



# Administrative Regulations

South San Antonio Independent School District

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## Delegation of Authority

The Board has delegated authority to the Superintendent for any projects below \$25,000 as outlined in Texas Government Code Chapter 2269. However, any single budgeted purchase of goods or services that costs \$25,00 or more, regardless of whether the goods or services are competitively purchased, shall require Board approval before a transaction may take place. South San ISD is required to provide the name or title for a person to whom it has delegated authority by rule or in the request for bids, proposals, or qualifications in an addendum to the request.

## Delegation in Emergencies

In the event of a catastrophe, emergency, or natural disaster affecting a district, the board may delegate to the superintendent or designated person the authority to contract for the replacement, construction, or repair of school equipment or facilities under Chapter 44 if emergency replacement, construction, or repair is necessary for the health and safety of district students and staff. Tex. Educ. Code § 44.0312(c).

## Contracts Valued at or above \$50,000

Other than contracts for the purchase of produce or vehicle fuel, Texas Education Code section 44.031 requires that all school district contracts for the purchase of goods and services valued at \$50,000 or more in the aggregate for each 12-month period be made by the method from the following options that provides the best value for the district:

1. Interlocal contract (See Board policy CH);
2. Competitive bidding for services other than construction services (See CVA);
3. Competitive sealed proposals for services other than construction services (CVB);
4. Construction manager agent method (CVC)
5. Construction manager at-risk method (CVE)
6. Design build method (See CVF)
7. Job order contract (See Board policy CVF)
8. The reverse auction procedure as defined by Government Code 2155.062

Chapter 2269 provides specific methods for procuring construction services:



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1. Competitive Bidding;
2. Competitive Sealed Proposals;
3. Construction Manager-Agent;
4. Construction Manager-at-Risk;
5. Design-Build; and
6. Job Order Contracting for minor construction, repair, rehabilitation, or alteration of a facility; and
7. Interlocal contract

Tex. Gov't Code §§ 2269.101, .151, .201, .251, .301, .401.

Below is a description of each delivery method:

- 1. Competitive Bidding** – This process includes (1) preparing a request for bids, (2) opening bids and (3) awarding a contract to the lowest bidder offering the best value for the district. In determining the best value, the district is not restricted to considering price alone but may consider other factors stated in the selection criteria, which may include the factors listed above. The bidder's safety record may be taken into consideration under certain circumstances.
- 2. Competitive Sealed Proposals** – This process includes (1) preparing a request for sealed proposals, (2) opening and ranking proposals received, and (3) selecting a contractor who offers the best value for the district according to the selection criteria developed by the district. The district may negotiate with the first-ranked contractor. If unsuccessful, negotiations with that contractor end and the district then moves to second-ranked and so on until a contract agreement is reached or all proposals are rejected.
- 3. Construction Manager-Agent (CMA)** – A CMA is a sole proprietorship, partnership, corporation, or other legal entity that provides consultation or administrative services during the design and construction phase and manages multiple contracts with various construction prime contractors. After selecting a CMA, the district then hires a general contractor or trade contractors who will serve as the prime contractor for their specific expertise and portion (s) of the work on the project.
- 4. Construction Manager-At-Risk** – This process 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 CMAR to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, or repair of a facility. The CMAR assumes the risk for construction of a



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facility at a contracted price as a general contractor and provides consultation to the district regarding construction during and after the design of the facility. The contracted price may be a guaranteed maximum price.

5. **Design-Build** – This process 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.
6. **Job Order Contract** – This 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. A district uses the competitive sealed proposal method for awarding a job order contract and may award contracts to multiple contractors in connection with each solicitation of proposals. The district must establish the maximum aggregate contract price when it advertises the proposal. The board must approve each job, task, or purchase order that exceeds \$500,000.
7. **Interlocal Contract** - An interlocal contract must contain certain terms and be approved by the board. Interlocal contracts are governed by the Interlocal Cooperation Act, Texas Government Code chapter 791, which authorizes local governments to contract with other local governments or state agencies to perform governmental services or functions, including administrative functions such as purchasing. A common type of interlocal contract is a cooperative purchasing program. A district that participates in a cooperative purchasing program satisfies any requirement to seek competitive bids. A district that enters a purchasing contract valued at \$25,000 or more under a cooperative purchasing program must document the amount, purpose, and disposition of a contract related fee, including a management fee, paid by or to the district in a written report submitted annually in an open board meeting. The written report must appear as an agenda item.

