent representative of the school district (Design/Build).

The Texas Occupations Code contains the general requirements governing the necessity of a design professional on a project. These requirements, which are independent of those in Chapter 2269, are focused on the nature of the work to be performed.

Architect Requirements

First, an architect is required to prepare an architectural plan or specification for the following district projects:

- a new building having construction costs exceeding \$100,000 that is to be:
 - constructed and owned by a state agency, a political subdivision of this state, or any other public entity in this state; and
 - used for education, assembly, or office occupancy; or
- an alteration or addition having construction costs exceeding \$50,000 that:
 - is to be made to an existing building that:
 - is owned by a state agency, a political subdivision of this state, or any other public entity in this state; and

- is or will be used for education, assembly, or office occupancy; any requires the removal, relocation, or addition of a wall or partition or the alteration or addition of an exit.

Therefore, for new construction exceeding \$100,000 or renovations or additions exceeding \$50,000, an architect will be required to draw architectural plans.

Engineer Requirements

The Engineering Practice Act provides that a school district may not construct a public work involving engineering in which the public health, welfare, or safety is involved, unless: (1) the engineering plans, specifications, and estimates have been prepared by an engineer; and (2) the engineering construction is to be performed under the direct supervision of an engineer. Unless a statutory exclusion applies, an engineer may be required even if the construction does not involve a facility or is not governed by Chapter 44, Subchapter B of the Education Code.

Two exclusions are established in the Engineering Practices Act: 1) a public work that involves electrical or mechanical engineering, if the contemplated expense for the completed project is \$8,000 or less; (2) a public work that does not involve electrical or mechanical engineering, if the contemplated expense for the completed project is \$20,000 or less. Thus, for a project requiring only structural or civil engineering, for example, if the project will cost no more than \$20,000, then an engineer is not required.

The following aspects of structural or mechanical modifications to building roofs are engineering and require the services of a Texas licensed professional engineer:

- 1) Evaluation of structural framing members prior to the addition of roof mounted equipment or heavier roof covering.
- 2) The change of roof pitch by the addition of structural framing members.
- 3) The evaluation and repair of roof structural framing found to be damaged during a roof repair project.
- 4) The modification of an internal roof drainage system.

If a roofing project is in excess of \$20,000 for public works and involves the addition of roof-mounted equipment or the installation of roofing material heavier than the original roofing material, then the building structural framing elements will be evaluated by a Texas licensed professional engineer to verify that the roof modification will not exceed the allowable structural loads on the building.

If a roofing project is in excess of \$20,000 for public works and involves the modification of roof pitch by the addition of rafters, trusses or other structural framing elements, then the structural elements of the modified roof will be designed and the construction supervised by a Texas licensed professional engineer for public works and the design of the structural elements will be performed by a Texas licensed professional engineer.

If a roofing project is in excess of \$20,000 for public works and during the execution of the project, damage to the buildings structural framing elements is discovered, a Texas licensed engineer will evaluate the damaged structure. If structural repairs are indicated, a Texas licensed professional engineer will design and supervise the required repairs for public works and the design of the structural repairs will be performed by a Texas licensed professional engineer. If a roofing project is in excess of \$8000 for public works and involves the modification of the roof internal drainage system, then a Texas licensed professional engineer is required to evaluate the modified drainage system and perform required design and construction supervision for public works and the design of the modified drainage system will be performed by a Texas licensed professional engineer.

The use of Multiple Design Professionals

If a project requires a school district to hire an architect and an engineer or other design professional, the district may comply with the requirement by making it the architect's duty to provide necessary engineering or other design services. In such a case, the architect essentially subcontracts with one or more engineers or other design professionals to provide other necessary design services for the project.

Delegation of Authority

The school board has delegated the authority to determine the project delivery method/contract award method to be used for each construction contract value at or below \$25,000.

Any expenditures not previously approved or authorized by the board, e.g., Change Orders, also must be approved by the board.

If a board of trustees does not take action to delegate its authority as allowed by law, the board itself must perform these functions.

The following actions cannot be delegated. This items may not be delegated:

- Determining the existence of an emergency permitting circumvention of procurement laws.
- Determining the prevailing wage rate for the project.
- Approval of the Educational Program and Educational Specifications,
- Adopting rules and procedures for the procurement of construction services.
- Passing a resolution establishing regulations permitting the school district to refuse to enter into a contract or other transaction with a person indebted to the school district.

A note about delegation of authority in emergency situations: While the Education Code requires that the board and not a designee) make the determination regarding the existence of an emergency under section 44.031(h), a separate Education Code provision seems to carve out an exception to that prohibition. Under section 44.0312(c), in the event of a catastrophe, emergency, or natural disaster affecting a school district, the board of trustees of the district may delegate to the superintendent or designated person the authority to contract for the replacement, construction, or repair of school equipment or facilities under this subchapter if emergency replacement, construction, or repair is necessary for the health and safety of district students and staff. Any expenditures not previously approved or authorized by the board, e.g., Change Orders, also must be approved by the board.

Contracts Valued at or Above \$25,000

For construction contracts over \$25,000 in the aggregate Government Code Chapter 2269, the board shall determine the project delivery/contract award method. To assist the Board, the Superintendent shall recommend the project delivery/contracts award method that he or she determines provides the best value to the District.

Determination of Delivery Method Providing Best Value

Chapter 2269 makes competitive bidding the default method of delivery. If the board of trustees or its designee believes that a different method of delivery provides the best value for the district, then it must adopt that alternative delivery method before advertising for bids. The term delivery method is commonly used to describe the methods established in Chapter 2269 for bidding and supervising a school district construction project. It should always be remembered that the choice of delivery method determines who, in the end, is responsible for providing an acceptable finished product.

Available Delivery Methods for Construction Contracts Below \$25,000

The law specifies the following available methods for construction contracts:

1. Competitive Bidding;
2. Competitive Sealed Proposals;
3. Job Order Contracts for minor construction, repair, rehabilitation or alteration of a facility; and
4. An inter-local contract.

