

CEDAR HILL ISD BOARD TRAINING BOND PROGRAM MANAGEMENT

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I. General Powers and Duties of the Board

- A. Govern and oversee the management of the public schools of the District. Education Code 11.151(b); Board Policy BAA (LEGAL).
- B. Monitor District finances to ensure that the Superintendent is properly maintaining the District's financial procedures and records. Education Code 11.1511(b)(9); Board Policy BAA (LEGAL).
- C. Issue bonds and levy, pledge, assess, and collect an annual ad valorem tax to pay the principal and interest on the bonds. Education Code 11.1511(c); Board Policy BAA (LEGAL).
- D. Enter into contracts as authorized under the Education Code or other law and delegate contractual authority to the Superintendent as appropriate. Education Code 11.1511(c); Board Policy BAA (LEGAL).
- E. The Board has final authority to determine and interpret the policies that govern the schools and, subject to the mandates and limits imposed by state and federal authorities, has complete and full control of the District. Board action shall be taken only in meetings that comply with the Open Meetings Act. Board Policy BBE (LOCAL).
- F. Board members as individuals shall not exercise authority over the District, its property, or its employees. Except for appropriate duties and functions of the Board President, an individual member may act on behalf of the Board only with the express authorization of the Board. Without such authorization, no individual member may commit the Board on any issue. Board Policy BBE (LOCAL).

II. The Selection Process

- A. If the Board considers a construction contract using a method authorized by Government Code Chapter 2267 other than competitive bidding, the Board must, before advertising, determine which method provides the best value for the District. Gov't Code 2267.056(a); Board Policy CV (LEGAL).
- B. Prior to advertising, the Board shall determine the project delivery/contract award method to be used for each construction contract valued at or above \$50,000. To assist the Board, the Superintendent shall recommend the project delivery/contract award method that he or she determines provides the best value to the District. Board Policy CV (LOCAL).
- C. School districts now have more flexibility in setting the criteria for evaluating proposals. Previously, districts were required to consider the specific criteria listed in

- the Education Code, along with any other criteria that the District decided to add to that list. Instead of saying that the District “shall” consider those criteria, the statute now says that the District “may” consider those items. Tex . Gov’t Code § 2267.055.
- D. In determining the award of a contract, 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. Gov’t Code 2267.055.
- E. In determining the award of a contract, the District may consider:
1. 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 2267.055.
- F. The District shall receive, publicly open, and read aloud the names of the offerors and any monetary proposals made by the offerors. Not later than the 45th day after the date on which the proposals are opened, the District shall evaluate and rank each proposal submitted in relation to the published selection criteria. Gov’t Code 2267.154 Board Policy CVB (LEGAL).
- G. The District shall select the offeror that submits the proposal that offers the best value for the District based on the selection criteria in the request for proposal and the weighted value for those criteria in the request for proposal and on its ranking evaluation. Gov’t Code 2267.155 Board Policy CVB (LEGAL).
- H. The District shall first attempt to negotiate a contract with the selected offeror. If the District is unable to negotiate a satisfactory contract with the selected offeror, the District shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected. Gov’t Code 2267.155 Board Policy CVB (LEGAL).
- I. Any proposal may be withdrawn prior to the scheduled time for opening. Proposals received after the specified time shall not be considered. The District may reject any and all proposals. Board Policy CVB (LOCAL).
- J. A Board member, employee, or agent of the 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. Education Code 44.032; Board Policy CV (LEGAL).

III. Construction Manager At Risk Selection

- A. “Construction manager-at-risk method” is a delivery method by which the District contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility. Gov’t Code 2267.251(a); Board Policy CVD (LEGAL).
- B. The District shall select the construction manager-at-risk in either a one-step or two-step process. The District shall prepare a single request for proposals, in the case of a one-step process, and an initial request for qualifications, in the case of a two-step process that includes:
 - 1. A statement as to whether the selection process is a one-step or two-step process;
 - 2. General information on the project site, project scope, schedule, selection criteria and the weighted value for each criterion, and estimated budget and the time and place for receipt of the proposals or qualifications; and
 - 3. Other information that may assist the District in its selection of a construction manager-at-risk. Gov’t Code 2267.253(a)–(e); Board Policy CVD (LEGAL).
- C. The District shall state the selection criteria in the request for proposals or qualifications. If a two-step process is used, the District may not request fees or prices in step one. In step two, the District may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk’s proposed fee and its price for fulfilling the general conditions. Gov’t Code 2267.253(a)–(e); Board Policy CVD (LEGAL).
- D. For Construction Manager at Risk projects, the district must make the “rankings” of potential construction managers public within seven days after the date the contract is awarded. Interestingly, there is not an analogous requirement for Competitive Sealed Proposals projects, except that there is a requirement (applicable to both CMAR and CSP methods) that the district make its “evaluations” of proposals public within seven days of awarding the contract. Tex. Gov’t Code §§ 2267.254(d); 2267.056(c).
- E. The Board shall determine, as a sum certain, the general prevailing rate of per diem wages in the 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 District or adopt the prevailing wage rate as determined by the U.S. Department of Labor. 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, .022.

IV. Delegation of Authority

- A. Previously, the school board was required to determine the method of delivery that would provide the best value on a project, and was specifically barred from delegating that selection. The new statute allows a board of trustees to delegate this duty to a “designated representative, committee, or other person.” Tex. Gov’t Code § 2267.053.
- B. The Board 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 2267.053; Board Policy CV (LEGAL).

V. Change Orders

- A. Larger construction contracts are now subject to a limit on the amount of change orders that may be approved. The limits are triggered when the price of a contract reaches \$1 million. Contracts with original contract prices of \$1 million or more cannot be increased by more than 25%. Contracts with lower original contract prices that are subsequently increased to reach the \$1 million threshold cannot be increased by more than 25% of the revised contract amount. In other words, the amount used for calculating the 25% limit is the first contract amount that is at least \$1 million. Gov’t Code 2267.001 *et.seq.*
- B. Change orders valued at or above \$25,000 shall require Board approval. The Superintendent shall be authorized to approve change orders of a lesser amount. Change orders approved by the Superintendent shall be communicated to the Board. Board Policy CV (LOCAL).

VI. Interaction with the City

- A. The 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.
- B. Texas Law Regarding a City’s Authority to Enforce Ordinances on Local School District
 - 1. A city may enforce its reasonable land development regulations and ordinances against an independent school district for the purposes of aesthetics and the maintenance of property values. Tex. Att’y Gen. Op. No. GA-0697 (2009).
 - 2. Generally, a city may enforce building ordinances that are related to safety. *Port Arthur ISD v. City of Groves*, 376 S.W.2d 330 (Tex. 1964).
 - 3. Generally, a city may not enforce zoning ordinances. *Austin ISD v. City of Sunset Valley*, 502 S.W.2d 670 (Tex. 1973).
- C. Grounds for Variance From Aesthetic Zoning Ordinances

1. Compliance with ordinances will create several safety hazards to students on elementary school property.
2. Compliance with ordinances will significantly increase construction costs and ongoing energy costs to run school.