

RECOMMENDED PRACTICES FOR

Selecting an Architect for K-12 Educational Facilities



Prepared by a Joint Committee:

**The Associated General
Contractors of America**



**The Council of Educational
Facilities Planners International
(Southern Region / Gulf Coast Chapter)**



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Prepared by a Joint Committee of:

The Associated General Contractors of America
Houston, Texas Chapter

(and)

The Council of Educational Facilities Planners International
Southern Region/Gulf Coast Chapter

July 2006



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September 15, 2006

I am pleased to recommend this reference document for selecting an Architect for K-12 facilities. This document is the result of the partnership between the Houston, Texas Chapter of the Association General Contractors of America (AGC-Houston) and the Gulf Coast Chapter/Southern Region of the Council of Educational Facility Planners International (CEFPPI). This collaborative effort represents countless hours of hard work by educational facility planners, educational facility architects and engineers, and representatives from construction companies involved in educational facility construction projects in the Southeast Texas area.

The Board of Trustees of the Southern Region and the International Board of CEFPPI have reviewed and approved this document.

This document has been created to provide assistance, guidance and best practices recommendations to anyone involved in the design, planning and construction of educational facilities in Texas.

We are proud to be able to provide this document for all our members and for colleagues in the educational facility field.

Sincerely,

A handwritten signature in black ink, appearing to read "Irene Nigaglioni", is written over a thin red horizontal line.

Irene Nigaglioni, AIA, REFP
President – Southern Region
Southern Region Representative to the International Board



September 6, 2006

Enclosed is the recently completed document *Recommended Practices for Selecting an Architect for K-12 Education Facilities*. The reference document is intended to assist all parties involved in the selection of architects and other professionals for the design and contract administration of K-12 educational facilities in Texas.

The document is the result of many hours of debate, discussion, and research by members of the Gulf Coast Chapter of the Council of Educational Facility Planners International (CEFPI) and the Houston Chapter of the Associated General Contractors of America (AGC). Properly implemented, this document can provide a systematic and objective method for selecting design professionals

This document has been reviewed and approved by the Board of Directors of the Houston AGC.

Sincerely,

Kenneth M. Humphries
President, AGC Houston Chapter

Section 1

INTRODUCTION

Recommended Practices for Selecting an Architect for K-12 Educational Facilities

Prepared by:



Introduction

The 74th Texas Legislature (through Senate Bill No. 1, 1995) and the 75th Texas Legislature (through Senate Bill No. 583, 1997) permitted Texas' public school districts to begin utilizing alternative methods for the procurement of construction contracts. These methods were further defined by the 76th Texas Legislature (through Senate Bill 669, 1999) and the 77th Texas Legislature (through Senate Bill 510, 2001).

Because of these laws, Texas school districts have begun taking advantage of these alternative delivery systems. In particular, Construction Manager at Risk (CM@Risk), Competitive Sealed Proposals (CSP) and Design-Build have emerged as popular systems.

In earlier years, the industry experienced many variations of the processes, and in some cases, violations of the law. In 2002, The Associated General Contractors Houston Chapter (AGC-Houston) and the Council of Educational Facility Planners International Gulf Coast Chapter (CEFPI-Gulf Coast) formed a joint task force that produced a recommended practices handbook on the Construction Manager at Risk delivery method. This handbook attempted to identify former mistakes, abuses and lessons learned. It also provided much-needed guidelines to ensure compliance with the law.

Again in 2003, AGC-Houston and CEFPI-Gulf Coast teamed up with a new task force that produced a recommended practices handbook on the Competitive Sealed Proposal (CSP) delivery system. Both of these handbooks can be accessed electronically at www.agchouston.org and www.cefpi.org.

The success of the previous two AGC/CEFPI joint task forces have led to the creation of the current joint task force to produce a recommended practices handbook focusing on the selection of an architect for K-12 educational facilities. With the onset of alternative delivery systems in the market, architects should also be evaluated based on their experience and qualifications relevant to each method. Although the task force specifically addresses the selection of an architect, the documented practices can also be used for selecting engineers and other building professionals.

The committee formed to author this handbook is comprised of members of the following organizations: the Gulf Coast Chapter of the Council of Educational Facility Planners International (CEFPI); and the Houston Chapter of the Associated General Contractors of America (AGC). The committee members include a diverse group of school personnel, consultants and contractors experienced in K-12 school projects throughout southeast Texas.

This document is not intended to be a legal interpretation of the laws defining the professional services procurement act. You should consult legal counsel for all aspects of this act. The sections of this handbook have been arranged to follow the chronological steps that should be taken in the selection of an architect.

Section 2

SELECTION REQUIREMENTS FOR PROFESSIONAL SERVICES

Recommended Practices for Selecting an Architect for K-12 Educational Facilities

Prepared by:



Selection Requirements for Professional Services

The State of Texas has adopted practice acts that stipulate project types that require the employment of state licensed architects and engineers. For publicly owned buildings, these acts state the following:

An architectural plan or specification for a new building constructed and owned by a public entity where the total projected building construction costs at the commencement of construction exceed \$100,000 shall be prepared by an Architect or under the supervision and control of an Architect if the building is intended for any of the following uses:

- (1) education: the use of a building at any time for instructional purposes;*
- (2) assembly: the use of a building for the gathering together of persons for purposes such as civic, social, or religious functions or for recreation, food or drink consumption, or awaiting transportation; or*
- (3) office occupancy: the use of a building for business, professional or service transactions of activities.*

An architectural plan or specification for an alteration or addition to an existing building owned by a public entity shall be prepared by an Architect or under the Supervision and Control of an Architect if:

- (1) the total projected building construction costs at the commencement of construction exceed \$50,000;*
- (2) the alteration or addition requires the removal, relocation, or addition of a wall or partition or the alteration of an exit; and*
- (3) the building is intended for any of the uses listed in the subsection above.*

Licensed engineers must be employed to design and supervise engineering construction of public works exceeding \$8,000 in cost if electrical or mechanical engineering is involved, or if the cost exceeds \$20,000 and electrical or mechanical engineering is not involved.

For public school projects, there are several State of Texas statutes and regulations that place restrictions on the manner in which public school districts may evaluate, select and hire architects and engineers. The first of these is the Texas Government Code, Chapter 2254, Professional and Consulting Services, Subchapter A, Professional Services. This chapter carries the short form title of the Professional Services Procurement Act. A copy of this act is included in the Appendix for reference (A2 - A16).

The essential information in the Professional Services Procurement Act is covered under Section 2254.004 that states: **CONTRACT FOR PROFESSIONAL SERVICES OF ARCHITECT, ENGINEER, OR SURVEYOR.**

(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.*

(b) If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the entity shall:

- (1) formally end negotiations with that provider;*
- (2) select the next most highly qualified provider; and*
- (3) attempt to negotiate a contract with that provider at a fair and reasonable price.*

(c) The entity shall continue the process described in Subsection (b) to select and negotiate with providers until a contract is entered into.

The provisions of the Professional Services Procurement Act are further reinforced in the Board Rules and Statutes of the Texas Board of Architectural Examiners, which governs the practice of architecture in the State of Texas. Subchapter H – Professional Conduct, part 1.147 of these rules state: *PROFESSIONAL SERVICES PROCUREMENT ACT - An Architect shall neither submit a competitive bid to nor solicit a competitive bid on behalf of any governmental entity that is prohibited by the Professional Services Procurement Act, Chapter 2254, Government Code, from making a selection or awarding a contract on the basis of competitive bids. An Architect may submit information related to the monetary costs of a professional service, including information found on a fee schedule, only after the governmental entity has selected the Architect on the basis of demonstrated competence and qualifications pursuant to the Professional Services Procurement Act.*

The Texas Board of Professional Engineers has adopted provisions similar to those of the Texas Board of Architectural Examiners.

In addition to these state-level rules and regulations, local policies adopted by Texas public school districts may place restrictions on the procedures to be used in evaluating, selecting and hiring architects and/or engineers. These restrictions might include defining who within the district has the authority to perform the evaluations, negotiate the contract and hire the architect and/or engineer. However, any local policies that conflict with the provisions of the Professional Services Procurement Act must defer to the state level provisions.

Some Board of Trustees are managed by the use of standing committees to address issues related to school district operations, such as construction renovations and maintenance; curriculum and instructional; special education; business services and community services; etc. In these cases, the committee (which would consist of several board members) would be involved in the selection process of hiring architects to perform services for the school district. Typically, this committee would spend time evaluating the issues and report back to the entire Board of Trustees with their recommendation(s) for the entire board to consider and vote on the matters at hand. For school boards, this can be a very efficient method of operation.

There are other school districts that would utilize staff and/or committees (consisting of citizens, board members and appropriate staff members) to evaluate and recommend the selection of architects. This process/procedure would typically be addressed in the local board policy for that particular school district, regardless of size. This method is typical of larger school districts who have dedicated staff to manage their bond construction programs. It is also found with small school districts where the board and the Superintendent would be the committee to select the architect(s). In these cases, the architects typically are short-listed by district staff and then interviews are conducted to the entire Board of Trustees at official board meetings. At this time, the board would ultimately discuss and approve the selected architect(s).

In any of these cases, school districts must be aware that if school board members participate in the selection committee process, the committee may be subject to the provisions of the Texas Open Meetings Act, article 6252-17, V.T.C.S. Per Opinion No. JM-1072 from the Office of the Attorney General of the State of Texas, dated July 12, 1989. The State Attorney General opinion states the following: ***“If a committee comprising one or more members of the Board of Trustees of a school district meets to discuss public business or policy, the committee itself is subject to the Texas Open Meetings Act, article 6252-17, V.T.C.S.”*** A copy of the referenced opinion in the Appendix (A17 - A20).

Upon further review of other state attorney general opinions on matters related to this subject, the research found another opinion involving a County Commissioner’s Court, which is a governmental body similar to a public school district Board of Trustees. Opinion No. JC-0060 dated June 2, 1999 from the Office of the Attorney General of the State of Texas states the following: ***“An ‘Evaluation Committee’ appointed by the Smith County Commissioners Court to recommend the selection of an architect and negotiate a contract with the selected firm is, under the facts described, a ‘governmental body’ subject to the Opens Meeting Act. If, however, the county judge and one commissioner are excluded from the Committee, it becomes merely an advisory body not subject to the Act.”*** A copy of the referenced opinion is in the Appendix (A21 - A26).

Based upon these two opinions, it appears that if a school district utilizes a member of the Board of Trustees on the evaluation committee, then the committee should strongly consider complying with the requirements of the Texas Open Meetings Act in accordance with the committee’s responsibility.

It is recommended that school districts follow local board policy, and such policy should not be in conflict with the Professional Services Procurement Act. As part of this recommendation, in an effort to provide a fair and impartial evaluation, the evaluation committee should only consist of district staff members from various departments without a member of the Board of Trustees. As per the above opinions, this committee would be considered “advisory only,” and not binding on the public entity. This evaluation committee should utilize the process outlined in this handbook and present its recommendation(s) of selected architect(s) to the administration and Board of Trustees for consideration and approval. The Board of Trustees would review and evaluate the recommendation(s) submitted and vote on the agenda item accordingly. Once approved by the Board of Trustees, the administration would have the ability to utilize such firms to perform architectural services. The district should consider whether this evaluation should be conducted on a per-project basis or for an entire bond program that has been approved (or to be voted on in the near future). Experience has found that evaluation and selection of architects for an entire bond program is much more efficient and less time consuming than evaluating and selecting on a per-project basis. If a district has a very large bond program, board meetings would be extended due to the large number of projects being performed. This would result in a significant increase in board agenda items for consideration.

In regard to contractual authority, only the Board of Trustees may bind a school district. Therefore, the board must authorize the administration to enter into a binding contract with any third party, including an architectural firm. Some districts may choose to have their Board of Trustees approve the projects in the bond authorization and specifically authorize the administration to execute contracts related to those projects. In this case, the board has authorized the required expenditures for the approved projects and no further action would be required. This would include individual board approval of architectural contracts as long as the expenditure falls within the approved bond authorization amount.

These recommended practices are not developed as a substitute for legal counsel and any school district considering the hiring of architects should consult with their legal counsel before proceeding with this process.

In the Appendix

Texas Board of Architectural Examiners – “When to Engage a Registered Architect” (pg. A1)

Government Code Chapter 2254 Professional and Consulting Services (pp. A2 - A16)

Opinion No. JM-1072 from the Office of the Attorney General of the State of Texas (pp. A17 - A20)

Opinion No. JC-0060 from the Office of the Attorney General of the State of Texas (pp. A21 - A26)

Section 3

TIMING OF HIRING AN ARCHITECT

Recommended Practices for Selecting an Architect for K-12 Educational Facilities

Prepared by:



Selection Requirements for Professional Services

A school district typically starts their capital improvements program by developing a bond process to assist in determining the district's facilities needs. The district, through their typical planning process, demographic analysis, enrollment projections, etc., will determine a general need for new facilities or expansion of existing facilities based on projected student growth within district boundaries. In addition, depending on the age of existing facilities and current infrastructure, general renovation needs may be identified resulting from curriculum program changes, maintenance and operation problems, etc. Based on this process, the district then determines whether or not a bond program is needed to address the needs identified. It then develops a bond study process to evaluate the needs and finalize a recommendation for the Board of Trustees' consideration. Once approved, the Board of Trustees can then call a bond election to be voted on by taxpayers within the district. To start the process itself, the administration will often present the need for a bond study process to the Board of Trustees for consideration. After the Board approves the need for the study and the process, the district may consider hiring an architect to assist with the process itself.

It is recommended that school districts consider obtaining consultants to assist with the bond planning process. And so there is no misunderstanding of the district's expectations, it is also recommended that a scope-of-work be clearly defined prior to hiring the consultants. There are many benefits to this approach. The consultant could: assist in performing facilities assessments of existing campuses to determine recommended upgrades and system replacements; determine budget costs for proposed renovations and new facilities; evaluate existing facilities to determine alternative uses; assess the feasibility of building replacement versus renovations/additions; assist with the evaluation of building capacities and enrollment projections to determine the need for new facilities.

Once the bond planning process is complete and the bond election successful, the district must strategize and document a building program timeline to determine two things: 1) when bond sales will be initiated; and 2) when projects will start and finish based on needs identified in the bond study process. Knowing this timeline will assist the district in determining when the architect(s) should be hired in order to implement the building program.

Some districts implement the **Request For Qualifications (RFQ)** process to evaluate architect qualifications for assistance during the building program. Other districts wait until the bond election is successful before starting the qualification process. Depending on the timeline of the building program itself, either method of timing is acceptable. In fast-growth districts, you will often find that the qualification process is complete before the bond planning process even begins. This ensures that once the bond election is successful, contracts can be awarded immediately to the selected firms to start projects right away in order to meet the fast-growth needs of the district. If the district decides to wait until after the election, this could actually delay the start of the building program 60 to 90 days, depending on how long it takes the district to complete the qualification and selection process. The district should evaluate the building program timeline, bond sales and other factors to determine when it would be in their best interest to complete the selection process and have architects ready to move forward with the approved projects.

In the Appendix

Bond Program Time Line, Typical Elementary School – Fast Growth School District (pg. A27)

Bond Program Time Line, Typical Elementary School – Normal Growth School District (pg. A28)

Section 4

PUBLICATION REQUIREMENTS

Recommended Practices for Selecting an Architect for K-12 Educational Facilities

Prepared by:



Publication Requirements for Professional Services

Chapter 2254 of the Texas Government Code does not require a public school district to publish or advertise when requesting qualifications for architectural services.

Chapter 2254 does include a publication requirement that is applicable only to state agencies. This requirement is defined in Section 2151.002 of Texas Government Code Chapter 2151: “... ***a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute; the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council; or a university system or an institution of higher education as defined by Section 61.003, Education Code, except a public junior college.***” Copies of Chapters 2151 and 2254 of the Texas Government Code are included in the Appendix.

However, if architectural services are procured through a design-build contract as identified in Section 44.036 of the Texas Education Code, the school district is required to publish a notice of the deadline (time) and place where qualification responses will be received and opened. This notice must be published once a week (for at least two weeks before the deadline) in the county in which the district’s central administrative office resides. If a local county newspaper does not exist, the notice shall be published in the nearest available county newspaper (nearest county seat) of the county in which the district’s central administrative office resides. In a two-step procurement process, the deadline (time) and place where second-step responses will be received are not required to be published. Section 44.036 requires the school district to “...***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.***” A copy of Section 44.036 of the Texas Education Code is included in the Appendix.

The most popular method employed by public school districts for soliciting statements of qualifications from architects is a direct request transmitted via mail, fax or email. Other methods include telephone calls, district web site postings and classified advertisements.

In the Appendix

Government Code Chapter 2254 Professional and Consulting Services (pp. A2 - A16)

Government Code Chapter 2151 State Purchasing and General Services (pg. A29)

Excerpt from Texas Education Code Section 44.036 (pp. A30 - A31)

Section 5

EVALUATION & SELECTION COMMITTEE

Recommended Practices for Selecting an Architect for K-12 Educational Facilities

Prepared by:



Evaluation & Selection Committee

Once a school district determines there is a need to select an architect(s) for individual projects or the entire bond program, the district should consider its preferred method of selection. In some cases, the district may already have an established local policy for selection, or the Board of Trustees may already have an established Board policy for selection. Most school districts typically utilize a selection committee (consisting of various district administrators) to review and evaluate qualifications submitted by architectural firms in response to a Request for Qualifications (RFQ). It should be determined (either by the Board of Trustees or Superintendent) what authority the committee will have in the process. Some selection committees are authorized to review qualifications and recommend a select list (short-list) of architects to the Board of Trustees for approval. Other committees have the authority to select the architectural firm(s) for presentation to the Board for approval of the architectural contract. There is no legal requirement for approval by the Board of Trustees of the selection process or the final recommended list of architects by the selection committee. However, due to potential political hazards within the community, it is considered good practice to get Board approval of recommended architects for any portion of the building program.

It is recommended that an evaluation and selection committee be organized and utilized for the selection process. Larger school districts will typically have a Facilities Planning/Construction Department with several staff members serving on the selection committee. Smaller districts may only have one person overseeing the entire program and will require additional administrators to serve on the committee. In an effort to ensure a fair process (and avoid having the Facilities Department be the sole decision-maker), it is good practice to utilize additional administrators representing other departments. Politically speaking, from the outside looking in, the selection process appears much more “open” when multiple departments are involved. Selection committee members typically include the Superintendent, Associate Superintendents, Assistant Superintendents, facilities and construction staff, as well as representatives from other key departments including (but not limited to): Maintenance, Operations, Purchasing, Food Services, campus Principals, etc. In some cases, a school district may even elect to have community members serve on the selection committee.

