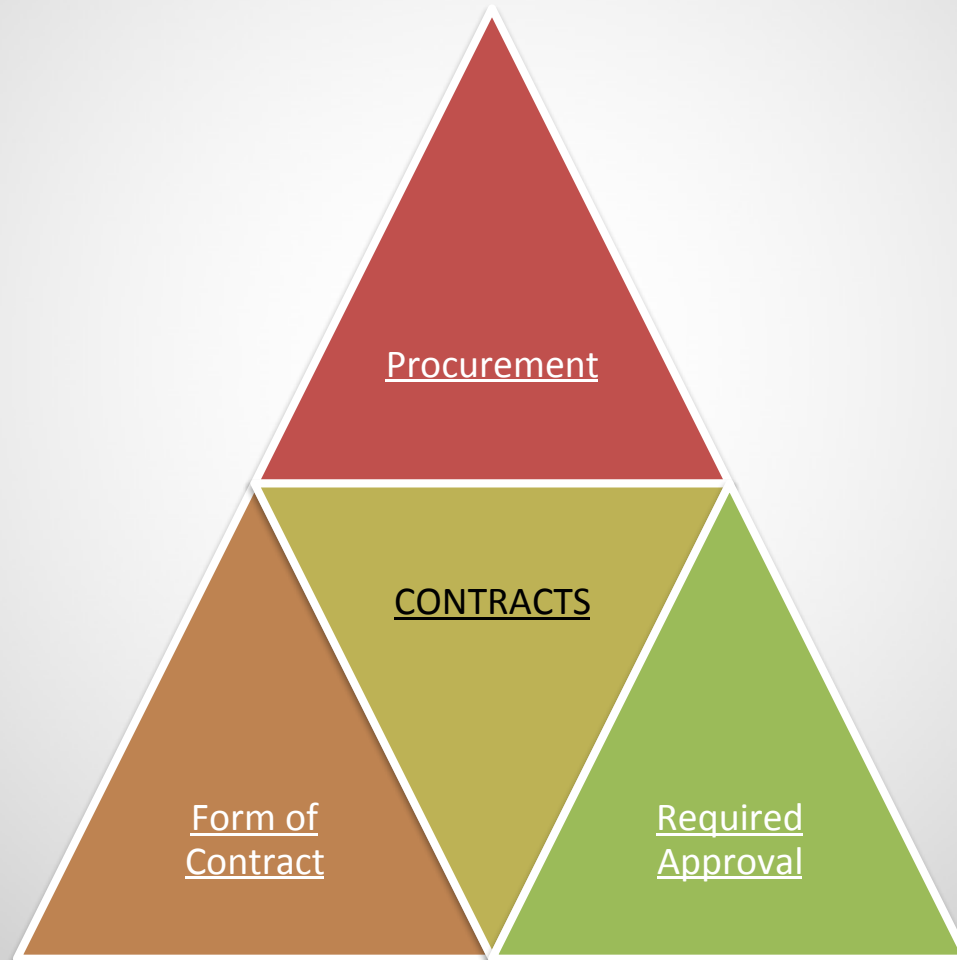


# Contracts: Three Prong Checklist

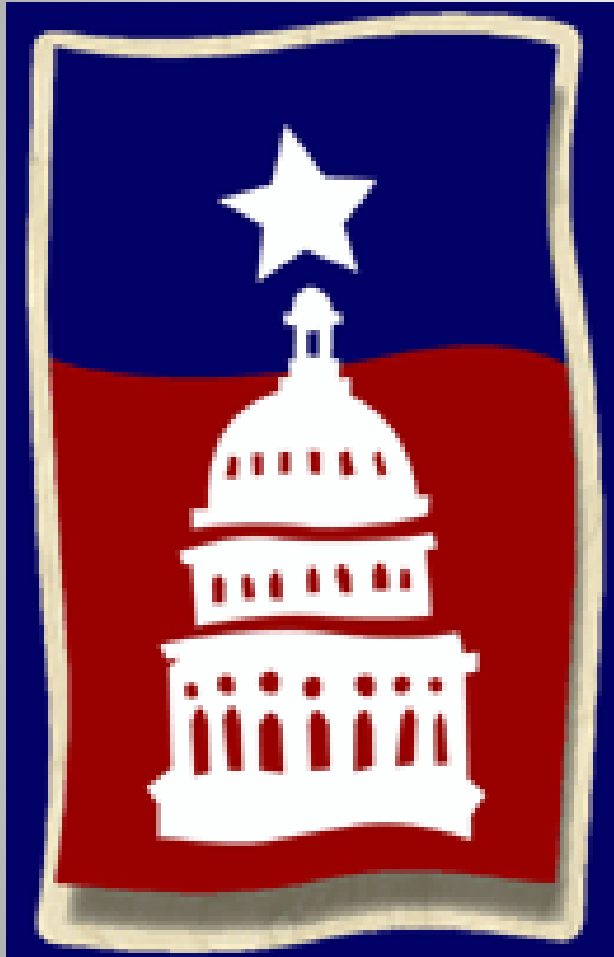


# SOURCES OF PROCUREMENT LAWS

- **Texas Government Code Chapter 2254**
- **Texas Government Code 2269.058**
  - Certain Professional Services
- **Texas Education Code Chapter 44**
  - Goods and Non-Construction Services
  - Pure Maintenance Services
- **Texas Government Code Chapter 2269**
  - Construction Services/Public Works; Maintenance under Job Order Contracting
- **2 CFR Part 200**
  - Federally Funded Projects

# WHY DOES KNOWING THE CORRECT STATUTORY SOURCE MATTER?

- Different procurement rules apply!!!
  - Mandatory and prohibited evaluation factors
  - Additional Board approvals required
  - Time and materials pricing vs. JOC pricing
- Construction services contracts trigger additional requirements (bonding, prevailing wage, use of architectural/engineering services)
- True Maintenance Services are exempted from prevailing wage and surety bonding requirements.



# Professional Services

# **PROFESSIONAL SERVICES PROCUREMENT ACT**

**It is unlawful to compete the follow construction related professional services on the basis of price!**

- Architects (including Landscape Architects)
- Engineers
- Land Surveyors
- Real Estate Appraisers
- Construction materials engineering, testing, inspection services and verification testing services necessary for acceptance of the facility by the District (i.e., geotech, materials testing, commissioning, asbestos and IAQ testing)