Construction Delivery Methods for Repairs, Renovations or New Constructions Exceeding \$50,000

The Facilities Department will identify construction needs District wide. If the amount of work for repairs and renovations exceed \$50,000, or new construction exceeds \$100,000, the Superintendent or designee will make recommendations to the Board of Trustees as to the construction delivery method providing best method for facility remediation. The selected method will be advertised. Methods include Texas Government Code 2269:

1. Competitive Bidding
2. Competitive Sealed Proposals
3. Construction Manager – Agent
4. Construction Manager – at Risk
5. Design / Build

Definition of Construction Delivery Methods

1. **Competitive Bidding** involves (1) preparing a request for bids, (2) opening the bids and (3) award a contract to the lowest responsible bidder.
2. **Competitive Sealed Proposals** involves (1) preparing a request for sealed proposals, (2) opening and ranking proposals received, and then (3) selecting a contractor who offers best value according to the selection criteria adopted to the district. The district attempts to negotiate a contract with the first-ranked contractor; if the district is unsuccessful, it ends negotiations with the contractor and attempts to negotiate with the second ranking contractor, and so on, until a contract is reached or all proposals are rejected.
3. **Design-Build Contract** is a single contract with a design-build firm for the design and construction of a facility. A design-build firm is a sole partnership, corporation, or other legal entity or team that includes an architect or engineer and or a construction contractor.
4. **Construction Manager-Agent** is a sole proprietorship, partnership, corporation, or other legal entity that serves as the agent for the governmental entity by providing construction administration and management services for the construction, rehabilitation, alteration, or repair of a facility. After selecting a construction manager-agent, the school district then hires a general contractor or trade contractors who will serve as the prime contractor for their specific portion of the work. The district may hire a general contractor or the district may assume the role of the general contractor by hiring multiple prime contractors to perform portions of the work.
5. **Construction Manager-At-Risk** is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides

consultation to the school district regarding construction during and after the design of a facility.

6. **Job Order Contract** may be awarded by a school district for the 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. Thus, this method by itself is not suited for major school construction projects. Chapter 44 list these contracts as a permissible delivery method, nothing in the Education Code specifically addresses the use of such contracts for construction services. The Attorney General has concluded that neither the Education Code nor the Inter Local Cooperation Act, Chapter 791 of the Government Code, require inter-local contracts to be competitively bid.

Establishing Selection Criteria and Relative Weights to Request for Proposals (RFP)

Under each of the delivery methods, the District must determine the criteria to be used in choosing among the competing vendors for the construction services under the construction method determined to represent the best value for the district. Also, the district must choose the relative weights given to each criteria.

Both the selection criteria and the relative weights must be determined by the district before publishing its request for bids, proposals, or qualifications because the selection criteria and their relative weights must be included in the request for bids, proposals, or qualifications. The determination of the selection criteria, or the delegation of that responsibility, requires board action, the subject should appear as an agenda item and the minutes should contain a resolution passed by the board in which the board either sets forth the selection criteria and weights that will be used to evaluate the offers received for construction services, or sets forth the board's delegation of that authority to Superintendent or Designee. In the event of delegation, both the fact of the delegation and the extent of the delegation should appear in the minutes.

Chapter 2269 Criteria Factors

The district will consider the following factors. Furthermore, the district will assign best value weights it chooses to each criterion. Chapter 2269's criteria are the following:

1. the price; the offeror's experience and reputation;
2. the quality of the offeror's goods or services;
3. the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses;
4. the offeror's safety record;
5. the offeror's proposed personnel;
6. whether the offeror's financial capability is appropriate to the size and scope of the project; and
7. any other relevant factor specifically listed in the request for bids, proposals or qualifications.

Hiring an Engineer or Architect

Architectural and engineering work for the construction and design of a project must be performed by licensed design professionals. Design professionals such as engineers and architects render professional services according to state law. Chapter 2269 of the Government Code does not apply to the selection of an architect. Instead, procurement of architects and engineers is governed by the Professional Services Procurement Act, Government Code Subchapter A, Chapter 2254.

The district cannot award contracts for professional services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award on the basis of demonstrated competence and qualifications for a fair and reasonable price. The professional fees under the contract may not exceed any maximum provided by law.

The district will issue a request for qualifications (RFQ) process. To seek qualifications through the use of an RFQ, the district first prepares a detailed request for qualifications seeking all pertinent information it wishes to use to determine the most qualified and competent design professional. Categories of information sought include all school construction projects designed or administered by the design professional, references, education and licensing information, financial information, information regarding all suits, arbitration proceedings, or mediations in which the architect has been a party or witness, and other desired information. The district then advertises that it is seeking qualifications for the specific design professional for the project. Interested applicants submit a qualification statement containing the information requested in the district's request for qualifications.

For architectural, engineering, or land surveying services, the district will:

- select the most highly qualified provider on the basis of demonstrated competence and qualifications; and
- Then attempt to negotiate with that provider a contract at a fair and reasonable price. If the parties cannot negotiate a satisfactory contract, then the district is required to formally end negotiations with that provider; select the next most highly qualified provider; and then attempt to negotiate with the provider a fair and reasonable contract.
- The process is continued until a contract is entered.
- The district is prohibited from purchasing engineering or architectural services through an inter-local contract, even if the district is using an inter-local contract as the method of delivery for the underlying project.

The district is prohibited from purchasing engineering or architectural services through an inter-local contract, even if the district is using an inter-local contract as the method of delivery for the underlying project.

Setting Prevailing Wage Rates

This District requires that workers on a school construction project be paid not less than the general prevailing wage rate of per diem wages for work of a similar character in the locality in which the work is performed; and . . . not less than the general prevailing rate of per diem wages for legal holiday and overtime work. However, this requirement does not apply to maintenance work.

For each contract awarded by the school district on a construction project, the board must determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work[.]The prevailing rate is set by either a) conducting a survey of the wages received by classes of workers employed on projects of a

character similar to the contract work in the political subdivision of the state in which the public work is to be performed; or (b) by using the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a, and its subsequent amendments. In other words, the prevailing wage rate is set by conducting a survey of the wages paid for workers on similar projects in the area, or using the local prevailing wage rate set under the federal Davis-Bacon Act.

The district's determination of the prevailing wage rate must be expressed as a sum certain, expressed in dollars and cents. Another significant requirement is that a board of trustees shall specify in the call for bids for the contract and in the contract itself the wage rates determined under the statute. The wage rates must appear in the request for bids or sealed proposals and in the contract documents.

Once a contract has been awarded, the contractor or a subcontractor) shall pay not less than the rate determined by the board. The statute establishes a penalty for failing to pay the prevailing wage rate. A contractor or subcontractor who violates this section shall pay to the school district on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. Finally, the statute requires that school districts specify in the contract documents the penalty for failing to pay prevailing wages.

7.2 PROVIDING NOTICE OF WORKER'S COMPENSATION COVERAGE

A school district's Board Policy CV (LEGAL) concisely summarizes a district's requirements under the worker's compensation statutes and regulations.

Required Workers' Compensation Coverage

When the District enters into a building or construction contract on a project, it shall fulfill the following requirements regarding required workers' compensation coverage. A project includes the provision of all services related to a building or construction contract for the District.

