

External Forensic Audit
Correction Action Plan: Procedures

VI. Purchasing

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

6.1 PURCHASING RESPONSIBILITY

A. Purchasing Policy

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

FASRG can be accessed through the TEA website at:

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

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

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

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

B. Purchasing Authority

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

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

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

6.2 STANDARDS OF CONDUCT

A. Ethics

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

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

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

B. Vendor Relations

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

C. Administrative Procedures for Conflict of Interest Disclosures

1. Conflict of Interest Disclosures for Board Members

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

2. Conflict of Interest Disclosures for Superintendent and District Employees

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

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

3. Conflict of Interest Disclosures for District Vendors

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

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

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

6.3 PURCHASING PRINCIPLES

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

6.4 PURCHASE ORDERS

B. Purchase Order Stipulations

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

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

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

C. General Purchase Order Procedures

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

D. Open Purchase Orders

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

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

E. Reporting

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

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

F. Specifications

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

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

G. Approved Vendor List (AVL)

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

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

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

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

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

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

H. Equipment Warranty, Maintenance and Repair

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

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

I. Requirements of Purchase of Record Document

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

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

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

J. Sales Taxes

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

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

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

K. Delivery and Receipt of Orders

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

L. Verification of District Data

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

6.5 CONTRACTS (other than Construction Contracts)

A. Contracts

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

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

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

B. Contract Signatories

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

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

C. Lease Rental Contracts

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

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

D. Consultants Contracts

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

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

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

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

E. Depository Contract

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

6.6 LEGAL BASIS FOR COMPETITIVE BIDS, PROPOSALS & QUOTATIONS

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

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

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

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

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

Competitive bids

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

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

B. Awarding Contracts (other than Construction Contracts)

Costs

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

Product or services

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

Vendor

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

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion

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

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

C. Enforcement

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

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

Conviction of an offense results in an individual's:

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

D. Bid and CSP/RFP Guidelines

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

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

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

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

Contract Length

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

Tie Bids

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

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

GC 2252.001; 2252.002

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

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

LGC 271.082

Purchasing Cooperatives

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

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

E. Law Code Abbreviations:

EC - Education Code

GC - Government Code

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

AC - Agriculture Code

TAC - Texas Administrative Code

PC - Penal Code

VATS -Vernon's Annotated Texas Statutes

6.7 BOARD POLICY CONCERNING PURCHASING

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

VII.
Construction Procurement, Management
and Required Process

7.1 CONSTRUCTION LAW

South San Antonio School district procurement is governed by Chapter 44, Subchapter B of the Texas Education Code. This is the set of laws that generally requires that school districts undergo a competitive process in procuring goods and services. Section 44.031 of the Education Code provides an *exclusive* list of methods by which a school district may enter a contract valued at \$50,000 or more in the aggregate for a twelve-month period.

Section 44.031 requires that contracts for construction services utilize a method under Chapter 2269 of the Texas Government Code. Thus, if section 44.031 applies and the contract under consideration is one for construction services, the project will be governed by Chapter 2269. For those situations in which section 44.031 may not apply, please see the discussion below.

Section 44.031 Texas Education Code

The statute is clear that it applies to 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, subject to certain exceptions discussed below. Section 44.031 and the subsequent sections that form Chapter 44, Subchapter B of the Education Code prevail over any other law relating to the purchasing of goods and services except a law relating to contracting with historically underutilized businesses. In other words, if the dollar value of the contract or contracts (where construction goods and/or services are normally purchased together) are within the scope of Section 44.031.

The \$50,000 Threshold

First, if the construction contract is less than \$50,000.00 in the aggregate over a twelve-month period, Section 44.031 does not apply.

