
Note: For information on procuring goods and services under Education Code Chapter 44, including the delegation of authority and pursuit of injunctions, see CF(LEGAL). For information on expenditures using federal funds, see CAAB. For information on providing notice to the Legislative Budget Board (LBB) regarding contracts, see GGC.

Board Authority

Education Code Chapter 44, Subchapter B, applies to junior college districts. *Education Code 44.0311(a)*

A governmental entity, including a college district, may adopt rules as necessary to implement Government Code Chapter 2269. *Gov't Code 2269.051*

Delegation of
Authority

The governing body of a governmental entity 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.

The governmental entity 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

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

Except as provided by Education Code Chapter 44, Subchapter B, all college district contracts valued at \$50,000 or more in the aggregate for each 12-month period shall be made by the method that provides the best value for the district: [See also CF]

1. An interlocal contract. [See CF]
2. Competitive bidding. [See CMA]
3. Competitive sealed proposals. [See CMB]
4. Construction manager-agent method. [See CMC]
5. Construction manager-at-risk method. [See CMD]
6. Design-build method. [See CME]
7. The reverse auction procedure as defined by Government Code 2155.062(d). [See CF]

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

Selecting a
Contracting Method

The governing body of a governmental entity 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 governmental entity. *Gov't Code 2269.056(a)*

Exceptions

*Emergency
Damage or
Destruction*

If school equipment, a school facility, or a portion of a school facility or personal property is destroyed or severely damaged or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and the board of trustees determines that the delay posed by the methods provided for in Education Code 44.031 would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment, school facility, or the part of the school facility may be made by methods other than those required by Education Code 44.031. *Education Code 44.031(h)*

*Contracts
Requiring a Bond*

A reverse auction procedure, whether the same or similar to that described by Government Code 2155.062, 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]. *Gov't Code 2253.021(h)*

Public Notice

Notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened shall be published in the county in which the district's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the district's central administrative office is located. 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. *Education Code 44.031(g); Gov't Code 2269.052(a)–(b)*

**Contract Selection
Criteria**

In determining the award of a contract, the governmental entity shall:

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

In determining the award of a contract, the governmental entity 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 governmental entity 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

Out-of-State Bidder

A governmental entity, including a college district, may not award a governmental contract for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment to a nonresident bidder whose principal place of business is not in this state, unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the amount by which a resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located or the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing relating to the contract will be performed.

This requirement does not apply to a contract involving federal funds. A governmental entity shall use the information published by the comptroller in the Texas Register to evaluate the bid of a nonresident bidder.

Gov't Code 2252.001-.004

Publishing Criteria

The governmental entity shall publish in the request for proposals or qualifications the criteria that will be used to evaluate the offerors, the applicable weighted value for each criterion, and a detailed methodology for scoring each criterion. *Gov't Code 2269.056(b)*

Contracts Valued at or Above \$1 Million

The contract requirements in Government Code Chapter 552, Subchapter J apply to an entity that is not a governmental body that executes a contract with a governmental body that:

1. Has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the governmental body; or
2. Results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the governmental body in a fiscal year of the governmental body.

Gov't Code 552.371(a) [See CF]

Contracts Prohibited

Scrutinized
Companies

A governmental entity, including a college district, may not enter into a governmental contract with a company that is identified on a list prepared and maintained by the comptroller under Government Code 806.051, 807.051, or 2252.153.

"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. The term includes a contract to obtain a professional or consulting service subject to Government Code Chapter 2254.

Gov't Code 2252.001(3), .152

Companies that
Boycott Israel

This section applies only to a contract that:

1. Is between a governmental entity and a company with ten or more full-time employees; and
2. Has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract.

"Boycott Israel" has the meaning assigned by Government Code 808.001.

"Company" has the meaning assigned by Government Code 808.001, except that the term does not include a sole proprietorship.

Gov't Code 2271.001(1)–(2), .002

Companies that
Boycott Energy
Companies

This section applies only to a contract that:

1. Is between a governmental entity and a company with 10 or more full-time employees; and
2. Has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott energy companies and will not boycott energy companies during the term of the contract.

“Boycott energy company” has the meaning assigned by Government Code 809.001.