The District shall:

1. Include in the bid specifications all the duties and responsibilities of contractors pertaining to required workers' compensation coverage. See CV(EXHIBIT)
2. As part of the contract, using the language required by 28 Texas Administrative Code (TAC) 110.110(c)(7), require the contractor to perform the duties and responsibilities pertaining to required workers' compensation coverage. See CV(EXHIBIT)
3. Obtain from the contractor a certificate of coverage for each person providing services on the project, prior to that person's beginning work on the project. This provision includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracts directly with the contractor and regardless of whether that person has employees. This includes, but is not limited to, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity furnishing persons to perform services on the contract. Services include, but are not limited to, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to a project. Services do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

4. Obtain from the contractor a new certificate of coverage showing extension of coverage:
 - a. Before the end of the coverage period, if the contractor's current certificate shows that the coverage period ends during the duration of the project ; and
 - b. No later than seven days after the expiration of the coverage for each other person providing services on the project whose current certificate shows that the coverage period ends during the duration of the project.
5. Retain certificates of coverage on file for the duration of the project and for three years thereafter.
6. Provide a copy of the certificate of coverage to the Workers' Compensation Commission upon request and to any person entitled to a copy by law.
7. Use the prescribed language for bid specifications and contracts without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation. See CV(EXHIBIT)

Labor Code 406.096; 28 TAC 110.110(a)(7)(8), (c)

The Attorney General has made clear that the workers' compensation statute, section of the Labor Code, applies to every building or construction contract' no matter how small the subject matter of the contract may be.

Certification of Design and Construction

Whenever the district plans new construction or a major space renovation, it will be required to develop an Educational Program and Educational Specifications. It will also need to adopt a Building Code and at the end of the project obtain a certification of design and construction.

Major space renovations - to all or part of the facility's instructional space where the scope of the work in the facility involves substantial renovations to the extent that most existing interior walls and fixtures are demolished and then subsequently rebuilt in a different configuration and/or function.

Educational Program for Construction Projects

The Educational Program is a written document that essentially sets forth how the district will achieve educational philosophy, mission, and goals through the construction project. The Texas Administrative Code sets out the following requirements:

1. A summary of the school district's educational philosophy, submission, and goals.
2. A description of the general nature of the district's instructional program in accordance with TAC §74.1 of this title (relating to Essential Knowledge and Skills).
The written educational program should describe:
 - the learning activities to be housed, by instructional space;
 - how the subject matter will be taught such as methods of instructional delivery;

- the materials and equipment to be used and stored;
- utilities and infrastructure needs; and
- the characteristics of furniture needed to support instruction.

Educational Specifications

The Educational Specifications is a detailed analysis of the district's intended use of the facilities. When developing the Educational Specifications, the district must use a design professional or consultant experienced in school planning and design. The rules also require the district to allow input from teachers and other campus staff and district program staff.

The district may use the same architect to develop the Educational Specifications and to design the project as a whole.

The Educational Program and Educational Specifications must be approved by the Board of Trustees. This authority cannot be delegated to administration.

Once the project is complete the district will present the architect with the Educational Program, Educational Specifications and adopted code so that the architect can certify that that project was completed in accordance with the Educational Program, the Educational specifications and the applicable codes.

Adoption of a Building Code

The Texas Administrative Code requires also that school districts adopt a building code for their projects.

In 2006, the Texas Legislature made the International Building Code as it existed on May 1, 2003 applicable to all district buildings in a school district for all construction beginning after January 1, 2006, and to any alteration remodeling, enlargement or repair of those district buildings.

Payment and Performance Bonds

A school district's Board Policy CV (LEGAL) also concisely summarizes a district's duty to require a contractor to provide payment or performance bonds. The policy states:

When the Board makes a public work contract for constructing, altering, or repairing a public building or carrying out or completing any public work, it shall require the contractor, before beginning the work, to execute payment and/or performance bonds as specified below. The bonds shall be executed by a corporate surety in accordance with Insurance Code 7.19-1. The bond shall be payable to the Board and in a form approved by the Board. *Gov't Code 2253.021(a), (d), (e)*

For a contract in excess of \$100,000, a performance bond shall be executed in the amount of the contract conditioned on the faithful performance of the work according to the plans, specifications, and contract documents. The bond is solely for the protection of the District. *Gov't Code 2253.021(b)*

For a contract in excess of \$25,000, a payment bond shall be executed in the amount of the contract solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material. *Gov't Code 2253.021(c)*

Failure to Obtain Payment Bond

If the Board fails to obtain a payment bond covering a contract in excess of \$25,000 from the prime contractor, it is subject to the same liability as a surety would be, and a payment bond beneficiary is entitled to a lien on money due to the prime contractor in the same manner and to the same extent as if the contract were subject to Subchapter J, Chapter 53, Property Code. *Gov't Code 2253.027*

No Bond for Design Services Only

A payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract that includes design services only. *Education Code 44.036(j)* Now *Gov't Code 2269.311(a)* See CVC for more information on design/build contracts, including bond amounts.

Bond for Insured Loss

The district will validate that a contractors insurance policy meets its obligation under a contract of insurance by arranging for the replacement of a loss, rather than by making a cash payment directly to the governmental entity, furnishes or has furnished by a contractor:

1. A performance bond for the benefit of the District, as described above; and
2. A payment bond, as described above. If the payment bond is not furnished, the District is subject to the same liability that a surety would have if the surety had issued the payment bond and the District had required the bond to be provided.

These bonds shall be furnished before the contractor begins work. It is a required obligation under a contract of insurance for the insurance company to furnish these bonds.

7.3 EXCEPTION TO BOND REQUIREMENT

The requirement that the District secure a performance or payment bond from an insurance company, above, does not apply when a surety company is complying with an obligation under a bond that had been issued for the benefit of the District. *Gov't Code 2253.022*

Advertising for, Receiving, and Opening Bids, Proposals or Request for Qualifications

Each district will have adopted rules and procedures for advertising, receiving, and opening of bids, proposals, and requests for qualifications. The statutory publication requirement is that a district must publish, in a newspaper in the county in which the district's central administrative office is located, notice of the time by when and place where the bids, proposals, or responses to a request for qualifications, will be received and opened. The notice must appear once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications.

One exception to publication exists. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately.

Making Selections Public

A district shall base its selection among offerors on applicable criteria listed for the particular method used. Once a selection is made based on these selection criteria, the district must document the basis of its selection and shall make its evaluations public not later than the seventh day after the date the contract is awarded.

Right to Work

A school district, in procuring goods or services; awarding a contract; or overseeing procurement or construction for a public work or public improvement may not consider whether a vendor is a member of or has another relationship with any organization. A school

district is further prohibited from preparing bid specifications or entering into contracts that deny or diminish the right of a person to work because of that person's membership or other relationship status to any organization.