Within the content of the architectural RFQ, school districts should identify position titles of selection committee members. The actual names of committee members should not be published. In addition, it is not recommended that members of the Board of Trustees be included on the selection committee, as this could potentially require committee meetings to be subject to the provisions of the Texas Open Meetings Act. In this case, committee meetings would have to be posted to the public in advance, subjecting the entire review and decision-making process to public observation (and potential unnecessary scrutiny). This issue is addressed further in the section addressing selection requirements for professional services.

As part of the RFQ, one person from the district should be identified as the “designated contact.” All communication between participating architects and the school district should be conducted solely through the designated contact. During the selection process, any form of communication between participating architects and members of the selection committee should be strictly prohibited and clearly instructed as such in the RFQ. In order to avoid the perception of preferential treatment, the designated district contact should ensure that any responses to requests for clarification in the RFQ are issued in writing to all participating architects. The designated district contact has certain responsibilities during the selection process:

- Issue the RFQ to architectural firms
- Schedule interviews and any site visits with architects
- Issue written responses to any questions, updates, clarifications, etc. to all participating architects
- Serve as chairperson (or co-chair) for the selection committee
- As required by progress reports, prepare/issue any communications to the school board and administrators
- Coordinate and contact all selection committee members regarding meeting schedules, etc.

Committee members who agree to serve on the selection committee should have a very good understanding of the responsibilities and time commitment required to affectively participate during the selection process. Each committee member must have a clear understanding of:

- the importance of the selection process;
- the evaluation and selection process/methodology;
- the district's standards, preferences and needs as they relate to the design and construction of new and renovated facilities;
- the typical services provided by an architectural firm;
- the design and construction process as it relates to bond projects;
- the time and commitment required to fully participate in the review and selection process (attend all meetings, interviews, site visits, etc.);
- the ability to look beyond the polished presentation materials in order to identify the strengths and weaknesses of each participating firm;
- the willingness to maintain an "open and objective" attitude throughout the evaluation and selection process; and
- the ability to be consistent in the scoring of each participating architect's response.

Ultimately, since evaluation scores are averaged together, it doesn't matter if one committee member scores consistently higher or lower than others, as long as each person is consistent with their scoring and ranking during the process. It is important to note that the selection process could require an enormous amount of time from each committee member, especially if a large number of responses to the RFQ are received.

Section 6

REQUESTS FOR QUALIFICATIONS (RFQs)

Recommended Practices for Selecting an Architect for K-12 Educational Facilities

Prepared by:



RFQ's

The Request for Qualifications (RFQ) is a vital component to any successful selection process. A focused, properly prepared request will establish a consistent format that collects specific, detailed information from architectural firms seeking to work for the district. To be most effective, this document should be tailored to the upcoming needs of a specific project, a series of projects, or an entire bond program.

The basic framework for a RFQ should include the following:

- A description of the scope of the project, group of projects or bond program and project delivery systems to be utilized (if known)
- A summary of the anticipated design services and disciplines required to complete the work
- Identification of the district's designated point-of-contact for any questions, clarifications and final submission of qualifications (contact name, phone, email address, etc.)
- Clearly defined format for the submittal
- Anticipated timeline of events for the selection process
- The position titles of members on the selection committee (if available)
- Should request general information from the participating firm (firm name, contact name, address, phone, years in business, specialties, etc.)
- Should request information on the participating firm's culture, management style and service philosophy
- Should request client/contractor references for the participating firm
- Should request project team/designated personnel proposed by the participating firm
- Other district-required vendor forms

Since the marketing materials prepared by architectural firms vary greatly in format, content, and detail, a structured submittal will allow those involved in the selection process to assess and compare each firm based on set criteria.

Once the RFQ is released, it is highly recommended that a log be maintained listing all firms requesting submittal information. Then, as notices of change and addenda are issued for the RFQ, they can be sent to all participating firms.

It is important that sufficient time be allowed for participating firms to prepare responses. A pre-proposal meeting should be considered approximately two weeks prior to the submittal deadline to answer any questions and address clarifications as needed. All questions and answers, either from the pre-proposal meeting or submitted separately in writing, should be published in an addendum and sent to each of the participating firms.

A sample RFQ follows this introduction. It has been prepared primarily as a request for architectural services that may or may not include other professional services. If needed, the document can be modified and customized to solicit for other professional services.

An additional sample RFQ recently issued by a school district is included in this book at the very end of the Appendix. Consideration should also be given to contacting other districts with on-going building programs to discuss their selection processes and potential changes that might increase the effectiveness of the process.

In the Appendix

SAMPLE: *Request for Statement of Architectural Qualifications* (end of Appendix)

REQUEST FOR QUALIFICATIONS

_____ **Independent School District**

Issued _____

_____ SCHOOL DISTRICT is seeking qualified firms to provide architectural and engineering services for the project(s) listed in project information. The district invites interested parties to submit qualifications for this work.

The district will review all complete submittals received by the deadline and short-list firms on a project(s) basis. As required by law, the district will make selection based on the best qualified firms for each project. The selection process will be based on a review of the firm's qualifications, completed projects, client references, and in some cases, interviews. Selection committee members may vary from project to project and will occur as each project is activated (only needed if multiple projects). Fee negotiations will occur with the most qualified firm selected by the selection committee as a final step in the selection process.

Scope of Services:

Include customary architectural services and related Structural / MEP / Civil engineering services for the project(s). The contract to execute between the district and the architect will be the AIA Document B141-1997, "Standard Form of Agreement Between Owner and Architect" as modified by the district.

Project Information:

Include here a description of the project(s), size, location and timing or description of entire bond program, and project delivery method to be utilized (if known).

Due Date:

By _____ pm on _____, 200__

Submission:

Forward _____ (___) copies of your qualification package to:

By _____ pm on _____, 200__

Questions:

Must be faxed to _____ or submitted electronically to _____ by _____.

REQUEST FOR QUALIFICATIONS

Submission Format:

Submissions must be complete, organized, and comply with the following conditions:

- Incomplete submissions will be disqualified.
- Follow the submission format exactly; scores will reflect the submitted format.
- Provide the submission in a letter-size binder approximately 10" x 11 ½" x 1 ½" deep or less.
- Information should be bound in a compact manner for long-term storage at a maximum of 1 ½" in depth.
- Under project references, clearly state the name of the firm who performed the references work. If work was performed under the employment of another firm, indicate so by naming that firm. Provide a description of the specific work performed by the firm or individual referencing each project.
- If you are submitting as a joint venture, provide separate project lists clearly indicating the name of the firm that completed each project being referenced and the specific role of that firm in the project.

Front of Binder

- Letter of Interest
- RFQ Submission Checklist Form

Tabs (1 through 5)

- In each Tab include the information as indicated on the RFQ.

Selection Timeline:

Request For Qualifications Released	_____
Deadline to submit questions	_____
Due Date For Request For Qualifications	_____
Selection Committee Review	_____
Interviewing, if appropriate	_____
Board Approval	_____

The timeline illustrated above is an estimate. It is subject to change according to schedule availability of selection committee members.

REQUEST FOR QUALIFICATIONS

RFQ SUBMISSION CHECKLIST FORM

Name of Firm: _____

Contact: _____

Phone: _____

Email: _____

REQUIRED DOCUMENTS

PLACEMENT

<input type="checkbox"/> 1. Letter of Interest	Insert at front of binder
<input type="checkbox"/> 2. RFQ Submission Form	Insert at front of binder
<input type="checkbox"/> 3. Submission of Qualifications	Insert in Tab 1, 2, 3, 4
<input type="checkbox"/> 4. Conflict of Interest Disclosure	Insert in Tab 5
<input type="checkbox"/> 5. Felony Conviction Notification	Insert in Tab 5
<input type="checkbox"/> 6. Certificate of Residency	Insert in Tab 5
<input type="checkbox"/> 7. HUB or Minority Owned Business Certification	Insert in Tab 5
<input type="checkbox"/> 8. Affidavit of Non-Collusion	Insert in Tab 5
<input type="checkbox"/> 9. Affidavit of Non-Discriminatory Employment	Insert in Tab 5
<input type="checkbox"/> 10. Supplemental Information (optional)	Insert in Tab 6

REQUEST FOR QUALIFICATIONS

Submission Content

The following information is comprehensive. Each district should choose the questions most appropriate for them.

Tab 1: Firm Information

- 1.1 Firm Name:
- 1.2 Business Address:
- 1.3 Telephone/fax number:
- 1.4 Contact/email address:
- 1.5 Type of organization: Individual or sole proprietorship, professional corporation, corporation partnership, joint venture or other
- 1.6 Name of Principals:
- 1.7 Professional History:
- 1.8 Provide last three years of financial statements (audited, if available)
- 1.9 Professional Affiliations:
- 1.10 Honors and Awards:
- 1.11 Professional and Civic involvement:
- 1.12 Comment on the firm's specialized expertise:
- 1.13 Number of years the firm has designed K-12 educational facilities:
- 1.14 Provide the firm's annual billings for the past three years and indicate the percentage that represents K-12 billings.
- 1.15 Provide the firm's organization chart indicating the following:
 - Total number of registered architects and the number of years with the firm
 - Total number of employees
- 1.16 Provide the firm's sample insurance certificate.
- 1.17 Provide the firm's history of claims and litigation for the past three years and how these claims were resolved.
- 1.18 Is the firm HUB or M/WBE certified? If so, identify certifying agency.
- 1.19 Provide a history of HUB or M/WBE utilization for the past three years.
- 1.20 Does the firm have in-house Civil, Structural, MEP Engineering or other Consultants expertise?
- 1.21 Provide any comments or concerns the firm has with the Owner/Architect contract.
- 1.22 Is the firm's principal office or a secondary office located in this school district?
- 1.23 Does any member of the firm's team presented for this project live in this school district?

REQUEST FOR QUALIFICATIONS

Tab 2: Firm's Management Style & Philosophy

- 2.1 Does the firm create its own Project Manuals/Specifications or is this service contracted out?
- 2.2 Does the firm have a history of producing school district-specific master specifications?
- 2.3 Do the firm's qualifications rely on any associate architects and/or consultants?
- 2.4 Provide the current workload of the firm versus the firm's workload capacity (expressed by the number of projects, their budget and the phase they are currently in).
- 2.5 Provide information on how many architect employees have been added to the staff in the past 12 months and how many architects have left the firm in the past 12 months.
- 2.6 Describe the firm's culture, vision and philosophy.
- 2.7 Describe the firm's design philosophy.
- 2.8 Describe the firm's organization and project management philosophy.
- 2.9 Describe the firm's programming and design process.
- 2.10 Describe the firm's quality control program during the design services.
- 2.11 Provide history of the firm's design time schedule adherence.
- 2.12 Describe the firm's philosophy and practice of document coordination.
- 2.13 How does the firm handle its errors and omissions? Provide an example.
- 2.14 Provide a history of the firm's accuracy in developing project budgets for school districts.
- 2.15 Provide a summary of the firm's bidding history, include the extent of addendum's issued and number of pages.
- 2.16 Describe the firm's philosophy regarding value engineering.
- 2.17 Describe the firm's coordination practices during preconstruction with the General Contractor/Construction Manager.
- 2.18 Describe the firm's use of technology during design services and construction administration phases of the project.
- 2.19 How does the firm handle warranty issues?
- 2.20 Identify the firm's most successful project and why.
- 2.21 Identify the firm's most unsuccessful project and why.
- 2.22 List the firm's experience with the Competitive Sealed Proposal (CSP) and the Construction Manager @ Risk (CMAR) project delivery systems.

REQUEST FOR QUALIFICATIONS

Tab 3: Firm References

- 3.1 Please provide a list of project references similar to this project(s) you are proposing on:
- Consider the school district, function and size of the project and the project delivery system
 - List up to ten projects and include Owner, Consultants, General Contractor/Construction Manager and Subcontractor(s) references (minimum of one) with contact name, phone and fax numbers
- 3.2 For the projects listed above, provide the following information:
- Owner's initial number of calendar days for design and contract document phases
 - Describe schedule overruns during the design and contract document phases
 - Owner's initial budget for construction cost
 - Initial contract amount with the General Contractor/Construction manager
 - Final contract amount

Tab 4: Project Team

- 4.1 Provide team organization chart for the project(s) you are proposing on, including back-up personnel:
- Provide resumes and references for the team proposed. Include Owner, Consultants and General Contractor Construction Manager references with contact name, phone and fax numbers
- 4.2 Will construction administration on this project(s) be performed with staff that was involved in the design and production of the contract documents?
- 4.3 Provide current workload of the team proposed by number of projects, their budgets and current phase (design, contract documents or construction).
- 4.4 Describe the involvement of a firm's principal in this project and their extent of involvement.
- 4.5 Include a tentative design services schedule.
- 4.6 List proposed consultants to be used for this project(s).
- 4.7 Do you see any potential conflicts of interest if awarded this project(s)?

Tab 5: Forms *(Use only the forms that are appropriate to your district)*

- Conflict of Interest Disclosure
- Felony Conviction of Residency
- Certificate of Residency
- HUB or Minority Owned Business Certification
- Affidavit of Non-Collusion
- Affidavit of Non-Discriminatory Employment

Tab 6: Supplemental Information

Supplemental Information may be submitted.

Section 7

REFERENCE QUESTIONNAIRE

Recommended Practices for Selecting an Architect for K-12 Educational Facilities

Prepared by:



Reference Questionnaire

In qualifying and selecting an architectural firm, a district must be clear internally on the qualifications it is seeking and the methods it will follow to determine qualifications. The district must have a clear understanding about what it is seeking and how it will evaluate qualifications submitted.

One of the best ways to accomplish this objective is to establish a point scoring system. This is particularly difficult given the often subjective nature of architectural selection.

This guide has provided a sample reference questionnaire for use in contacting the references of participating architectural firms. This questionnaire is designed to be easy to send, easy for the reference to use, and easy for the district to tabulate. It is also flexible enough to allow the district to customize it to address its own needs.

The following is an overview of the sample questionnaire form located at the end of this section. It discusses how to use and score the form.

Overview

The questionnaire form is organized into three (3) sections:

1. Introduction – This section contains reference information and fax number. It identifies the school district sending the form and the project for which the district is seeking a reference.

Use: The form is designed to be sent via fax. The district must fill in the company name, the individual contact at the company, their fax number, the name of the district, the project(s) for which the architectural firm has submitted qualifications, and the name of the architectural firm.
2. Questionnaire – This section contains a series of graded questions. The grade attached to each question is based on a point system. The point system is based on a scale from “strongly disagree” to “strongly agree.” Respondents circle the point score they believe is appropriate.
3. Comments and Instructions – This section contains instructions on how/when to return the form, as well as space for respondents to offer additional comments. In the event the respondent has questions, the district should include the name and contact information of the person receiving the form.

How to use the form

The form may be used exactly as provided in this guide. In this case, the district receiving the form would total the average of the points in each column. The district would then follow the same procedure to determine an average score from all respondents – that is, to calculate a total average score of all average scores.

Alternately, the district may elect not to use the average score method described above. Instead, the district might decide to take average scores for each question from all respondents. For example, question 13 addresses the quality of the working drawings. If reference forms were sent to three different references and scores of 1, 3 and 5 were returned for question 13, the district may elect to score this question as a 3 (that is $1+3+5=9$ divided by 3 reference responses equals an average score of 3). The total of these average scores for each question could then be added up to create an overall score for an architectural firm.

Another method of scoring would be to assign a weighted value to questions of particular importance to the district. If the questionnaire has 21 questions, and question 13 was of particular importance to the school district, that question might be assigned a weighted value of 10 points, and questions of lesser importance might be assigned lower values. The average of the weighed scores for each question would then be totaled among the references (as described in the preceding paragraph) and an overall average score calculated.

In the cases of the last two scoring methods, the average score box at the end of the questions would be disregarded. In addition, the district may choose to add their own questions to the suggested format (or delete some questions). Whatever scoring method is chosen, the district must determine how it wants to utilize reference scoring and what weight it will carry in the overall process.

ARCHITECTURAL FIRM REFERENCE QUESTIONNAIRE

DATE: _____

TO: COMPANY _____

CONTACT _____

FAX NUMBER _____

_____ ISD has accepted architectural qualification statements for:

PROJECT NAME(S): _____

This firm has used your company/organization as a reference: _____

(INSERT FIRM NAME)

The following questions are part of _____ ISD's selection criteria and will help us evaluate this firm's qualifications for our project(s). We would greatly appreciate your response to the following questions regarding their performance on project(s) you are familiar with. Please review each question and circle the appropriate answer.

		Strongly Disagree		Disagree		Agree		Strongly Agree		N/A	
1) This firm is knowledgeable and well qualified in the area of K-12 educational facilities (and in the type of work being considered for this project).	1	2	3	4	5	6	7	8	9	10	n/a
2) This firm maintained the project(s) schedule during the design services phase (preliminary design, design development and construction documents).	1	2	3	4	5	6	7	8	9	10	n/a
3) This firm showed leadership and the desire to work as a team during the construction documents phase of the project(s).	1	2	3	4	5	6	7	8	9	10	n/a
4) Addendums issued during the bidding process were timely and reasonable in number, scope and length (versus extensive).	1	2	3	4	5	6	7	8	9	10	n/a
5) The proposals/bids received were within the anticipated range of cost (rather than over budget).	1	2	3	4	5	6	7	8	9	10	n/a
6) This firm reviewed and approved the shop drawings and product submittals in a timely manner avoiding unnecessary and extensive delays during construction.	1	2	3	4	5	6	7	8	9	10	n/a
7) This firm responded promptly to RFI's, PR's and change orders in order to maintain the project(s) schedule.	1	2	3	4	5	6	7	8	9	10	n/a
8) This firm shows leadership and works as a team player rather than being adversarial during the construction phase. Construction-related issues are resolved in a fair and reasonable manner.	1	2	3	4	5	6	7	8	9	10	n/a
9) This firm was willing to consider and implement viable suggestions from the Owner, consultants, general contractor and subcontractors for the betterment of the project(s).	1	2	3	4	5	6	7	8	9	10	n/a

10) This firm had minimal or a reasonable number of change orders due to architectural errors or omissions.	1	2	3	4	5	6	7	8	9	10	n/a
11) The project drawings and specifications were complete, thorough and well coordinated between design disciplines.	1	2	3	4	5	6	7	8	9	10	n/a
12) Specifications for the project(s) were appropriately customized, conveying the intent of the design and district standards.	1	2	3	4	5	6	7	8	9	10	n/a
13) This firm was cooperative, responsive and timely in compiling and following up on the general contractors' completion of the punch list.	1	2	3	4	5	6	7	8	9	10	n/a
14) This firm expedited project close-out (to extent possible) and organized and reviewed the record drawings, O&M manuals, warranties, etc. with little assistance from district staff.	1	2	3	4	5	6	7	8	9	10	n/a
15) This firm followed up on significant warranty issues and assisted the district in completing the one-year warranty walk-through.	1	2	3	4	5	6	7	8	9	10	n/a
16) The project(s) was designed substantially compliant with the State of Texas handicap accessibility requirements and has received certification from the State.	1	2	3	4	5	6	7	8	9	10	n/a
17) Despite the adverse conditions inherent in every project, this firm performed consistently well from design through project close-out.	1	2	3	4	5	6	7	8	9	10	n/a
18) This firm provided adequate and consistent staff from design through project close-out.	1	2	3	4	5	6	7	8	9	10	n/a
19) This firm would likely be hired again.	1	2	3	4	5	6	7	8	9	10	n/a
TOTALS:											

FOR DISTRICT USE
TOTAL SCORE
(relevant scores only): _____

What type of project is this firm best suited for?