**Texas Gov't Code Section 2254.002  
Texas Gov't Code Section 2269.058**

# WHEN MUST A RFQ BE ADVERTISED AND PUBLISHED?

- Contracts for the design and implementation of energy savings measures guaranteed to offset the cost of the measures over a specified period

Tex. Ed. Code §44.901(h)

- Selection of a CM-Agent (Program/Project Manager)
- Selection of a Design-Build Firm/Team
- Selection of CM-at-Risk by Two Step Process

Tex. Gov't Code § 2269

# SELECTING CONSTRUCTION-INDUSTRY PROFESSIONAL SERVICES

- First select the most highly qualified provider on the basis of demonstrated competence and qualifications
- Then attempt to negotiate a contract with that provider for a fair and reasonable price
- If the parties cannot agree, District must formally terminate negotiations before moving on to the next most highly qualified provider, and so on, until a contract is entered into

Tex. Gov't Code § 2254.004

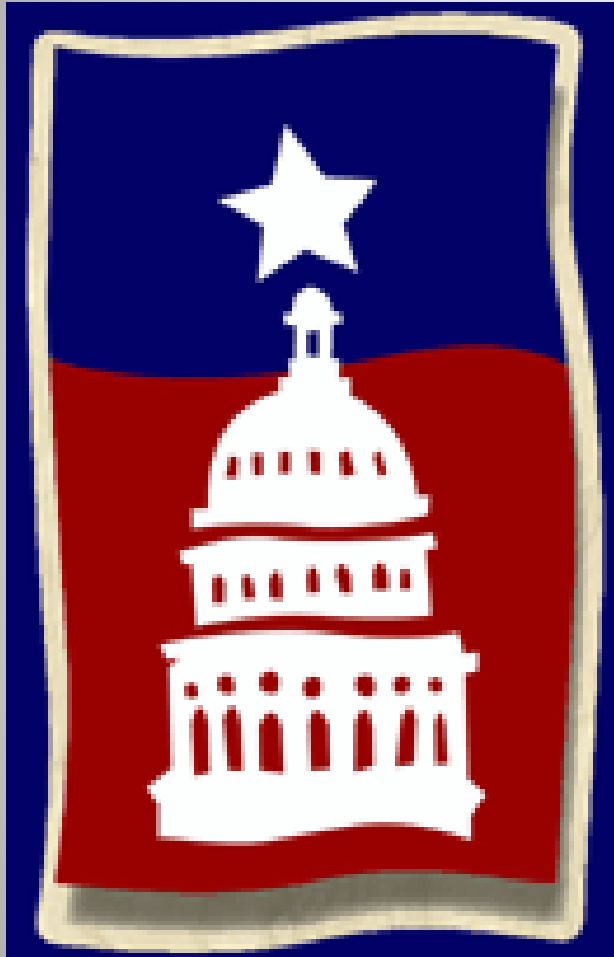
Tex. Gov't Code § 2269.058

Tex. Ed. Code § 44.901(h)

# SELECTING CONSTRUCTION-INDUSTRY PROFESSIONAL SERVICES WHEN USING FEDERAL FUNDS

- The only recognized professional service exception under federal procurement rules are architects and engineers
- For A/E contracts with fees at or above \$250,000, RFQ must be advertised (no pricing)
- Warning: according to 2 CFR Part 200, contracts over \$10,000 and under \$250,000 require multiple quotes, but Texas law forbids price competition for professional services (Which is most restrictive?)