“Company” has the meaning assigned by Government Code 809.001, except that the term does not include a sole proprietorship.

Gov't Code 2274.001(1)–(2), .002(a)–(b)

Exception

The above section does not apply to a governmental entity that determines the requirements of that section are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.
Gov't Code 2274.002(c)

Companies that
Discriminate
Against a Firearm
Entity or Firearm
Trade Association

This section applies only to a contract that:

1. Is between a governmental entity and a company with at least ten full-time employees; and
2. Has a value of at least \$100,000 that is to be paid wholly or partly from public funds of the governmental entity.

A governmental entity may not enter into a contract with a company for the purchase of goods or services unless the contract contains a written verification from the company that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

Gov't Code 2274.002(a)–(b)

Definition

"Discriminate against a firearm entity or firearm trade association" means, with respect to the entity or association, to:

1. Refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association;
2. Refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or

3. Terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

The term does not include:

1. The established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and
2. A company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship:
 - a. To comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or
 - b. For any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

Gov't Code 2274.001(3)

Exceptions

The prohibition does not apply to a governmental entity that contracts with a sole-source provider or does not receive any bids from a company that is able to provide the written verification required by this section.

The prohibition does not apply to a contract entered into in connection with or relating to the issuance, sale, or delivery of notes under Government Code Chapter 404, Subchapter H or the administration of matters related to the notes, including the investment of note proceeds, as provided by Government Code 2274.003.

Gov't Code 2274.002(c), .003

Contracts with
Foreign-Owned
Companies

A governmental entity may not enter into a contract or other agreement relating to critical infrastructure in this state with a company:

1. If, under the contract or other agreement, the company would be granted direct or remote access to or control of critical infrastructure in this state, excluding access specifically allowed by the governmental entity for product warranty and support purposes; and
2. If the governmental entity knows that the company is:
 - a. Owned by or the majority of stock or other ownership interest of the company is held or controlled by:

- (1) Individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; or
- (2) A company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or

- b. Headquartered in China, Iran, North Korea, Russia, or a designated country.

"Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.

"Critical infrastructure" means the measures taken to protect a computer, computer network, computer system, or other technology infrastructure against unauthorized use or access.

"Designated country" means a country designated by the governor as a threat to critical infrastructure under Government Code 2274.0103.

Gov't Code 2274.0101(1), (2), (4), .0102(a)

**Required
Disclosures**

Disclosure of
Interested Parties

A governmental entity or state agency may not enter into a contract with a business entity that requires an action or vote by the governing body of the entity or agency before the contract may be signed, has a value of at least \$1 million, or is for services that would require a person to register as a lobbyist under Government Code Chapter 305, with certain exceptions, unless the business entity, in accordance with Government Code 2252.908 and rules adopted by the Texas Ethics Commission, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. [See GL] *Gov't Code 2252.908*

Disclosures by
Purchasing
Personnel

Before a state agency, including a college district, may award a major contract, a contract that has a value of at least \$1 million, for the purchase of goods or services to a business entity, each of the state agency's purchasing personnel working on the contract must disclose in writing to the administrative head of the state agency any relationship the purchasing personnel is aware about that the employee has with an employee, a partner, a major stockholder, a paid consultant with a contract with the business entity the value of which exceeds \$25,000, or other owner of the business entity who

is within a degree described by Government Code 573.002, the third degree by consanguinity or within the second degree by affinity of the purchasing employee. The state auditor shall develop a form for use in reporting a specified relationship.

"Purchasing personnel" means an employee of a state agency who makes decisions on behalf of the state agency or recommendations regarding contract terms or conditions on a major contract, who is to be awarded a major contract, preparation of a solicitation for a major contract, or evaluation of a bid or proposal.

