

Trinity Valley Community College

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Trinity Valley Community College
107501

FACILITIES CONSTRUCTION

CM
(LEGAL)

BOARD AUTHORITY

Education Code Chapter 44, Subchapter B, applies to Junior College Districts. *Education Code 44.0311*

DELEGATION OF AUTHORITY

The Board may adopt rules and procedures for the acquisition of goods and services. *Education Code 44.031(d)*

The Board may delegate its authority regarding an action authorized or required to be taken by the College District by Education Code Chapter 44, Subchapter B to a designated person, representative, or committee.

The Board may not delegate the authority to act regarding an action authorized or required to be taken by the Board by Education Code Chapter 44, Subchapter B.

In procuring construction services, the College District shall provide notice of the delegation and the limits of the delegation in the request for bids, proposals, or qualifications or in an addendum to the request. If the College 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

INJUNCTION

A court may enjoin performance of a contract made in violation of Education Code Chapter 44, Subchapter B. A county attorney, district attorney, criminal district attorney, citizen of the county in which the College District is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this subsection is entitled to reasonable attorney's fees as approved by the court. *Education Code 44.032(f)*

IMPERMISSIBLE PRACTICES

A Trustee, employee, or agent of the College District who knowingly or with criminal negligence violates the purchasing laws is subject to criminal penalties. *Education Code 44.032* [See CF]

CONTRACTS VALUED AT OR ABOVE \$25,000	<p>All College District contracts valued at \$25,000 or more in the aggregate for each 12-month period, shall be made by the method, that provides the best value for the College District: [See also CF]</p> <ol style="list-style-type: none">1. Competitive bidding. [See CMA]2. Competitive sealed proposals. [See CMB]3. A catalog purchase as provided by Government Code Chapter 2157, Subchapter B.4. An interlocal contract.5. A design/build contract. [See CMC]6. A contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager. [See CMD, CME]7. A job order contract for the minor construction, repair, rehabilitation, or alteration of a facility. [See CMF]8. The reverse auction procedure as defined by Government Code 2155.062(d). [See CF]
SELECTING A CONTRACTING METHOD	<p><i>Education Code 44.031(a)</i></p> <p>When the College District is considering awarding a construction contract using a method specified by Education Code 44.031 (a), the Board shall, before advertising, determine which purchasing method provides the best value for the College District.</p> <p><i>Education Code 44.035(a)</i></p>
PUBLIC NOTICE	<p>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 College 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 College 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.</p> <p><i>Education Code 44.031(g)</i></p>
CONTRACT SELECTION CRITERIA	<p>The College District shall base its selection among offerors on criteria authorized in Education Code 44.031(b). [See CF] The College District shall publish in the request for bids, proposals, or qualifications the criteria that will be used to evaluate the offerors and the relative weights given to the criteria. <i>Education Code 44.035(b)</i></p>
MAKING EVALUATIONS PUBLIC	<p>The College 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. <i>Education Code 44.035(c)</i></p>

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, attorney, or fiscal agents. The College District may 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)*

Competitive bids shall not be solicited for professional services of any licensed or registered certified public accountant, architect, landscape architect, land surveyor, physician, optometrist, professional engineer, state-certified or state-licensed real estate appraiser, or registered nurse. Contracts for these professional services shall be made on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price. *Gov't Code 2254.002, 2254.003(a)* [See PROCURING ARCHITECTURAL, ENGINEERING, AND LAND-SURVEYING SERVICES, below]

EMERGENCY DAMAGE OR DESTRUCTION If school equipment, a school facility, or a part 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 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)*

CRIMINAL HISTORY Before entering into a contract with the College District, a person or business must give notice to the College District if the person or an owner or operator of the business has been convicted of a felony. The College District may terminate a contract with a person or business if the College District determines that the person or business failed to give such notice or misrepresented the conduct resulting in the conviction. The College District must compensate the person for services performed before the contract terminated. *Education Code 44.034*

RIGHT TO WORK While engaged in awarding a contract or overseeing procurement or construction for a public work or public improvement, the College District:

1. May not consider whether a vendor 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.

Education Code 44.043

REGISTERED ARCHITECT An architect registered in accordance with Occupations Code, Title 6, Chapter 1051, shall prepare architectural plans and specifications for:

1. A new building constructed and owned by the College District that will be used for education, assembly, or office occupancy when the total projected construction costs at the commencement of construction exceed \$100,000.
2. Any alteration or addition to an existing building owned by the College District that is, or will be, used for education, assembly, or office occupancy when the total projected construction costs of alteration or addition at the commencement of construction exceed \$50,000 and the alteration or addition requires the removal, relocation, or addition of any walls or partitions or the alteration or addition of an exit.

The College District may comply with this requirement by choosing a registered architect or a registered professional engineer as the prime design professional for a building construction, alteration, or addition project.