**TEXAS EDUCATION  
CODE  
CHAPTER 44**

## WHAT MUST BE COMPETITIVELY PROCURED?

- *“Except as provided by this subchapter . . . .”*
- “all school district contracts for goods and services, except for vehicle fuel and produce”
- “valued at \$50,000 or more in the aggregate for each 12 month period”
- “shall be made by the method, of the following methods, that provides the best value for the district.”

Tex. Ed. Code §44.031(a)

# UNLAWFUL SPLITTING

The following types of purchases are illegal:

- "Component purchases" - purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.
- "Separate purchases" - purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.
- "Sequential purchases" - purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

Tex. Ed. Code §44.032

# TEXAS EDUCATION CODE METHODS

- Competitive bidding for goods and services **other than construction services**;
- Competitive sealed proposals for goods and services **other than construction services**;
- Request for proposals for services **other than construction services**;
- Interlocal contract;
- A method provided by Chapter 2269, Government Code, for **construction services** (see next slide);
- Reverse auction procedure (real time internet bids); or
- Formation of a political subdivision corporation.

Tex. Ed. Code § 44.031

# GOVERNMENT CODE METHODS FOR CONSTRUCTION SERVICES

- Competitive Bidding (defined project)
- Competitive Sealed Proposals (defined project)
- Construction Manager at Risk (defined project)
- Construction Manager Agent (defined project(s) or program)
- Design-Build (defined project)
- Job Order Contracting or Coop (maintenance, repair, minor construction projects not yet defined; to be determined/assigned later)

# “OTHER THAN CONSTRUCTION SERVICES”

- Procurement of all “construction services” valued at \$50,000 or greater in the aggregate is governed under Tex. Gov’t Code Chapter 2269
- The Education Code does not define “construction services”
- “Maintenance” is expressly mentioned in Tex. Gov’t Code Chapter 2269 as a permissible use of job order contracting method
- Procurement of “time and materials” maintenance vendors is prohibited under Tex. Educ. Code Chapter 44 procurement methods if vendors will provide “construction services”
- Public works statutes, OSHA, the AG’s Office, and case law define “construction services”



# WHAT IS “MAINTENANCE”?

- According to the Texas Attorney General:
  - ordinary upkeep
  - repairs necessary to preserve something in good condition
  - to “keep up, keep from change; preserve”
  - includes “ordinary repairs necessary and proper from time to time for that purpose”



Tex. Att’y Gen. Op. No. O-1216 (1930)

# WHAT IS “MAINTENANCE”?

- According to OSHA:



- **Maintenance activities =**

- “making or keeping a structure, fixture or foundation (substrates) in proper condition in a routine, scheduled, or anticipated fashion.”
- “This definition implies ‘keeping equipment working in **existing** state, i.e., preventing its failure or decline.’”

OSHA decision [08/11/1994] - Construction vs.

Maintenance [1926.32; 1910.12])

–OSHA relies on the same definitions for maintenance vs. construction that the Department of Labor uses in determining prevailing wage compliance.



# WHAT IS “MAINTENANCE”?

- According to OSHA:
    - “Determinations of whether a contractor is engaged in maintenance operations rather than construction activities must be made on a case-by-case basis, taking into account all information available at a particular site.”
    - **Factors to determine whether a project constitutes maintenance or construction:**
      - One-for-one replacement (“like for like”)
      - Scale and complexity of the project, including the amount of time and material required to complete the job
      - The physical size of the object being worked on
- OSHA Letter to Raymond Knobb (11/18/2003)

# WHAT IS “LIKE FOR LIKE”?

“Like for like” is not the sole factor of the test. Once you determine that a replacement will be:

- equal in **grade, quality** and **capacity**,
- without the **addition** of any **new** or **upgraded** components, appurtenances, features or functions

Do not forget to also consider:

- The scale and complexity of the project, including the amount of time and material required to complete the job (i.e. HVAC equipment replacements)
- The physical size of the object being worked on (i.e., entire roof replacements, turf replacements would not likely be maintenance)

# WHAT IS “MAINTENANCE”?

- According to Texas Comptroller / Tex. Admin. Code:
  - Maintenance on real property:
    - For operational and functional improvements to realty, maintenance means scheduled, periodic work that is necessary to sustain or support safe, efficient, continuous operations, or to prevent the decline, failure, lapse, or deterioration of the improvement.
    - Maintenance does *not* include work to remodel, modify, upgrade, perform major repair, or restore, even if the work is scheduled or periodic.