What type of project is this firm least suited for?

Other comments?

Thank you for your assistance with this questionnaire. Once complete, please fax to our office at _____ (fax) by _____ (time) on _____ (date).

Sincerely,

 (NAME)

 (DATE)

Section 8

RANKING & SCORING OF QUALIFICATIONS

Recommended Practices for Selecting an Architect for K-12 Educational Facilities

Prepared by:



Ranking and Scoring of Qualifications

During the selection process, there are no legal requirements for ranking and scoring architectural qualifications. However, it is recommended that school districts utilize an objective evaluation process to select an architectural firm(s). By documenting how the selection was made, the use of an objective process helps to address any accountability issues that may arise later.

Within this handbook, architectural evaluation forms have been provided that offer both objectivity and flexibility. These forms are provided in a customizable format to accommodate individual district priorities/needs.

Form 1: RFQ Response Scoring Sheet

This form is used by each member of the selection committee to score each architectural firm's response to the RFQ. This form follows the RFQ format found at the end of Section 6 in this book (RFQs).

Based upon individual district priorities and needs, the selection committee may elect to expand (or reduce) the evaluation criteria in Column 2 and weight the criteria differently in column 5.

If the number of responses to the RFQ is substantial (6 or more firms), it is recommended that a short-list be developed using the scores from Form 1. At that point, reference questionnaires (located at the end of Section 7 in this book) should be distributed to each respondent's references (short-listed firms or all respondents).

Form 2: Tabulation of Reference Questionnaire Responses

This form is used to tabulate and score the returned reference questionnaires for each respondent. The evaluation criteria follow the questions in the reference questionnaire. The third column allows the school district to weight the criteria based on their own priorities. Line 22 produces a numerical average of the weighted scores for all criteria.

Form 3A: Evaluation Scoring Tabulation Sheet

This form is used to tabulate the scores from the RFQ Response Scoring Sheet (Form 1) and the responses to the reference questionnaire (Form 2). Again, depending on district priorities, the form's flexibility allows reference scorings to be equal to an individual evaluation (Form 1), or have increased weighting.

Form 3B

This form (used only if the district conducts interviews) is used to score the effectiveness of each architectural firm during the interview process.

Form 4: Final Tabulation

This form is used to tabulate the final scores of all architectural firm respondents from Form 3A, and interview scores from Form 3B (if used).

FORM 1

RFQ RESPONSE SCORING SHEET

DATE: _____

ARCHITECT NAME: _____

PROJECT NAME: _____

SCHOOL DISTRICT NAME: _____

Evaluator Name:		Criteria Scoring (1 to 10) <i>1 (Unacceptable)</i> <i>5 (Average)</i> <i>10 (Exceptional)</i>		Criteria Weighting <i>(If all evaluation criteria are of equal weight, leave "1" in this column. Increase this numerical value for evaluation criteria which are of higher importance.)</i>		
Evaluation Criteria		Score		Weighting		Weighted Score
1	TAB 1 - Firm Information	0	x	1	=	0
2	TAB 2 - Firm's Management Style & Philosophy	0	x	1	=	0
3	TAB 4 - Project Team	0	x	1	=	0
4	TAB 5 - Forms	0	x	1	=	0
5	TAB 6 - Supplemental Information	0	x	1	=	0
6	Adherence to Submission Requirements	0	x	1	=	0
7	TOTAL WEIGHTED SCORE <i>(Sum of Weighted Scores Lines 1 Through 6)</i>					0

FORM 2

TABULATION OF REFERENCE QUESTIONNAIRE RESPONSES

No.	Evaluation Criteria	Criteria Weighting <i>(If all criteria are of equal weight, leave "1" in this column. Increase this value for criteria of higher importance)</i>	Ref. Name 1	Ref. Name 2	Ref. Name 3	Ref. Name 4	Ref. Name 5	Ref. Name 6	Ref. Name 7	No. of Reference Scores <i>(Enter the number of reference scores received for each criteria)</i>	Average Weighted Score <i>(Sum of criteria scoring multiplied by criteria weighting; Divided by No. of reference scores)</i>
			Reference Scores <i>10 (Str. Agree) to 1 (Str. Disagree)</i>								
1	This firm is knowledgeable and well qualified in the area of K-12 educational facilities (and the type of work being considered for this project).	1								7	0
2	This firm maintained the project(s) schedule during the design services phase (preliminary design, design development and construction documents).	1								7	0
3	This firm showed leadership and the desire to work as a team during the construction document phase of the project(s).	1								7	0
4	Addendums issued during the bidding process were timely and reasonable in number, scope and length (versus extensive).	1								7	0
5	The proposals/bids received were within the anticipated range of costs (rather than over budget).	1								7	0
6	This firm reviewed and approved the shop drawings and product submittals in a timely manner avoiding unnecessary and extensive delays during construction.	1								7	0
7	This firm responded promptly to RFI's, PR's and change orders in order to maintain the project schedule(s).	1								7	0

REFERENCE QUESTIONNAIRE TABULATION (cont'd)

		Criteria Weighting <i>(If all criteria are of equal weight, leave "1" in this column. Increase this value for criteria of higher importance)</i>	Ref. Name 1	Ref. Name 2	Ref. Name 3	Ref. Name 4	Ref. Name 5	Ref. Name 6	Ref. Name 7	No. of Reference Scores <i>(Enter the number of reference scores received for each criteria)</i>	Average Weighted Score <i>(Sum of criteria scoring multiplied by criteria weighting; Divided by No. of reference scores)</i>
8	This firm shows leadership and works as a team player rather than being adversarial or unreasonable during the construction phase. Construction related issues are resolved in a fair and reasonable manner.	1								7	0
9	This firm was willing to consider and implement viable suggestions from the owner, other consultants, general contractor and subcontractors for the betterment of the project(s).	1								7	0
10	This firm had minimal or a reasonable number of change orders due to architectural errors or omissions.	1								7	0
11	The project drawings and specifications were complete, thorough, and well coordinated between the design disciplines.	1								7	0
12	The specifications for the project(s) were appropriately customized, conveying the intent of the design and the district standards.	1								7	0
13	This firm was cooperative, responsive, and timely in compiling and following up on the general contractors completion of the punch list.	1								7	0
14	This firm expedited the project close-out process (to the extent possible) and organized and reviewed the record drawings, O&M manuals, warranties, etc. with little assistance from the district staff.	1								7	0
15	This firm followed up on significant warranty issues and assisted the district in completing the one-year warranty walk-through.	1								7	0

REFERENCE QUESTIONNAIRE TABULATION (cont'd)

		Criteria Weighting <i>(If all criteria are of equal weight, leave "1" in this column. Increase this value for criteria of higher importance)</i>	Ref. Name 1	Ref. Name 2	Ref. Name 3	Ref. Name 4	Ref. Name 5	Ref. Name 6	Ref. Name 7	No. of Reference Scores <i>(Enter the number of reference scores received for each criteria)</i>	Average Weighted Score <i>(Sum of criteria scoring multiplied by criteria weighting; Divided by No. of reference scores)</i>
16	The project(s) was substantially in compliance with the State of Texas handicap accessibility requirements and has received certification from the State.	1								7	0
17	This firm performed consistently well from design through project close-out despite the adverse conditions that occur on every project.	1								7	0
18	This firm provided adequate and consistent staff from design through project closeout.	1								7	0
19	This firm would likely be hired again.	1								7	0
20	TOTAL WEIGHTED SCORES <i>(Sum of Last Column, Lines 1 Through 19)</i>										0
21	NUMBER OF EVALUATION CRITERIA										19
22	AVERAGE WEIGHTED SCORES <i>(Line 20 Divided by Line 21)</i>										0

FORM 3A

EVALUATION SCORING TABULATION

DATE: _____

ARCHITECT NAME: _____

PROJECT NAME: _____

SCHOOL DISTRICT NAME: _____

		Reference Weighting <i>(If reference scoring is of equal weight to scoring by each evaluation team member, leave "1" in this column. Increase this numerical value if reference scoring is of higher weight)</i>		References Score <i>(Form 2 Line 22)</i>		Total Weighted Score
1	Average Score from Reference Questionnaires	1	x	0	=	0
	Evaluators					
2	Evaluator Name 1 <i>Enter Evaluator's Score from Form 1, Line 7</i>					0
3	Evaluator Name 2 <i>Enter Evaluator's Score from Form 1, Line 7</i>					0
4	Evaluator Name 3 <i>Enter Evaluator's Score from Form 1, Line 7</i>					0
5	Evaluator Name 4 <i>Enter Evaluator's Score from Form 1, Line 7</i>					0
6	Evaluator Name 5 <i>Enter Evaluator's Score from Form 1, Line 7</i>					0
7	Evaluator Name 6 <i>Enter Evaluator's Score from Form 1, Line 7</i>					0
8	Evaluator Name 7 <i>Enter Evaluator's Score from Form 1, Line 7</i>					0
9	Enter Number of Evaluators + 1 (References Score)					8
10	TOTAL AVERAGED EVALUATION SCORE					0

FORM 3B

INTERVIEW SCORING

DATE: _____

ARCHITECT NAME: _____

PROJECT NAME: _____

SCHOOL DISTRICT NAME: _____

No.	Evaluation Criteria	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	Evaluator 6	Evaluator 7	No. of Evaluators <i>(Enter the number of evaluation scores received for each criteria)</i>	Average Score <i>(Sum of evaluation scores divided by number of evaluators)</i>
		Evaluation Scoring <i>10 (Excellent) 5 (Average) 1 (Poor)</i>								
1	How well did the Architect and their team interact with each other and the selection committee?								7	0
2	Were the Architect's key personnel present and engaged in the presentation?								7	0
3	Was the presentation clear, concise, and "on subject"?								7	0
4	Were technical issues understandable?								7	0
5	Were the selection committee's questions answered?								7	0
6	Would this team present well to the school board and parent organizations?								7	0
7	Was the information in the presentation consistent with the information included in the Architect's RFQ response?								7	0
8	TOTAL AVERAGE SCORE <i>(Sum of Last Column, Lines 1 Through 6)</i>									0

FORM 4

FINAL TABULATION

DATE: _____

PROJECT NAME: _____

SCHOOL DISTRICT NAME: _____

Architectural Firms	Interview Score <i>(Form 3B Line 8)</i>		Interview Weighting <i>(If the Interview Score is of equal weight to the Evaluation Score, leave "1" in this column. Change this numerical value if the Interview Score is of higher or lower weight.)</i>		Weighted Interview Score		Evaluation Score <i>(Form 3A Line 10)</i>		Total Score <i>(Weighted Interview Score + Evaluation Score)</i>
Architect #1	0	x	1	=	0	+	0	=	0
Architect #2	0	x	1	=	0	+	0	=	0
Architect #3	0	x	1	=	0	+	0	=	0
Architect #4	0	x	1	=	0	+	0	=	0
Architect #5	0	x	1	=	0	+	0	=	0
Architect #6	0	x	1	=	0	+	0	=	0

Section 9

SHORT-LISTING FOR FORMAL INTERVIEWS

Recommended Practices for Selecting an Architect for K-12 Educational Facilities

Prepared by:



Short-Listing for Formal Interviews

Team member compatibility is critical to the success of every project. So, although not required, formal interviews are a recommended part of the architectural selection process. The interview process helps the selection committee better understand the architectural firm's style, personalities, priorities and approaches (all critical factors in determining if the architect is compatible with the district's project team).

Interviews also afford the district the opportunity to evaluate the architectural firm's presentation skills, and how the firm will present on behalf of the district as its representative on a project (or group of projects).

At the interview, it is important that short-listed firms be represented by the key personnel to be assigned to the project(s). It is also recommended that key members of the architect's consultants be present.

On an individual project, three to five firms should be short-listed for interviews. Larger building programs (including numerous projects) may necessitate hiring more than one architect, thus requiring a larger short-list of firms from which the final selections will be made.

Section 10

INTERVIEW PROCESS & REQUIREMENTS

Recommended Practices for Selecting an Architect for K-12 Educational Facilities

Prepared by:



Interview Process and Requirements

Interviewing Short-Listed Architectural Firms

While a short-list of architectural firms is being developed, a schedule should be established to coordinate the dates necessary for architectural recommendations and approval by the Board of Trustees. This schedule should accomplish the following:

- Determine the milestones that must be met for the selection of the architectural firm(s)
- Send a “Notice of Interview” to the short-listed firms with a list of important topics that the selection committee would like addressed during the interview
- Allow appropriate preparation time for the selected firms (approximately 2 weeks)
- Establish an interview schedule that is compatible with committee participant time, but also meets the time frames and deadlines dictated by the selection process
- Provide an interview room with sufficient size for visual presentations that might include easels, boards and or PowerPoint presentations. Inform the short-listed firms about what will and will not be provided for their use (laptops, projection screens, projectors, easels, etc.)
- Allow adequate time for the selection committee to analyze and grade the presentations

Consideration should also be given to conducting the interviews at the offices of the short-listed firms. By doing so, the selection committee might achieve a greater understanding of the participating firm through meeting their staff and observing their internal organization and processes.

Interview Participants

The selection committee should conduct the interviews and may choose to involve others based on their role in the overall project or program. Additional participants might include principals, administrative staff, finance and/or maintenance/operations staff.

Proposed Interview Agenda

Should formal interviews be conducted as part of the selection process, it is recommended that an agenda be prepared that outlines the content and a planned timeframe for the interview process. To aid in interview preparation, a copy of the agenda should be furnished to the architectural firm(s) in advance of the interview. Interviews should allow adequate time for each architectural firm to set up and remove their presentation without interfering with the next scheduled interview. A sample Agenda might include:

- I. Introductions (5 minutes)
- II. Review of Selection Process (5 minutes)
- III. Architectural Team Presentation (20 to 30 minutes)
- IV. Questions and Answers (10 to 20 minutes)
- V. Closing (5 minutes)
- VI. Total Time Allocated (45 minutes to 1 hour)

A 30-minute break (minimum) between interviews should be considered. This transition time should allow a break for the committee and time for the next participant to set up their presentation. Determining the appropriate number of interviews per day is also important. This should be based on selection committee work schedules, availability of the interview room and the endurance of committee members.

Introductions

Introduce selection committee and school representatives with a brief explanation of their role in the process.

Review of the Selection Process

Briefly review the interview and selection process. If possible, describe the general anticipated time frame.

Architectural Team Presentation

This is the architectural firm's time to present their proposed team and arguments for why they should be considered. This time should be monitored to avoid running over.

In preparing for this portion of the interview, the selection committee should review each of the firms' submittals and be familiar with their response. The committee may choose to ask the architects to elaborate on issues that are critical to the projects under consideration such as:

- Design Approach
- Budget Control
- Construction Administration Approach
- Key Personnel
- Team Interaction (Committee, Architect, Contractor)

The interview will be the committee's best opportunity to assess the architectural firm's personality and its ability to answer questions directly.

Questions and Answers

Members of the selection committee should feel free to ask any questions of the architectural firm except questions related to architectural fees for the project(s). Fee discussions/negotiations are strictly prohibited until the recommendation and final selection of an architectural firm is complete.

Closing

Consider allowing time for the architectural firm to make closing remarks.

Scoring Interview Presentations

Interview evaluations should be completed as soon as possible following each interview. Since each short-listed firm has already been acknowledged for its expertise through the short-listing process, the selection committee should consider:

- how well the firm and its team interacted with each other and selection committee members;
- whether or not the firm’s key personnel were present and engaged in the presentation;
- whether or not the presentation was clear, concise and “on subject”;
- whether or not any technical issues were understandable;
- whether or not the selection committee’s questions were answered “honestly” and thoroughly;
- whether or not this team would present well to the Board of Trustees and parent organizations;
- whether or not the presentation was consistent with information included in the firm’s RFQ response.

The committee should complete the interview evaluation forms in Section 8 of this book (Ranking/Scoring of Qualifications).

Section 11

FINAL SELECTION & APPROVALS

Recommended Practices for Selecting an Architect for K-12 Educational Facilities

Prepared by:



Final Selection Process and Approvals

For larger bond programs, the school district might consider selecting multiple architectural firms to complete the many addition/renovation projects and new facilities associated with such a program. There is no suggested “rule-of-thumb” when it comes to deciding the number of firms to hire based on the size of a building program. However, many factors should be considered when making this decision. These factors include, but are not limited to:

- the political environment;
- board policy (as established by the Board of Trustees);
- the number of projects included in the bond program;
- the timing (or proposed timelines) for the projects;
- the capabilities of the internal staff assigned to manage the program for the district;
- local administration policy;
- workload capacities of the firms being considered;
- and other miscellaneous factors.

It should be noted that if the district decides to utilize numerous firms for the bond program, it becomes increasingly difficult to manage multiple firms in terms of consistency of the educational design and construction standards the district has set for its building program.

Larger school districts with large bond programs usually have several staff members who assist with managing projects from programming through construction and warranty phases. In some cases, the district may choose to work with a program manager to assist in managing the numerous bond projects. Smaller school districts typically have one person and clerical support that oversee the entire program. Smaller bond programs may not require the need to hire multiple architects. In some cases, districts utilize the selection process to determine which architectural firms should be hired for individual projects within a bond program.

After the interview process has been completed and scored by the selection committee, it should be determined how many firms will be considered for the final selection process. In addition, as part of the RFQ, the district should indicate if additional review and evaluation steps will be taken beyond the interview process. Some districts create an additional short-list after the interview and move into another phase of the selection process that includes having short-listed firms provide additional data on specific issues such as maintenance and operation costs including utilities, etc. The committee might also consider taking tours of select projects designed by the short-listed firms. Another option might be to have the committee visit the office(s) of the short-listed firms in order to have informal discussions with individual members of the architectural team being proposed for services in the district.

If the district elects to utilize additional phases beyond the RFQ and interview process, the committee should develop a similar evaluation scoring process to that used for reviewing and scoring RFQ submittals and interviews. It is important to note that, no matter how many phases are utilized, there is no legal requirement for the district to disclose the scoring process utilized by the committee during the selection process. However, it should be emphasized that the process should be consistent for all participating firms during every phase, and should be well documented in case the district receives a public information request for information regarding the evaluation and selection of architectural firms. If requested, the district would be required to disclose all available information that is part of the record-keeping process.