### **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.



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Both the selection criteria and relative weights must be determined by the district before publishing the request for bids, proposals, or qualifications. The determination of the selection criteria or the delegation of the responsibility requires Board action. After approval, the Board minutes should contain a Resolution in which the Board either sets forth the selection criteria and weights that will be utilized to evaluate the offers received for construction services or sets for the Board's delegation of authority to the Superintendent or designee. In the event of delegation, both the fact of the delegation should appear in the Board minutes.

Texas Government Code 2269 lists the following factors that a district may consider (the district can select its own criteria and assign whatever weight it chooses):

- The price, the offeror's experience, and reputation, or services;
- The quality of the offeror's goods or services;
- The impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses;
- The offeror's safety record;
- The offeror's proposed personnel;
- Whether the offeror's financial capability is appropriate to the size and scope of the project; and
- Any other relative factor specifically listed in the request for bids, proposals, or qualifications.

The Education Code also recognizes a final factor the district may consider. The Board of Trustees may pass 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. 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 should always publish the desired selection criteria in the request for bids or sealed proposals.

### **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 does not apply to the selection of an architect. Instead,



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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 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 using an RFQ, the district first prepares a detailed request for qualifications seeking all pertinent information needed to determine the most qualified and competent design professional. Categories of information should include the following:

- All school construction projects designed or administered;
- References;
- Education and licensing information;
- Financial information;
- Information regarding all lawsuits, arbitration proceedings, or mediations if applicable and
- Other desired information.

The district then advertises that it is seeking qualifications for the specific project. Interested applicants must submit a qualification statement containing the information requested by the district.

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

- Select the most highly qualified provider based on demonstrated competence and qualifications; and
- Attempt to negotiate with the provider at a fair and reasonable price. If the parties cannot negotiate a satisfactory contract, the district is required to end negotiations with the provider, select the next most highly qualified provider; and begin negotiations for a fair and reasonable price.

The process is continued until a contract is finalized with a provider. 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 a method of delivery for the underlying project.

### **Setting Prevailing Wage Rates**



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The 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 position in the locality in which the work is performed. This includes per diem wages for legal holidays and overtime work (this requirement does not apply to maintenance work).

For each contract awarded by the 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 wages received by classifications of workers employed on projects similar to the work in the political subdivision of the state in which the work is to be performed; or
- b) By using the prevailing wage rate as determined by the United States Department of Labor (DOL) in accordance with the David-Bacon Act (40 U.S.C. Section 276a, and its subsequent amendments).

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 the Board of Trustees shall specify in the call for bids for the contract and in the contract itself, the required wage rates as 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 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 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 rate stipulated in the contract. The statute also requires that the district specify the penalty for failing to pay prevailing wages in the contract documents.

### **Providing Notice of Worker's Compensation Coverage**

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

### **Required Worker's Compensation Coverage**



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When the district enters a building or construction contract on a project, it shall fulfill the following required worker's compensation coverages. A project includes the provision of all services related to a building or construction contract for the district. The district shall:

1. Include specifications of all duties and responsibilities of contractors pertaining to required worker's compensation coverages.
2. Use the language required by 28 TAC 110.110(c)(7) and require the contractor to perform the duties and responsibilities pertaining to required worker's compensation coverages.
3. Obtain a certificate of coverage from the contractor for each person working 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 or is an employee. This includes, but is not limited to, independent contractors, subcontractors, 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 Worker's 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.

The Attorney General has detailed the worker's compensation statute section of the Labor Code in 406.096; 28 TAC 110.110(c)(7)(8), (c). This statute applies to every building or construction contract no matter how small the scope of work of the contract.

### **Payment and Performance Bonds**



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Board Policy CV (LEGAL) requires a contractor to provide payment or performance bonds as follows:

A district that makes a public work contract with a prime contractor shall require the contractor, before beginning the work, to execute to the district:

1. A performance bond if the contract is in excess of \$100,000; and
2. A payment bond if the contract is in excess of \$25,000.

A bond required by this provision must be executed by a corporate surety in accordance with Insurance Code Article 7.19-1 (now Insurance Code 3503.001–.005). A bond for a public work contract with a district must be payable to and its form must be approved by the awarding board.