# “ELECTRICAL MAINTENANCE” DEFINED

- **Electrical Maintenance Work** – The replacement, or repair of existing electrical appurtenances, apparatus, equipment, machinery, or controls used in connection with the use of electrical energy in, on, outside, or attached to a building, residence, structure, property, or premises.
  - All replacements or repairs must be of the same rating and type as the existing installation.
  - No improvements may be made that are necessary to comply with applicable codes under Texas Occupations Code, Chapter 1305.
  - Electrical maintenance work does not include the installation of any new electrical appurtenances, apparatus, equipment, machinery, or controls beyond the scope of any existing electrical installation.

16 Tex. Admin. Code Chapter 73, Section 73:10(17)

# WHAT IS “CONSTRUCTION”?

## Texas Government Code

- A **Public Work Contract** is defined as:

- “...a contract for constructing, altering, or repairing a public building or carrying out or completing any public work.”

- **“Public work labor”** is defined as:

- “...labor used directly to carry out a public work.”

Tex. Gov’t Code § 2253.001(4)-(6)

- Case law has clarified that a “public work contract includes both traditional construction and **contracts for repair** of a building. *LA Ash, Inc. v. Tex. A&M Univ.*, 2008 Tex. App. LEXIS 8206, 2008 WL 4742135 (Tex. App. Waco Oct. 29, 2008); see also *Acratod Co. v. Housing Auth. of Houston*, 1999 Tex. App. LEXIS 889, 1999 WL 82450 (Tex. App. Houston 1st Dist. Feb. 11, 1999).

# WHAT IS “CONSTRUCTION”?

- According to Texas Labor Code:

- “Building or construction” includes:

- (A) erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
- (B) remodeling, extending, repairing, or demolishing a structure; or
- (C) otherwise improving real property or an appurtenance to real property through similar activities.

Tex. Labor Code § 406.096(e)(1)

- AG: Section 406.096 “applies to every ‘building or construction contract’ entered into by the State or a political subdivision of the State, no matter how small the subject matter of the contract may be.”

Tex. Att’y Gen. Op. No. DM-300 (1994)

# WHAT IS “CONSTRUCTION”?

- According to OSHA:
  - “Construction work is not limited to new construction. It includes the repair of existing facilities. The replacement of structures and their components is also considered construction work.”

OSHA decision (08/11/1994)



# “ON-CALL” VENDOR POOLS

- Unless **ALL** work the District plans to have performed by a pool of “on-call” facilities vendors will fall within the definition of “maintenance,” the procurement should be conducted as a “construction services” procurement
- The only construction services procurement method allowed for the selection of one or more vendors to perform future, as-needed maintenance, repair or minor construction services is **Job Order Contracting**
- Job order contracting can be used for maintenance services, but Chapter 44 methods cannot be used for construction services.



# EMERGENCY EXCEPTION TO PROCUREMENT

- Contracts for repair or replacement of school equipment, a facility, a part of a school facility or personal property is destroyed, severely damaged, or as a result of an unforeseen catastrophe undergoes major operational or structural failure
- Board must determine that the delay posed by competitive procurement **would substantially prevent or substantially impair the conduct of classes or other school activities**
- Authority to contract may be delegated; authority to suspend procurement rules cannot be delegated