Emergency Exceptions

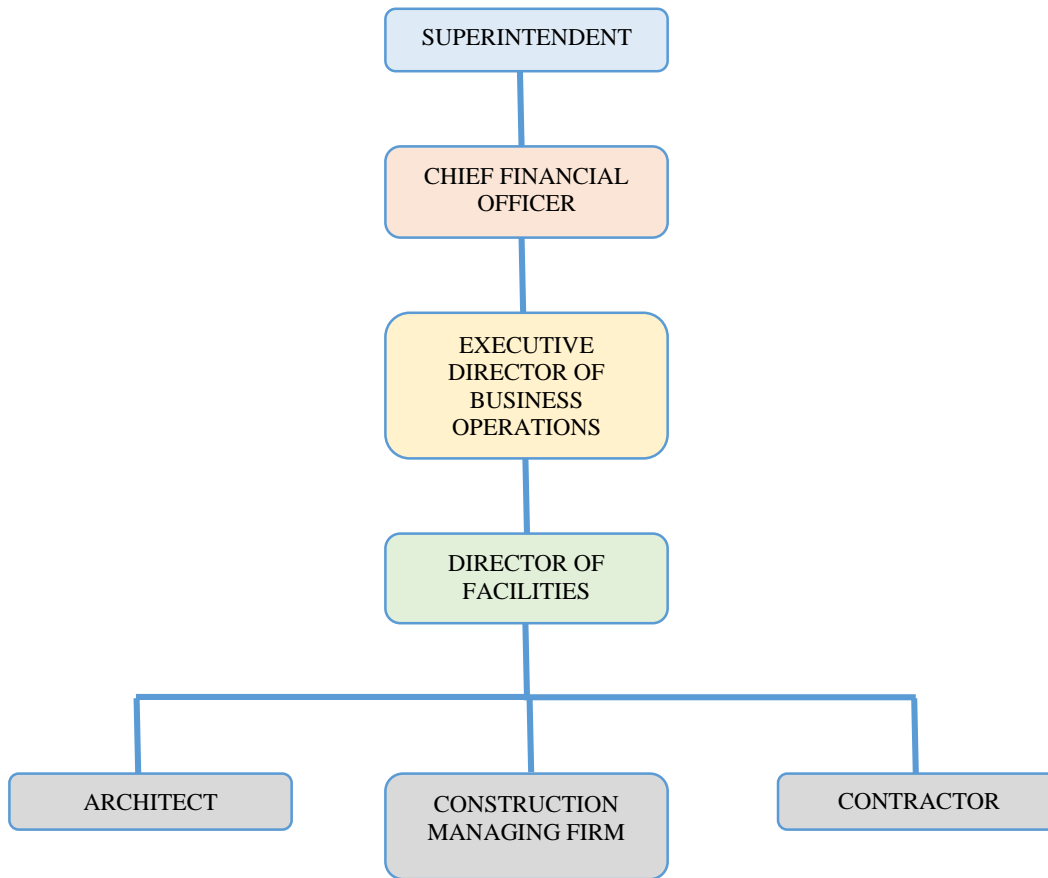
Section 44.031 provides that, in certain instances, school districts may purchase outside the methods listed, without providing a specific method to be used. These circumstances are extremely narrow. First, the exception commonly known as the emergency exception is for true emergencies—situations when school equipment, a school facility, or a portion of a school facility or personal property is destroyed, severely damaged, or experiences a major unforeseen operational or structural failure.

Even if an emergency has occurred as a matter of fact, the board of trustees must make findings to that effect in order to use this exception. The board must determine that the delay posed by the contract methods required by Section 44.031 would prevent or substantially impair the conduct of classes or other essential school activities, then and only then may contracts for the replacement or repair of the equipment, school facility, or portion of the school facility . . . be made by a method other than the methods required by Section 44.031.

Sole Source Exception

Section 44.031 also establishes a sole source exception. A contractor's presentation of a sole source letter should be viewed with great skepticism. Rather, this exception is reserved for those rare circumstances where an item is available from only one source, including: 1) an item for which competition is precluded because of the existence of a patent, copyright, secret process, or monopoly; 2) a film manuscript, or book; 3) utility service including electricity, gas, or water; and 4) a captive replacement part or component for the equipment. In most circumstances, many of the four listed items (such as utility service) are available from more than one source. If that is the case, this exception is not available.

