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Administration of construction quality standards

(A) This subsection establishes standards for the administration and procurements of design professional services and other professional services and for the administration of competitive bids and contracting requirements for construction services. A school district shall comply with requirements in this subsection and with all applicable requirements, restrictions, and responsibilities established in state law, administrative code, or by a local authority having jurisdiction. **See IISD Purchasing**

(B) A school district shall comply with the administrative and procedural requirements established in this subsection and with the standards established in subsection (j) of this section to promote construction quality and best value for a capital improvement project subject to this section.

(C) A standard in this section that incorporates by reference a key statutory provision or administrative rule is established as a compliance requirement for a school district seeking to procure, obtain a competitive bid, or administer a contract for construction services, construction-related services, design professional services, or any other professional service required for a capital improvement project. The requirements establish a method by which a school district shall demonstrate compliance with the requirements in this subsection and with the construction quality standards and construction code requirements in subsection (j) of this section. Any express reference to, or omission of, an applicable statutory provision in this subsection may not be construed to diminish, alter, or abate a provision of law applicable to a school district or to a school district capital improvement project subject to this section.



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School district requirements and responsibilities

(A) In accordance with TEC, §46.003(g), the board of trustees and voters of a school district shall determine district needs concerning construction, acquisition, renovation, or improvement to instructional facilities. School district funding is entrusted to the district by the taxpayers, and a district must ensure procurement processes and procedures are transparent and provide the best value to the district by complying with applicable laws governing procurement of professional design services and construction services and with the standards established in this subsection to promote construction quality.

(B) In accordance with TEC, §11.201, a superintendent shall oversee and ensure compliance with the standards for school facilities established in this section pursuant to TEC, §46.008, and shall ensure board consideration for any action specified as being required to be made by the board of trustees, whether by statute, board rule, or other applicable requirement.

(C) In accordance with TEC, §44.0312(b), a board of trustees may not delegate the authority to act regarding an action authorized or required by TEC, Chapter 44, Subchapter B, to be taken by a board of trustees of a school district.

(D) In accordance with TEC, §44.0312(a), a board of trustees of a school district may, as appropriate, delegate its purchasing and contracting authority under TEC, Chapter 44, Subchapter B, regarding an action authorized or required to be taken by a school district or a designated person, representative, or committee.



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School district requirements and responsibilities

(E) In accordance with TEC, §44.0312(a), when procuring construction services for a capital improvement project, a school district board of trustees shall provide notice of the delegation and the limits of the delegation in the request for bids, proposals, or qualifications or in an addendum to the request. If the school district fails to provide that notice, a ranking, selection, or evaluation of bids, proposals, or qualifications for construction services other than by the board of trustees in an open public meeting is advisory only.

(F) A superintendent shall ensure that a requirement to specify the level of delegation of authority is included in the bid specifications when procuring construction services to select a contractor, in accordance with TEC, §44.0312.

(G) In accordance with TEC, §44.0312(c), in the event of a catastrophe, an emergency, or a natural disaster affecting a school district, the board of trustees of the district has all authority to delegate to the superintendent or designated representative the authority to contract for the replacement, construction, or repair of school equipment or facilities under TEC, Chapter 44, Subchapter B, if emergency replacement, construction, or repair is necessary for the health and safety of district students and staff.

(H) In accordance with TEC, §44.031(d), and TGC, §2269.051, a school district may adopt rules as necessary to implement the management responsibilities and duties established for school district procurement and delivery of professional design and construction services for a capital improvement project.



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Requirements for construction services

(A) In accordance with TEC, §44.031, the award of a school district contract for construction services or construction-related services valued at \$50,000 or more must be made by competitive bid or by the construction delivery contracting method established in TGC, Chapter 2269, that provides the best value for the district.

(B) In accordance with TGC, §2269.056(a), a school district that is considering a construction contract using a method of procuring construction services other than by competitive bid must first, before advertising, determine which contracting method for construction services contained in TGC, Chapter 2269, provides the best value to the school district for the project.

(C) A school district is required to consider certain factors established in TGC, §2269.056(b), if the district engages in consideration of a construction delivery contracting method other than competitive bidding to evaluate best value for the district, and the district must adhere to the requirements specified for each type of construction delivery contracting method established in TGC, Chapter 2269, Subchapters D, E, F, and G, and must determine, prior to utilization, the best value for the district. A school district shall comply and adhere in full to the requirements specified for each construction delivery contracting method.