Tex. Ed. Code § 44.031(h); 44.0312

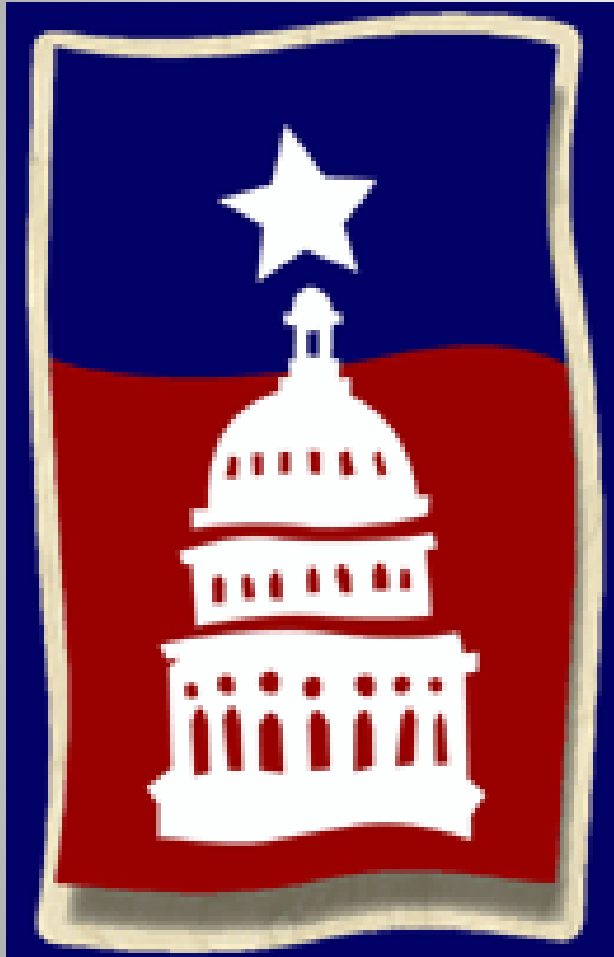
# SOLE SOURCE EXCEPTION

“Without complying with Subsection (a), a school district may purchase an item that 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) a utility service, including electricity, gas, or water; and
- (4) a captive replacement part or component for equipment.” (i.e., required so as not to void warranties; certified parts or installers)

# CHANGE ORDER STATUTE

- The District may approve change orders or amendments necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished
- The Board may grant general authority to an administrative official to approve change orders
- A contract with an original contract price of \$1 million or more may not be increased by more than 25 percent
- If a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price



**Texas Government Code  
Chapter 2269:  
Construction  
Services/Public Works  
and Maintenance**

- Before considering a construction contract by a method other than competitive sealed bid, the **SCHOOL BOARD** must determine, before advertising, which delivery method provides the best value for the District
- No similar requirement for non-construction procurements
- The Board can delegate the authority to make this determination

**Tex. Gov't Code § 2269.056**

# **AUTHORIZED DELIVERY METHODS FOR CONSTRUCTION SERVICES**

- Competitive Bidding (defined project)
- Competitive Sealed Proposals (defined project)
- Construction Manager at Risk (defined project)
- Design-Build (defined project)
- Job Order Contracting or Coop (projects not yet defined; to be determined/assigned later)
- Construction Manager Agent (defined project(s) or program)

# **AUTHORIZED DELIVERY METHODS FOR FEDERALLY FUNDED PROJECTS**

- 2 CFR Part 200 requires competitive sealed bids or competitive sealed proposals
- 2 CFR Part 200 expressly prohibits CM-at-Risk or cost-plus contracts
- 2 CFR Part 200 allows use of cooperatives for Job Order Contracting, provided cooperatives are compliant with 2 CFR Part 200 requirements
- FEMA requires 3 coop quotes: documentation that 3 coop vendors were considered (including small, women and minority-owned businesses)

# PUBLISHING REQUIREMENTS

- Notice of when and where bids or proposals or the responses to a request for qualifications will be received and opened shall be published in the newspaper of the county where the District's central administrative office is located, once a week for at least two weeks prior to the deadline for receiving bids, proposals, or responses to a request for qualifications
- Must be at least 14 days between the first advertisement and the deadline for receipt of bids, proposals, or qualifications
- 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
- Beware of extending bid deadlines by addenda only
- Weighted selection criteria must appear in solicitation



# COMPETITIVE BIDDING

- District shall hire an engineer or architect to prepare construction documents for the project
- Request for bids must include construction documents, estimated budget, project scope, estimated completion date and other necessary information
- District selects the “lowest responsible bidder”
- No changes in scope, deadlines or price may be negotiated prior to contract award

# COMPETITIVE SEALED PROPOSALS

- District shall hire an engineer or architect to prepare construction documents for the project
- Solicitation must include construction documents, weighted selection criteria, estimated budget, project scope, estimated completion date and other necessary information
- District must score and rank proposer within **45 days**; may negotiate modifications in scope or time, and price changes associated with modifications
- Can only negotiate with 1<sup>st</sup> ranked vendor; if unable to agree, must terminate negotiations and move to 2<sup>nd</sup> ranked, and so on until contract reached

# CONSTRUCTION MANAGER-AT-RISK

- Provides pre-construction services during the design phase (alongside the A/E), including cost estimating, scheduling, feasibility and constructability reviews, and long-lead item procurement
- The CMR serves as the general contractor during the construction phase; holds the contracts with the subcontractors
- District pays for actual costs of construction, plus a markup, up to a guaranteed maximum price
- Procured using two-step or one-step procurement process
- Step 1 is RFQ; in Step 2 up to 5 finalist may submit costs proposals for pre-construction services, fee, general conditions

# PROCUREMENT OF SUBCONTRACTORS ON CMR PROJECTS

- A CMR shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work *other than the minor work that may be included in the general conditions*

