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**Note:** For information on the new instructional facilities allotment, see CBA.

For additional legal requirements applicable to purchases with federal funds, see CBB.

For information on procuring goods and services under Education Code Chapter 44, see CH.

For required vendor disclosures and contract provisions, including prohibitions, see CHE.

For provisions pertaining to criminal history record information on contractors, see CJA(LEGAL).

For legal requirements related to energy savings performance contracts, see CL.

For facility standards, see CS.

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**Definition** “Public work contract” means a contract for constructing, altering, or repairing a public building or carrying out or completing any public work. *Gov’t Code 2253.001(4)*

**Board Authority** A district may adopt rules as necessary to implement Government Code Chapter 2269. *Gov’t Code 2269.051; 19 TAC 61.1040(e)(2)(H)*

**Delegation of Authority** The board may delegate its authority under Government Code Chapter 2269 regarding an action authorized or required by Chapter 2269 to a designated representative, committee, or other person. *Gov’t Code 2269.053(a)*

The district shall provide notice of the delegation, the limits of the delegation, and the name or title of each designated person by rule or in the request for bids, proposals, or qualifications or in an addendum to the request. *Gov’t Code 2269.053(b); Education Code 44.0312(a)*

If the district fails to provide that notice, a ranking, selection, or evaluation of bids, proposals, or qualifications for construction services other than by the board in an open public meeting is advisory only. *Education Code 44.0312(a); 19 TAC 61.1040(e)(2)(E)*

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 Education Code 44.0312. *19 TAC 61.1040(e)(2)(F)*

FACILITIES CONSTRUCTION

CV  
(LEGAL)

[For information regarding delegation in the event of a catastrophe, emergency, or natural disaster, see CH.]

**Contracts Valued at  
or Above \$50,000**

Except as provided by Education Code Chapter 44, Subchapter B, all district contracts for the purchase of goods and services 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 a district [see also CH]:

1. An interlocal contract. *Education Code 44.031(a)(4)* [See CH]
2. A method provided by Government Code Chapter 2269 for construction services. *Education Code 44.031(a)(5)*
  - a. Competitive bidding. *Gov't Code 2269 Subch. C* [See CVA]
  - b. Competitive sealed proposals. *Gov't Code 2269 Subch. D* [See CVB]
  - c. Construction manager-agent method. *Gov't Code 2269 Subch. E* [See CVC]
  - d. Construction manager-at-risk method. *Gov't Code 2269 Subch. F* [See CVD]
  - e. Design-build method. *Gov't Code 2269 Subch. G* [See CVE]
  - f. Job order contracting. *Gov't Code 2269 Subch. I* [See CVF]
3. The reverse auction procedure as defined by Government Code 2155.062(d). *Education Code 44.031(a)(6)* [See CH]

*Education Code 44.031(a); Gov't Code Ch. 2269*

Exceptions  
*Emergency  
Damage or  
Destruction*

For information on procurement options when school equipment, a facility, or personal property is destroyed or severely damaged as a result of an unforeseen catastrophe or emergency, under Education Code 44.031, see CH.

*Contracts  
Requiring a Bond*

A reverse auction procedure may not be used to obtain services related to a public work contract for which a bond is required under Government Code 2253.021 [see Payment and Performance Bonds, below]. "Reverse auction procedure" has the meaning assigned by Government Code 2155.062 or a procedure similar to that described by Section 2155.062. *Gov't Code 2253.021(h)*

**Notice Publication**

A board shall advertise or publish notice of requests for bids, proposals, or qualifications in a manner prescribed by law.

For a contract entered into by a board under a method provided by Government Code 2269, the board shall publish notice of the time and place the bid or proposal or request for qualifications will be received and opened in a manner prescribed by law.

*Gov't Code 2269.052(a)-(b)*

[See CH for additional notice publication requirements.]

**Contract Selection  
Criteria**

In determining the award of a contract under Government Code Chapter 2269, the district shall consider and apply:

1. Any existing laws, including any criteria, related to historically underutilized businesses; and
2. Any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses.