Once the district completes all phases of the evaluation process for each participating firm, those firms with the highest ranking and/or scores (based upon the selection committee's evaluation criteria) would be selected (e.g. the district wants to select a total of 4 firms, so the highest four ranked firms would be the final selected firms). After completing the final selection, the selection committee would submit its final recommendation(s) to the administration for consideration and final approval.

It should be noted that it is not mandatory for the Board of Trustees to approve the recommendations of the selection committee. The administration could accept the recommendations as submitted and proceed into the next phase of formal fee negotiations and contract execution with each firm selected. If this approach is taken, the Superintendent may elect to submit a formal written report to the Board of Trustees that provides an executive summary of the selection process and the final results indicating which firms were selected.

Whether required or not by administrative and/or board policies, some districts elect to submit the committee's recommendations to the Board of Trustees for final approval at the next regularly scheduled board meeting. If board approval is required, it is most common that the district administrator responsible for Facilities Planning & Construction (along with a committee chairperson) makes the presentation to the board. The presentation indicates the results of the process and makes a final recommendation of architectural firms for the School Board's review and final approval. Utilizing this process, the recommendation would be the same for the entire bond program or individual projects.

Section 12

FORMS OF AGREEMENT

Recommended Practices for Selecting an Architect for K-12 Educational Facilities

Prepared by:



Forms of Agreement between Owner and Architect

The formal agreement between Owner and Architect is intended to establish the scope, terms, conditions and compensation for which an architectural firm will deliver services for a project(s). The agreement outlines the schedule (timeline) for services and the process necessary to modify scope, fees and services.

In determining the form of agreement, the Owner may choose to use one of the standard forms authored by professional organizations such as the American Institute of Architects (AIA). These documents have been developed over many years and reflect changes in the construction industry and interpretations of governing laws. Modifications to the standard forms are typically accomplished through amendments and special conditions.

Should the Owner prefer a non-standard form, legal counsel (experienced in the design and construction industry) should be employed to develop the document and its subsequent modifications.

At a minimum, agreements should include (but not limited to):

- the parties executing the agreement;
- a description of the scope of services and additional services;
- identification of the Owner's and Architect's representative(s);
- the Owner's and Architect's responsibilities and expectations;
- the Architect's compensation and the payment terms;
- a set project schedule;
- identification of final ownership of the documents;
- the process to terminate the agreement (if necessary);
- insurance coverage and limits.

In negotiating the architect's contract, emphasis should be placed on prevention of problems and allocation of risk. Contract terms should be clear and concise in establishing responsibilities, rights and privileges for each party. Consideration should be given to agreement terms that protect the Owner's interest while avoiding terms and conditions that create uninsurable conditions for the architect.

The Owner should never execute a contract without the review of legal representation.

Section 13

FEE NEGOTIATION & STRUCTURE

Recommended Practices for Selecting an Architect for K-12 Educational Facilities

Prepared by:



Fee Negotiation and Structure

According to Texas law, architectural fees cannot be discussed nor negotiated during the architectural selection process. Architects are to be selected based solely on qualifications, not fees. Once the selection process has been completed and an architectural firm has been selected, the district can then enter into formal fee negotiations with the selected firm(s). Fee negotiations can be conducted for architectural services related to one project, several projects or an entire bond program.

Basic Services Fee Structure

Standard Form of Agreement Between Owner and Architect (AIA Document B141) is the industry-standard form used by most school districts for architectural services. This form (B141) outlines and describes a set of “basic services” to be performed by an architect during the design and construction phases of a project.

When a district (Owner) enters into negotiations with an architect, it is important to understand that the fees being negotiated are typically based on the architect’s ability to provide “basic services” described in B141. The Owner should be aware that the listing of services documented in B141 might not be inclusive of all services required by the Owner to complete the project(s). To avoid any misunderstandings of service expectations, it is highly recommended that school districts carefully review B141 as it relates to the level/type of services expected for completion of the project(s). If the district requires particular services not included in B141, it is recommended that the additional scope be discussed with the architect for inclusion in the contract. This protects the Owner by ensuring that the final negotiated fee encompasses all services required by the Owner. Otherwise, the district may find itself subject to “additional service charges” by the architect as detailed in B141. This is discussed further below.

There are many factors to consider when entering into fee negotiations with an architectural firm. Such factors include, but are not limited to: project type, project size, new construction or renovations and construction delivery method. Usually, the school district negotiates a flat fee based on a percentage of final construction costs (for new construction and/or renovation projects, regardless of complexity). The typical fee range for most new construction and renovation projects is 5% to 8% of final construction costs. For more complex renovation projects, the typical fee ranges from 6 to 10% of final construction costs (depending on complexity). To determine the percentage fee, some districts like to use a “fee scale” (based on estimated construction costs) for renovation projects. Other districts like to use a flat percentage fee for all project types, regardless of difficulty.

In addition to the standard methods mentioned above, there are alternative fee structures that can be considered during negotiations. Although most school districts utilize the standard percentage of final construction costs structure to determine fees, other types of fee structures include hourly fees and fixed fees.

Hourly fees are typically based on an hourly rate schedule for employee type (i.e. Principal, Project Manager, CAD Technician, Specification Writer, etc.). Another version of the hourly fee structure is to take the hourly rate of the employee and multiply it times an agreed-upon “Direct Expense Multiplier” (e.g. \$25.00/hour x 3.3 multiplier = \$82.50/hour). The multiplier covers all costs associated with the employee, including benefits, etc. To control excessive fees, most hourly fee contracts are negotiated with a maximum, not-to-exceed amount. This type of fee structure is typically utilized for special services (outside of the “basic services”) offered by the architectural firm.

Another form of compensation for architectural services is fixed fees. This type of fee structure can be calculated several ways. The district can agree to set a final construction budget, and then offer to pay a fixed fee of 6% of that budget (regardless of final construction costs). This method could actually work out to benefit both parties. If the architect agrees to a fixed fee structure and is successful in delivering the project under the set budget, the fee remains constant and the architect retains the fee difference between actual construction costs and the set budget (i.e. if the budget is set at \$10 Million, and final construction costs come to \$9.5 Million, the architect retains the 6% difference of \$500,000, or \$30,000). This provides extra incentive for the architect to keep the project under budget.

Some school boards will be concerned that when the fee is based on a percentage of construction costs, there is no incentive for the architect to stay within budget. The theory is that as long as construction costs continue to escalate, so does the architectural fee. The media often uses this same theory when reporting on a school district's construction program. This can create a negative community perception of the district's management style and/or the practices being utilized to design and construct school facilities.

Conceptually, there is some truth to this. However, there are several concepts that negate this theory. The first concept is that architecture in the K-12 educational market is a very competitive industry, and if one architectural firm gains a reputation for continually bringing projects in over budget, they run the risk of not only losing work in their client district(s), but ultimately eliminate their opportunities for work in other, non-client districts as word spreads. Secondly, the district has the option of including clauses in the architectural contract that creates a maximum fee compensation based on an established construction budget. If final construction costs exceed the agreed-upon budget, the architect's compensation is limited to the maximum fee based on the set budget (and not actual construction costs). Again, this creates an incentive for the architect to keep the project within budget. In addition, clauses can be added to the contract that state if construction costs exceed the established budget, the architect must redesign the project (to be within budget) at no additional cost to the Owner.

Included Services and Changes in Services

AIA *Standard Form of Agreement Between Owner and Architect* (B141) describes the basic scope of services an architectural firm should provide as part of the architect's fee. B141 also lists services that can be included as a "Change in Services" resulting in an increase in the architect's fee. If it is likely that the project will require a Change in Services, it may be advantageous to the district to negotiate the inclusion of those services within the architect's base fee.

Reimbursable Expenses

Another important component of fee negotiations (regardless of fee structure) is reimbursable expenses. This area of the agreement is often overlooked and exposes the school district to additional costs if it is not carefully reviewed and modified. Examples of reimbursable expenses included in most architectural contracts include (but not limited to): reproduction costs for contract documents, travel, models, 3-D renderings, postage costs, governmental filings, etc. In B141, there are several clauses that stipulate what type of expenses are considered reimbursable and should be reviewed and possibly modified as part of fee negotiations. In addition, there is a multiplier included in the contract that allows the architect to add an "administrative cost" (for the paperwork associated with processing expenses) as a reimbursable. The district should be aware of this issue and discuss the multiplier as part of negotiations.

In summary, it is vitally important that school district personnel understand the scope of services being considered for a project(s) and become intimately educated on the content of B141 prior to negotiations. It is the responsibility of the district to consult with legal counsel to ensure the contract is modified in a manner that addresses all district requirements. It is perfectly acceptable to modify the language of the contract to comply with any concerns the district may have with the terms of agreement.

Section 14

DEBRIEFING OF ARCHITECTS

Recommended Practices for Selecting an Architect for K-12 Educational Facilities

Prepared by:



Debriefing of Architects

If different, the district should determine what information about the selection process should be released unsolicited to the general public and architects that submitted responses to the RFQ. Legal consultation is highly advised to assist in establishing these parameters, especially if School Board Trustees participated in the selection process.

There is no legal requirement for the district to release any unsolicited information about the selection process to the general public or architects. However, at a minimum, after the district has selected and negotiated a fee with an architect (or architects), it is recommended that the district notify all participating architects about the final decision. The notification should include the name of the architect(s) selected and the name of the district's contact person (in case any participating party has comments or questions).

A formal debriefing of the architects short-listed during the selection process should be considered, especially if the district plans to initiate another selection process. The debriefing is a prime opportunity for the district to gain candid feedback to improve future selection processes. Additionally, a debriefing will reduce or eliminate any misconceptions the architect(s) may have about the selection process and why they were not selected.

The effectiveness of debriefings diminishes with time. Optimally, the debriefing should be scheduled within a week (and no more than six weeks) after the conclusion of the selection process.

Acknowledgements

The Houston Chapter of the Associated General Contractors (AGC) and the Gulf Coast Chapter of the Council of Educational Facility Planners International (CEFPI) would like to acknowledge and express their sincere appreciation for all the time, efforts and professional expertise provided by individuals that participated in this AGC/CEFPI Joint Committee effort.

Special thanks to the Committee Co-Chairs, John Carson, Chuck Cummins and Roy Sprague who spent many volunteer hours outside of their full-time positions to oversee this committee process. Without such professionalism and dedication, this recommended practice document would not have been created. In addition, a special thanks to Committee Co-Chairs Susan Nittka, Director of Industry Issues and Jerry Nevlud, Executive Vice President of the AGC Houston Chapter, for their time and effort in assisting with meeting coordination and use of the AGC facilities. We also wish to acknowledge AGC's financial support for providing lunch at committee meetings. Additional thanks go to Ken English for all his efforts and input in the last several months to help the Committee complete the final document.

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The group of Committee participants listed above hereby endorses and recommends this practice handbook on “***Selecting an Architect for K-12 Educational Facilities***” to you for your use and reference. We hope that you find the document beneficial as you embark on a very exciting, challenging and rewarding experience to meet the needs of your building program and best serve the students and their educational achievements.

APPENDIX

Recommended Practices for Selecting an Architect for K-12 Educational Facilities

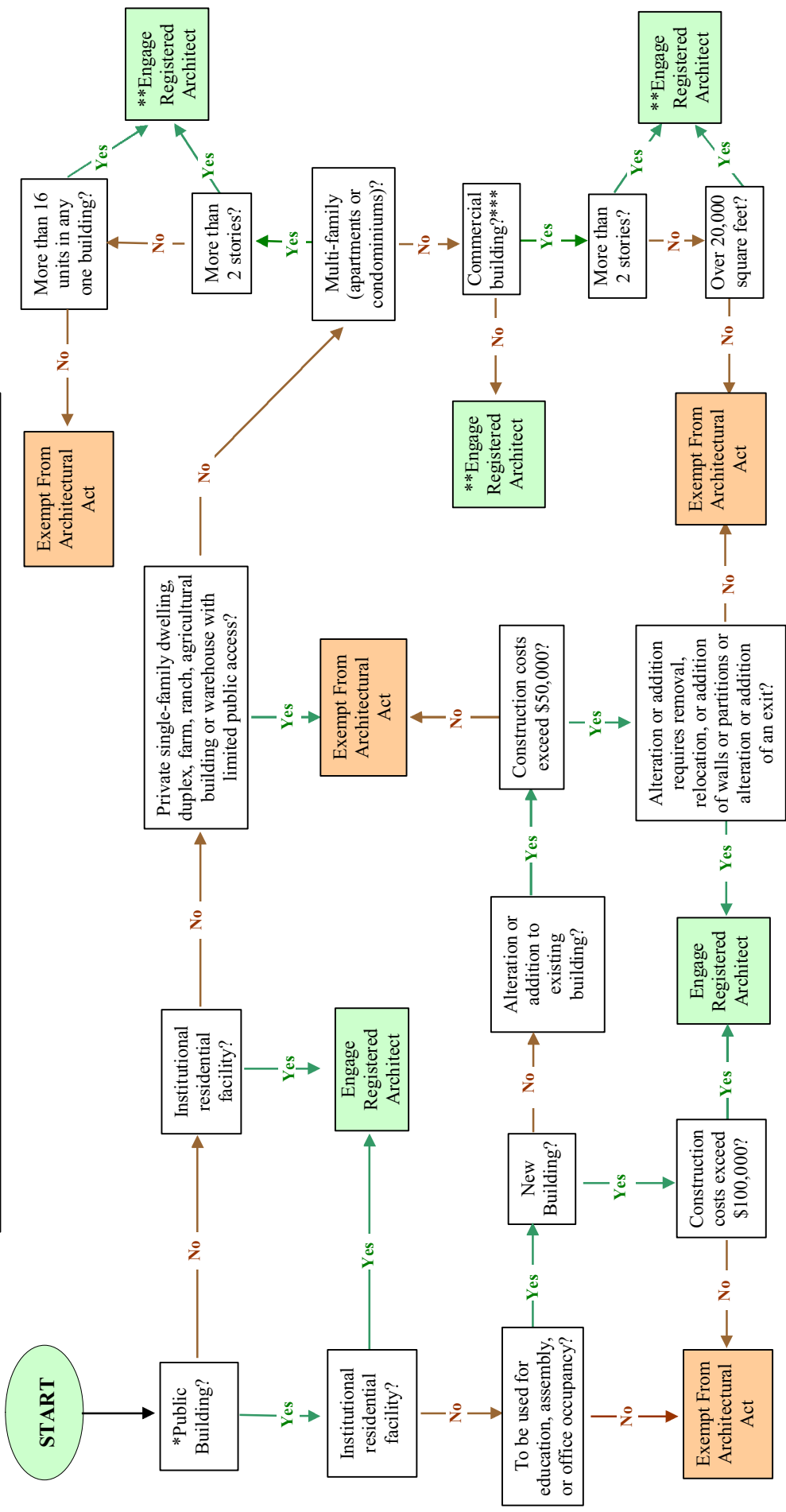
Prepared by:



Texas Board of Architectural Examiners Regulation of the Practice of Architecture

P.O. Box 12337
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NOTE: A person who wishes to offer or perform design services pursuant to any of the exemptions must not use any form of the word "architect" in connection with the offer or performance of design services.



* "Public Building" means any building that is owned by a State agency, a political subdivision of the State, or any other public entity in Texas.
 ** If a project involves only the alteration of an existing building and the alteration does not involve a substantial structural or exitway change to the building, the project is exempt from the architectural act.
 *** "Commercial building" means an enclosed structure primarily used for the purchase, sale, or exchange of commodities or services.

GOVERNMENT CODE

CHAPTER 2254. PROFESSIONAL AND CONSULTING SERVICES

SUBCHAPTER A. PROFESSIONAL SERVICES

§ 2254.001. SHORT TITLE. This subchapter may be cited as the Professional Services Procurement Act.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

§ 2254.002. DEFINITIONS. In this subchapter:

(1) "Governmental entity" means:

- (A) a state agency or department;
- (B) a district, authority, county, municipality, or other political subdivision of the state;
- (C) a local government corporation or another entity created by or acting on behalf of a political subdivision in the planning and design of a construction project; or
- (D) a publicly owned utility.

(2) "Professional services" means services:

(A) within the scope of the practice, as defined by state law, of:

- (i) accounting;
- (ii) architecture;
- (iii) landscape architecture;
- (iv) land surveying;
- (v) medicine;
- (vi) optometry;
- (vii) professional engineering;
- (viii) real estate appraising; or
- (ix) professional nursing; or

(B) provided in connection with the professional employment or practice of a person who is licensed or registered as:

- (i) a certified public accountant;
- (ii) an architect;
- (iii) a landscape architect;
- (iv) a land surveyor;
- (v) a physician, including a surgeon;
- (vi) an optometrist;
- (vii) a professional engineer;
- (viii) a state certified or state licensed real estate

appraiser; or

- (ix) a registered nurse.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 244, § 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1542, § 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1409, § 8, eff. Sept. 1, 2001.

§ 2254.003. SELECTION OF PROVIDER; FEES.

(a) A governmental entity 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:

(1) on the basis of demonstrated competence and qualifications to perform the services; and

(2) for a fair and reasonable price.

(b) The professional fees under the contract:

(1) must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations; and

(2) may not exceed any maximum provided by law.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

§ 2254.0031. INDEMNIFICATION. A state governmental entity may require a contractor selected under this subchapter to indemnify or hold harmless the state from claims and liabilities resulting from the negligent acts or omissions of the contractor or persons employed by the contractor. A state governmental entity may not require a contractor to indemnify or hold harmless the state for claims or liabilities resulting from the negligent acts or omissions of the state governmental entity or its employees.

Added by Acts 1999, 76th Leg., ch. 1499, § 1.37, eff. Sept. 1, 1999.

§ 2254.004. CONTRACT FOR PROFESSIONAL SERVICES OF ARCHITECT, ENGINEER, OR SURVEYOR.

(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.

(b) If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the entity shall:

(1) formally end negotiations with that provider;

(2) select the next most highly qualified provider; and

(3) attempt to negotiate a contract with that provider at a fair and reasonable price.

(c) The entity shall continue the process described in Subsection (b) to select and negotiate with providers until a contract is entered into.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 119, § 1, eff. Sept. 1, 1997.

§ 2254.005. VOID CONTRACT. A contract entered into or an arrangement made in violation of this subchapter is void as against public policy.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

§ 2254.006. CONTRACT NOTIFICATION. A state agency, including an institution of higher education as defined by Section 61.003, Education Code, shall provide written notice to the Legislative Budget Board 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 \$14,000. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 10th day after the date the agency enters into the contract.

Added by Acts 1999, 76th Leg., ch. 281, § 13, eff. Sept. 1, 1999.

SUBCHAPTER B. CONSULTING SERVICES

§ 2254.021. DEFINITIONS. In this subchapter:

(1) "Consulting service" means the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee.