Construction Projects Authority / Responsibility



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

Chapter 2269 of the Texas Government Code

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

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

§ 2269 Use of Architect or Engineer

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

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

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

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

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

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

Architect Requirements

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

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

any requires the removal, relocation, or addition of a wall or partition or the alteration or addition of an exit.

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

Engineer Requirements

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

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

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

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

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

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

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

The use of Multiple Design Professionals

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

Delegation of Authority

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

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

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

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

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

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

Contracts Valued at or Above \$25,000

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

Determination of Delivery Method Providing Best Value

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

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

The law specifies the following available methods for construction contracts:

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

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

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

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

Definition of Construction Delivery Methods

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

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

6. **Job Order Contract** may be awarded by a school district for the maintenance, repair, alteration, renovation, remediation, or minor construction, of a facility when the work is of a recurring nature, but the delivery times, type, and quantities of work required are indefinite. Thus, this method by itself is not suited for major school construction projects. Chapter 44 list these contracts as a permissible delivery method, nothing in the Education Code specifically addresses the use of such contracts for construction services. The Attorney General has concluded that neither the Education Code nor the Inter Local Cooperation Act, Chapter 791 of the Government Code, require inter-local contracts to be competitively bid.

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

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

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

Chapter 2269 Criteria Factors

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

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

Hiring an Engineer or Architect

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

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

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

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

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

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

Setting Prevailing Wage Rates

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

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

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

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

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

7.2 PROVIDING NOTICE OF WORKER'S COMPENSATION COVERAGE

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

Required Workers' Compensation Coverage

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

The District shall:

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

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

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

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

Certification of Design and Construction

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

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

Educational Program for Construction Projects

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

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

The written educational program should describe:

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

Educational Specifications

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

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

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

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

Adoption of a Building Code

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

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

Payment and Performance Bonds

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

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

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

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

Failure to Obtain Payment Bond

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

No Bond for Design Services Only

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

Bond for Insured Loss

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

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

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

7.3 EXCEPTION TO BOND REQUIREMENT

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

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

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

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

Making Selections Public

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

Right to Work

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

Contract Documents

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

Contract for Inspection and Testing Services

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

7.4 REQUIREMENTS FOR DELIVERY METHODS

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

The Design-Build Contract

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

Procedures:

Step 1. Board Approve Delivery Method

Step 2. Adopt Design-Build as Method of

Delivery Step 3. Hire an Independent Engineer or Architect

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

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

Step 5. Prepare the Design Criteria Package

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

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

Step 6. Prepare Request for Qualifications

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

Step 7. Set a Prevailing Wage Rate

Step 8. Give Notice of Worker's Compensation Coverage

Step 9. Require Payment and Performance Bonds

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

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

Step 10. Publish Request for Qualifications

Step 11. Evaluate Responses and Select Design-Build Firm

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

Phase One

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

In addition, each firm must certify to the governmental entity that each architect or engineer that is a member of the firm was selected based on demonstrated competence and qualifications, in the manner provided by Section 2254.004 Government Code.

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

Phase Two

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

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

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

After selecting the top firm, a district must attempt to negotiate a contract with the selected firm. If negotiations are unsuccessful, the district must, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.

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

The Construction Manager-Agent Contract

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

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

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

The construction manager-agent may not:

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

Procedures:

Step 1. Board Approve Delivery Method

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

Step 3. Hire an Engineer or Architect

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

Step 4. Select the Construction Manager-Agent

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

Step 5. Make the Selection Public

Step 6. Set a Prevailing Wage Rate

Step 7. Give Notice of Worker's Compensation Coverage

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

Step 9. Hire a General Contractor or Multiple Trade Contractors

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

District Serving as its Own General Contractor

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

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

The Construction Manager-At-Risk Contract

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

Selection Procedures:

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

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

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

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

One-Step Process

1. *Prepare Request for Proposals*

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

2. *Set a Prevailing Wage Rate*

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

4. *Require Payment and Performance Bonds*

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

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

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

- *Evaluate and Rank Proposals*

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

- *Negotiate with Offerors*

The district is required to first attempt to negotiate a contract with the selected offeror. If negotiations are unsuccessful, the district must, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

- *Make the Selection Public*

Two-Step Process

First Step: Requests for Qualifications

- *Prepare Request for Qualifications*

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

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

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

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

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

Select Five or Fewer Offerors Based on Qualifications

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

Second Step Process:

- *Request Additional Information*

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

- *Open Proposals*

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

- *Evaluate and Rank Finalists*

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

published selection criteria and on its ranking evaluation.