In determining the award of a contract, the district may consider:

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

*Gov't Code 2269.055*

Experience Modifier  
*Definitions*

"Contract" means a contract awarded by a district that is:

1. A construction contract, as defined by Business and Commerce Code 272.0001; or
2. A contract for constructing, altering, or repairing a public building or carrying out or completing any public work.

"Contract solicitation" means a request for bids, proposals, qualifications, offers, or other responses from potential contractors under a contract.

“Experience modifier” means a factor expressed as a value that:

1. Is assigned to an employer seeking to purchase a workers’ compensation insurance policy in this state;
2. Affects the premium amount for the policy; and
3. Is based on the employer’s past loss experience.

*Voidable  
Contract  
Provisions*

An offer to contract or a contract solicitation may not require a specified experience modifier in order to accept the offer or respond to the contract solicitation.

A contract or an agreement collateral to or affecting a contract may not require the contractor to have a specified experience modifier.

A contract solicitation, an offer, a contract, or an agreement collateral to or affecting a contract that violates these requirements is voidable as against public policy.

*Gov’t Code 2252.909*

**Using Method Other  
Than Competitive  
Bidding**

Determine Best  
Value

The board that considers a construction contract using a method authorized by Government Code Chapter 2269 other than competitive bidding must, before advertising, determine which method provides the best value for the district.

Publish Criteria

The district shall base its selection among offerors on applicable criteria listed for the particular method used. The district shall publish in the request for proposals or qualifications:

1. The criteria that will be used to evaluate the offerors;
2. The applicable weighted value for each criterion; and
3. A detailed methodology for scoring each criterion.

Make Evaluations  
Public

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

*Gov’t Code 2269.056*

**Submission**

A person who submits a bid, proposal, or qualification to a governmental entity shall seal it before delivery. *Gov’t Code 2269.059*

**Documents Related  
to Evaluation and  
Ranking**

An offeror who submits a bid, proposal, or response to a request for qualifications for a construction contract under Government Code Chapter 2269 may, after the contract is awarded, make a request in writing to the district to provide documents related to the evaluation of the offeror’s submission.

Not later than the 30th day after the date a request is made, the district shall deliver to the offeror the documents relating to the evaluation of the submission including, if applicable, its ranking of the submission.

*Gov't Code 2269.060*

**Uniform General  
Conditions for  
Contracts**

After reviewing the uniform general conditions adopted by the Texas Facilities Commission under Government Code 2166.302, a school district may adopt uniform general conditions to be incorporated in all district building construction contracts. *Education Code 44.035*

**Right to Work**

While engaged in procuring goods or services, awarding a contract, or overseeing procurement or construction for a public work or public improvement under Government Code Chapter 2269, a district:

1. May not consider whether a person is a member of or has another relationship with any organization; and
2. Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to an organization.

*Gov't Code 2269.054*

**Collective  
Bargaining**

A district awarding a public work contract funded with state money, including the issuance of debt guaranteed by the state, may not:

1. Prohibit, require, discourage, or encourage a person bidding on the public work contract, including a contractor or subcontractor, from entering into or adhering to an agreement with a collective bargaining organization relating to the project; or
2. Discriminate against a person described by item 1 based on the person's involvement in the agreement, including the person's status or lack of status as a party to the agreement or willingness or refusal to enter into the agreement.

*Gov't Code 2269.0541(a)*

**Out-of-State Bidders  
Change Orders**

For legal requirements regarding out-of-state bidders, see CH.

If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the district may approve change orders making the changes. The district may grant general authority to an administrative official to approve the change orders.

The total contract price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.

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.

*Education Code 44.0411*

Unsigned Change  
Orders

A vendor may elect not to proceed with additional work directed by a district under a public work contract if:

1. The vendor has not received a written, fully executed change order for the district-directed additional work; and
2. The aggregate actual or anticipated value of the additional work under the vendor's contract terms plus any previous district-directed additional work for which the vendor has not received a written, fully executed change order exceeds 10 percent of the vendor's original public work contract amount.

A subcontractor may elect not to proceed with additional work directed by a vendor under a subcontract if:

1. The subcontractor has not received a written, fully executed change order for the district-directed additional work from the vendor; and
2. The aggregate actual or anticipated value of the additional work under the subcontractor's subcontract terms plus any previous district-directed additional work for which the subcontractor has not received a written, fully executed change order exceeds 10 percent of the subcontractor's subcontract amount.