Contract Documents

The legal vehicle for each construction delivery method is a written, legally binding contract for construction services. The form of the contract will vary according to the delivery method chosen. School district attorney will develop, modify and finalize any and all construction related contracts.

Contract for Inspection and Testing Services

The district will contract for the construction materials engineering, Geo testing, inspection services and the verification testing services necessary for the acceptance of the facility independently of its contractor, construction manager, or architect.

7.4 REQUIREMENTS FOR DELIVERY METHODS

This section explores the step-by step requirements for each delivery method.

The Design-Build Contract

A design-build contract is a contract with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility. A design-build firm is a sole proprietorship, partnership, corporation, or other legal entity or team that includes an engineer or architect and a construction contractor. It is important to recognize that the statutory procedure for a design-build contract is unique. Remember, even when using the Design-Build method, the district must still engage an independent design professional.

Procedures:

- Step 1. Board Approve Delivery Method
- Step 2. Adopt Design-Build as Method of
- Delivery Step 3. Hire an Independent Engineer or Architect

The district is required to designate an architect or engineer independent of the design-build firm to act as its representative for the duration of the project. If this design professional is not a full-time employee of the district, the selection process must be in accordance with section 2254.004 of the Government Code.

- Step 4. Prepare Selection Criteria and Weights for Hiring Design-Build Firm
- Step 5. Prepare the Design Criteria Package

A school district must prepare a design criteria package, which is a set of documents that provides sufficient information, including criteria for selection, to permit a design-build firm to prepare a response to a governmental entity's request for qualifications and to provide any additional information requested. A district should rely on its independent engineer or architect (see step 3) to assist it in the preparation of the design criteria package, and must do so if the preparation requires the practice of engineering or architecture.

The design criteria package must specify criteria the district considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget

estimates, time schedules, quality assurance and quality control requirements, site development requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirement.

Step 6. Prepare Request for Qualifications

A district must prepare a request for qualifications addressed to potential design-build firms. The project engineer or architect ideally will prepare the RFQ. This request for qualifications will include general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project.

Step 7. Set a Prevailing Wage Rate

Step 8. Give Notice of Worker's Compensation Coverage

Step 9. Require Payment and Performance Bonds

Note that a payment or performance bond is not required for, and may not provide coverage for the portion of the design-build contract with the design-build firm as to the amount of the bonds:

If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the district must each be in an amount equal to the project budget, as specified in the design criteria package. The design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the district to ensure that the design-build firm will furnish the required performance and payment bonds before construction begins.

Step 10. Publish Request for Qualifications

Step 11. Evaluate Responses and Select Design-Build Firm

The district must evaluate statements of qualifications and select a design-build firm in two phases. Each phase of the two-step procedure is discussed below.

Phase One

Under this phase of the selection process, a district evaluates the proposals submitted on the basis of each firm's experience, technical competence, and capability to perform, the past performance of the firm and members of the firm, and other appropriate factors submitted by the firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted.

In addition, each firm must certify to the governmental entity 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 Section 2254.004 Government Code.

The district is required to qualify a maximum of five responders to submit proposals that contain additional information, and, if the governmental entity chooses, to interview for final selection.

Phase Two

In this second and final phase, the district is required to evaluate the additional information submitted by the offeror's on the basis of the selection criteria stated in the request for qualifications and the results of any interview.

Prior to making a final selection, the district will request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, or costing methodology.

The district then is required to rank each proposal submitted on the basis of the criteria set for the in the request for qualifications. Next, the district shall select the design-build firm that submits the proposal offering the best value for the governmental entity on the basis of the published selection criteria and on its ranking evaluations.

After selecting the top firm, a district must attempt to negotiate a contract with the selected firm. If negotiations are unsuccessful, the district must, 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.

Step 12. Make the Selection Public no later than the 7th day after the date the contract is awarded.

The Construction Manager-Agent Contract

A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that provides consultation to the school district regarding construction, rehabilitation, alteration, or repair of the facility. Also, the school district may require that the construction manager-agent provide administrative personnel, equipment necessary to perform duties under this section, and on-site management and other services specified in the contract. No matter the construction manager-agent's specific duties, it represents the district in a fiduciary capacity.

Fiduciary capacity, means that the construction-manager acts on behalf of the school district and is obligated, when so acting to put the school district's interest ahead of any personal interest of the fiduciary. Therefore, the fiduciary duty encompasses at the very minimum a duty of good faith and fair dealing recognized by law. A district should take great care that its contract with a construction manager-agent does not erode or lessen the manager-agent's responsibility under the statute.

Fiduciary capacity notwithstanding, a district must understand that the construction manager-agent does not serve as the prime contractor for any portion of the work, but merely serves as a consultant or Project manager owing an extremely high duty to the school district. In other words, a construction manager-agent is not a contractor ultimately responsible as such for defectively-constructed work.

The construction manager-agent may not:

1. Self-perform any aspect of the construction, rehabilitation, alteration, or repair of the facility;
2. Be a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility; or
3. Provide or be required to provide performance and payment bonds for the construction, rehabilitation, alteration or repair of the facility.

Procedures:

- Step 1. Board Approve Delivery Method
- Step 2. Adopt Construction Manager-Agent as Method of Delivery
- Step 3. Hire an Engineer or Architect

Before or concurrently with selecting a construction manager-agent, the district must select or designate an engineer or architect who shall prepare the construction documents for the project. The district must select or designate an architect or engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. The school district's engineer or architect hired for the project cannot serve alone or in combination with another person, as the construction manager-agent 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 Texas Government Code Chapter 2269, Subchapter E. The Government Code, however, does not prohibit the engineer or architect from providing customary construction phase services under the architect's or engineer's original professional services agreement. Therefore, a construction manager-agent's contract, as such, would not include any engineering or architectural services for the project. Those responsibilities would be found in the agreement between the district and the engineer or architect. Nevertheless, provided separate contracts are used, and provided the statutory procedures are followed as to each contract, the statute permits the construction manager-agent to be one and the same as the project engineer or architect. The standard-form architect agreement provides for supervision of the work during the construction phase, and also permits a district to contract with the architect for additional supervisory responsibilities that may be similar to services that would be provided by a construction manager-agent. A district, working with its school attorney, should ensure that the construction manager-agent's contractual responsibilities do not overlap with those of the architect.

- Step 4. Select the Construction Manager-Agent

A district selects a construction manager-agent in the same manner as it would hire an engineer or architect, on the basis of demonstrated competence and qualifications under Section 2254.004, Government Code. Again, the hiring of the construction manager-agent cannot occur *prior to* the hiring of the engineer or architect.