Tex. Gov't Code § 2269.255

- Supposed to occur after GMP is set, but Texas law does not specify timing
- Contract can set specific timing; should be disclosed during procurement

# CMR SELF-PERFORMED WORK

- A CMR may seek to self-perform portions of the work if:
  - (1) the CMR submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors; and
  - (2) the District determines that the CMR's bid or proposal provides the best value
- Affiliates should be treated the same as the CMR for purposes of SPW
- CMRs and affiliates should submit SPW bids to District in advance

# CONSTRUCTION MANAGER-AGENT (PROGRAM/PROJECT MANAGER)

- Acts as a fiduciary of the District, providing consultation, management or administration services during design and construction phase
- Must be competitively procured using a **publicly advertised RFQ process**; price competition prohibited
- Selected in the same manner as a professional service, but is NOT a professional service such that it is exempt from procurement requirements
- A CM-Agent may not act as a contractor or subcontractor on the project(s) and does not hold any construction contracts with any party
- District still must procure prime contractors or trade contractors for the project(s) in compliance with procurement laws
- CMA must carry a minimum of \$1,000,000 in professional liability or E&O insurance; not required to furnish bonds

# DESIGN-BUILD

- Single firm *or team* provides both design and construction of a project
- Selected by two-step publicly advertised RFQ process
- District must hire independent architect or engineer to represent District during project
- May not seek competitive pricing at the time you procure and select the firm/team, may seek “cost methodology” from up to five finalists in Step 2 of the RFQ process.
- Pricing negotiated after selection, typically a design fee during the design phase, and “cost-plus a fee” during the construction phase, up to a guaranteed maximum price
- Beware of contractors offering “turnkey” services – contractors not procured by design-build method should not provide professional design services either directly or by subcontract

# JOB ORDER CONTRACTING

- “A procurement method used for maintenance, repair, alteration, renovation remediation, or minor construction” of facilities “when the “work is of a recurring nature, but the delivery times, types, and quantities of work required are indefinite”
  - Only construction method that allows for use of a cooperative in lieu self-procurement
  - Only method allowed to select contractors for future, undefined projects or tasks



# HOW JOCS WORK

- Proposers compete on coefficients/multipliers to be applied to either a (i) designated published unit price book or (ii) a list of pre-priced work items; open T&M pricing not allowed in Texas
- Proposers may be asked to submit information relating to qualifications and experience
- District or cooperative executes contract(s) with one or more vendors for future, as-needed work; maximum 2 year base term with up to 3 annual renewals
- District issues individual job orders, signed by both parties, stating scope and price of assigned tasks
- By law, the Board must approve any job order that exceeds \$500,000
- Payment and performance bond laws may apply – determined on a per job order basis

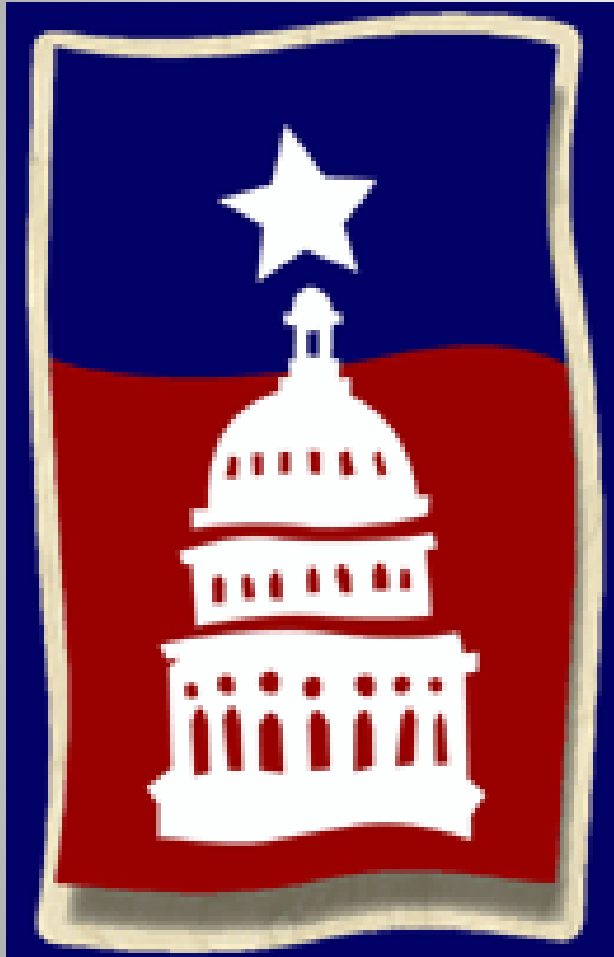
# Purchase Orders Not Sufficient

- The terms and conditions of the coop solicitation govern the relationship between the coop and the vendor, not the district and the vendor
- Certain rights only exist if in an agreement signed by the District and the Vendor
  - Right to indemnification
  - Right to recover attorneys' fees
  - Liquidated damages
  - Warranties and obligations to repair
  - Rights in event of termination or breach
- 2269.410 requires an “order” signed by both parties, and District issued Purchase Orders are not usually countersigned by vendor