A vendor or subcontractor who elects not to proceed with additional work is not responsible for damages associated with the election not to proceed.

*Gov't Code 2251.0521*

**Inspection,  
Verification, and  
Testing**

Independently of the contractor, construction manager-at-risk, or design-build firm, a district shall 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. The district shall select the services for



which it contracts in accordance with Government Code 2254.004.  
*Gov't Code 2269.058*

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**Note:** For additional requirements related to code compliance, including fees and contracts, see 19 Administrative Code 61.1040(e)(5).

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**Impact Fees**

A district is not required to pay impact fees imposed under Local Government Code Chapter 395 unless the board consents to the payment of the fees by entering a contract with the political subdivision that imposes the fees. The contract may contain terms the board considers advisable to provide for the payment of the fees.  
*Local Gov't Code 395.022*

**Design Professionals**

A 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. *19 TAC 61.1040(a)(4), (e)(4)(D)*

A 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 Government Code Chapter 2254. [See Procuring Architectural or Engineering Services, below] *19 TAC 61.1040(e)(5)(B)*

**Architects and Engineers**

An architect or engineer required to be selected or designated under Government Code Chapter 2269 has full responsibility for complying with Occupations Code Chapter 1051 or 1001, as applicable.

If the selected or designated 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 Government Code 2254.004 [see Procuring Professional Services, below].

*Gov't Code 2269.057*

**Registered Architect**

An architectural plan or specification for any of the following may be prepared only by an architect:

1. A new building having construction costs exceeding \$100,000 that is to be:
  - a. Constructed and owned by a district; and

- b. Used for education, assembly, or office occupancy; or
- 2. An alteration or addition having construction costs exceeding \$50,000 that:
  - a. Is to be made to an existing building that:
    - (1) Is owned by a district; and
    - (2) Is or will be used for education, assembly, or office occupancy; and
  - b. Requires the removal, relocation, or addition of a wall or partition or the alteration or addition of an exit.

This provision does not prohibit an owner of a building from contracting with an architect or engineer as the prime design professional for a building construction, alteration, or addition project. Designation as the prime design professional does not expand the scope of practice of an architect or engineer beyond the scope of practice that the architect or engineer is authorized to practice under Occupations Code Chapter 1001 or 1051.

*Occupations Code 1051.703; 22 TAC 1.212*

*Registered  
Engineer*

A 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.

*Occupations Code 1001.407*

The following work is exempt from Occupations Code Chapter 1001 (Texas Engineering Practice Act):

- 1. A public work that involves electrical or mechanical engineering, if the contemplated expense for the completed project is \$8,000 or less; or
- 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.

*Occupations Code 1001.053*

*Certification for  
Purchases  
Through  
Purchasing  
Cooperatives*

A district may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative under Government Code Chapter 791 in an amount greater than \$50,000 unless a person designated by the district certifies in writing that:

1. The project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Occupation Code Chapter 1001 or 1051; or
2. The plans and specifications required under Occupation Code Chapters 1001 and 1051 have been prepared.

“Purchasing cooperative” means a group purchasing organization that governmental entities join as members and the managing entity of which receives fees from members or vendors.

*Gov’t Code 791.011(j)* [See CH for more information on interlocal contracts and purchasing cooperatives.]

Procuring  
Architectural or  
Engineering  
Services

Education Code 44.031 does not apply to a contract for professional services rendered, including the services of an architect. *Education Code 44.031(f)* [See CH for information on the Professional Services Procurement Act generally.]

In procuring architectural, engineering, or land-surveying services, a district shall:

1. First select the most highly qualified provider on the basis of demonstrated competence and qualifications; and
2. Then attempt to negotiate with that provider a contract at a fair and reasonable price.

If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land-surveying services, a district shall formally end negotiations with that provider, select the next most highly qualified provider, and attempt to negotiate a contract with that provider at a fair and reasonable price. The district shall continue this process to select and negotiate with providers until a contract is entered into.