- Step 5. Make the Selection Public
- Step 6. Set a Prevailing Wage Rate
- Step 7. Give Notice of Worker's Compensation Coverage
- Step 8. Require Payment and Performance Bonds for the General Contractor or Contractors Hired under Step 9.
- Step 9. Hire a General Contractor or Multiple Trade Contractors

The district hires, in accordance with applicable law and in any manner authorized by Chapter 2269, a general contractor or trade contractors who will serve as the prime contractor for their specific portion of the work. This procurement would be through a method such as competitive sealed proposals or competitive bidding. This procurement should be treated as its own procurement under Chapter 2269 and the district shall follow all procedural steps for that delivery method.

District Serving as its Own General Contractor

A general contractor or trade contractors who will serve as the prime contractor for their specific portion of the work does not expressly exclude the district from serving as its own general contractor.

If the district acts as its own general contractor the District must issue requests for proposals, evaluate, award, and separately contract with each of the trades and suppliers of goods or services valued at less than \$50,000. Bonding requirements are also applicable to each such contract. Except for relatively small projects, these requirements have been known to significantly delay the completion of the project, and have many times resulted in large cost overruns. Also, if defects are present in the project, a district can expect a trade contractor to blame another trade contractor for the problems, leaving the district to prove who is responsible for the defect between possibly multiple contractors.

The Construction Manager-At-Risk Contract

A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the school district regarding construction during and after the design of a facility.

Selection Procedures:

- Step 1. Board Approves Delivery Method
- Step 2. Adopt Construction Manager-At-Risk as Method of Delivery
- Step 3. Hire an Engineer or Architect

On or before the selection of a construction manager-at-risk, the district shall select or designate an architect or engineer to prepare the construction documents for the project. If the District selects architect or engineer is not a full-time employee of the district the district shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004. The school district's engineer or architect hired for the project cannot serve alone or in combination with another person, as the construction manager-at-risk unless the architect or engineer is hired to serve as the construction manager-at-risk under a separate or concurrent selection process conducted in accordance with Chapter 2269. The Government Code, however, does not prohibit the district's architect or engineer from providing customary construction phase services under the architect's or engineer's original professional services agreement.

- Step 4. Prepare Selection Criteria and Weights for Hiring Construction Manager-At-Risk
- Step 5. Select the Construction Manager-at-Risk

The Government Code allows the construction manager-at-risk to be chosen by either a one or two-step process:

One-Step Process

1. *Prepare Request for Proposals*

In a one-step selection process, a district prepares a request for proposals, including general information on the project site, project scope, schedule, selection criteria and the weighted value for each criterion, and estimated budget and the time and place for receipt of the proposals. The district must also prepare a statement that the selection process is a one-step process, and other information that may assist the district in its selection of a construction manager- at-risk. The district shall state the selection criteria in the request for proposals. Also, if a one-step process is used, the district may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions.

2. *Set a Prevailing Wage Rate*

3. *Give Notice of Worker's Compensation Coverage*

4. *Require Payment and Performance Bonds*

If a fixed contract amount or guaranteed maximum price has not been determined at the time a contract is awarded, the penal sums of the performance and payment bonds delivered to the district must each be in an amount equal to the project budget, as specified in the request for qualifications. The construction manager shall deliver the bonds not later than the 10th day after the date the construction manager executes the contract unless the construction manager furnishes a bid bond or other financial security acceptable to the district to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

- *Publish Request for Proposals*
- *Open Proposals*

On the advertised date, time, and place, that the district must receive, publicly open, and read aloud the names of the offerors, as well as the fees and prices, if any, stated in each proposal as the proposal is opened.

- *Evaluate and Rank Proposals*

Not later than the 45th day after the date on which the final proposals are opened, the district shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals. The district shall select the offeror that submits the proposal that offers the best value for the district based on the published selection criteria and on its ranking evaluation.

- *Negotiate with Offerors*

The district is required to first attempt to negotiate a contract with the selected offeror. If negotiations are unsuccessful, the district must, 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.

- *Make the Selection Public*

Two-Step Process

First Step: Requests for Qualifications

- *Prepare Request for Qualifications*

In a two-step selection process, a district prepares a request for qualifications including general information on the project site, project scope, schedule, selection criteria, estimated budget, and the time and place for receipt of qualifications and a statement that the selection process is a two-step process, and other information that may assist the district in its selection of a construction manager-at-risk. The district shall state the selection criteria in the request for qualifications. The district may not request fees or prices in step one.

- *Set a Prevailing Wage Rate*
- *Give Notice of Worker's Compensation Coverage*
- *Require Payment and Performance Bonds*

If a fixed contract amount or guaranteed maximum price has not been determined at the time a contract is awarded, the penal sums of the performance and payment bonds delivered to the district must each be in an amount equal to the project budget, as specified in the request for qualifications. The construction manager shall deliver the bonds not later than the 10th day after the date the construction manager executes the contract unless the construction manager furnishes a bid bond or other financial security acceptable to the district to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

- *Publish Request for Qualifications*
- *Open Submissions*

On the advertised date, time, and place, that the district must receive, publicly open, and read aloud the names of the offerors.

Select Five or Fewer Offerors Based on Qualifications

The district must evaluate the offerors on the basis of the qualifications stated in the responses to the requests for qualifications, and then it must select five or fewer offerors as the leading candidates for construction manager-at-risk.

Second Step Process:

- *Request Additional Information*
In this second step, the district may request that the five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and prices for fulfilling the general conditions.
- *Open Proposals*
On the advertised date, time, and place, the district must receive, publicly open, and read aloud the names of the offerors, as well as the fees and prices stated in each proposal as the proposal is opened.
- *Evaluate and Rank Finalists*
Not later than the 45th day after the dated on which the final proposals are opened, the district shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals. The district shall select the offeror that submits the proposal that offers the best value for the district based on the

published selection criteria and on its ranking evaluation.

- *Negotiate with Offerors*
The district is required to first attempt to negotiate a contract with the selected offeror. If negotiations are unsuccessful, the district must, 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.
- *Make Selection Public*

Guarantee Maximum Price (GMP)

The district will require the selected contractor to submit a Guarantee Maximum Price (GMP) on or before 75% of the completed architectural specifications and drawings. The GMP will include all major elements as defined in the schedule of values of the project that equals to the Guarantee Maximum Price (GMP) submitted and approved by the district.