(2) "Major consulting services contract" means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000, or \$25,000 for an institution of higher education other than a public junior college.

(3) "Consultant" means a person that provides or proposes to provide a consulting service. The term includes a political subdivision but does not include the federal government, a state agency, or a state governmental entity.

(4) "Political subdivision" means:

- (A) a county;
- (B) an incorporated or unincorporated municipality;
- (C) a public junior college;
- (D) a public school district or other educational or rehabilitative district;
- (E) a metropolitan or regional transit authority;
- (F) an airport authority;
- (G) a river authority or compact;
- (H) a regional planning commission, a council of governments, or a similar regional planning agency created under Chapter 391, Local Government Code;
- (I) the Edwards Aquifer Authority or a district governed by Title 4, Water Code;
- (J) a soil and water conservation district;
- (K) a county or municipal improvement district;
- (L) a county road or road utility district;
- (M) a county housing authority;
- (N) an emergency services or communications district;
- (O) a fire prevention district;
- (P) a public health or hospital authority or district;
- (Q) a mosquito control district;
- (R) a special waste district;
- (S) a rural rail transportation district; or
- (T) any other local government or special district of this state.

(5) "State agency" has the meaning assigned by Section 2151.002.

(6) "State governmental entity" means a state department, commission, board, office, institution, facility, or other agency the jurisdiction of which is not limited to a geographical portion of the state. The term includes a university system and an institution of higher education, other than a public junior college, as defined by Section 61.003, Education Code. The term does not include a political subdivision.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, § 5.44(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, § 17.19(11), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1035, § 3, eff. June 19, 1997; Acts 2003, 78th Leg., ch. 1266, § 1.02, eff. June 20, 2003.

§ 2254.022. INTERPRETATION OF SUBCHAPTER.

(a) This subchapter shall be interpreted to ensure:

- (1) the greatest and fairest competition in the selection by state agencies of consultants; and
- (2) the giving of notice to all potential consultants of the need for and opportunity to provide consulting services.

(b) This subchapter does not:

- (1) discourage state agencies from using consultants if the agencies reasonably foresee that the use of consultants will produce a more efficient and less costly operation or project;
- (2) prohibit the making of a sole-source contract for consulting services if a proposal is not received from a competent, knowledgeable, and qualified consultant at a reasonable fee, after compliance with this subchapter; or
- (3) require or prohibit the use of competitive bidding procedures to purchase consulting services.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1035, § 4, eff. June 19, 1997.

§ 2254.023. APPLICABILITY OF SUBCHAPTER. This subchapter applies to consulting services that a state agency acquires with money:

- (1) appropriated by the legislature;
- (2) derived from the exercise of the statutory duties of a state agency; or
- (3) received from the federal government, unless a federal law or regulation conflicts with the application of this subchapter.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

§ 2254.024. EXEMPTIONS. (a) This subchapter does not apply to or discourage the use of consulting services provided by:

- (1) practitioners of professional services described in Subchapter A;
- (2) private legal counsel;
- (3) investment counselors;
- (4) actuaries;
- (5) medical or dental services providers; or
- (6) other consultants whose services are determined by the governing board of a retirement system trust fund to be necessary for the governing board to perform its constitutional fiduciary duties, except that the governing board shall comply with Section 2254.030.

(b) If the governor, comptroller, and General Services Commission consider it more advantageous to the state to procure a particular consulting service under the procedures of Chapters 2155-2158, instead of under this subchapter, they may make a memorandum of understanding to that effect and each adopt the memorandum by rule. Procurement of a consulting service described in a memorandum of understanding under this subsection is subject only to Chapters 2155-2158.

(c) The comptroller by rule may define circumstances in which a state agency may procure, without complying with this subchapter, certain consulting services that will cost less than a minimum amount established by the comptroller. The comptroller must determine that noncompliance in those circumstances is more cost-effective for the state.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 165, § 17.19(1), eff. Sept. 1, 1997.

§ 2254.025. EMERGENCY WAIVER.

(a) The governor, after receipt of a request complying with this section, may grant a limited waiver of the provisions of this subchapter for a state agency that requires consulting services before compliance with this subchapter can be completed because of an unforeseen emergency.

(b) A state agency's request for a waiver must include information required by the governor, including:

- (1) information about the nature of the emergency;
- (2) the reason that the state agency did not foresee the emergency;
- (3) the name of the consultant with whom the agency intends to

contract; and

- (4) the amount of the intended contract.

(c) As soon as possible after the governor grants a limited waiver, a state agency shall comply with this subchapter to the extent that the requirements of this subchapter are not superfluous or ineffective because of the waiver. The agency shall include with information filed with the secretary of state for publication in the Texas Register a detailed description of the emergency on which the request for waiver was predicated.

(d) The governor shall adopt rules to administer this section.

(e) In this section, "unforeseen emergency" means a situation that suddenly and unexpectedly causes a state agency to need the services of a consultant. The term includes the issuance of a court order, an actual or imminent natural disaster, and new state or federal legislation. An emergency is not unforeseen if a state agency was negligent in foreseeing the occurrence of the emergency.

(f) This section applies to all consulting services contracts and renewals, amendments, and extensions of consulting services contracts.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1035, § 5, eff. June 19, 1997.

§ 2254.026. CONTRACT WITH CONSULTANT. A state agency may contract with a consultant only if:

- (1) there is a substantial need for the consulting services; and
- (2) the agency cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with a state governmental entity.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1035, § 6, eff. June 19, 1997.

§ 2254.027. SELECTION OF CONSULTANT. In selecting a consultant, a state agency shall:

- (1) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and
- (2) if other considerations are equal, give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1035, § 7, eff. June 19, 1997.

§ 2254.028. NOTICE OF INTENT: MAJOR CONSULTING SERVICES CONTRACT.

(a) Before entering into a major consulting services contract, a state agency shall:

- (1) notify the Legislative Budget Board and the governor's Budget and Planning Office that the agency intends to contract with a consultant;
- (2) give information to the Legislative Budget Board and the governor's Budget and Planning Office to demonstrate that the agency has complied or will comply with Sections 2254.026 and 2254.027; and
- (3) obtain a finding of fact from the governor's Budget and Planning Office that the consulting services are necessary.

(b) A major consulting services contract that a state agency enters into without first obtaining the finding required by Subsection (a)(3) is void.

(c) Subsection (a)(3) does not apply to a major consulting services contract to be entered into by an institution of higher education other than a public junior college if the institution includes in the invitation published under Section 2254.029 a finding by the chief executive officer of the institution that the consulting services are necessary and an explanation of that finding.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1035, § 8, eff. June 19, 1997; Acts 2003, 78th Leg., ch. 1266, § 1.03, eff. June 20, 2003.

§ 2254.029. PUBLICATION IN TEXAS REGISTER BEFORE ENTERING INTO MAJOR CONSULTING SERVICES CONTRACT.

(a) Not later than the 30th day before the date it enters into a major consulting services contract, a state agency shall file with the secretary of state for publication in the Texas Register:

- (1) an invitation for consultants to provide offers of consulting services;
- (2) the name of the individual who should be contacted by a consultant that intends to make an offer;
- (3) the closing date for the receipt of offers; and
- (4) the procedure by which the state agency will award the contract.

(b) If the consulting services sought by a state agency relate to services previously provided by a consultant, the agency shall disclose that fact in the invitation required by Subsection (a). If the state agency intends to award the contract for the consulting services to a consultant that previously provided the services, unless a better offer is received, the agency shall disclose its intention in the invitation required by Subsection (a).

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1035, § 9, eff. June 19, 1997.

§ 2254.030. PUBLICATION IN TEXAS REGISTER AFTER ENTERING INTO MAJOR CONSULTING SERVICES CONTRACT. Not later than the 20th day after the date of entering into a major consulting services contract, the contracting state agency shall file with the secretary of state for publication in the Texas Register:

- (1) a description of the activities that the consultant will conduct;
- (2) the name and business address of the consultant;
- (3) the total value and the beginning and ending dates of the contract; and
- (4) the dates on which documents, films, recordings, or reports that the consultant is required to present to the agency are due.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1035, § 10, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 1467, § 1.30, eff. Sept. 1, 1999.

§ 2254.0301. CONTRACT NOTIFICATION. A state agency shall provide written notice to the Legislative Budget Board of a contract for consulting services if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$14,000. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 10th day after the date the entity enters into the contract.

Added by Acts 1999, 76th Leg., ch. 281, § 14, eff. Sept. 1, 1999.

§ 2254.031. RENEWAL; AMENDMENT; EXTENSION.

(a) A state agency that intends to renew a major consulting services contract shall:

- (1) file with the secretary of state for publication in the Texas Register the information required by Section 2254.030 not later than the 20th day after the date the contract is renewed if the renewal contract is not a major consulting services contract; or
- (2) comply with Sections 2254.028 and 2254.029 if the renewal contract is a major consulting services contract.

(b) A state agency that intends to renew a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029 if the original contract and the renewal contract have a reasonably foreseeable value totaling more than \$15,000, or \$25,000 for an institution of higher education other than a public junior college.

(c) A state agency that intends to amend or extend a major consulting services contract shall:

- (1) not later than the 20th day after the date the contract is amended or extended, file the information required by Section 2254.030 with the secretary of state for publication in the Texas Register if the contract after the amendment or extension is not a major consulting services contract; or
- (2) comply with Sections 2254.028 and 2254.029 if the contract after the amendment or extension is a major consulting services contract.

(d) A state agency that intends to amend or extend a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029 if the original contract and the amendment or extension have a reasonably foreseeable value totaling more than \$15,000, or \$25,000 for an institution of higher education other than a public junior college.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, § 11, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 1467, § 1.31, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1266, § 1.04, eff. June 20, 2003.

§ 2254.032. CONFLICTS OF INTEREST.

(a) An officer or employee of a state agency shall report to the chief executive of the agency, not later than the 10th day after the date on which a private consultant submits an offer to provide consulting services to the agency, any financial interest that:

(1) the officer or employee has in the private consultant who submitted the offer; or

(2) an individual who is related to the officer or employee within the second degree by consanguinity or affinity, as determined under Chapter 573, has in the private consultant who submitted the offer.

(b) This section applies to all consulting services contracts and renewals, amendments, and extensions of consulting services contracts.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

§ 2254.033. RESTRICTION ON FORMER EMPLOYEES OF A STATE AGENCY.

(a) An individual who offers to provide consulting services to a state agency and who has been employed by that agency or by another agency at any time during the two years preceding the making of the offer shall disclose in the offer:

(1) the nature of the previous employment with the agency or the other agency;

(2) the date the employment was terminated; and

(3) the annual rate of compensation for the employment at the time of its termination.

(b) A state agency that accepts an offer from an individual described in Subsection (a) shall include in the information filed under Section 2254.030 a statement about the individual's previous employment and the nature of the employment.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

§ 2254.034. CONTRACT VOID.

(a) A contract entered into in violation of Sections 2254.029 through 2254.031 is void.

(b) A contract entered into with a private consultant who did not comply with Section 2254.033 is void.

(c) If a contract is void under this section:

(1) the comptroller may not draw a warrant or transmit money to satisfy an obligation under the contract; and

(2) a state agency may not make any payment under the contract with state or federal money or money held in or outside the state treasury.

(d) This section applies to all consulting services contracts, including renewals, amendments, and extensions of consulting services contracts.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 1467, § 1.32, eff. June 19, 1999.

§ 2254.035. DIVIDING CONTRACTS.

(a) A state agency may not divide a consulting services contract into more than one contract to avoid the requirements of this subchapter.

(b) This section applies to all consulting services contracts, including renewals, amendments, and extensions of consulting services contracts.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

§ 2254.036. ARCHIVES.

(a) On request, a state agency shall, after the agency's contract with a consultant has ended, supply the Legislative Budget Board and the governor's Budget and Planning Office with copies of all documents, films, recordings, or reports compiled by the consultant under the contract.

(b) Copies of all documents, films, recordings, or reports compiled by the consultant shall be filed with the Texas State Library and shall be retained by the library for at least five years.

(c) The Texas State Library shall list each document, film, recording, and report given to it under Subsection (b) and shall file the list at the end of each calendar quarter with the secretary of state for publication in the Texas Register.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1035, § 12, eff. June 19, 1997.

§ 2254.037. REPORTS. As part of the biennial budgetary hearing process conducted by the Legislative Budget Board and the governor's Budget and Planning Office, a state agency shall report to the Legislative Budget Board and the governor's Budget and Planning Office on any actions taken in response to the recommendations of any consultant with whom the state agency contracts during the previous biennium.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1035, § 13, eff. June 19, 1997.

§ 2254.038. MIXED CONTRACTS. This subchapter applies to a contract that involves both consulting and other services if the primary objective of the contract is the acquisition of consulting services.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

§ 2254.039. COMPTROLLER'S RULES.

(a) The comptroller shall adopt rules to implement and administer this subchapter. The comptroller's rules may not conflict with or cover a matter on which this subchapter authorizes the governor to adopt rules.

(b) The comptroller shall give proposed rules to the governor and the General Services Commission for review and comment before adopting the rules.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

§ 2254.040. PROCUREMENT BY GENERAL SERVICES COMMISSION.

(a) The General Services Commission may, on request of a state agency, procure for the agency consulting services that are covered by this subchapter.

(b) The commission may require reimbursement for the costs it incurs in procuring the services.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 426, § 16, eff. June 18, 1999.

SUBCHAPTER C. CONTINGENT FEE CONTRACT FOR LEGAL SERVICES

§ 2254.101. DEFINITIONS. In this subchapter:

(1) "Contingent fee" means that part of a fee for legal services, under a contingent fee contract, the amount or payment of which is contingent on the outcome of the matter for which the services were obtained.

(2) "Contingent fee contract" means a contract for legal services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained.

(3) "State governmental entity":

(A) means the state or a board, commission, department, office, or other agency in the executive branch of state government created under the constitution or a statute of the state, including an institution of higher education as defined by Section 61.003, Education Code;

(B) includes the state when a state officer is bringing a *parens patriae* proceeding in the name of the state; and

(C) does not include a state agency or state officer acting as a receiver, special deputy receiver, liquidator, or liquidating agent in connection with the administration of the assets of an insolvent entity under Article 21.28, Insurance Code, or Chapter 36, 66, 96, or 126, Finance Code.

Added by Acts 1999, 76th Leg., ch. 1499, § 3.03, eff. Sept. 1, 1999.

§ 2254.102. APPLICABILITY.

(a) This subchapter applies only to a contingent fee contract for legal services entered into by a state governmental entity.

(b) The legislature by this subchapter is providing, in accordance with Section 44, Article III, Texas Constitution, for the manner in which and the situations under which a state governmental entity may compensate a public contractor under a contingent fee contract for legal services.

(c) This subchapter does not apply to a contract for legal services entered into by an institution of higher education under Section 153.006, Education Code.

Added by Acts 1999, 76th Leg., ch. 1499, § 3.03, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1266, § 1.13, eff. June 20, 2003.

§ 2254.103. CONTRACT APPROVAL; SIGNATURE.

(a) A state governmental entity that has authority to enter into a contract for legal services in its own name may enter into a contingent fee contract for legal services only if:

(1) the governing body of the state governmental entity approves the contract and the approved contract is signed by the presiding officer of the governing body; or

(2) for an entity that is not governed by a multimember governing body, the elected or appointed officer who governs the entity approves and signs the contract.

(b) The attorney general may enter into a contingent fee contract for legal services in the name of the state in relation to a matter that has been referred to the attorney general under law by another state governmental entity only if the other state governmental entity approves and signs the contract in accordance with Subsection (a).

(c) A state governmental entity, including the state, may enter into a contingent fee contract for legal services that is not described by Subsection (a) or (b) only if the governor approves and signs the contract.

(d) Before approving the contract, the governing body, elected or appointed officer, or governor, as appropriate, must find that:

(1) there is a substantial need for the legal services;

(2) the legal services cannot be adequately performed by the attorneys and supporting personnel of the state governmental entity or by the attorneys and supporting personnel of another state governmental entity; and

(3) the legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the services will be obtained or because the state governmental entity does not have appropriated funds available to pay the estimated amounts required under a contract providing only for the payment of hourly fees.

(e) Before entering into a contingent fee contract for legal services in which the estimated amount that may be recovered exceeds \$100,000, a state governmental entity that proposes to enter into the contract in its own name or in the name of the state must also notify the Legislative Budget Board that the entity proposes to enter into the contract, send the board copies of the proposed contract, and send the board information demonstrating that the conditions required by Subsection (d)(3) exist. If the state governmental entity finds under Subsection (d)(3) that the state governmental entity does not have appropriated funds available to pay the estimated amounts required under a contract for the legal services providing only for the payment of hourly fees, the state governmental entity may not enter into the proposed contract in its own name or in the name of the state unless the Legislative Budget Board finds that the state governmental entity's finding with regard to available appropriated funds is correct.

(f) A contingent fee contract for legal services that is subject to Subsection (e) and requires a finding by the Legislative Budget Board is void unless the board has made the finding required by Subsection (e).

Added by Acts 1999, 76th Leg., ch. 1499, § 3.03, eff. Sept. 1, 1999.

§ 2254.104. TIME AND EXPENSE RECORDS REQUIRED; FINAL STATEMENT.

(a) The contract must require that the contracting attorney or law firm keep current and complete written time and expense records that describe in detail the time and money spent each day in performing the contract.

(b) The contracting attorney or law firm shall permit the governing body or governing officer of the state governmental entity, the attorney general, and the state auditor each to inspect or obtain copies of the time and expense records at any time on request.

(c) On conclusion of the matter for which legal services were obtained, the contracting attorney or law firm shall provide the contracting state governmental entity with a complete written statement that describes the outcome of the matter, states the amount of any recovery, shows the contracting attorney's or law firm's computation of the amount of the contingent fee, and contains the final complete time and expense records required by Subsection (a). The complete written statement required by this subsection is public information under Chapter 552 and may not be withheld from a requestor under that chapter under Section 552.103 or any other exception from required disclosure.

(d) This subsection does not apply to the complete written statement required by Subsection (c). All time and expense records required under this section are public information subject to required public disclosure under Chapter 552. Information in the records may be withheld from a member of the public under Section 552.103 only if, in addition to meeting the requirements of Section 552.103, the chief legal officer or employee of the state governmental entity determines that withholding the information is necessary to protect the entity's strategy or position in pending or reasonably anticipated litigation. Information withheld from public disclosure under this subsection shall be segregated from information that is subject to required public disclosure.

Added by Acts 1999, 76th Leg., ch. 1499, § 3.03, eff. Sept. 1, 1999.