*Gov’t Code 2254.004*

An interlocal contract between a district and a purchasing cooperative may not be used to purchase engineering or architectural services. *Gov’t Code 791.011(h)*

FACILITIES CONSTRUCTION

CV  
(LEGAL)

Contracts for  
Engineering or  
Architectural  
Services

*Indemnification*

A covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a district is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must indemnify or hold harmless the district against liability for damage, other than liability for damage to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the indemnitor or the indemnitor's agent, consultant under contract, or another entity over which the indemnitor exercises control.

*Duty to Defend*

Except as provided below, a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a district is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must defend a party, including a third party, against a claim based wholly or partly on the negligence of, fault of, or breach of contract by the district, the district's agent, the district's employee, or other entity, excluding the engineer or architect or that person's agent, employee, or subconsultant, over which the district exercises control. A covenant or promise may provide for the reimbursement of a district's reasonable attorney's fees in proportion to the engineer's or architect's liability.

*District as  
Additional  
Insured*

A district may require in a contract for engineering or architectural services to which the district is a party that the engineer or architect name the district as an additional insured under the engineer's or architect's general liability insurance policy and provide any defense provided by the policy.

*Standard of Care*

A contract for engineering or architectural services to which a district is a party must require a licensed engineer or registered architect to perform services:

1. With the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license; and
2. As expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

In a contract for engineering or architectural services to which a district is a party, a provision establishing a different standard of care than a standard described above is void and unenforceable. If a contract contains a void and unenforceable provision, the standard of care described above applies.

Nothing in these provisions prohibits a district in a contract for engineering or architectural services to which the district is a party from including and enforcing conditions that relate to the scope, fees, and schedule of a project in the contract.

*Local Gov't Code 271.904*

**Payment and  
Performance Bonds**

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

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

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

*Gov't Code 2253.021(a), (d)-(e)*

The performance bond is solely for the protection of the district awarding the public work contract, in the amount of the contract, and conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents.

*Gov't Code 2253.021(b)*

The payment bond is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material, and in the amount of the contract. *Gov't Code 2253.021(c)*

**Failure to Obtain  
Payment Bond**

If a district fails to obtain from a prime contractor a payment bond as required above or fails to include in a lease the lease terms required by Government Code 2252.909 [see CDB]:

1. The district is subject to the same liability that a surety would have if the surety had issued a payment bond and if the district had obtained the bond; and
2. A payment bond beneficiary is entitled to a lien on money due to the prime contractor in the same manner and to the same extent as if the public work contract were subject to Property Code Chapter 53, Subchapter J (Lien on Money Due Public Works Contractor).

*Gov't Code 2253.027(a)*

FACILITIES CONSTRUCTION

CV  
(LEGAL)

**Bond for Insured  
Loss**

A district shall ensure that an insurance company that is fulfilling its obligation under a contract of insurance by arranging for the replacement of a loss, rather than by making a cash payment directly to the district, furnishes or has furnished by a contractor:

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

If the payment bond is not furnished, the district is subject to the same liability that a surety would have if the surety had issued the payment bond and the district had required the bond to be provided.

The bonds required to be furnished by the provisions above shall be furnished before the contractor begins work. It is an implied obligation under a contract of insurance for the insurance company to furnish these bonds.

*Exception to  
Bond  
Requirement*

These provisions do not apply to a district when a surety company is complying with an obligation under a bond that had been issued for the benefit of the district.

*Gov't Code 2253.022*

**Prevailing Wage on  
Public Works**

"Worker" includes a laborer or mechanic. *Gov't Code 2258.001(3)*

A worker employed on a public work by or on behalf of a district shall be paid:

1. Not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and
2. Not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

The requirements above do not apply to maintenance work. A worker is employed on a public work for purposes of this provision if the worker is employed by a contractor or subcontractor in the execution of a contract for public work with a district.

*Gov't Code 2258.021*

For a contract for a public work awarded by a district, the board shall determine the general prevailing rate of per diem wages in the district for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work by:

1. Conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the district in which the public work is to be performed; or
2. Using the prevailing wage rate as determined by the U.S. Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments.

The board shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents. A board shall specify in the call for bids for the contract and in the contract itself the wage rates determined under these provisions. The board's determination of the general prevailing rates of per diem wages is final.