(D) A school district shall ensure a contract for construction services required to be procured by a method in TGC, Chapter 2269, specifies the contractor's responsibilities for site safety and requires compliance with the requirement to provide workers' compensation insurance in accordance with Texas Labor Code, §406.096.



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Requirements for construction services

(E) In accordance with TGC, §2252.063 and §2252.064, a school district shall ensure that a contract with a general contractor requires the contractor to provide to the district annual payment statements derived from sales tax reports and to execute a bond issued by a surety company authorized to do business in the state of Texas in an amount determined by the school district, which may not exceed the contract price. The bond must be payable to the school district and conditioned on the faithful performance of the terms of the contract.

(F) If a school district selects the design build method of construction delivery, the district shall procure a design professional, independent of the contractor, to act as the school district's representative for the procurement process and for the duration of the construction in accordance with TGC, §2269.355.

(G) In accordance with TGC, §2269.408(a), if a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of architecture or engineering, the school district shall select or designate an architect or engineer, in accordance with TGC, Chapter 2254, to prepare the construction documents for the project. In accordance with TGC, §2269.408(b), TGC, §2269.408(a), does not apply to a job order contract or an order issued under the contract for industrialized buildings or relocatable educational facilities subject to and approved under TOC, Chapter 1202, if the contractor employs the services of an architect or engineer who approves the documents for the project.



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Requirements for design professional services

(A) In accordance with TGC, §2269.102, a school district seeking to issue a request for competitive bids for construction services shall first select or designate an architect or engineer, in accordance with TOC, Chapter 1051 or Chapter 1001, as applicable, to prepare the construction documents required for a capital improvement project to be awarded by competitive bid.

(B) A capital improvement project that contains architectural or engineering services, as defined by TOC, Chapter 1051 or Chapter 1001, as applicable, must use the professional services of an architect or engineer, or both, as required by the scope of the project.

(C) When architectural or engineering services are required, a school district shall procure architectural or engineering services from a design professional in accordance with TGC, §2254.004. A design professional may subcontract another design professional to perform architectural or engineering services as part of the scope of services that the subcontracting design professional is providing to a school district. A school district shall require that an architect perform architectural services in accordance with TOC, Chapter 1051, to prepare construction documents required for a new construction or major renovation project for a school facility. A school district shall require that an engineer perform engineering services in accordance with TOC, Chapter 1001, to prepare engineering plans and specifications documents required for a minor renovation, major renovation, or a new construction project for a school facility.



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Requirements for design professional services

(D) A school district shall designate one design professional to be the prime design professional for a capital improvement project and shall contractually engage the prime design professional to review and coordinate the design of the project, allowing the prime design professional to rely on and contract for other design professionals where appropriate.

(E) A school district shall ensure a contract for professional design services for a capital improvement project contains the scope of services defined with reasonable specificity, including contractual time parameters, milestones, or deadlines and shall ensure that contract terms conform to the standard of care established in Local Government Code, §271.904, which requires architectural and engineering services to be provided with the professional skill and care ordinarily provided by competent architects or engineers practicing under same or similar circumstances and professional license.

(F) In accordance with TOC, §1051.703(d), designation as the "prime design professional" does not expand, limit, or otherwise alter the scope of a design professional's practice nor does it allow a design professional to fulfill the requirements of a professional license for which they have not been lawfully granted.



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Requirements for professional services of third-party consultants

(A) When procuring the professional services of a third-party consultant for a capital improvement project, a school district must adhere to the requirements established in TGC, Chapter 2269.058, and this section. A school district is required to select a qualified provider of a professional service for which it contracts under this subsection in accordance with TGC, Chapter 2254.

(B) A school district shall require any design professional contractually engaged to procure professional design services from any other design professional as a subconsultant to select and subcontract the professional design services based on the qualification-based selection process established in TGC, Chapter 2254.

(C) A school district shall ensure, through confirmation from a local or state building official, or a third-party code compliance officer as provided for in subsection (j)(2) of this section, that all required inspections, testing, or permits required for a capital improvement project have been performed in accordance with contractual terms and in accordance with all applicable building code specifications.

(D) In accordance with TGC, §2269.058, a school district shall, independently of the contractor, construction manager-at-risk, or design-build firm, provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the district.



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Requirements for professional services of third-party consultants

(E) A school district shall ensure, through confirmation from a local or state building official or a third-party code compliance officer, that all code compliance issues and requirements for a capital improvement project have been addressed or performed, including inspections, testing, and permits that are required.