Gov't Code 2262.001(4), .004

*Notice
Publication*

Notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened shall be published in the county in which the district's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the district's central administrative office is located. 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. *Education Code 44.031(g)*

Submission

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

Electronic Bids or
Proposals

A college district may receive bids or proposals through electronic transmission if the board of trustees of the college district adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time. An electronic bid or proposal is not required to be sealed. A provision of this chapter that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission. *Education Code 44.0313*

Selection

The governmental entity shall base its selection among offerors on applicable criteria listed for the particular method used. *Gov't Code 2269.056(b)*

**Making Evaluations
Public**

The governmental entity 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(c), .105*

FACILITIES CONSTRUCTION

CM
(LEGAL)

Disclosure to Offeror upon Request	Not later than the 30th day after the date a request is made by an offeror for documents related to the evaluation of the offeror's submission under Government Code 2269.060, the governmental entity shall deliver to the offeror the documents relating to the evaluation of the submission including, if applicable, its ranking of the submission. [See CMB for competitive sealed proposal evaluations] <i>Gov't Code 2269.060</i>
Consolidated Insurance Program	If a construction contract requires a person to enroll in a consolidated insurance program, the parties are subject to the disclosure requirements described by Insurance Code Chapter 151, Subchapter A.
Change Orders	<p>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.</p> <p>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.</p> <p>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.</p> <p><i>Education Code 44.0411</i></p>
Inspection, Verification, and Testing	Independently of the contractor, construction manager-at-risk, or design-build firm, a governmental entity 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 governmental entity. The governmental entity shall select the services for which it contracts in accordance with Government Code 2254.004. <i>Gov't Code 2269.058</i>
Energy Savings Performance Contracts	The contracting and delivery procedures for construction projects described at Government Code Chapter 2269 do not apply to energy savings performance contracts described at Education Code 51.927. [See CH] <i>Education Code 51.927(k)</i>

Professional Services

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 governmental entity, the governmental entity 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 registered under Occupations Code Chapter 1051 to engage in the practice of architecture:

1. A new building having construction costs exceeding \$100,000 that is to be constructed and owned by a political subdivision of this state and used for education, assembly, or office occupancy.
2. An alteration or addition having construction costs exceeding \$50,000 that is to be made to an existing building that is owned by a political subdivision of this state and is or will be used for education, assembly, or office occupancy and requires the removal, relocation, or addition of a wall or partition or the alteration or addition of an exit.

This section does not prohibit an owner of a building from contracting with an architect or an 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 1051.101(1), .703; 22 TAC 1.212

Registered Engineer

The following work is exempt from Occupations Code Chapter 1001:

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; Atty. Gen. Op. WC-791 (1966)

Certification for
Purchases Through
Purchasing
Cooperatives

A local government 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:

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

Procuring
Professional
Services

The purchasing requirements of Education Code 44.031 do not apply to a contract for professional services rendered, including the services of an architect. A college district may, at its option, contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Government Code 2254.003, in lieu of the methods provided by Education Code 44.031. *Education Code 44.031(f)*

A governmental entity, including a college district, may not select a provider of professional services or a group or association of providers or award a contract for the 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 to perform the services and for a fair and reasonable price.

"Professional services" means services:

1. Within the scope of the practice, as defined by state law, of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, professional nursing, or forensic science;
2. Provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant, an architect, a landscape architect, a land surveyor, a physician, including a surgeon, an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, a registered nurse, or a forensic analyst or forensic science expert; or

3. Provided by a person lawfully engaged in interior design, regardless of whether the person is registered as an interior designer under Occupations Code Chapter 1053.

Gov't Code 2254.002, .003(a)

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

1. First select the most highly qualified provider of those services 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, the entity 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 entity shall continue the process to select and negotiate with providers until a contract is entered into.

Gov't Code 2254.004

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

Certain Medical
Services

If a governmental entity is procuring services provided in connection with the professional employment or practice of a physician, including a surgeon, or an optometrist or registered nurse and the number of contracts to be awarded under this section is not otherwise limited, the governmental entity may make the selection and award on the basis of:

1. The provider's agreement to payment of a set fee, as a range or lump-sum amount; and
2. The provider's affirmation and the governmental entity's verification that the provider has the necessary occupational licenses and experience.

Gov't Code 2254.008(a)

Professional
Services Contract
Exceeding \$50,000

A state agency, including a college district and other institutions of higher education, shall provide written notice to the LBB of a contract for professional services, other than a contract for physician or optometric services, if the amount of the contract, including an amendment, modification, renewal, or extension of the contract,

exceeds \$50,000. The notice must be on a form prescribed by the LBB and filed not later than the 30th day after the date the agency enters into the contract. *Gov't Code 2254.006*

*Contracts for
Engineering or
Architectural
Services*

Required
Standard of
Care

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

Local Gov't Code 271.904(d)–(e)

Limitation on In-
demnification

A covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a governmental agency 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 governmental agency 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.