*Gov't Code 2253.021(a), (d)–(e)*

The performance bond is solely for the protection of the district awarding the public work contract, in the amount of the contract, and conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents. *Gov't Code 2253.021(b)*

The payment bond is 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, and in the amount of the contract. *Gov't Code 2253.021(c)*

### **Failure to Obtain Payment Bond**

If a district fails to obtain from a prime contractor a payment bond as required above:

1. The district is subject to the same liability that a surety would have if the surety had issued a payment bond and if the district had obtained the bond; and
2. 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 public work contract were subject to Property Code Chapter 53, Subchapter J (Lien on Money Due Public Works Contractor). *Gov't Code 2253.027(a)*

### **No Bond for Design Surveyors**

A payment or performance bond is not required for or may not provide coverage for the portion of a design-build contract that includes design services only. See CVC (LEGAL) for more information on design-build contracts, including bond amounts.

### **Bond for Insured Loss**

A district 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 district, furnishes or has furnished by a contractor:





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1. A performance bond as described above for the benefit of a district; and
2. A payment bond, as described above for the benefit of the beneficiaries 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.

The bonds required to be furnished by the provisions above 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.

### **Exception to Bond Requirement**

These provisions do not apply to a district 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*

The district has 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. It must publish the deadline for proposals, bids and RFP's as well as when and where they will be received and opened. The notice must appear once per week for at least two weeks before the deadline.

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 will base its selection among offerors on applicable criteria listed for the particular method used. Once a selection is made, the district must document the basis of its selection and make its evaluations public not later than the seventh (7<sup>th</sup>) day after the date the contract is awarded.

### **Right to Work**

In procuring goods services; awarding a contract; or overseeing procurement or construction for public work or public improvement, the district may not consider whether a vendor is a member of or has another relationship with any organization. In addition, 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 establishing the precise duties and responsibilities of all parties involved for construction services. The form of the contract will vary according to the delivery method chose. The district will consult the district's attorney in developing, modifying and negotiating the contract or contracts used for the project. When the district



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signs the form AIA contract, it must accept responsibility for parts of the construction project that are generally the responsibility of the contractor or architect. The form contracts are user-friendly and endorsed by the national contractor organization, they significantly increase protections to the district.

### Separate Contract for Inspections and Testing Services

The district will 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

Below are the requirements for each contract delivery method:

- **The Design-Build Contract** – The 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. The district must prepare a design criteria package that includes criteria for section, a permit for a design-build firm to prepare a response to a governmental entity's request for qualifications and to provide any additional information requested. The design criteria package must specify the criteria that 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, cost or budget estimates, time schedules, quality assurance and quality control requirements, special material requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirements. The district should rely on its independent engineer or architect to assist in the preparation of the design criteria package if the preparation requires the practice of engineering or architecture. When using the Design-Build method, the district must still engage an independent design professional. The process is as follows:
  - **Step 1** – Determine Delegation of Authority
  - **Step 2** – Adopt Design-Build as Method of Delivery
  - **Step 3** – Hire an Independent Engineer or Architect
- The district must 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 to 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



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- **Step 6** – The district must prepare a request for will qualifications addressed to potential design-build firms. The project engineer or architect will prepare the RFQ. The RFQ will include the 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 – A-build firm as to the amount of the bonds payment or performance bond is 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 lather than the 10<sup>th</sup> day after the date the design-build 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 require performance and payment bonds before construction begins.
- **Step 10** – Publish Request 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** – The district evaluates the proposals submitted on the basis of each firm’s experience, technical competence, and capability to perform, past performance of the firm, members of the firm, and other appropriate factors submitted in response to the RFQ. Cost-related or price-related evaluation factors are not permitted. Each firm must certify that each architect or engineer that was selected was selected based on competence and qualifications according to Government Code Section 2254.004. The district is required to qualify maximum of five responses to submit proposals that contain additional information and interview for the final selection.
  - **Phase Two** – The district is required to evaluate the additional information submitted by the offerors on the basis of the selection criteria stated in the RFQ and the results of the interview. Prior to making the final decision, 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



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meet schedules, or costing methodology. The district is required to rank each proposal submitted on the basis of the criteria set for in the RFQ. The district will select the design-build firm that submits the proposal offering the best value on the basis of the published selection criteria and its ranking evaluations. After selecting the top firm, the district must attempt to negotiate a contract. If negotiations with the top firm are unsuccessful, the district must formally and in writing, end all negotiations with the firm and proceed to negotiate with the next firm in 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 7<sup>th</sup> day after the date the contract is awarded.