§ 2254.105. CERTAIN GENERAL CONTRACT REQUIREMENTS. The contract must:

(1) provide for the method by which the contingent fee is computed;

(2) state the differences, if any, in the method by which the contingent fee is computed if the matter is settled, tried, or tried and appealed;

(3) state how litigation and other expenses will be paid and, if reimbursement of any expense is contingent on the outcome of the matter or reimbursable from the amount recovered in the matter, state whether the amount recovered for purposes of the contingent fee computation is considered to be the amount obtained before or after expenses are deducted;

(4) state that any subcontracted legal or support services performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm is an expense subject to reimbursement only in accordance with this subchapter; and

(5) state that the amount of the contingent fee and reimbursement of expenses under the contract will be paid and limited in accordance with this subchapter.

Added by Acts 1999, 76th Leg., ch. 1499, § 3.03, eff. Sept. 1, 1999.

§ 2254.106. CONTRACT REQUIREMENTS: COMPUTATION OF CONTINGENT FEE; REIMBURSEMENT OF EXPENSES.

(a) The contract must establish the reasonable hourly rate for work performed by an attorney, law clerk, or paralegal who will perform legal or support services under the contract based on the reasonable and customary rate in the relevant locality for the type of work performed and on the relevant experience, demonstrated ability, and standard hourly billing rate, if any, of the person performing the work. The contract may establish the reasonable hourly rate for one or more persons by name and may establish a rate schedule for work performed by unnamed persons. The highest hourly rate for a named person or under a rate schedule may not exceed \$1,000 an hour. This subsection applies to subcontracted work performed by an attorney, law clerk, or paralegal who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm as well as to work performed by a contracting attorney or by a partner, shareholder, or employee of a contracting attorney or law firm.

(b) The contract must establish a base fee to be computed as follows. For each attorney, law clerk, or paralegal who is a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm, multiply the number of hours the attorney, law clerk, or paralegal works in providing legal or support services under the contract times the reasonable hourly rate for the work performed by that attorney, law clerk, or paralegal. Add the resulting amounts to obtain the base fee. The computation of the base fee may not include hours or costs attributable to work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm.

(c) Subject to Subsection (d), the contingent fee is computed by multiplying the base fee by a multiplier. The contract must establish a reasonable multiplier based on any expected difficulties in performing the contract, the amount of expenses expected to be risked by the contractor, the expected risk of no recovery, and any expected long delay in recovery. The multiplier may not exceed four without prior approval by the legislature.

(d) In addition to establishing the method of computing the fee under Subsections (a), (b), and (c), the contract must limit the amount of the contingent fee to a stated percentage of the amount recovered. The contract may state different percentage limitations for different ranges of possible recoveries and different percentage limitations in the event the matter is settled, tried, or tried and appealed. The percentage limitation may not exceed 35 percent without prior approval by the legislature. The contract must state that the amount of the contingent fee will not exceed the lesser of the stated percentage of the amount recovered or the amount computed under Subsections (a), (b), and (c).

(e) The contract also may:

- (1) limit the amount of expenses that may be reimbursed; and
- (2) provide that the amount or payment of only part of the fee is contingent on the outcome of the matter for which the services were obtained, with the amount and payment of the remainder of the fee payable on a regular hourly rate basis without regard to the outcome of the matter.

(f) Except as provided by Section 2254.107, this section does not apply to a contingent fee contract for legal services:

- (1) in which the expected amount to be recovered and the actual amount recovered do not exceed \$100,000; or
- (2) under which a series of recoveries is contemplated and the amount of each individual recovery is not expected to and does not exceed \$100,000.

(g) This section applies to a contract described by Subsection (f) for each individual recovery under the contract that actually exceeds \$100,000, and the contract must provide for computing the fee in accordance with this section for each individual recovery that actually exceeds \$100,000.

Added by Acts 1999, 76th Leg., ch. 1499, § 3.03, eff. Sept. 1, 1999.

§ 2254.107. MIXED HOURLY AND CONTINGENT FEE CONTRACTS; REIMBURSEMENT FOR SUBCONTRACTED WORK.

(a) This section applies only to a contingent fee contract:

- (1) under which the amount or payment of only part of the fee is contingent on the outcome of the matter for which the services were obtained, with the amount and payment of the remainder of the fee payable on a regular hourly rate basis without regard to the outcome of the matter; or

- (2) under which reimbursable expenses are incurred for subcontracted legal or support services performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm.

(b) Sections 2254.106(a) and (e) apply to the contract without regard to the expected or actual amount of recovery under the contract.

(c) The limitations prescribed by Section 2254.106 on the amount of the contingent fee apply to the entire amount of the fee under the contingent fee contract, including the part of the fee the amount and payment of which is not contingent on the outcome of the matter.

(d) The limitations prescribed by Section 2254.108 on payment of the fee apply only to payment of the contingent portion of the fee.

Added by Acts 1999, 76th Leg., ch. 1499, § 3.03, eff. Sept. 1, 1999.

§ 2254.108. FEE PAYMENT AND EXPENSE REIMBURSEMENT.

(a) Except as provided by Subsection (b), a contingent fee and a reimbursement of an expense under a contract with a state governmental entity is payable only from funds the legislature specifically appropriates to pay the fee or reimburse the expense. An appropriation to pay the fee or reimburse the expense must specifically describe the individual contract, or the class of contracts classified by subject matter, on account of which the fee is payable or expense is reimbursable. A general reference to contingent fee contracts for legal services or to contracts subject to this subchapter or a similar general description is not a sufficient description for purposes of this subsection.

(b) If the legislature has not specifically appropriated funds for paying the fee or reimbursing the expense, a state governmental entity may pay the fee or reimburse the expense from other available funds only if:

(1) the legislature is not in session; and

(2) the Legislative Budget Board gives its prior approval for that payment or reimbursement under Section 69, Article XVI, Texas Constitution, after examining the statement required under Section 2254.104(c) and determining that the requested payment and the contract under which payment is requested meet all the requirements of this subchapter.

(c) A payment or reimbursement under the contract may not be made until:

(1) final and unappealable arrangements have been made for depositing all recovered funds to the credit of the appropriate fund or account in the state treasury; and

(2) the state governmental entity and the state auditor have received from the contracting attorney or law firm the statement required under Section 2254.104(c).

(d) Litigation and other expenses payable under the contract, including expenses attributable to attorney, paralegal, accountant, expert, or other professional work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm, may be reimbursed only if the state governmental entity and the state auditor determine that the expenses were reasonable, proper, necessary, actually incurred on behalf of the state governmental entity, and paid for by the contracting attorney or law firm. The contingent fee may not be paid until the state auditor has reviewed the relevant time and expense records and verified that the hours of work on which the fee computation is based were actually worked in performing reasonable and necessary services for the state governmental entity under the contract.

Added by Acts 1999, 76th Leg., ch. 1499, § 3.03, eff. Sept. 1, 1999.

§ 2254.109. EFFECT ON OTHER LAW.

(a) This subchapter does not limit the right of a state governmental entity to recover fees and expenses from opposing parties under other law.

(b) Compliance with this subchapter does not relieve a contracting attorney or law firm of an obligation or responsibility under other law, including under the Texas Disciplinary Rules of Professional Conduct.

(c) A state officer, employee, or governing body, including the attorney general, may not waive the requirements of this subchapter or prejudice the interests of the state under this subchapter. This subchapter does not waive the state's sovereign immunity from suit or its immunity from suit in federal court under the Eleventh Amendment to the federal constitution.

Added by Acts 1999, 76th Leg., ch. 1499, § 3.03, eff. Sept. 1, 1999.

SUBCHAPTER D. OUTSIDE LEGAL SERVICES

§ 2254.151. DEFINITION. In this subchapter, "state agency" means a department, commission, board, authority, office, or other agency in the executive branch of state government created by the state constitution or a state statute.

Added by Acts 2003, 78th Leg., ch. 309, § 7.18, eff. June 18, 2003.

§ 2254.152. APPLICABILITY. This subchapter does not apply to a contingent fee contract for legal services.

Added by Acts 2003, 78th Leg., ch. 309, § 7.18, eff. June 18, 2003.

§ 2254.153. CONTRACTS FOR LEGAL SERVICES AUTHORIZED. Subject to Section 402.0212, a state agency may contract for outside legal services.

Added by Acts 2003, 78th Leg., ch. 309, § 7.18, eff. June 18, 2003.

§ 2254.154. ATTORNEY GENERAL; COMPETITIVE PROCUREMENT. The attorney general may require state agencies to obtain outside legal services through a competitive procurement process, under conditions prescribed by the attorney general.

Added by Acts 2003, 78th Leg., ch. 309, § 7.18, eff. June 18, 2003.



Office of the Attorney General State of Texas

July 12, 1989

Honorable Ernestine V. Glossbrenner Chairman Public Education Committee Texas House of Representatives P.O. Box 2910 Austin, Texas 78768-2910	Opinion No. JM-1072 Re: Whether certain subcommittees of the board of trustees of school districts are subject to the Texas Open Meetings Act, article 6252-17, V.T.C.S. (RQ-1702)
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Dear Representative Glossbrenner:

As chair of the House Public Education Committee, you inquire about the extent to which the Texas Open Meetings Act, article 6252-17, V.T.C.S., applies to committees of the board of trustees of a school district. In specific, you ask about a committee of members of the board of trustees that comprises less than a quorum of the board. You indicate that the committee at issue "performs functions regarding matters affecting the school district." We presume that your question is limited to those functions that such a committee may lawfully perform. See *Webster v. Texas & Pac. Motor Transp. Co.*, 166 S.W.2d 75, 76 (Tex.1942).

The Open Meetings Act requires that each "governmental body" in this state post notice for and deliberate at meetings that are open to the public unless a closed session is expressly permitted. V.T.C.S. art. 6252-17, s 2(a); see *Cox Enterprises, Inc. v. Board of Trustees of Austin Indep. School Dist.*, 706 S.W.2d 956, 960 (Tex.1986); see also Attorney General Opinion H-3 (1973) (act opens decision-making process); but see *City of San Antonio v. Aguilar*, 670 S.W.2d 681, 686 (Tex.App.--San Antonio 1984, writ ref'd n.r.e.) (attorney-client privilege may form separate basis for closed meeting). The act encompasses each "meeting," which is defined, in part, as "any deliberation between a quorum of members of a governmental body." V.T.C.S. art. 6252-17, s 1(a) (emphasis added). A "quorum" is a majority of the governing body. *Id.* s 1(d). Many governmental bodies believe that the act does not apply when a quorum is not present. Whether such subcommittees are themselves subject to the act depends, in part, on the act's definition of "governmental body."

Section 1(c) of the Open Meetings Act provides:

'Governmental body' means any board, commission, department, committee, or agency within the executive or legislative department of the state, which is under the direction of one or more elected or appointed members; and every Commissioners Court and city council in the state, and every deliberative body having rule-making or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city; and the board of trustees of every school district, and every county board of school trustees and county board of education; and the governing board of every special district heretofore or hereafter created by law.

V.T.C.S. art. 6252-17, s 1(c). For a local-level entity to constitute a "governmental body" under section 1(c), as a general rule, the entity must fall within one of the section's three specific descriptions. Attorney General Opinions [JM-794](#) (1987); [JM-340](#) (1985). Subcommittees of school districts are not listed expressly.

The first category includes "every deliberative body having rule-making or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city." V.T.C.S. art. 6252-17, s 1(c). Subcommittees or agencies of a city or county therefore fall within the definition of "governmental body" when they have rule-making or quasi-judicial power. See, e.g., Attorney General Opinions [JM-1007](#) (1989), H-1281 (1978) (salary grievance committees); MW-506 (1982) (board of trustees of firemen's retirement fund has quasi-judicial powers and is agency of city); MW-177 (1980) (higher education authority created by city or cities); H-554 (1975) (hospital authority that performs governmental function and that is created by city). The act does not cover a purely "advisory" agency of a county or city that is not composed of members of the governmental body. See Attorney General Opinion H-467 (1974) (city's library board).

The definition of "governmental body" also lists two other categories of local-level entities: school districts and special districts. The definition does not list agencies or committees subordinate to school districts and special districts. [Attorney General Opinion JM-340](#) (1985). This omission implies that subcommittees of school districts and other special districts are not covered by the act. This does not, however, prevent a subcommittee of a special district covered by the act from falling within the scope of the Open Meetings Act. This is true particularly in regard to subcommittees comprising members of the parent governmental body.

When a subcommittee includes members of a parent governmental body, the subcommittee itself may be covered by the Open Meetings Act. In 1973, the attorney general considered whether a state-level entity, the Texas Board of Mental Health and Mental Retardation, could institute a practice of dividing board members into several specialized committees. Attorney General Opinion H- 3 (1973). The committees were to meet with the board's staff to study specific matters and recommend actions at open meetings of the whole board. Reasoning that the board might simply "rubber-stamp" the committees' recommendations and that this would deprive the public of access to the board's actual decision- making process, the attorney general concluded that

committees composed of members of the board, even if less than a quorum, must comply with the Open Meetings Act. *Id.* at 10; see also Attorney General Opinion H-823 (1976). A similar approach applies to analysis of special districts' subcommittees. For example, standing committees of special districts that are composed of members of the governing board of the special districts must comply with the Open Meetings Act when the standing subcommittees discuss public business or policy. Attorney General Opinion H-238 (1974) (standing committee of board of managers of hospital district).

You indicate that the school district subcommittee at issue "performs functions regarding matters affecting the school district." If the committee at issue is composed of one or more members of the school board, the committee itself is subject to the Open Meetings Act. [\[FN1\]](#) Moreover, as indicated, it is not clear that the board lawfully may delegate to a subcommittee the power to act on behalf of the board. See *Webster v. Texas & Pac. Motor Transp. Co.*, *supra*.

SUMMARY

If a committee comprising one or more members of the board of trustees of a school district meets to discuss public business or policy, the committee itself is subject to the Texas Open Meetings Act, article 6252-17, V.T.C.S.

Very truly yours,



Jim Mattox
Attorney General of Texas

Mary Keller
First Assistant Attorney General

Lou McCreary
Executive Assistant Attorney General

Judge Zollie Steakley
Special Assistant Attorney General

Rick Gilpin
Chairman, Opinion Committee

Jennifer S. Riggs
Chief, Open Government Section of the Opinion Committee

Prepared by
Jennifer S. Riggs
Assistant Attorney General

Footnotes

FN1. The criminal sanctions of the act may also be of concern when the members of an entity covered by the act divide into or participate in subcommittees. See, e.g., Attorney General Opinions MW-390 (1981); MW-28 (1979). Proving a criminal offense depends on proof of the requisite culpable state of mind. Violation of the criminal provisions of the act depends on what constitutes "meeting in numbers less than a quorum for the purpose of secret deliberations" to "knowingly conspire to circumvent" the Open Meetings Act. V.T.C.S. art. 6252-17, s 4(b).



Office of the Attorney General - State of Texas
John Cornyn

June 2, 1999

<p>The Honorable Jack Skeen, Jr. Smith County Criminal District Attorney Smith County Courthouse Tyler, Texas 75702</p>	<p>Opinion No. JC-0060</p> <p>Re: Whether a committee appointed by a commissioners court to recommend the selection of an architect is subject to the Open Meetings Act (RQ-0063)</p>
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Dear Mr. Skeen:

You have requested our opinion as to whether a committee appointed by a commissioners court to recommend the selection of an architect is subject to the Open Meetings Act. Under the circumstances you describe, we conclude that it is. Section 2254.003 of the Government Code provides, in relevant part:

(a) A governmental entity 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:

(1) on the basis of demonstrated competence and qualifications to perform the services; and

(2) for a fair and reasonable price.

Tex. Gov't Code Ann. § 2254.003 (Vernon 1999).

You indicate that, pursuant to section 2254.003, the Commissioners Court of Smith County appointed an "Evaluation Committee" composed of the county judge, one commissioner, the county auditor, the county purchasing agent, the county engineer, the county director of maintenance, and three members of a citizens' task force. The function of the Committee is to receive written information from interested architectural firms, "evaluate written documents, listen to presentations, research previous work history and then rank them as to the most qualified. The recommendation presented to the [commissioners] court . . . is not in any form binding [on] the court." Letter from Nancy F. Braswell, Smith County Auditor, to Honorable John Cornyn, Attorney General 2 (May 4, 1999) (on file with Opinion Committee) [hereinafter Braswell letter of 5/4/99]. After the court has "determined the 'most qualified,' then the same committee would begin negotiations with that firm, and then the negotiated

price [will] be considered by [the] commissioners court." *Id.* You ask whether the presence of the county judge and one commissioner on the Evaluation Committee violates any open meeting requirement.

The Open Meetings Act, chapter 551 of the Government Code, defines "governmental body" to include, on the state level, "a board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members," Tex. Gov't Code Ann. § 551.001(3)(A) (Vernon 1994), and on the local level, "a county commissioners court in the state," *id.* § 551.001(3)(B), as well as "a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality," *id.* § 551.001(3)(D). The Act further defines "meeting" as "a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action." *Id.* § 551.001(4). Because the Act defines a meeting to involve discussion, consideration, or final action on public business or public policy over which the governmental body has supervision or control, a governmental body must have the authority to supervise or control public business or policy in order to fall within the Act's scope. *See Gulf Reg'l Educ. Television Affiliates v. University of Houston*, 746 S.W.2d 803, 809 (Tex. App.-Houston [14th Dist.] 1988, writ denied). *See also* Tex. Att'y Gen. Op. No. [JM-331](#) (1985) (citizens advisory panel to state agency with no power to supervise or control public business not subject to Open Meetings Act); Tex. Att'y Gen. LO-93-064 (public university's student fee advisory committee that made recommendations for consideration by board of regents not subject to Act).

There are five members of the commissioners court in Smith County--four commissioners and the county judge. The Evaluation Committee thus consists of less than a quorum of the commissioners court. An entity appointed by a governmental body but containing less than a quorum of members of that governmental body may be subject to the Open Meetings Act, either because it falls within a definition of the term "governmental body" or as a subcommittee of a governmental body. In Attorney General Opinion [JC-0053](#) (1999), we recently said that a pricing committee appointed by the Board of Directors of the Texas Public Finance Authority to act on the board's behalf in negotiating a bond sale and executing a bond purchase contract is a state level "governmental body" within the meaning of section 551.001(3)(A), subject to the Open Meetings Act. And in Letter Opinion No. 97-058, this office concluded that a committee of the Texas Funeral Commission consisting of two Commission members and other individuals and that was delegated authority to investigate complaints and supervise investigations exercised and controlled public business and was itself a governmental body for purposes of that provision. Tex. Att'y Gen. LO-97-058, at 5. On a few occasions, we have concluded that a subcommittee is subject to the Act exclusively on the basis of its membership. In Attorney General Opinion [H-238](#) (1974), for example, the attorney general said that standing committees of the Harris County Hospital District, each composed of three but less than a quorum of the District's board of managers,

were subject to the Open Meetings Act. *See also* Tex. Att'y Gen. Op. No. [JM-1072](#) (1989) (subcommittees of board of trustees of independent school district are subject to Open Meetings Act).

