

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 the 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.

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.