- *Negotiate with Offerors*

The district is required to first attempt to negotiate a contract with the selected offeror. If negotiations are unsuccessful, the district must, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

- *Make Selection Public*

Guarantee Maximum Price (GMP)

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

Subcontractor Bidding Process

The construction manager-at-risk must publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major trade elements of the work other than the minor work that may be included in the general conditions. Any CMAR contractor self-performed work shall follow subcontractor bidding process. The statutory publication requirement is that the construction manager must publish, in a newspaper in the county in which the district's central administrative office is located, notice of the time by when and place where the subcontractor bids or proposals will be received and opened. The notice must appear once a week for at least two weeks before the deadline for receiving subcontractor bids or proposals. The construction manager-at-risk and the assigned Superintendent designee, which may include Chief Financial Officer and the Executive Director of Business Operations, will review all trade contractor or subcontractor bids and/or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the CMAR contractor, architect, engineer, or District. All bids or proposals shall be made available to the public after the awarding of the contract or the seventh day after the date of final selection of subcontractor bids or proposals.

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

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

CMAR Contractor Performing Part of the Work

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

The CMAR Contractor Contract

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

Competitive Sealed Proposals

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

Procedures:

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

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

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

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

- Step 11. Evaluate and Rank Proposals

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

- Step 12. Select a Contractor

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

- Step 13. Negotiate with the Selected Offeror

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

If the district is unable to negotiate a satisfactory contract with the selected offeror, the district

shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

Step 14. Make the Selection Public

Competitive Bidding

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

Procedure:

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

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

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

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

Step 10. Evaluate and Rank Bidders

Consideration of Bidder's Safety Record

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

- (a) the District will adopted a written definition and criteria for accurately determining the safety record of a bidder;
- (b) the District has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of

- the bidder; and
- (c) the determinations are not arbitrary and capricious.

Step 12. Select a Contractor

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

Step 13. Document Basis for Selection and Make Selection Public

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

Job Order Contracts

Job Order Contracting is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite. This method is only available for work on a facility that is a building, the design and construction of which is governed by accepted building codes, or a structure or land, whether improved or unimproved, that is associated with a building. Thus, this method by itself is not suited for major school construction projects.

Procedures:

- Step 1. Board Approved Delivery Method
- Step 2. Adopt Job Order Contracting as Method of Delivery
- Step 3. Hire an Engineer or Architect

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

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

Step 5. Prepare Request for Sealed Proposals

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

Step 6. Set a Prevailing Wage Rate

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

Step 7. Give Notice of Worker's Compensation Coverage

Step 8. Require Payment and Performance Bonds

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

Step 9. Publish Request for Sealed Proposal

Step 10. Open Proposals

Next, a district must publicly open the sealed proposals.

Step 11. Evaluate and Rank Proposals

Step 12. Select a Contractor

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

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

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

Orders under a Job Order Contract

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

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

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

Interlocal Agreements

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

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

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

Procedures:

When Using a Purchasing Cooperative

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

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

- Step 7. Hire an Architect or Engineer

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

Procedures when not using a Purchasing Cooperative:

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

7.5 PROCUREMENT PROCESS PROFESSIONAL SERVICES

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

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

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

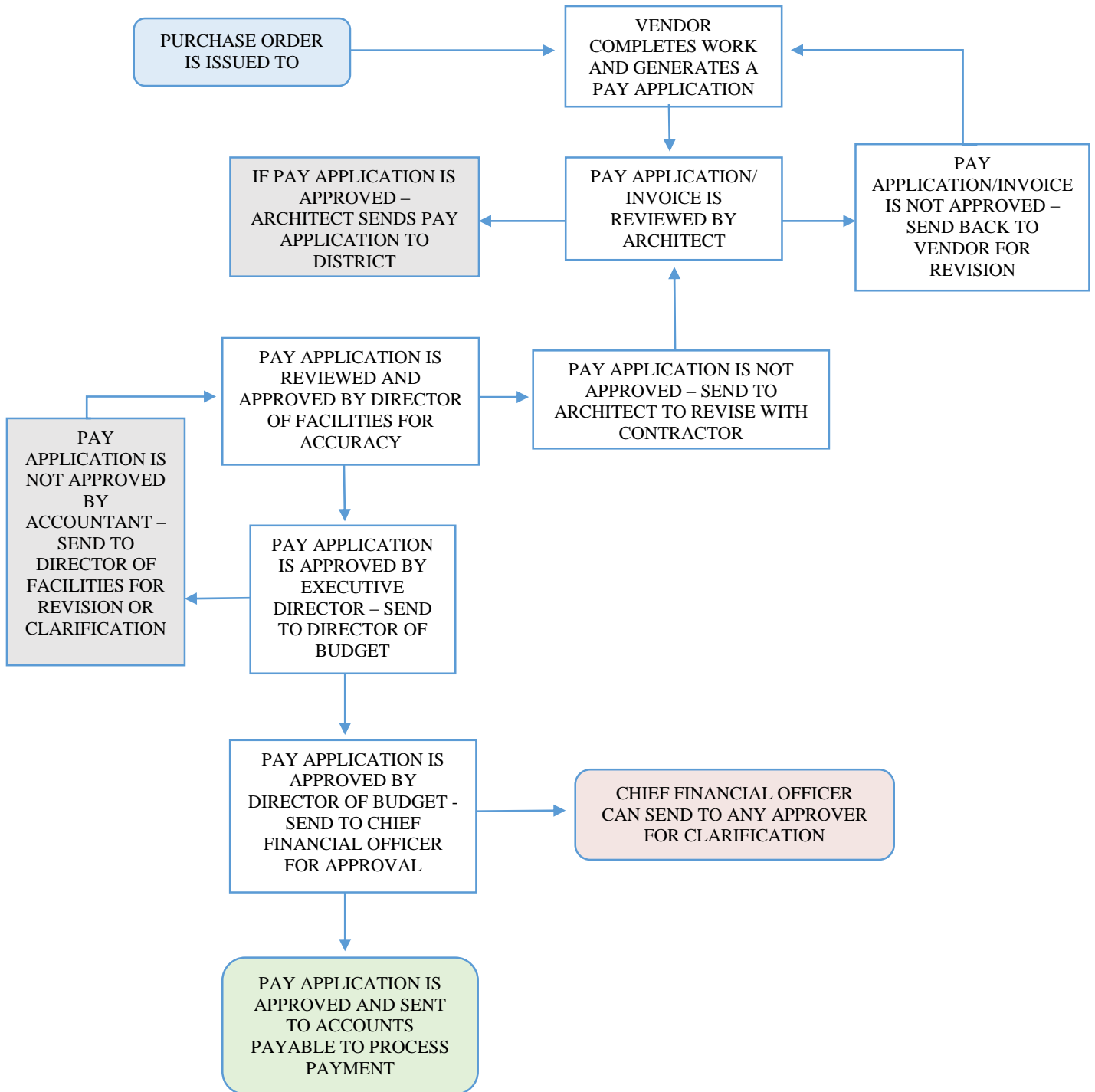
7.6 ADMINISTRATIVE RESPONSIBILITIES

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

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

Construction Fund

Approval of Payments Pay Application/Invoice



7.7 REQUIRED CONSTRUCTION BINDER DOCUMENTATION

Every Construction Project shall have the following required information:

A. Construction Binder shall include the following tab information:

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

B. Construction Binder Tab Description

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

7.8 PROJECT INSURANCE PROCEDURES

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

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

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

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