But not every body that includes less than a quorum of a governmental body is subject to the Act. In Attorney General Opinion [H-994](#), the attorney general found that a fifteen-member "Committee to Study the Selection Process of Chief Administrative Officers of the Component Institutions of The University of Texas System" was not subject to the Act, even though it was appointed by the Chairman of the Board of Regents and itself contained three regents. Tex. Att'y Gen. Op. No. [H-994](#) (1977) at 3. The "presence of three Regents on the fifteen-member committee" was insufficient to "bring it within the provisions of the Open Meetings Act as a committee of the Board." *Id.* at 2. Despite the recognized danger that a "board might become the rubber stamp of its committees . . . this danger is diminished in the present case by the appointment of twelve other members who might represent different viewpoints within the university system." *Id.* The committee's purpose, according to its enabling resolution, was "to make an extensive study of the selection process and submit its recommendations to the Board of Regents." *Id.* The opinion concluded that "[t]his resolution appears to make the Committee an advisory body only, without power to supervise or control public business." *Id.* Because of "the absence of facts showing that the Committee is more than an advisory body," the attorney general was unable to "say that its meetings are required to be open by the Open Meetings Act." *Id.*

The Evaluation Committee, which contains less than a quorum of the commissioners court, is not itself a "commissioners court" for purposes of section 551.001(3)(B) of the statute. Nor is it obvious that it may properly be classified as "a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county" within the meaning of section 551.001(3)(D). Thus we consider whether the Evaluation Committee is subject to the Open Meetings Act based on its membership, which includes two members of the commissioners court.

In our view, the initial work of the Evaluation Committee falls within the ambit of Attorney General Opinion [H-994](#). The Evaluation Committee's mission is to perform evaluations of architectural firm applicants and submit a recommendation in the form of a ranking of the firms to the commissioners court. As you indicate, the Committee's recommendation is not binding in any way on the court. Even though two members of the commissioners court are members of the Committee, the presence of seven other individuals attests to the likelihood that other viewpoints will be considered. In these circumstances, the commissioners court is less likely to "rubber-stamp" the Committee's choice. On the contrary, you indicate that, even if the Committee ranked one firm in last place, the court could nevertheless award that firm the contract. The Committee's initial work thus appears to be that of an advisory body only, without power to supervise or control public business.

The negotiation process, however, which begins after the commissioners court has selected the "most qualified" firm, raises different concerns. In *Finlan v.*

City of Dallas, 888 F.Supp. 779 (N.D. Tex. 1995), city taxpayers and residents sought an injunction against an "Ad Hoc Committee--Downtown Sports Development Project," appointed by the Mayor of Dallas for the purpose of conducting negotiations with the owners of professional basketball and hockey teams regarding their proposed move from a city-owned arena. The committee was composed of five council members, less than a quorum of the full council of fifteen. As the court found, the group comprised "an official committee appointed by the Mayor for the purpose of negotiating behind closed doors with third parties, involving millions of dollars of taxpayer money with no public input. . . ." *Id.* at 785 (footnote omitted). Even though the committee was required by the city charter and council rules to comply with the Open Meetings Act, it was necessarily subject to the Open Meetings Act's requirements under "a fair reading of the [Act] itself in light of the strong public policy considerations for which the law was created." *Id.* The court noted that the composition of the committee weighted the work in favor of whatever recommendation it rendered: "With the five members of the Committee in favor of a new arena, as well as the Mayor who appointed them, only two more votes are needed from the remaining nine City Council members to go along with whatever deal the Committee cuts." *Id.* at 785-86. The court even found "circumstantial evidence that the Committee was designed to circumvent the [Act]." *Id.* at 786.

Likewise, in the situation you pose, the Evaluation Committee is appointed by the commissioners court to conduct negotiations with private parties regarding the expenditure of public funds. Unlike the ranking of architectural firms in the initial stage of the process, from which the commissioners court is at liberty to select the firm that the Evaluation Committee ranked in last place, the result of the negotiating process leaves no room for the commissioners' input: the court must either adopt or reject the contract negotiated by the Evaluation Committee. If the county judge and the commissioner who serve on the Committee agree on the terms negotiated, only one more vote would be needed from the remaining commissioners to adopt the privately-negotiated terms. These circumstances, we believe, render the Committee's work more than advisory and suggest that the commissioners court is more likely to act as a rubber-stamp.

The information you have supplied indicates that "[i]t would be difficult or impossible for the commissioners court to negotiate fees in open court." *See* Braswell letter of 5/4/99 *supra*, at 2. Although, contrary to the court in *Finlan*, we have no reason to believe that the appointment of the Evaluation Committee "was designed to circumvent the Act," neither this office nor any Texas court has recognized that the "difficulty" or "impossibility" of conducting business in public is a valid reason for exempting a governmental body from the command of the Open Meetings Act. To the contrary, the provisions of the Act are to be liberally construed in favor of open government. *See Cox Enterprises, Inc. v. Board of Trustees, Austin Indep. Sch. Dist.*, 706 S.W.2d 956, 960 (Tex. 1986); *Acker v. Texas Water Comm'n*, 790 S.W.2d 299, 300 (Tex. 1990).

Although we have in our analysis considered the two distinct tasks of the

Committee, we do not believe that the Committee's work can be effectively bifurcated for purposes of its compliance with the Open Meetings Act. It would be anomalous to conclude that an identical group of individuals, created by the same appointing power to perform two distinct tasks that nevertheless form a coherent whole, is a "governmental body" at one moment but not the next. If one of its functions renders it a "governmental body" for purposes of the Open Meetings Act, it must be so in all its endeavors. In our opinion, therefore, under the terms of the order of the Commissioners Court of Smith County dated April 12, 1999, appointing an Evaluation Committee, and under the terms of the Request for Qualifications dated March 17, 1999, the Evaluation Committee is a "governmental body" subject to chapter 551 of the Government Code, the Open Meetings Act.

You also ask whether the Evaluation Committee would be a "governmental body" under the Open Meetings Act if the county judge and commissioner are "removed from the committee." Although the question is close, we believe that the exclusion of those individuals would place the Committee more squarely in the category of a strictly "advisory" body, and thus remove it from the designation of "governmental body." The absence of any member of the commissioners court on the Evaluation Committee will necessarily require the court to consider afresh the negotiated contract, without the risk that two members will have already made up their minds. We therefore conclude that, if, under the circumstances you have described, the county judge and commissioner are excluded from the Evaluation Committee, the Committee is more clearly identifiable as an advisory body only. As was said in Attorney General Opinion [H-994](#), in the absence of facts showing that such a reconstituted committee is more than advisory, its meetings are not required to be open by the Open Meetings Act.

S U M M A R Y

An "Evaluation Committee" appointed by the Smith County Commissioners Court to recommend the selection of an architect and negotiate a contract with the selected firm is, under the facts described, a "governmental body" subject to the Open Meetings Act. If, however, the county judge and one commissioner are excluded from the Committee, it becomes merely an advisory body not subject to the Act.

Yours very truly,



JOHN CORNYN
Attorney General of Texas

ANDY TAYLOR
First Assistant Attorney General

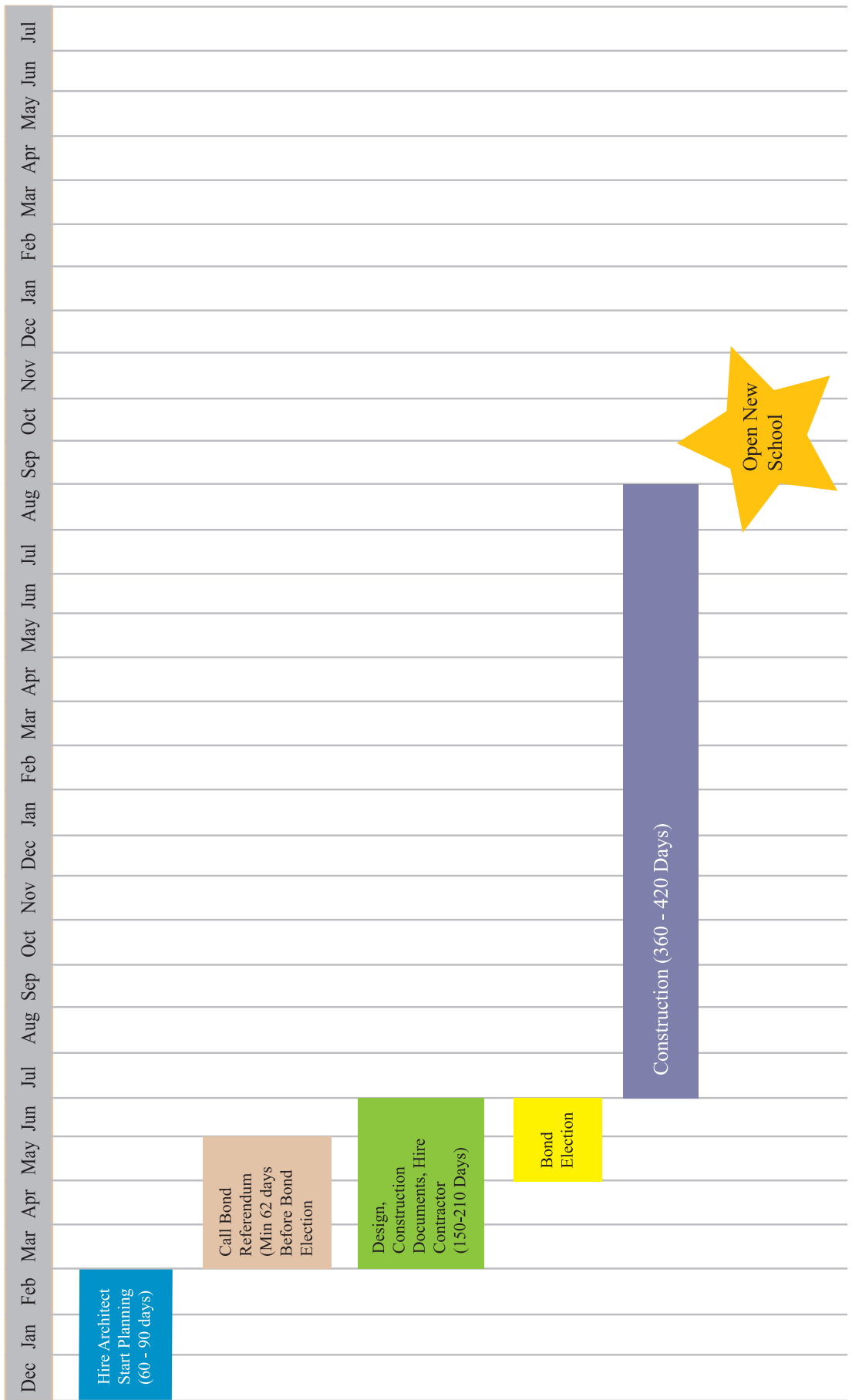
CLARK KENT ERVIN
Deputy Attorney General - General Counsel

ELIZABETH ROBINSON
Chair, Opinion Committee

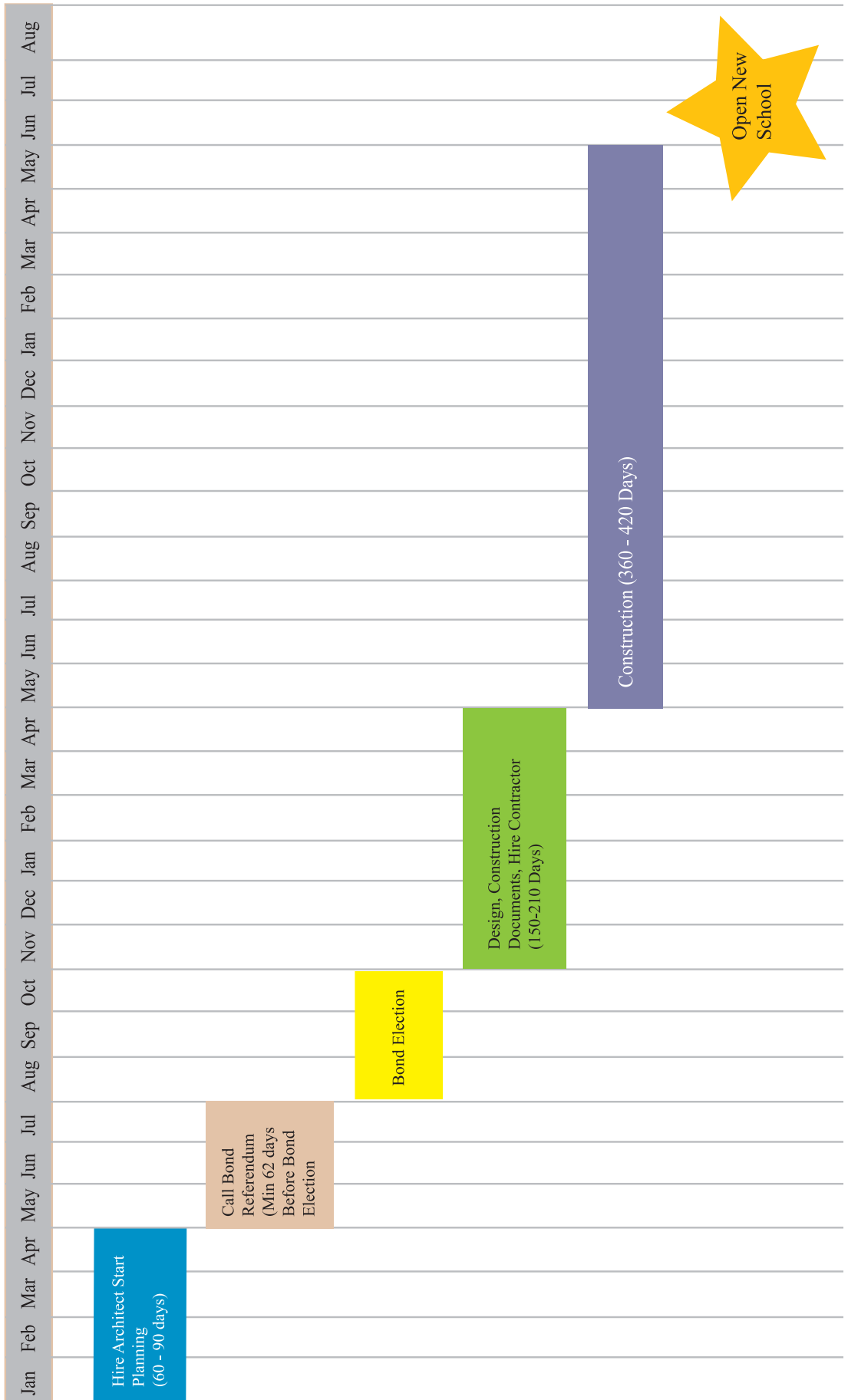
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GOVERNMENT CODE

SUBTITLE D. STATE PURCHASING AND GENERAL SERVICES

CHAPTER 2151. GENERAL PROVISIONS

Sec. 2151.001. **SHORT TITLE.** This subtitle may be cited as the State Purchasing and General Services Act.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2151.002. **DEFINITIONS.** Except as otherwise provided by this subtitle:

(1) "Commission" means the Texas Building and Procurement Commission.

(2) "State agency" means:

(A) a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute;

(B) the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council;

or

(C) a university system or an institution of higher education as defined by Section 61.003, Education Code, except a public junior college.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.199, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1035, Sec. 60, eff. June 19, 1997; Acts 2001, 77th Leg., ch. 1422, Sec. 1.02, eff. Sept. 1, 2001.

Sec. 2151.003. **REFERENCE.** A statutory reference to the General Services Commission, the State Board of Control, or the State Purchasing and General Services Commission means the Texas Building and Procurement Commission.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 1.03, eff. Sept. 1, 2001.

Sec. 2151.004. **TRANSFER OF POWERS AND DUTIES TO DEPARTMENT OF INFORMATION RESOURCES.** (a) The powers and duties of the General Services Commission under Chapter 2170 or other law relating to providing telecommunications services for state government are transferred to the Department of Information Resources.

(b) A reference in law to the General Services Commission that relates to the powers and duties of the General Services Commission under Chapter 2170 or other law relating to providing telecommunications services for state government is a reference to the Department of Information Resources.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 1.04, eff. Sept. 1, 2001.

Sec. 2151.005. **EXEMPTIONS RELATED TO LEGAL SERVICES.** This subtitle does not apply to:

(1) obtaining outside legal counsel services;

(2) obtaining expert witnesses; or

(3) procuring litigation-related goods and services for which competitive procurement is not feasible under the circumstances.

Added by Acts 2003, 78th Leg., ch. 309, Sec. 7.04, eff. June 18, 2003.

EXCERPT FROM
EDUCATION CODE
CHAPTER 44. FISCAL MANAGEMENT
SUBCHAPTER A. SCHOOL DISTRICT FISCAL MANAGEMENT

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.

*EXCERPT FROM EDUCATION CODE - CHAPTER 44. FISCAL MANAGEMENT
SUBCHAPTER A. SCHOOL DISTRICT FISCAL MANAGEMENT (cont'd)*

(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.

NOTICE:
REQUEST FOR STATEMENT OF QUALIFICATIONS
FOR ARCHITECTURAL SERVICES
_____ INDEPENDENT SCHOOL DISTRICT

This is an invitation and Request for Statement of Qualifications from architectural firms. Services to be provided include customary architectural services and related structural/MEP-engineering services for renovations and/or new school projects (the "Project") which are anticipated to be constructed at multiple locations within the (_____ District Name _____) Independent School District ("_____ District Name _____ ISD").

The contract to be executed between the (_____ District Name _____) ISD and the architect will be the AIA Document B141-1997 "Standard Form of Agreement Between Owner and Architect," as modified including the attached Addendum to the Standard Form of Agreement.

Responses to this Request for Statement of Qualifications will be received until _____ p.m. on _____, 2006 at:

(_____ District Name _____) Independent School District
Attn: Designated Contact
Job Title of Designated Contact
Street Address
City, State, Zip Code

Responses received after this time will not be considered. Responses shall include the information requested hereafter. Submissions of Statement of Qualifications, once received by (_____ District Name _____) ISD, may not be modified or withdrawn. Notification as to acceptance or non-acceptance will be made by U.S. mail and/or fax to each firm individually. Collective listing of participating firms or listing of selected firms will not be published, except where required by law.

Respondents not selected for second-phase evaluation may pick up all but one copy of the original submittals within ten (10) days after notification. Submittals not picked up within the time period will be destroyed. Inquiries or requests for clarification regarding this Request for Statement of Qualifications shall be directed in writing by one of the following methods:

U.S. Mail to:

Name of Contact

Contact Title

(_____ District Name _____) Independent School District

Street Address

City, State, Zip Code

Electronic Mail:

Email address of designated contact

Facsimile to:

Fax Number

Attention: Designated Contact

Clarifications will be provided as soon as possible. Clarifications, which might affect other firms' responses, will be sent to all firms in the form of an addendum, via most effective means of communication — email or facsimile. Early requests for clarification are encouraged. No clarifications will be given within five (5) working days prior to the deadline for submissions.

