

#### **C.2.3.4 (Procedure) Construction Management**

Responsible Department: Vice Chancellor for Finance and Administration

Based on Board Policy: [C.2.3 - Facilities and Grounds Management](#)

Approved: 8-18-09

Last Amended:

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#### **Specifications**

The Chancellor or designee shall ensure that detailed specifications are prepared for any construction-related project regardless of procurement or project delivery method.

#### **Process**

All responses to construction-related procurement opportunities shall be submitted in sealed envelopes, plainly marked with the name and identifying number of the construction-related procurement opportunity and the time of opening of the responses. Such responses may be withdrawn prior to the scheduled time for opening and if not withdrawn, shall be opened at the time specified, in an open forum at which any interested parties shall be welcome. Responses to construction-related procurement opportunities received after the specified time shall not be considered. Nothing in this procedure shall be interpreted to restrict in any way, the use by the College District of procurement or project delivery methods available under applicable law.

#### **Safety Record**

If the College District considers the safety record of potential contractors/consultants in determining to whom to award a contract, the safety record shall be defined as a potential contractor's/consultant's OSHA (Occupational Safety and Health Administration) inspection logs for the last three years, a loss analysis from the potential contractor's/consultant's insurance carrier, and a loss history covering all lines of insurance coverage carried by the potential contractor/consultant.

#### **Communication with Contractors**

No College District Board member or employee other than authorized Legal Affairs personnel shall communicate with potential contractors/consultants, (including professional designers, project management professionals and the potential contractors'/consultants' employees, subcontractors, officers or agents) who are interested in, or might reasonably become interested in, any particular construction-related procurement opportunity from the date of publication until the contract is executed. If Board members or non-authorized employees are contacted during this time by any potential contractors/consultants described above, they shall inform the potential contractor/consultant that such communication is prohibited, direct them to the Legal Affairs department, and immediately report the contact to the Legal Affairs department.

The Legal Affairs department shall keep a log of all such contacts. Contractors/consultants who violate this policy may be subject to a range of sanctions including disqualification from competition for the construction-related procurement opportunity and/or other future procurement opportunities after Board review. Employees who violate this policy may be subject to disciplinary action, including termination after review by the Chancellor.

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#### **Required Workers' Compensation Coverages**

The College District shall use the following language for bid specifications and contracts for building or construction, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation.

A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project is required for the duration of the project.

Duration of the project includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the College District.

Persons providing services on the project ("subcontractor" in Texas Labor Code 406.096) include all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the project.

Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. Services do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all employees of the contractor providing services on the project for the duration of the project.

The contractor must provide a certificate of coverage to the College District prior to being awarded the contract.

If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the College District showing that coverage has been extended.

The contractor shall obtain from each person providing services on a project, and provide to the College District:

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1. A certificate of coverage, prior to that person beginning work on the project, so the College District will have on file certificates of coverage showing coverage for all persons providing services on the project; and
2. No later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter. The contractor shall notify the College District in writing by certified mail or personal delivery, within ten days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

The contractor shall post on each project site a notice, in the text, form, and manner prescribed by the TDI, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

1. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all of its employees providing services on the project for the duration of the project;
2. Provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project for the duration of the project;
3. Provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
4. Obtain from each other person with whom it contracts, and provide to the contractor:
  - a. A certificate of coverage, prior to the other person beginning work on the project; and
  - b. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
5. Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
6. Notify the College District in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that

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materially affects the provision of coverage of any person providing services on the project; and

7. Contractually require each person with whom it contracts to perform as required by items 1–6, with the certificates of coverage to be provided to the person for whom they are providing services.

By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the College District that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the TDI's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The contractor's failure to comply with any of these provisions is a breach of contract by the contractor that entitles the College District to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the College District.

The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996.

#### *Legal Reference - TACC Policy Reference Manual*

CM(LEGAL) - Facilities Construction

CM(EXHIBIT) - Facilities Construction

CMA(LEGAL) - Facilities Construction: Competitive Bidding

CMB(LEGAL) - Facilities Construction: Competitive Sealed Proposals

CMC(LEGAL) - Facilities Construction: Design-Build Contracts

CMD(LEGAL) - Facilities Construction: Construction Manager-Agent

CME(LEGAL) - Facilities Construction: Construction Manager At-Risk

CMF(LEGAL) - Facilities Construction: Job Order Contracts