*Gov't Code 2258.022(a), (c)-(e)*

Government Code 2258.022(b) applies to a public work located in a county bordering the United Mexican States or in a county adjacent to a county bordering the United Mexican States. *Gov't Code 2258.022(b)*

Enforcement

A board awarding a contract, and an agent or officer of the board, shall:

1. Take cognizance of complaints of all violations of Government Code Chapter 2258 committed in the execution of the contract; and
2. Withhold money forfeited or required to be withheld under Government Code Chapter 2258 from the payments to the contractor under the contract, except that the board may not withhold money from other than the final payment without a determination by the board that there is good cause to believe that the contractor has violated Government Code Chapter 2258.

On receipt of information, including a complaint by a worker, concerning an alleged violation of Government Code 2258.023 [see Penalty for Noncompliance, below] by a contractor or subcontractor, a board shall make an initial determination as to whether good cause exists to believe that the violation occurred. A board must make its determination before the 31st day after the date the board receives the information. A board shall notify in writing the contractor or subcontractor and any affected worker of its initial determination.

*Gov't Code 2258.051-.052(a)-(c)*

Retainage and  
Reimbursement

A board shall retain any amount due under the contract pending a final determination of the violation. *Gov't Code 2258.052(d)*

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**Note:** Arbitration of unresolved issues is governed by Government Code 2258.053-.055.

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A board shall use any amounts retained under Government Code Chapter 2258 to pay the worker the difference between the amount the worker received in wages for labor on the public work at the rate paid by the contractor or subcontractor and the amount the worker would have received at the general prevailing rate as provided in the arbitrator's award. The board may adopt rules, orders, or ordinances relating to the manner in which the reimbursement is made. *Gov't Code 2258.056(a)-(b)*

Penalty for  
Noncompliance

The contractor who is awarded a contract by a district or a subcontractor of the contractor shall pay not less than the rates determined under these provisions to a worker employed by it in the execution of the contract. A contractor or subcontractor who violates this provision shall pay to the 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. A board awarding a contract shall specify this penalty in the contract. A contractor or subcontractor does not violate this section if a board awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as required by these provisions. The board shall use any money collected under this provision to offset the costs incurred in the administration of Government Code Chapter 2258. *Gov't Code 2258.023*

Criminal Offense

An officer, agent, or representative of a district commits an offense if the person willfully violates or does not comply with a provision of Government Code 2258. *Gov't Code 2258.058(a)*

**Required Workers'  
Compensation  
Coverage**

A district shall ensure a contract for construction services required to be procured by a method in Government Code Chapter 2269 specifies the contractor's responsibilities for site safety and requires compliance with the requirement to provide workers' compensation insurance in accordance with Labor Code 406.096, below. *19 TAC 61.1040(e)(3)(D)*

A district that enters into a building or construction contract shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for each employee of the contractor employed on the public project. Each subcontractor shall provide such a certificate relating to coverage of the subcontractor's employees to the general contractor, who shall



provide the subcontractor's certificate to the district. *Labor Code 406.096(a)-(b)*

A district that enters into a building or construction contract on a project shall:

1. Include in the bid specifications all the duties and responsibilities of contractors pertaining to required workers' compensation coverage, using the language required by 28 Administrative Code 110.110(c)(7).
2. As part of the contract, using the language required by 28 Administrative Code 110.110(c)(7), require the contractor to perform the duties and responsibilities pertaining to required workers' compensation coverage as set out in 28 Administrative Code 110.110(d).
3. Obtain from the contractor a certificate of coverage for each person providing services on the project, prior to that person beginning work on the project.
4. Obtain from the contractor a new certificate of coverage showing extension of coverage:
  - a. Before the end of the current 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 Texas Department of Insurance, Division of Workers' Compensation upon request and to any person entitled to a copy by law.
7. Use the language contained in 28 Administrative Code 110.110(c)(7) 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.