Respondents are only permitted to contact _____, the designated (_____ District Name _____) ISD representative, in writing regarding this Request for Qualifications. Any or all contacts shall be directed to the address or phone number mentioned above and shall be only for the express purpose of clarifying the specifics of the Request for Statement of Qualifications.

QUALIFICATION EVALUATION & SELECTION PROCESS

Phase One

The Review Committee will consist of staff members from various departments which include, but are not limited to: Facilities Planning & Construction, Purchasing, Finance, Curriculum & Instruction, General Administration, Maintenance, Operations, Food Services, etc. After evaluation of the submitted Statements of Qualifications, the Review Committee will select a short list of firms upon which to give further consideration through a second phase evaluation. Results of the selection status of each firm will be provided individually. (_____ District Name _____) ISD will not publicize the names of submitting firms or of the firms advancing to the second phase of selection.

Phase Two

The second phase of the evaluation process will consist of interviews conducted with the selected firms at the Facilities Planning & Construction office by the Review Committee. Specific details will be provided to each firm selected upon notification of advancing to the second phase. Generally, each firm can expect to provide a 30 minute presentation to the Review Committee about their firm and project types. After the presentation, a fifteen minute question and answer time period will be provided to address any specific questions the Committee may have related to the firm's presentation and/or information provided. After evaluation of the interview presentations, the Review Committee has the option to select a short list of firms upon which to give further considerations through a third phase evaluation. Results of the selection status of each firm will be provided individually. (____ District Name ____) ISD will not publicize the names of submitting firms or of the firms advancing to the second phase of selection.

Phase Three

The third phase evaluation process will involve tours guided by each respective selected firm of existing buildings identified on the Statement of Qualifications selected by the Review Committee, together with a review of the operational and maintenance costs of such buildings. Each firm selected for the third phase will be given adequate time to schedule the tour and prepare the information necessary to disclose the operational and maintenance costs. A format will be provided to the selected firms for submittal of all third phase documentation. The Review Committee will consider selecting a further short list based on the tours conducted and additional information submitted for review and evaluation. Results of this third phase of the selection status of each firm will be provided individually. (____ District Name ____) ISD will not publicize the names of submitting firms or of the firms advancing to the third phase of selection.

Phase Four

The Review Committee will enter into a fourth phase evaluation which will consist of a scheduled tour of the offices of the firms still being considered. Upon completion of the tours of the selected firms offices, the Review Committee will complete it's evaluation and finalize the selection of architectural firms to be considered for architectural services for any renovation and/or new facilities that were included in the 2001 and 2004 Bond Programs. Each firm will be notified individually of the final results of this phase.

Initially, any new firm/s that are selected on the final approved list will be considered for providing architectural services on renovation projects only. After the district has the opportunity to work with the selected firm and such results are considered satisfactory or above, then further consideration will be provided to such firms for architectural services on new facilities designs. Being selected on the final list in no way guarantees such selected firms to provide any architectural services for projects. The district will select architects from the approved list of firms to best serve the district needs on a project to project basis. The program requirements for each project will be provided to the firm at the time of the project assignment by (____ District Name ____) ISD as may be required for the design of renovations and/or new facilities that were approved in the (____ insert year/s ____) Bond Program and any future bond program..

The selected firms will be asked to execute the Standard Form of Agreement between Owner and Architect as modified. A sample of this Agreement is attached hereto to the request for qualifications for review by the architectural firm. No revisions to the agreement with the exception of project specific language only will be allowed and the architect is expected to execute such agreement. If the Architect is unable to execute the agreement in its current form, the firm must indicate this in the submission and indicate what specific exceptions, if any, the firm has with such contract. Any exceptions to the contract language will be part of the evaluation process with the Review Committee and could have an effect on the outcome of the selection of the final list of approved architectural firms that will be considered to provide architectural services to the school district.

Selection Timeline

The respondents must adhere to the following timeline for submission of Statement of Qualifications to be considered. The Timeline established for the Review Committee to evaluate all submissions and determine selection of firms for the next phase of the evaluation is an estimate and is subject to change. As the Review Committee moves through the various phases of the evaluation process, the Committee reserves the right to change such schedule and may ask for additional supplemental information as may be requested to complete the evaluation. If additional information is requested, the Review Committee will provide adequate time for the firms to submit such information in order to be considered for the next phase of the evaluation.

Request For Statements of Qualifications Released	_____	, 2006
Deadline to submit questions/clarifications	_____	, 2006
District response to questions/clarifications	_____	, 2006
Due Date for Statement of Qualifications submittal	_____	, 2006
Phase 1 Review Committee Evaluation	_____	, 2006
Phase 2 Short List Notification	_____	, 2006
Phase 2 Interviews	_____	, 2006
Phase 3 Short List Notification	_____	, 2006
Phase 3 Tour of Selected Firms Projects	_____	, 2006
Selection Committee Review	_____	, 2006
Phase 4 Tour of Selected Firms Offices	_____	, 2006
Review Committee Final Evaluation/Selection	_____	, 2006
Notification to Final Selected Architectural Firms	_____	, 2006
Written or Verbal Report to Board of Trustees	_____	, 2006

Note:

As noted above, this schedule is an estimate and is subject to change depending on the schedule availability of the Committee Members.

INSTRUCTIONS FOR PHASE ONE SUBMISSION

- MINIMUM REQUIREMENTS -

Submittals for minimum requirements shall be prepared simply and economically, and shall provide concise answers to the requested information in the order and format prescribed. Failure to do so may be cause for disqualification from further consideration. Emphasis will be placed upon clarity and completeness of the submitted response, as opposed to the artistic appearance of the submission.

A total of ____ (____) copies of each submittal shall be neatly packaged and sealed with the address of the recipient affixed to the exterior face.

Submission Format

Submissions must be complete and organized in the following manner:

- Incomplete submissions will be disqualified.
- Follow the submission format exactly; scores will reflect the submitted format.
- Provide the submission in a letter-size D-Slant binder 1 ½” deep or less .
- Information should be bound in a compact manner for long-term storage within the 1 ½” D-Slant binder.
- Under project references, clearly state the name of the firm who performed the references work. If work was performed under the employ of another firm indicate so by naming that firm. Provide a description of the specific work performed by the firm or individual referencing each project.
- If you are submitting as a joint venture, provide separate project lists clearly indicating the name of the firm that completed each project being referenced and the specific role of that firm in the project.
- The physical size dimensions are for the paper size stored within the binder and are not applicable to the specified binder depth. The size and page limit is exclusive of tab dividers. 11 x 17 size sheets are acceptable as long as the sheets are folded to the specified paper size limitation.
- Tabs (1 through 8) - In each Tab Section, please include the information as indicated by the following:

1. Architect’s Introductory Letter of Interest (Tab 1)

This document should be prepared and signed jointly by the Partner-in-Charge and the proposed Project Architect/Manager assigned to the potential (____ District Name____) ISD project - a statement in essay form that allows personal expression as to:

- a. Why you believe your firm is aptly suited to perform architectural services for (____ District Name____) ISD;
- b. What special qualities/attributes you and your firm possess that would enable you to meet the district’s educational specifications and high expectations of service in a superior manner;
- c. Identify specific instances where other school districts have benefited as a result of your association with their construction program.

- d. Comment on your firm's qualifications, including general information and brief history of the firm, including a chronology of the firm's origin through its current status and any changes in ownership, locale, or addresses since its inception.
- e. Comment on your firm's ability and commitment to provide insurance, including professional liability insurance, per the attached contract requirements.

Please limit your Introductory Letter (Tab 1) to three (3) letter-size pages.

2. Architect's Qualification Statement: (Tab 2)

Attach a completed AIA Document B431 Architect's Qualification Statement. In the event that a submitting firm has multiple offices, submit one B431 for the office nearest the (District Name) ISD in (City), Texas, and a separate B431 providing the information for the collective company. In the event that one or more firms are submitting via joint venture, each participating firm shall fully complete a B431. Additionally, a detailed description of the proposed organizational structure and the proposed role of each firm of the conglomerate shall be provided.

Where articles on the B431 would be duplicated on supplemental requested information, so stipulate on the form. Do not leave any spaces completely blank.

3. Firm Profile (Tab 3)

- 3.1 Firm Name
- 3.2 Business Address
- 3.3 Telephone/fax number
- 3.4 Contact/email address
- 3.5 Type of organization: Individual or sole proprietorship, professional corporation, corporation partnership, joint venture or other
- 3.6 Name of Principals
- 3.7 Professional History
- 3.8 Provide last three years of financial statements, audited, if available
- 3.9 Professional Affiliations
- 3.10 Honors and Awards
- 3.11 Professional and Civic involvement

- 3.12 Comment on the firm's specialized expertise
- 3.13 Number of years the firm has designed K-12 educational facilities
- 3.14 Provide the firm's annual billings for the past three years and indicate the percentage that represents K-12 billings
- 3.15 Provide the firm's organization chart indicating the following:
 - a. Total number of registered architects and the number of years with the firm
 - b. Total number of employees
- 3.16 Provide the firm's sample insurance certificate
- 3.17 Provide the firm's history of claims and litigation for the past three years and how these claims were resolved
- 3.18 Does the firm have in-house Civil, Structural, MEP Engineering or other Consultants expertise?
- 3.19 Provide any comments or concerns the firm has with the Owner/Architect contract
- 3.20 Is the firm's principal office or a secondary office located in this school district?
- 3.21 Does any member of the firm's team presented for this project live in this school district?

4. Firm's Management Style & Philosophy (Tab 4)

- 4.1 Does the firm create its own Project Manuals/Specifications or is this service contracted out?
- 4.2 Does the firm have history of producing school district specific master specifications?
- 4.3 Provide the current workload of the firm versus the firm's workloads capacity (expressed by the number of projects, their budget and the current phase they are in). For firms that have multiple office locations, please provide information on the local office that would manage and provide such architectural services. Provide the overall firm wide data as additional information.
- 4.4 Provide information on how many architect employees have been added to the staff in the past 12 months and how many architects have left the firm in the past 12 months.
- 4.5 Describe the firm's culture, vision and philosophy
- 4.6 Describe the firm's design philosophy
- 4.7 Describe the firm's organization and project management philosophy
- 4.8 Describe the firm's programming and design process
- 4.9 Describe the firm's quality control program during the design services

- 4.10 Provide history of the firm's design time schedule adherence
- 4.11 Describe the firm's philosophy and practice of document coordination
- 4.12 How does the firm handle its errors and omissions? Provide an example
- 4.13 Provide a history of the firm's accuracy in providing project budgets
- 4.14 Provide a summary of the firm's bidding history, include the extent of addendum's issued and number of pages
- 4.15 Describe the firm's philosophy regarding value engineering
- 4.16 Describe the firm's coordination practices during preconstruction with the General Contractor/Construction Manager
- 4.17 Describe the firm's use of technology during design services and construction administration phases of the project
- 4.18 How does the firm handle warranty issues
- 4.19 Identify the firm's most successful project and why
- 4.20 Identify the firm's most unsuccessful project and why
- 4.21 List the firm's experience with the Competitive Sealed Proposal (CSP) and the Construction Manager @ Risk (CM@Risk) project delivery systems

5. Firm References (Tab 5)

Specific numbers of projects are stipulated to be included in Tab 5 under specific sections. These projects can be projects that have completed the design phase; projects currently under construction; or projects that construction has been completed.

It should be noted that if respondents provide fewer project references than stipulated below, the submittal will not be considered non-compliant and will not be excluded from the evaluation process. However, it could potentially impact the evaluation of the respondent's submission.

The size and number of addendum issued on each project reference provided shall include the total number of pages issued for each addendum which shall include any drawings issued as part of the addendum.

5.1 Related Work Experience

Provide a list of at least ten (10) most recent local school projects on which your firm has provided full architectural services. "Local" in this instance means projects within the Education Service Center Region (insert relevant ESC Region #) area in (City), Texas. "Your firm" in this instance refers to the local office, not the corporate composite. Providing this information constitutes the respondent's invitation for (District Name) ISD to contact the persons listed.

The list shall include, in this order, one project per letter-sized page:

1. Name of Project
2. Name of Owner
3. Mailing address of Owner
4. Telephone number and fax number of Owner
5. Owner's contact person
6. Description of project
7. Size in square footage of project
8. Owner's initial number of calendar days for design and contract document phases
9. Describe schedule overruns during the design and contract document phases
10. Owner's initial budget for construction cost
11. Number and size of addendums issued on project
12. Date of construction contract
13. Date of Substantial Completion
 - a. Actual Date of Substantial Completion
 - b. If project completed late, explanation of why and what your team did to attempt to get the project back on schedule.
14. Project budget amount at design phase
15. Dollar value of construction at date of contract
16. Dollar value of construction at completion of contract
 - a. Over/under budget amount and explanation of such
17. Explanation of any change orders on the project
18. Name of Project Architect/Manager
19. Name, Address and Telephone Number of General Contractor/Construction Manager
20. Name and Telephone Number of General Contractor's/Construction Manager's Contact Person
21. List of Project Consultants utilized by Architect.

5.2 New School Facility Experience

Provide a list of at least 10 projects (elementary, middle and high school projects along with support facilities) that were completed in design or substantially completed within the past 3-5 years (may be some or all of the projects submitted under paragraph 5.1. Providing this information constitutes the respondent's invitation for (District Name) ISD to contact the persons listed.

1. Name of Project
2. Name of Owner
3. Mailing address of Owner
4. Telephone number and fax number of Owner
5. Owner's contact person
6. Description of project
7. Size in square footage of project
8. Number and size of addendum issued on project
9. Date of construction contract

10. Date of Substantial Completion
 - a. Actual date of Substantial Completion
 - b. If project completed late, explanation of why and what your team did to attempt to get the project back on schedule.
11. Project budget amount at design phase
12. Dollar value of construction at Date of Contract
13. Dollar value of construction at Completion of Contract
 - a. Over/under budget amount and explanation of such
14. Name of project architect/manager
15. Name, address and telephone number of general contractor's/ construction manager
16. Name and telephone number of general contractor's/construction manager's contact
17. Your opinion of modifications that would have improved the building
18. Your opinion of modifications that could be made to the design to make the building conform to the Educational Specifications
19. List of Project Consultants utilized by Architect

5.3. Renovation Project Experience

Provide a list of a minimum of five (5) renovation projects that were completed within the past 3-5 years that are in the price range of \$1,000,000 up to \$5,000,000. Provide a list of a minimum of five (5) renovation projects each valued from \$5,000,001 up to \$10,000,000 and five projects from \$10,000,001 and greater. In addition, please provide a list of a minimum of five (5) major multi-phased renovation projects that worked around school operations that were on-going during construction. Each project provided by the architect in this section shall include the following information on each and every project:

1. Name of Project
2. Name of Owner
3. Mailing Address of Owner
4. Telephone number and fax number of Owner
5. Owner's contact person
6. Description of project
7. Size in square footage of project
8. Number and size of addendum issued on project
9. Date of construction contract
10. Date of Substantial Completion
 - a. Actual Date of Substantial Completion
 - b. If project completed late, explanation of why and what your team did to attempt to get the project back on schedule.
11. Project budget amount at design phase
12. Dollar value of construction at date of contract
13. Dollar value of construction at completion of contract
 - a. Over/under budget amount and explanation of such
14. Name of project architect/manager
15. Name, address and telephone number of general contractor/ construction manager

16. Name and telephone number of general contractor's/construction manager's contact
17. Your opinion of modifications that would have improved the building
18. Your opinion of modifications that could be made to the design to make the building conform to the Educational Specifications
19. Explanatory statement to describe the phased renovation process while school was still in session and what steps were taken to ensure the safety of the students and staff and the adherence to the project schedule.
20. List of Project Consultants utilized by Architect

5.4 Contractor References

Provide a minimum of five (5) references from General Contractors that you have worked with in the past (can include contractors from projects listed above) the district can contact to discuss your firm's performance and teamwork during the construction phase of various projects. The references requested are for the architectural firm only and not individuals within the firm. These references can be from projects listed under Tab 5 or can be general representation of the firm from any general contractor.

6. Project Team (Tab 6)

- 6.1 Provide team organization chart that you would propose to utilize for working on (District Name) ISD projects (renovations and/or additions) including back-up personnel along with included consultants
- 6.2 Provide resumes and references for each member of the team proposed. Include Owner, Consultants and General Contractor/Construction Manager references for each team member with contact name, phone and fax numbers
- 6.3 Will construction administration on (District Name) project(s) be performed with staff that was involved in the design and production of the contract documents?
- 6.4 Provide current workload of the team proposed by number of projects, their budgets and current phase (design, contract documents or construction)
- 6.5 Describe the involvement of a firm's principal in this project and their extent of involvement
- 6.6 Include a tentative design services schedule for one summer duration construction renovation projects based upon your previous experience in performing such services. Also include a proposed timeline for both new facility designs and repeat designs for elementary, middle and high school facilities.
- 6.7 List proposed consultants you would propose to use for any renovations and/or additions type project(s) performed in (District Name) ISD. Please refer to the list of Consultant types noted in the Standard Form of Agreement Between Owner and Architect included in the RFQ as a basis of providing such requested list. Consultant qualification information is not required as part of the submission requirements. Only provide the proposed consultant company names.

- 6.8 Do you see any potential conflicts of interest if selected to perform such architectural services on projects for (_____ District Name _____) ISD. If so, please list such conflicts and explain in detail.
- 6.9 As part of the Standard Form of Agreement, the Architect is required to provide geotechnical engineering and topographical survey as a reimbursable expense as needed for projects requiring this scope of service. Please provide a list of such companies you would utilize for (_____ District Name _____) ISD projects as part of your project team.

7. Supplemental Forms (Tab 7)

- 7.1 Conflict of Interest Questionnaire
- 7.2 Felony Conviction Notification
- 7.3 Affidavit of Non-Discriminatory Employment

See attached forms for submission.

8. Supplemental Information

No assurance is offered that the Review Committee will examine supplemental information in evaluating responses.

Supplemental information only may be submitted via DVD (15 minutes maximum) or electronic format on Microsoft PowerPoint 2003 or earlier. (Label shall identify the respondent, recipient, and purpose for the material).

It is unnecessary to provide supplemental information on the first submittal. However, if the respondent so chooses, additional information may be provided in the form of promotional brochures or similar material. Physical size of the submission shall be limited to 8 ½ by 11 not to exceed 100 pages for supplemental information only. This physical size limitation applies to the Supplemental Information only and not to the other submission requirements noted elsewhere within the RFQ.