Subcontractor Bidding Process

The construction manager-at-risk must publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major trade elements of the work other than the minor work that may be included in the general conditions. Any CMAR contractor self-performed work shall follow subcontractor bidding process. The statutory publication requirement is that the construction manager must publish, in a newspaper in the county in which the district's central administrative office is located, notice of the time by when and place where the subcontractor bids or proposals will be received and opened. The notice must appear once a week for at least two weeks before the deadline for receiving subcontractor bids or proposals. The construction manager-at-risk and the assigned Superintendent designee, which may include Chief Financial Officer and the Executive Director of Business Operations, will review all trade contractor or subcontractor bids and/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 CMAR contractor, architect, engineer, or District. All bids or proposals shall be made available to the public after the awarding of the contract or the seventh day after the date of final selection of subcontractor bids or proposals.

The District may decide to reject a CMAR contractor's recommendation on a particular subcontractor bid or proposal, but may be required to pay for the increase in cost, if any:

If the CMAR contractor reviews, evaluates, and recommends to the district a bid or proposal from a trade contractor or subcontractor but the district requires another bid or proposal to be accepted, the District may compensate the CMAR contractor for an increase in price beyond the cumulative buy-out schedule of values not to increase the GMP.

CMAR Contractor Performing Part of the Work

The CMAR contractor may perform portions of the work itself if the CMAR contractor submits its bid and/or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors; and if the District determines that the CMAR contractor bid or proposal provides the best value for the District. Additionally, the CMAR contractor may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements when a trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with the applicable bidding process within the GMP and trade schedule of values amount.

The CMAR Contractor Contract

The District will use a contract form developed and approved by District's school attorney that includes a Guaranteed Maximum Price (GMP) to be set on or before 75% of the completed specifications and drawings for the project.

Competitive Sealed Proposals

Competitive Sealed Proposals is a procurement method by which a governmental entity requests proposals, ranks the offerors, negotiates as prescribed, and then contracts with a general contractor for the construction, rehabilitation, alteration, or repair of a facility.

Procedures:

- Step 1. Board Approves Delivery Method
- Step 2. Adopt Competitive Sealed Proposals as Method of Delivery
- Step 3. Hire an Engineer or Architect
- Step 4. Prepare Selection Criteria and Relative Weights for Hiring Contractor
- Step 5. Prepare Request for Competitive Sealed Proposals

The district must prepare a request for competitive sealed proposals that includes construction documents, selection criteria and the weighted value for each criterion, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to respond to the request.

- Step 6. Set a Prevailing Wage Rate
- Step 7. Give Notice of Worker's Compensation Coverage
- Step 8. Require Payment and Performance Bonds
- Step 9. Publish Request for Competitive Sealed Proposals
- Step 10. Open Proposals

The district must receive, publicly open, and read aloud the names of the offerors, and any monetary proposals made by the offerors.

- Step 11. Evaluate and Rank Proposals

Within 45 days after the date of opening the proposals, the district must evaluate and rank each proposal submitted by applying the published selection criteria.

- Step 12. Select a Contractor

The district must select the offeror that submits the proposal that offers the best value for the governmental entity based on: (1) the selection criteria in the request for proposal and the weighted value for those criteria in the request for proposal; and (2) its ranking evaluation.

- Step 13. Negotiate with the Selected Offeror

The district shall first attempt to negotiate a contract with the selected offeror. The district and its architect or engineer may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification.

If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, 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.

Step 14. Make the Selection Public

Competitive Bidding

Competitive Bidding is a procurement method by which a school district contracts with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder. A school district may contract for the construction, alteration, rehabilitation, or repair of a facility only after it advertises for bids for the contract in a manner prescribed by law, receives competitive bids, and awards the contract to the lowest responsible bidder.

Procedure:

- Step 1. Delegate Authority
- Step 2. Hire an Engineer or Architect
- Step 3. Prepare Selection Criteria and Relative Weights for Hiring Contractor
- Step 4. Prepare Request for Competitive Bids

The district must prepare a request for competitive bids that includes construction documents, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to submit a bid.

- Step 5. Set a Prevailing Wage Rate
- Step 6. Give Notice of Worker's Compensation Coverage
- Step 7. Require Payment and Performance Bonds
- Step 8. Publish Request for Competitive Bids
- Step 9. Open Bids

The district shall receive, publicly open, and read aloud the names of the offerors and their bids. Bids may be opened only by the board at a public meeting, or by an officer or employee of the district at or in an office of the district. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. However, the bidding statute does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

Step 10. Evaluate and Rank Bidders

Consideration of Bidder's Safety Record

As part of the selection process, a district may consider the bidder's safety record. In determining who is a responsible bidder, the district may take into account the safety record of the bidder, of the firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such firm, corporation, partnership, or institution if:

- (a) the District will adopted a written definition and criteria for accurately determining the safety record of a bidder;
- (b) the District 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

(c) the determinations are not arbitrary and capricious.

Step 12. Select a Contractor

Keep in mind that the district is entitled to reject any and all bids.

Step 13. Document Basis for Selection and Make Selection Public

Not later than the seventh day after the date the contract is awarded, the district shall document the basis of its selection and shall make the evaluations public.

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. This method is only available for work on a facility that is a building, the design and construction of which is governed by accepted building codes, or a structure or land, whether improved or unimproved, that is associated with a building. Thus, this method by itself is not suited for major school construction projects.

Procedures:

Step 1. Board Approved Delivery Method

Step 2. Adopt Job Order Contracting as Method of Delivery

Step 3. Hire an Engineer or Architect

If a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of architecture within the meaning of Chapter 1051, Occupations Code, or the practice of engineering within the meaning of Chapter 1001, Occupations Code, the district shall select or designate an architect or engineer to prepare the construction documents for the project.

Step 4. Prepare Selection Criteria and Relative Weights for Hiring Contractor

Step 5. Prepare Request for Sealed Proposals

The district must advertise for, receive, and publicly open sealed proposals for job order contracts. The district may require offerors to submit information in addition to rates, including experience, past performance, and proposed personnel and methodology.

Step 6. Set a Prevailing Wage Rate

As stated above, the prevailing wage law discussed applies only to the construction of a public work, including a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction. However, this requirement does not apply to maintenance work.

Step 7. Give Notice of Worker's Compensation Coverage

Step 8. Require Payment and Performance Bonds

The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.

Step 9. Publish Request for Sealed Proposal

Step 10. Open Proposals

Next, a district must publicly open the sealed proposals.

Step 11. Evaluate and Rank Proposals

Step 12. Select a Contractor

The district may award job order contracts to one or more job order contractors in connection with each solicitation of proposals.

Step 13. Enter a Job Order Contract(s) with the Selected Offeror(s)

The base term for a job order contract may not exceed two years. The district may renew the contract annually for not more than three additional years.

Orders under a Job Order Contract

After it enters into a job order contract, a district may make orders for work under the contract. To do so, the order must be signed by the district's representative and the contractor. The order may be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities, or may be a unit price order based on the quantities and line items delivered.