### The Construction Manager-Agent Contract

A construction manager-agent is the sole proprietorship, partnership, corporation, or other legal entity that provides consultation to the school district regarding construction, rehabilitation, alteration, or repair of a facility. The district may require the construction manager-agent to provide administrative, personnel, and equipment necessary to perform duties and on-site management as well as other services in the specified contract. The manager-agent also represents the district in a “fiduciary capacity”. “Fiduciary capacity” means that the manager-agent acts on behalf of the school district and is obligated to put the district’s interest ahead of any personal interest of the fiduciary. The fiduciary duty encompasses at the very minimum, a duty of good faith and fair dealing recognized by law and take responsibility under statute.

The construction manager-agent does **not** serve as the prime contractor for any portion of the work, but serves as a consultant or project manager owing an extremely high duty to the school district. The construction manager-agent **may not**:

- Self-perform any aspect of the construction, rehabilitation, alteration or repair of the facility;
- Be a party to a construction subcontract for the construction, rehabilitation, alteration or repair of the facility; or
- Provide or be required to provide performance and payment bonds for the construction, rehabilitation, alteration or repair of the facility.
- Selection Procedures:
  - **Step 1** – Delegate authority
  - **Step 2** – Adopt construction manager-agent as Method of Delivery
  - **Step 3** – Hire an engineer or architect – The district must select or designate an engineer or architect on the basis of demonstrated competence and qualifications who shall prepare



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the construction documents for the project. In accordance with Texas Government Code Chapter 2269, Subchapter E, the school district's hired engineer or architect for the project cannot serve alone or in combination with another person as construction manager-agent unless the architect or engineer is hired under a separate or concurrent selection process. This does not prohibit the engineer or architect from providing customary phase services under the original professional services agreement. The standard-form architect agreement provides for supervision of the work during the construction phase, and also permits the district to contract with the engineer or architect for additional supervisory responsibilities that may be similar to services provided by a construction manager-agent. The district, working with its 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 should select the construction manager-agent on the basis of demonstrated competence and competence under Government Code Section 2254.004. This cannot occur prior to hiring 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 school 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. The procurement process will 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 the delivery method.

### **District Serving as Its Own General Contractor**

The law requiring that a district procure a general contractor or trade contractors does not exclude the district from serving as its own general contractor. Although potential cost savings exist for the district in serving as general contractor with the assistance of a construction manager-agent, the district should understand that most projects need daily, qualified supervision and coordination of all work. In addition, 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 good or services valued at \$50,000 or more. Bonding requirements are also applicable to each such contract. Requirements for relatively small projects have been known to significantly delay the completion of the project and have many times



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resulted in large cost overruns. Also, if defects are present in the project, the district can expect a trade contractor to blame another contractor for the problems, leaving the district to prove who is responsible for the defect between multiple contractors.

### Construction Manager-At-Risk

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

- Selection Procedures:
  - **Step 1** – Delegate Authority
  - **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 architect or engineer is not a full-time employee of the district, the district shall select the architect or engineer of Chapter 2254.004. In accordance with Texas Government Code Chapter 2269, Subchapter E, the school district's hired engineer or architect for the project cannot serve alone or in combination with another person as construction manager-at-risk unless the architect or engineer is hired under a separate or concurrent selection process. This does not prohibit the engineer or architect from providing customary phase services under the 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

- *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 in 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



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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.

- *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 budget, as specified in the request for qualifications. The construction manager shall deliver the bonds not later than the 10<sup>th</sup> 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 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 45<sup>th</sup> 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 for 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: Request for Qualifications**



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- *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, as well as other information that may assist the district in its selection of a construction manager-at-risk. The district will 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 equal amount to the project budget, as specified in the request for qualifications. The construction manager shall deliver the bonds not later than the 10<sup>th</sup> 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 is scheduled to receive, publicly open, and read aloud 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 and then 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 select solely on the basis of qualifications, provide additional information, including the construction manager-at-risk proposed fee and prices for fulfilling the general conditions.





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- *Open Proposals*

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

- *Evaluate and Rank Finalists*

Not later than the 45<sup>th</sup> day after the date on which the final proposals are opened, the district will 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*

### **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. The statutory publication requirement applying here is that the construction manager must publish, in a newspaper in the county where the district's central administrative office is located and give notice of the date, time 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 a district representative 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 of contract or the seventh (7<sup>th</sup>) day after the date of final selection of the bids or proposals.

The 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,

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 districts 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**



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The construction manager-at-risk may perform portions of the work itself 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 defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with the applicable bidding process.