Except as provided by Local Government Code 271.904(c), a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a governmental agency 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 governmental agency, the agency's agent, the agency's employee, or other entity, excluding the engineer or architect or that person's agent, employee, or subconsultant, over which the governmental agency exercises control. A covenant or promise may provide for

the reimbursement of a governmental agency's reasonable attorney's fees in proportion to the engineer's or architect's liability.

Notwithstanding Local Government Code 271.904(b), a governmental agency may require in a contract for engineering or architectural services to which the governmental agency is a party that the engineer or architect name the governmental agency as an additional insured under the engineer's or architect's general liability insurance policy and provide any defense provided by the policy.

Local Gov't Code 271.904(a)–(c)

Criminal History

A person or business entity, with the exception of a publicly held corporation, that enters into a contract with a college district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. A college district may terminate a contract with a person or business if the district determines that the person or business entity failed to give such notice or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract.
Education Code 44.034

Right to Work

When 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, the governmental entity:

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 any organization.

Gov't Code 2269.054

Accessibility

Each facility or part of a facility constructed by, on behalf of, or for the use of the college district shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities. Alterations of facilities that affect or could affect their usability shall, to the maximum extent feasible, be altered in such manner that the altered portion is readily accessible to and usable by individuals with disabilities.
28 C.F.R. 35.151; 34 C.F.R. 104.23

**Payment and
Performance Bonds**

A governmental entity that makes a public work contract with a prime contractor or authorizes a nongovernmental entity leasing public property from the governmental entity to enter into a public

work contract with a prime contractor shall require the contractor, before beginning the work, to execute payment and/or performance bonds as specified below. The bonds must be executed by a corporate surety in accordance with Insurance Code 7.19-1. A bond executed for a public work contract with another governmental entity must be payable to and its form must be approved by the awarding governmental entity.

For a contract in excess of \$100,000, a performance bond shall be executed. The performance bond is solely for the protection of the governmental entity 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.

For a contract in excess of \$25,000, a payment bond shall be executed. 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(a)–(e)

Failure to Obtain
Payment Bond

If a governmental entity fails to obtain from a prime contractor a payment bond as required by Government Code 2253.021 the entity is subject to the same liability as a surety would have if the surety had issued a payment bond and if the entity had obtained the bond, 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 Property Code Chapter 53, Subchapter J. *Gov't Code 2253.027*

No Bond for Design
Services Only

A payment or performance bond is not required and may not provide coverage for the design portion of the design-build contract with the design-build firm under Government Code Chapter 2269, Subchapter G. [See CME for more information on design/build contracts, including bond amounts] *Gov't Code 2269.311(a)*

Bond for Insured
Loss

A governmental entity shall ensure that an insurance company that is fulfilling its obligation under a contract of insurance by arranging for the replacement of a loss, rather than by making a cash payment directly to the governmental entity, furnishes or has furnished by a contractor, in accordance with Government Code Chapter 2253:

1. A performance bond as described by Government Code 2253.021(b) for the benefit of the governmental entity; and
2. A payment bond as described in Government Code 2253.021(c) for the benefit of the beneficiaries described by

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

The bonds must be furnished before the contractor begins work. It is an implied obligation under a contract of insurance for the insurance company to furnish the bonds.

Gov't Code 2253.022(a)–(c), (f)

Exception to Bond
Requirement

Government Code 2253.022 does not apply to a governmental entity when a surety company is complying with an obligation under a bond that had been issued for the benefit of the governmental entity. *Gov't Code 2253.022(e)*

**Prevailing Wage
on Public Works**

A worker, such as a laborer or mechanic, employed on a public work, exclusive of maintenance work, by or on behalf of a political subdivision, including a college district, shall be paid 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 not less than the general prevailing rate of per diem wages for legal holiday and overtime work. A worker is employed on a public work if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with a political subdivision of the state or any officer or public body of a political subdivision of the state. *Gov't Code 2258.001, .021(3)*

For a contract for a public work awarded by a political subdivision of the state, the public body shall 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 by 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 using the prevailing wage rate as determined by the U.S. Department of Labor.