# A/E SERVICES FOR JOC PROJECTS

- District must independently hire A/E if services required
- Districts may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative in an amount greater than \$50,000, **unless**:
  - A person designated by the local government certifies in writing that:
    - The project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under the Texas Engineering Practice Act or the Texas Board of Architectural Examiners; or
    - Required plans and specifications have been prepared

Tex. Gov't Code § 791.011(j)



**When the Services of an  
Architect or Engineer  
are Required by Law**

# **PRACTICE OF ARCHITECTURE**

## **OCCUPATIONS CODE §1051.001**

“‘Practice of architecture’ means a service or creative work applying the art and science of developing design concepts, planning for functional relationships and intended uses, and establishing the form, appearance, aesthetics, and construction details for the construction, enlargement, or alteration of a building or environs intended for human use or occupancy, the proper application of which requires education, training, and experience in those matters.”

# REQUIREMENTS FOR PUBLIC WORKS

## TEX. OCC. CODE ANN. § 1051.703(A)

A new building owned by a political subdivision having construction costs exceeding \$100,000 or an alteration or addition to an existing building having construction costs exceeding \$50,000 must have architectural plans and specifications prepared by an architect.

# PRACTICE OF ENGINEERING

## OCCUPATIONS CODE §1001.001

- The “‘practice of engineering’ means the performance of or an offer or attempt to perform any public or private service or creative work, the adequate performance of which requires engineering education, training, and experience in applying special knowledge or judgment of the mathematical, physical, or engineering sciences to that service or creative work.”
- “A service, design, analysis, or other work performed for a public or private entity in connection with a utility, structure, building, machine, equipment, process, system, work, project, or industrial or consumer product or equipment of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature.”

# **PUBLIC WORKS PROJECTS**

**TEX. OCC. CODE ANN. § 1001.407**

A political subdivision may not construct a public work involving engineering in which the public health, welfare or safety is involved unless the engineering plans, specifications, and estimates have been prepared by an engineer and the engineering construction is to be performed under the direct supervision of an engineer.



# EXCEPTIONS

## OCCUPATIONS CODE §1001.053

- An engineer is not required for a public work project if:
  - A project involving electrical or mechanical engineering will cost \$8,000 or less
  - A project not involving electrical or mechanical engineering will cost \$20,000 or less (i.e., structural or civil)

# JOB ORDER CONTRACTING

## SEC. 2269.408: USE OF ARCHITECT OR ENGINEER

- “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 governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project.*”

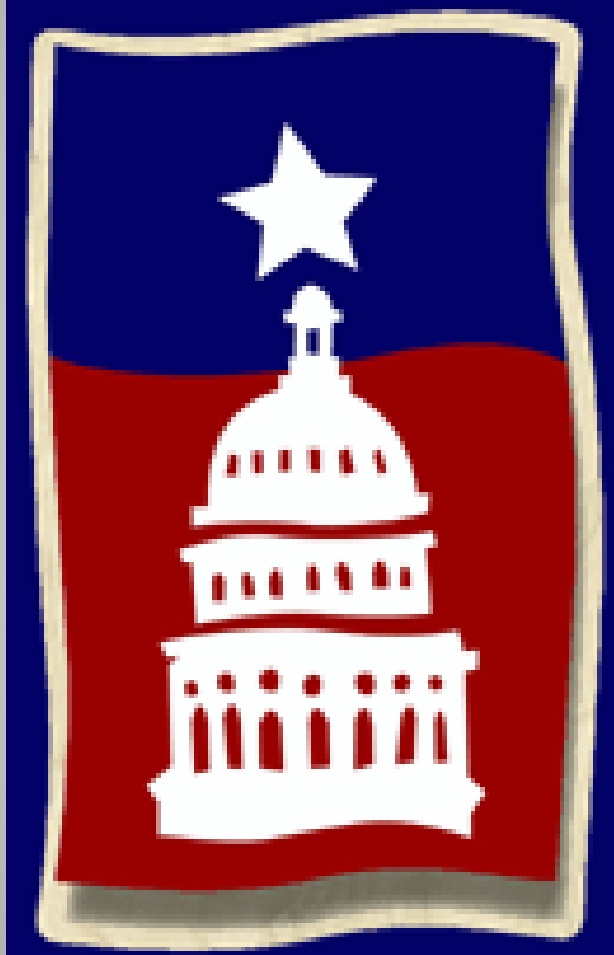
# PORTABLE BUILDINGS

- Do not need a separate A/E to design “relocatable educational facilities” subject to and approved under Chapter 1202, Occupations Code (structure only); however, separate A/E may be required for designing utility connections or infrastructure (depending on cost)