Thus, an order under a job order contract should always be in writing, signed by a representative authorized by the board, and should have either a lump-sum price or a price based on the previously-established unit price.

The statute seems to imply that a district may make an unlimited number of orders with a particular job order contractor during the term of a job order contract.

Interlocal Agreements

School districts may also choose to procure construction services through the use of an interlocal agreement. Under this method of delivery, the district contracts with another local government, a state agency, or nonprofit corporation that is created and operated to provide one or more governmental functions and services. Districts commonly enter into such Cooperative Purchasing agreements with Education Service Centers, Cities, Counties, Community College Districts and other nonprofit corporations.

The District may not procure architecture or engineering services through a purchasing cooperative. According to the Financial Accountability Resource Guide (Update 14) published by the Texas Education agency, the benefits of utilizing cooperative purchasing include the following: the cost savings on products or services which is achieved by combining the purchasing power of many smaller districts to gain advantage in the market; savings on administrative costs; and accessibility to more products and services.

It is important to note that each party paying for the performance of governmental functions or services must make those payments from the current budget to the party providing the services.

Procedures:

When Using a Purchasing Cooperative

- Step 1. Ensure that District is Party to Interlocal Contract with Cooperative
- Step 2. Adopt Interlocal Contract as Method of Delivery
- Step 3. Negotiate Contract with Contractor
- Step 4. Set a Prevailing Wage Rate
- Step 5. Give notice of Worker's Compensation require Payment and Performance Bonds
- Step 6. Make Purchase through the Cooperative

The fact that a particular contractor is listed with the Cooperative does not mean that the district can simply sign a contract with that contractor. The purchase must be made through the Cooperative.

- Step 7. Hire an Architect or Engineer

The necessity for hiring a design professional will be governed by the Texas Occupations Code. The District may not procure an architect or engineer's services through a purchasing cooperative—this must be done independently.

Procedures when not using a Purchasing Cooperative:

- Step 1. Adopt Interlocal Contract as Method of Delivery
- Step 2. Authorize execution of the interlocal contract
- Step 3. Create a Statement of the purpose, terms, rights and duties of the contracting parties.
- Step 4. Include a specification that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.
- Step 5. If another agency will administer the project, then the other agency must adhere to the bidding laws applicable to it.
- Step 6. If the school district will administer the project then it must adhere to the Education Code Provisions governing construction by following steps 7-16.
- Step 7. Set a Prevailing Wage Rate.
- Step 8. Give Notice of requirement of Worker's Compensation Coverage.
- Step 9. Require Payment and Performance Bonds.
- Step 10. Utilize one of the construction procurement methods authorized by Texas Government Code Chapter 2269.

7.5 PROCUREMENT PROCESS PROFESSIONAL SERVICES

*The Purchasing Department will comply with the Professional Services Procurement Act in the selection of Architects and Engineers and ensure the District follows a fair and transparent process. The designation of an engineer and or an architect is to assist the District with construction documents for the project identified. The Facilities Department will assist the Purchasing Department with the preparation of documents for advertisement to include:

- The assignment of weights to the criteria:
 1. The Director of Facilities and the Executive Director of Business Operations will be present to evaluate, score and rank proposals in order to select a qualified vendor.
 2. Once a vendor is selected a fair and reasonable price will be negotiated. If a price cannot be negotiated the next most highly qualified vendor will be selected.
 3. Professional fees will not exceed the maximum amount provided by law. Texas Government Code 2254
 4. The selection is taken to the Board of Trustees for final approval.
 5. The office of the Executive Director of Business Operations will include all evaluation tools used in the selection process as back up documentation to the Board of Trustees.
 6. The District then enters into a contract with the selected vendor.

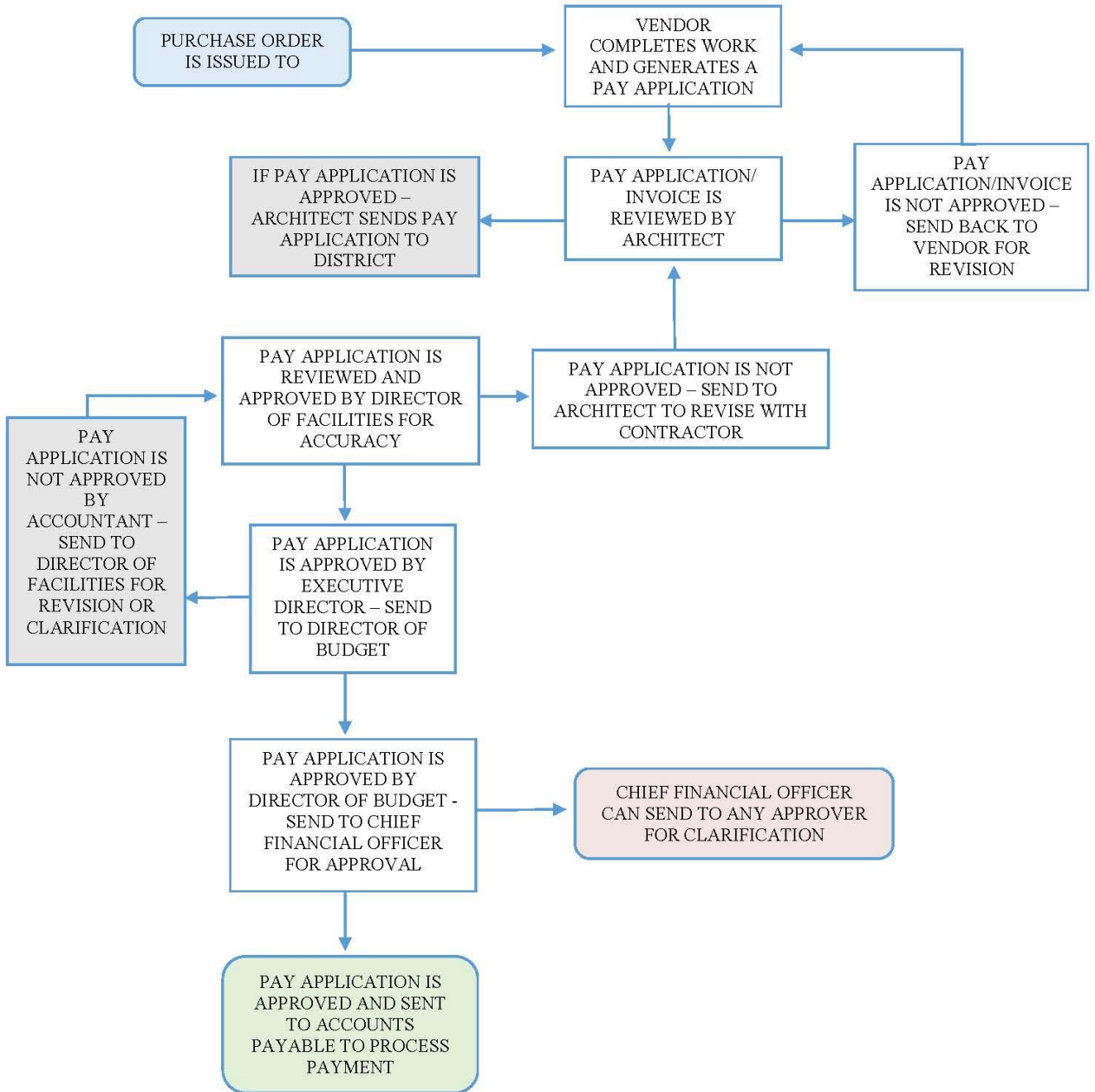
* It is imperative the Purchasing Department Ensures weighted values are published in the Request for Proposal, bid logs are kept, a bid opening is scheduled, score sheets are kept and the award is made public on the 7th day. In addition the selection criteria and assigned weights must be Board approved. (CVA LOCAL, CH LOCAL, CVD LEGAL, Professional Services Procurement Act)