### **Construction Manager-At-Risk**

The district will use a contract form contract approved by the district's attorney that includes a Guaranteed Maximum Price (GMP) 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 contracts with a general contractor for the construction, rehabilitation, alteration, or repair of a facility.

Procedures:

- Step 1. Delegate Authority
- 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



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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 the Rank Proposals

Within forty-five (45) days after the date of opening the proposals, the district must evaluate and rank each proposal submitted by applying and published criteria.

### Step 12. Select a Contractor

The district must select the offeror that submits the proposal that offers the best value based on:

1. The selection criteria in the request for proposal and the weighted value for those criteria, and
2. It's 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 the offeror and proceed to the next offeror in 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 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 in the contract to the lowest responsible bidder.

Procedure:

Step 1. Delegate Authority

Step 2. Hire an Engineer or Architect

Step 3. Prepare Selection Criteria Relative Weights for Hiring Contractor

Step 4. Prepare Request for Competitive Bids



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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, 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 had adopted a written definition and criteria for accurately determining the safety record of the bidder;
- b) The Board has given notice to the 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 11. Select a Contractor

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

Step 12. Document Basis for Selection and Make Selection Public

Not later than the seventh (7<sup>th</sup>) day after the date the contract is awarded, the district will document the basis of its selection and make the evaluation public.



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## Job Order Contracts

Job Order Contracting is a procurement method use 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 work is governed by accepted building codes, or structure or land, whether improved or unimproved, that is associated with a building. This method is not suited for major school construction purposes.

Procedures:

Step 1. Delegate Authority

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 service 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, or 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 will 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



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Step 10. Open Proposals (must publicly open the sealed proposals)

Step 11. Evaluate and Rank Proposals

Step 12. Select a Contractor

The district may award job order contacts 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, 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 representative authorized by the Board and should have either a lump-sum price or a price based on the previously established unit price. This statute allows the district to make an unlimited number of orders within 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 entity, the state, a state agency, or non-profit 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, Citi4es, 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 17) 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 service

School districts are required to document any contract-related fee and the purpose of each fee under the act.



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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 school 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.

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

### **Procedures When Using a Purchasing Cooperative:**

- Step 1. Ensure that the 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 Required Payment and Performance Bonds
- Step 6. Make a 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. Keep in mind that the district may not procure an architect or engineer's services through a purchasing cooperative. The selection 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 Party
- Step 4. Include a Specification that Each Party Paying for the Performance of Governmental



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Functions or Services Must Make those Payments from Current Revenues Available to the Paying Party

Step 5. If Another Agency Will Administer the Project, the Other Agency Must Adhere to the Bidding Laws Applicable to it.

Step 6. If the school district will administer the project, it must adhere to the Education Code Provisions governing construction by following Steps 7-12.

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

### **Delivery Methods**

The Operations and Facilities Department will identify construction needs district wide. If the amount of work for repairs and renovation exceed \$50,000, or new construction exceeds \$100,000, the superintendent or designee will make recommendations to the Board of Trustees. A construction delivery method to provide facility remediation should be determined. The selected method will be advertised to include Texas Government Code 2269 as follows:

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

### **Procurement Process for Construction Projects**

The Purchasing Department will comply with the Professional Service 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 architect to assist the district with construction documents for the project identified. The Operations and Facilities Department will assist the Purchasing Department with the preparation of documents for advertisement to include:

- Selection Criteria





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- The Assignment of Weights to the Criteria
  - The leadership in the Facilities and Operations Department 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 Texas Government Code 2254.
  - The selection is taken to the Board of Trustees for final approval.
  - The office of the Executive Director of 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.

It is imperative that 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 made public on the seventh (7<sup>th</sup>) day. In addition, the selection criteria and assigned weights must be Board approved. (See CVA LOCAL, CH LOCAL, CVD LEGAL, and the Professional Services Procurement Act)

### **Administrative Responsibilities**

Any contract or document requiring Board action will be sent to legal counsel for review. In addition, it is the responsibility of Administration to file all documents relative to the construction project accordingly.

- The Purchasing Department will be the repository for all bid documents, contract, and all subsequent information (advertisements, bid logs, score sheets, etc.)
- The Executive Director of Operations will be responsible for maintaining a construction binder/file out-lining Board approved projects.
- Oversight responsibilities by the office of the Executive Director of Operations include:
  - Project progression and completion
  - Pay applications in collaboration with the office of the Chief Financial Officer and Business office (Process should be outlined in the 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).



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- Provide information concerning construction projects to keep the Superintendent and Board informed.