# PORTABLE AND MODULAR BUILDINGS

## 19 TAC § 61.1036(F)(3)

- Within 30 days of erection and installation (and before occupancy), a school district must have a portable or modular building inspected, including the construction of the foundation system and the erection and installation of the building on the foundation
- Must be inspected by the local building authority, if in a jurisdiction with adopted building code
- Must be inspected by a certified independent third party inspector if in an area with no adopted building code or building inspector
- Installation of portable/modular must be inspected even if manufacturer used State-approved and sealed plans for the building



**Surety Bonds**  
**Prevailing Wage Laws**  
**Criminal History Laws**

# PUBLIC WORKS BONDS

- Performance bond required if contract is in excess of \$100,000
  - Protects the District from financial losses arising from default, material breach, termination or abandonment
- Payment bond required if a contract is in excess of \$25,000
  - Protects the District from claims for nonpayment of suppliers, subcontractors and sub-subcontractors
- A governmental entity that fails to obtain statutorily required bonds stands in the shoes of the surety

# HOW MUCH AND WHEN?

- For a CSP project, penal sum of bonds must equal contract sum; delivery required before work begins
- For a CMR project, if a fixed contract amount or guaranteed maximum price has not been determined, use the project budget (published in the RFQ or RFP)
- For a CMR project, delivery required not later than the tenth (10<sup>th</sup>) day after the execution date for 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 bonds when a guaranteed maximum price is established

# PREVAILING WAGE RATES

- Chapter 2258 applies to the construction of a public work **paid for in whole or in part from public funds**
- Prevailing wage requirement does **not** apply to maintenance work
- Right to be paid prevailing wage rates:
  - Not less than the general prevailing rate or 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



# PREVAILING WAGE RATES

- Can use local rates from entity's own survey or the published U.S. Department of Labor's (Davis Bacon) wages
- Board must adopt Prevailing Wage Rates (typically by resolution)
- Prevailing Wage Rates must be published in the bid specifications/project manual and referenced in the contract documents
- Locally adopted rates do not expire provided they are still prevailing
- Federally-Funded Projects
  - Strict Davis Bacon program requirements apply except for FEMA public assistance programs
  - Additional provisions required for bid documents and contracts
  - District must obtain weekly certified payroll
  - Rates updated throughout the year per County

# TECHNOLOGY WORKERS

- DOL Prevailing Wage Rate Scale for Harris County includes a category for (i) low voltage, and (ii) alarm installation; each are separate from regular electricians
- If not separately specified, DOL General Classification of “Electricians” is deemed to include:
  - Alarm installers
  - Sound and communication workers/installers
  - Electronic technicians
  - Lightning protection installers
  - Low voltage installers

(Source: U.S. Dep’t of Labor Prevailing Wage Resource Book, 2010)

# PREVAILING WAGE RATES

- The obligation is on the contractor or sub who is awarded a public works contract to pay no less than the rates determined under Chapter 2258
- A contractor or sub who violates the prevailing wage payment requirement must pay to Owner **\$60** for **each worker** employed for **each calendar day** or part of the day that the worker was paid less than the wage rates stipulated in the contract
  - But, a contractor or sub does **not** violate this requirement if the public body awarding the contract does not determine the prevailing wage rates and specify the rates in the contract, as is required by 2258.

# PREVAILING WAGE RATES

- An officer, agent, or representative of the state or of a political subdivision commits an offense if he/she willfully violates or does not comply with a provision of Chapter 2258.
- Punishment:
  - A fine not to exceed \$500;
  - Confinement in jail for a term not to exceed six months; or
  - Both fine and a confinement.

Tex. Gov't Code § 2258.058

# CRIMINAL HISTORY REVIEW

- District must collect and maintain the certification forms from all tiers
- Applies to employees and independent contractors of contractors and subcontractors (including professional consultants) who:
  - ✓ Has, or will have, continuing duties under a contract
  - ✓ Has opportunity for direct contact with students
- Prohibited Offenses:

Convictions of felony crimes against the person or any conviction requiring sex offender registration, if:

  - ✓ The offense occurred within 30 years of date employment will begin (or date the law was effective, for existing employees), and
  - ✓ The victim was under the age of 18 or enrolled in public school at the time of the offense
- 2017 Legislature clarified “opportunity for direct contact” to allow for fence separation and summer exception