7.6 ADMINISTRATIVE RESPONSIBILITIES

Any contract requiring Board action will be approved by the school district's attorney to legal counsel for review. In addition it is the responsibility of Administration to file all documents relevant to the construction project accordingly:

1. The Purchasing Department will be the repository for all bid documents, contracts and all subsequent information (advertisements, bid logs, score sheets).
2. The Executive Director of Business Operations department will be the repository for all construction bid documents, contracts, pay applications, change orders, subcontractors buyout documentation, schedule of values, education program records, drawings, specifications and all relation construction program documentation for all construction projects assigned to the department.
3. Construction Administrative Oversight responsibilities by the Office of the Executive Director of Business Operations include:
 - Project progression and completion
 - Pay applications in collaboration with the office of the Chief Financial Officer and Business office. (Process outlined in flowchart)
 - Change orders and contract amendments will be monitored to verify the scope of work, overall project cost and each will require board approval. (CV LOCAL).
 - Provide information concerning construction projects to keep the Superintendent of Schools and Board of Trustees informed.

Construction Fund Approval of Payments Pay Application/Invoice



7.7 REQUIRED CONSTRUCTION BINDER DOCUMENTATION

Every Construction Project shall have the following required information:

A. Construction Binder shall include the following tab information:

1. Notice to Proceed
2. Contractor Contract
3. Change Order
4. Allowance Change Order
5. Contingency Project Binder
6. W9
7. Certificate of Liability
8. Performance Bond
9. Payment Bond
10. Schedule of Values
11. Pre-Construction Meeting
12. Meeting Correspondence
13. Payment Application
14. Subcontractor Validated "Buy Out" Logs
15. Contractor's Affidavit of Payment of Debits & Claims
16. Contractor's Affidavit of Release of Liens
17. Notice of Claim
18. Punch List
19. Substantial completion
20. Material Testing
21. Surveys & Other Documents
22. 3rd Tier Contractors
23. Miscellaneous Project Vendors

B. Construction Binder Tab Description

1. **Notice to Proceed-** Authorized written notice from project owner to contractor to proceed with the work on a specified date.
2. **Contractor Contract-** Agreement between owner and contractor.
3. **Change Order -** Written authorization provided to a contractor approving a change from the original plans, specifications, or other contract documents, as well as a change in the cost.
4. **Allowance Change Order-** Written authorization provided to a contractor approving a change from the original plans, specifications, or other contract documents, with no change in the cost.
5. **Contingency Project Binder –** Contingency: Amount of money included in Contractor Contract by client for unexpected/unplanned cost that may appear during construction or unplanned additions to project.
6. **W9-** Contractor document of employment
7. **Certificate of Liability-** Insurance
8. **Performance Bond-** Guarantee that a contractor will perform a job according to the terms of the contract, or the bond will be forfeited.
9. **Payment Bond-** Guarantee that the contractor will pay all costs of labor, materials, and other services related to the project.
10. **Schedule of Values-** A listing of the work in a project with an assigned value for each, which equals the contract sum and/or GMP, and subcontractor final buy-out cost schedules.
11. **Buy Out Log –** It is the subcontractor amounts that the CMAR pays its subcontractor below the agreed contract and schedule of values that will be credited to the District.
12. **Pre-Construction Meeting-** A meeting to review project items or concerns.
13. **Meeting Correspondence-** Agendas and meeting notes.
14. **Payment Application-** Certified requests for payment from project contractors.
15. **Contractor’s Affidavit of Payment of Debits & Claims-** Contractor’s final request for payment, stating that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the owner might be responsible has been paid or otherwise satisfied.
16. **Contractor’s Affidavit of Release of Liens-** Contractor stating that all releases or waivers of liens have been received.
17. **Notice of Claim-** Legal claim from a subcontractor for lack of payment by the general contractor.
18. **Punch List-** A general list of tasks that must be done in a limited time.
19. **Substantial completion-** Completion of project.
20. **Material Testing-** Documentation of any testing.
21. **Surveys & Other Documents-** Survey performed by a Civil Engineer to evaluate and obtain all field data.
22. **3rd Tier Contractors-** A subcontractor to a general contractor.
23. **Miscellaneous Project Vendors –** Under this tab there should be additional sub tabs with the specific vendor name, behind the vendor’s tab place all P.O.’s, Invoice’s, etc. Any documents that relate to the vendor that do not have a specific tab in the binder should be placed in this tab.

7.8 PROJECT INSURANCE PROCEDURES

General contractors, architects and all other vendors must meet insurance liability requirements pertaining to the project. This requirement will be outlined in the project RFQ/RFP.

Forms should be provided by vendor to the SSAISD office at the start of a project or when a particular vendor gets involved with the project.

If you notice that a vendor has not submitted the required forms or insurance coverage, the office of the Chief Financial Officer.

- Once required forms are received:
 - Create 2 copies
 - Create transmittal form to submit to Finance department.
 - Attach Original Forms to transmittal and submit to Finance department.
- Highlight copies:
 - Insured Name
 - Policy Expiration
 - Actual date(s) of expiration
 - Certificate Holder
- Set an appointment in Outlook as a reminder:
 - Label appointment with company name.
 - Certificate of Liability expires with date of expiration.
 - Set appointment for 30 days prior to expiration date.
- File:
 - In construction binder under tab labeled: Certificate of Liability insurance.
 - In binder labeled Insurance Forms (located in the Construction Support Clerk's desk).
 - Locate project name and file appropriately.
- Calling to renew insurance coverage certificates:
 - Contact the contractor immediately listed.