(F) Any contract with a third-party code compliance officer shall be in accordance with terms and requirements specified by the International Code Council and shall be procured in accordance with TGC, Chapter 2254, as required by TGC, §2269.058.

(G) A building permit or local government fee for code compliance, a contract with a third-party code compliance officer, a third-party inspector, or consultant shall be the obligation and responsibility of the school district, procured in accordance with TGC, Chapter 2254, as required by TGC, §2269.058, and consistent with the terms of subsection (j) of this section.

(H) In accordance with TEC, §44.901 and §44.902, a school district may contract for energy or water conservation measures and must procure the services for energy or water savings performance contracts according to the procedures established for professional services in TGC, §2254.004.



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Contract compliance and construction quality control assurances

IISD school district shall ensure that services sought by or provided to the district for a school facility capital improvement project, including, but not limited to, professional design services, construction services, construction administration services, third-party inspection services, third-party testing services, or third-party code compliance services, are provided through a project-specific written agreement that:

- (A) conforms to applicable state laws and any requirements, standards, or codes adopted by a local authority having jurisdiction;
- (B) contains all services required to be provided in the agreement, prohibits the school district from waiving any services or directing any changes where recommended by an applicable design professional, and requires all changes to the construction documents to be documented in writing and signed by the prime design professional, the contractor, and the school district;
- (C) specifies the level of observation, testing, and documentation required to be conducted through the agreement to determine and certify conformance and completion of services provided;
- (D) requires the use of a prime design professional to coordinate and prepare a proposed statement of any special inspections or testing required in accordance with the required construction codes, customizing the proposed statement based on knowledge about the project regardless of whether the statement requires testing and inspection to be less than the default requirements of the required construction codes, including materials testing, project-specific requirements for special inspections and testing, specific wind and seismic requirements, frequency of the special inspections, or tests to be performed in accordance with the referenced standard defining the inspection;



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Contract compliance and construction quality control assurances

(E) ensures that construction documents are of sufficient clarity to indicate the timing, location, nature, and extent of specific inspections and tests required to be performed by the school district through the local authority having jurisdiction, the third-party code compliance officer, any third-party special inspector or inspection agency, or the prime design professional if qualified as a special inspector and specified as a contractual term;

(F) ensures that a building permit is issued by a local authority having jurisdiction or a third-party code compliance officer in which a building permit shall be considered by the school district to indicate that the proposed statement of special inspections is approved and constitutes the code-required inspections and tests;

(G) requires the contractor, before beginning construction, to submit to the school district, prime design professional, and the building official or third-party code compliance officer an acknowledgement of the contractor's responsibility to notify quality assurance personnel that will be performing inspections and tests when the project is ready for those specific inspections and tests and the contractor's responsibility to request and obtain a final report from each quality control person performing the code-required inspections and tests before requesting a certificate of occupancy;

(H) requires third-party inspectors to perform the code-required inspections and tests, to submit inspection and testing reports to the school district and the prime design professional, and to submit a final report to the school district, prime design professional, building official or third-party code compliance officer, and contractor, upon request by the contractor, indicating any known deficiencies discovered during the project that have not yet been addressed at the time of the request;



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Contract compliance and construction quality control assurances

(I) requires special inspection and testing reports to be submitted to the building official and the prime design professional and any discrepancies to be brought to the attention of the contractor, and if not corrected, to be brought to the attention of the building official, the prime design professional, and the school district;

(J) specifies treatment for timely performance and documentation required in response to requests for information, change documents, or change orders;

(K) specifies payment certification provisions requiring notarized contractor signature on the application for Certificate of Substantial Completion and specifies that the school district must provide certification of payment for any of the school district's separate consultants or contractors;

(L) requires clear indication of the date of substantial completion on the payment certification, specifies the punch list provided by the contractor to address all remaining areas of the project, and documents all known school district accepted nonconforming work;

(M) limits required certifications of work requested or required by the school district to work required under the issuing party's services agreement;



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Contract compliance and construction quality control assurances

- (N) ensures that contract terms for design professional services are consistent and aligned and do not conflict or overlap with regard to contractual responsibilities assigned to the prime design professional, any design professional of record, the contractor, any prime subcontractors, a third-party building code compliance officer, or a third-party special inspector or consultant; and
- (O) ensures appropriate specifications or treatment for the school district's acceptance or acknowledgement of a contractor's final completion as the owner of the facility.