The public body shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents. A public body shall specify in the call for bids for the contract and in the contract itself the calculated prevailing wage rates. The public body's determination of the general prevailing rates of per diem wages shall be final.

Gov't Code 2258.022

Enforcement

A public body awarding a contract, and an agent or officer of the public body, shall take cognizance of complaints of all violations of Government Code Chapter 2258, and withhold money forfeited or

required to be withheld under this chapter from the payments to the contractor under the contract, except that the public body may not withhold money from other than the final payment without a determination by the public body that there is good cause to believe that the contractor has violated Chapter 2258.

On receipt of information, including a complaint by a worker, concerning an alleged violation of Section 2258.023 by a contractor or subcontractor, a public body shall make an initial determination as to whether good cause exists to believe that the violation occurred. A public body must make its determination before the 31st day after the date the public body receives the information. A public body 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 public body shall retain any amount due under the contract pending a final determination of the violation. A public body 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 public body may adopt rules, orders, or ordinances relating to the manner in which the reimbursement is made. *Gov't Code 2258.052(d), .056*

Penalty for
Noncompliance

The contractor who is awarded a contract by a public body or a subcontractor of the contractor shall pay not less than the rates determined under Government Code 2258.022 to a worker employed in the execution of the contract. A contractor or subcontractor who fails to pay the specified rates as required shall pay to the political subdivision of the state 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 specified in the contract. A public body awarding a contract shall specify this penalty in the contract. A contractor or subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as provided by Section 2258.022. The public body shall use any penalty money collected under this section to offset the costs incurred in the administration of Government Code Chapter 2258. *Gov't Code 2258.023*

**Required Workers'
Compensation
Coverage**

A governmental entity that enters into a building or construction contract on a project, which includes the provision of all services related to a building or construction contract for a governmental entity, shall:

1. Include in the bid specifications all the duties and responsibilities of contractors pertaining to required workers' compensation coverages described in 28 Administrative Code 110.110(c)(7). [See CM(EXHIBIT)]
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 described in 28 Administrative Code 110.110(d). [See CM(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. "Person providing services on the project" includes but is not limited to 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" does 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.
5. 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.
6. 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.
7. Retain certificates of coverage on file for the duration of the project and for three years thereafter.
8. 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.
9. 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 CM(EXHIBIT) for prescribed language]

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

Exception

A sole proprietor, partner, or corporate executive officer of a business entity that elects to provide workers' compensation insurance coverage is entitled to benefits under that coverage as an employee unless the sole proprietor, partner, or corporate executive officer is specifically excluded from coverage through an endorsement to the insurance policy or certificate of authority to self-insure. *Labor Code 406.097; 28 TAC 110.110(i)*

Use of Student Fees in Construction

A junior college district facility constructed with student fees may be used only for junior college district purposes, as determined by the board. Student fees may not be used for construction, repair, or rehabilitation of a community center or junior college district auxiliary enterprise unless the enterprise serves as a student center or dormitory. *Education Code 130.124; Atty. Gen. Op. JM-139 (1984)*

Impermissible Practices

Violation of
Purchasing Laws

An officer, employee, or agent of a college district who knowingly or with criminal negligence violates the purchasing laws found in Education Code Chapter 44 as described at Education Code 44.032 is subject to criminal penalties. [See CF] *Education Code 44.032*

Prohibition on
Collective
Bargaining
Agreements

A governmental entity, including a college district, awarding a public work contract funded with state money, including the issuance of debt guaranteed by this 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 above 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

Enforcement Actions

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

Attorney Fees

A governmental contract may not provide for the award of attorney's fees to the governmental entity in a dispute in which the entity 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. *Gov't Code 2252.904(b)*

**Public and Private
Facilities and
Infrastructure
Partnerships**

A governmental entity, including a college district, may enter into a partnership with a private entity for the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, and installation of education facilities, technology and other public infrastructure, and government facilities that serve a public need and purpose in accordance with the requirements of Government Code Chapter 2267. *Gov't Code Ch. 2267*