

Texas Education Code

**Sec. 44.036. DESIGN-BUILD CONTRACTS FOR**

**FACILITIES.** (a) In this section:

(1) "Design-build contract" means a single contract with a design-build firm for the design and construction of a facility.

(2) "Design-build firm" means a partnership, corporation, or other legal entity or team that includes an engineer or architect and builder qualified to engage in building construction in Texas.

(3) "Design criteria package" means a set of documents that provides sufficient information to permit a design-build firm to prepare a response to a school district's request for qualifications and any additional information requested, including criteria for selection. The design criteria package must specify criteria the district considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, or any other requirement, as applicable.

(b) A school district may use the design-build method for the construction, rehabilitation, alteration, or repair of a facility. In using that method and in entering into a contract for the services of a design-build firm, the contracting school district and the design-build firm shall follow the procedures provided by Subsections (c)-(j).

(c) The district shall designate an engineer or architect independent of the design-build firm to act as its representative for the duration of the work on the facility. If the district's engineer or architect is not a full-time employee

of the district, any engineer or architect designated shall be selected on the basis of demonstrated competence and qualifications in accordance with Section 2254.004, Government Code.

(d) The district shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. The district shall also prepare the design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, or the practice of architecture within the meaning of Chapter 1051, Occupations Code, those services shall be provided in accordance with the applicable law.

(e) The district shall evaluate statements of qualifications and select a design-build firm in two phases:

(1) In phase one, the district shall prepare a request for qualifications and evaluate each offeror's experience, technical competence, and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each offeror must certify to the district that each engineer or architect that is a member of its team was selected based on demonstrated competence and qualifications, in the manner provided by Section 2254.004, Government Code. The district shall qualify a maximum of five offerors to submit additional information and, if the district chooses, to interview for final selection.

(2) In phase two, the district shall evaluate the information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and

the results of any interview. The district may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, costing methodology, or other factors as appropriate. The district may not require offerors to submit detailed engineering or architectural designs as part of the proposal. The district shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications. The district shall select the design-build firm that submits the proposal offering the best value for the district on the basis of the published selection criteria and on its ranking evaluations. The district shall first attempt to negotiate with the selected offeror a contract. 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 negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(f) Following selection of a design-build firm under Subsection (e), that firm's engineers or architects shall complete the design, submitting all design elements for review and determination of scope compliance to the district or district's engineer or architect before or concurrently with construction.

(g) An engineer shall have responsibility for compliance with the engineering design requirements and all other applicable requirements of Chapter 1001, Occupations Code. An architect shall have responsibility for compliance with the requirements of Chapter 1051, Occupations Code.

(h) The district shall provide or contract for, independently of the design-build firm, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the district. The district shall select those

services for which it contracts in accordance with Section 2254.004, Government Code.

(i) The design-build firm shall supply a signed and sealed set of construction documents for the project to the district at the conclusion of construction.

(j) A payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract under this section that includes design services only. If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the district must each be in an amount equal to the project budget, as specified in the design criteria package. The design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the district to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Added by Acts 1997, 75th Leg., ch. 1179, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1225, Sec. 5, 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1409, Sec. 12, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.757, eff. Sept. 1, 2003.