Occupations Code 1051.307; 22 TAC 1.212

REGISTERED ENGINEER Electrical or mechanical engineering plans, specifications, and estimates for all construction by the College District that costs more than \$8,000 and involves public health, welfare, or safety must be prepared by a registered professional engineer, and the engineering construction executed under the supervision of such an engineer. *Occupations Code 1001.053; Atty. Gen. Op. C-791 (1966)*

The College District is not required to secure the services of a registered professional engineer to prepare plans for or supervise a construction project that does not involve electrical or mechanical engineering and for which the contemplated cost does not exceed \$20,000. *Occupations Code 1001.053*

**PROCURING
ARCHITECTURAL,
ENGINEERING, AND LAND-
SURVEYING SERVICES**

In procuring architectural, engineering, or land-surveying services, the College District shall [see PROFESSIONAL SERVICES above]:

1. First select the most highly qualified provider on the basis of demonstrated competence and qualifications; and
2. Then attempt to negotiate a contract with that provider 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 College 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 College District shall continue this process until a contract is entered into.

Gov't Code 2254.004

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 CFR 35.151; 34 CFR 104.23*

**PAYMENT AND
PERFORMANCE BONDS**

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

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

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

**FAILURE TO OBTAIN
PAYMENT BOND**

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

**NO BOND FOR DESIGN
SERVICES ONLY**

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

**BOND FOR INSURED
LOSS**

The Board 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:

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

These bonds 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

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

Gov't Code 2253.022

OUT-OF-STATE BIDDERS

The Board shall not award a contract for general construction, improvements, services, or public works projects or for purchase of supplies, materials, or equipment to a 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 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. *Gov't Code 2252.001, 2252.002*

This requirement shall not apply to a contract involving federal funds. The College District shall rely on information published by the Texas Building and Procurement Commission in evaluating the bids of a nonresident bidder. *Gov't Code 2252.003, 2252.004*

PREVAILING WAGE ON PUBLIC WORKS

A worker, laborer, or mechanic employed on a public work, exclusive of maintenance work, by or on behalf of the College District shall be paid not less than the general prevailing rate of per diem wages. The general prevailing rate of per diem wages is the rate of per diem wages for work of a similar character in the locality in which the work is performed, and also includes the 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 public work with the College District. *Gov't Code 2258.001, 2258.021*

The Board shall determine, as a sum certain, the general prevailing rate of per diem wages in the College District for each craft or type of worker needed to execute the contract and also for legal holiday and overtime work. To ascertain the general prevailing rate of per diem wages, the Board shall either conduct a survey of the wages received by classes of workers, laborers, and mechanics employed on projects of a character similar to the contract work in the College District or adopt the prevailing wage rate as determined by the U.S. Department of Labor, if the survey used to determine that rate has been conducted within

three years prior to the date the College District calls for bids on the project. The Board shall specify the prevailing rate of per diem wages in the call for bids and in the contract itself. The Board's determination of the general prevailing rates of per diem wages shall be final. *Gov't Code 2258.001, 2258.022*

ENFORCEMENT

The Board, and an agent or officer of the Board, shall receive complaints regarding violations of the prevailing wage requirements of Chapter 2258, and withhold money from the contractor as required by statute. Upon receipt of a complaint, the Board shall determine, before the 31st day after the date the information is received, whether good cause exists to believe that a contractor or subcontractor has failed to pay the prevailing wage and shall provide written notice of its determination to the contractor or subcontractor and any affected laborer, worker, or mechanic of its initial determination. *Gov't Code 2258.051, 2258.052*

RETAINAGE AND REIMBURSEMENT

The Board shall retain any amounts due under the contract pending a final determination of the violation. Upon a final determination that violations have occurred, the Board shall use those retained amounts to pay the laborer, worker, or mechanic the difference between the amount the worker received in wages and the amount the worker would have received at the prevailing rate of per diem wages 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 2258.052(d), 2258.056*

PENALTY FOR NONCOMPLIANCE

The contractor to whom the contract is awarded or any subcontractors of the contractor shall pay not less than the specified rates to all laborers, workers, and mechanics employed in the execution of the contract. A contractor or subcontractor who fails to pay the specified rates as required shall pay to the College District \$60 for each worker, laborer, or mechanic employed for each calendar day or part of a calendar day the worker is paid less than the wage rates specified in the contract. The Board must specify this penalty in the contract. If the College District does not determine the prevailing wage rates and specify them in the contract, the contractor or subcontractor may not be fined. The Board shall use any penalty money collected to offset the costs incurred in administering Government Code Chapter 2258. *Gov't Code 2258.023*

REQUIRED WORKERS' COMPENSATION COVERAGE

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

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

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

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

EXCEPTION

This coverage requirement does not apply to sole proprietors or partners of a covered business entity or corporate officers, if the sole proprietor, partner, or officer is explicitly excluded from the coverage of their business entity 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 facility constructed with student fees may be used only for College District purposes, as determined by the Board. Student fees may not be used for construction, repair, or rehabilitation of a community center or College District auxiliary enterprise unless it serves as a student center or dormitory. *Education Code 130.124; Atty. Gen. Op. JM-139 (1984)*

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