*28 TAC 110.110(c)*

Exception

This coverage requirement does not apply to sole proprietors, partners, and corporate officers who meet the requirements of Labor

Code 406.097(c), and who are explicitly excluded from coverage in accordance with Labor Code 406.097(a). *28 TAC 110.110(i)*

**Definitions**

“Persons providing services on the project” 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 contracted 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 project. “Services” includes but is not limited to providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. “Services” does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets. *28 TAC 110.110(a)(7)*

“Project” includes the provision of all services related to a building or construction contract for a district. *28 TAC 110.110(a)(8)*

**Criminal Offenses**

For information on criminal offenses for violations of Education Code 44.031, see CH.

**Enforcement Actions**

Government Code Chapter 2269 may be enforced through an action for declaratory or injunctive relief filed not later than the 15th day after the date on which the contract is awarded. *Gov’t Code 2269.452*

**Defects in Facilities**

A district that brings an action for recovery of damages for the defective design, construction, renovation, or improvement of a district facility financed by bonds shall provide the commissioner with written notice of the action by registered or certified mail, return receipt requested, not later than the 30th day after the date the action is filed. If the district fails to comply with this provision, the court or an arbitrator or other adjudicating authority shall dismiss the action without prejudice. The dismissal of an action under this provision extends the statute of limitations on the action for a period of 90 days.

The notice must include a copy of the petition and an itemized list of the defects in the design, construction, renovation, or improvement for which the district is seeking damages under the action.

In an action involving an instructional facility financed by bonds for which the district receives state assistance under Education Code Chapter 46, Subchapter A (Instructional Facilities Allotment), the commissioner may join in the action on behalf of the state to protect the state’s share in the action.

A district that brings an action under these provisions shall use the net proceeds from the action for:

1. The repair of the defective design, construction, renovation, or improvement of the facility on which the action is brought, including the repair of any ancillary damage to furniture and fixtures;
2. The replacement of the facility on which the action is brought;
3. The reimbursement of the district for a repair or replacement; or
4. Any other purpose with written approval from the commissioner.

Education Code 46.008 applies to the repair. A district shall provide to the commissioner an itemized accounting of any repairs made.

The state's share resulting from an action brought under these provisions involving an instructional facility financed by bonds for which the school district receives state assistance under Education Code Chapter 46, Subchapter A is state property. The district shall send to the comptroller any portion of the state's share not used by the district to repair the defective design, construction, renovation, or improvement of the instructional facility on which the action is brought or to replace the facility. Education Code 48.272 applies to the state's share.

*Definitions*

"Net proceeds" means the difference between the amount recovered by or on behalf of a school district in an action, by settlement or otherwise, and the legal fees and litigation costs incurred by the district in prosecuting the action.

"State's share" means an amount equal to the district's net proceeds from the recovery multiplied by a percentage determined by dividing the amount of state assistance under Education Code Chapter 46, Subchapter A used to pay the principal of and interest on bonds issued in connection with the instructional facility that is the subject of the action by the total amount of principal and interest paid on the bonds as of the date of the judgment or settlement.

*Education Code 44.151*

*Attorney General  
Enforcement*

If the attorney general believes that a district has violated or is violating Education Code 44.151(d), (e), or (f) (use of proceeds, accounting, and the state's share), the attorney general may, after providing at least two weeks' notice to the district, bring an action

on behalf of the state to enjoin the district from violating those sections.

In such an action, the attorney general may request and the court may order any other appropriate relief that is in the public interest, including payment of:

1. A civil penalty in an amount not to exceed \$20,000 for each violation;
2. The attorney general's reasonable costs for investigating and prosecuting the violation; or
3. If applicable, the amount of the state's share.

*Education Code 44.152(a)-(b)*

Attorney Fees

A governmental contract may not provide for the award of attorney's fees to a district in a dispute in which the district prevails unless the contract provides for the award of attorney's fees to each other party to the contract if that party prevails in the dispute.

"Governmental contract" means a contract awarded by a governmental entity for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment.

*Gov't Code 2252.904*

Construction  
Liability Claims

To assert a claim against a contractor, subcontractor, supplier, or design professional for damages arising from damage to or loss of real or personal property caused by an alleged construction defect in an improvement to real property that is a public building or public work in which the district has an interest, the district must comply with Government Code Chapter 2272, which may not be waived. A purported waiver of Chapter 2272 is void. *Gov't Code 2272.002(a), .0025*