

SOLID LEGAL FOUNDATIONS

LEGAL ISSUES IN TEXAS SCHOOL CONSTRUCTION PROJECTS
THE CORE PROGRAM

Statewide Law Firm.
Local Solutions.

Experience. Respect. Results.

Presented by:

Oscar G. Treviño, Partner

35 Years Representing Texas School Districts

CORE SESSION • 2026 SCHOOL FINANCE CONFERENCE

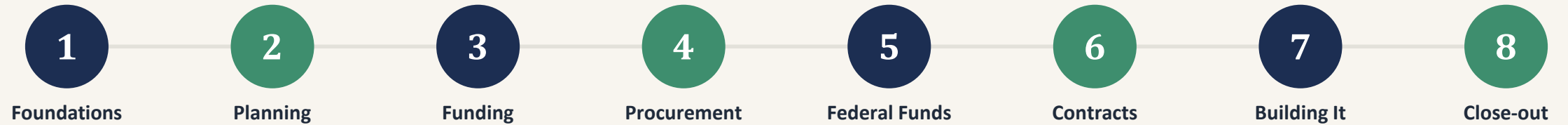
Tuesday, July 21, 2026 • 8:30 a.m. – 4:00 p.m. • 6 CEU hours



O'HANLON
DEMÉRATH
& CASTILLO

THE PROJECT LIFECYCLE AT A GLANCE

Eight legal checkpoints, in the order you actually hit them — we move left to right all day.



DISCUSS · SHARE YOUR EXPERIENCE

Map your project

As we move through the day, place your current or most recent project on this timeline — where did the legal friction actually show up?

WHY SCHOOL CONSTRUCTION IS A LEGAL MINEFIELD

A construction project sits on top of public money, an election, dozens of vendors, and children.

Five pressures pull on every decision:

Stewardship

Public dollars demand competition & documentation.

Fair Competition

Vendors must get an equal, transparent shot.

Transparency

Open meetings, open records, honest disclosure.

Safety

Code, accessibility & school-security mandates.

Accountability

Audits, the AG, and the courts are watching.



FIRST PRINCIPLE

The through-line

When two of these pressures collide — speed vs. competition, or flexibility vs. documentation — that is where legal issues are born. Spot the collision early and you can manage it; miss it and it becomes a dispute.

01

FOUNDATIONS

Who makes the rules — and how federal, state, and local law stack on a single project.



DISCUSS · SHARE YOUR EXPERIENCE

In your district, who really drives construction decisions — the board, the superintendent, or the business office? Where does that line blur?

Three layers of authority



THREE LAYERS OF LAW ON ONE PROJECT

Federal

- Applies **only** when federal funds touch the work
- 2 CFR §§ 200.317–.327 (Uniform Guidance procurement) / EDGAR award terms
- Davis-Bacon, debarment, anti-lobbying

State (Texas)

- The default rulebook for every project
- Education, Government & Local Gov't Codes
- Election, Occupations & Property Codes

Local

- Your board's adopted (LOCAL) policies
- City permits, zoning & utility rules
- Interlocal & cooperative agreements



RED FLAG • TRAP

The cardinal rule when layers overlap

When layers overlap, comply with all applicable federal, state, local and award-specific requirements. Federal funds do not replace Texas procurement law — they add to it. Build the process to satisfy both.

THE TEXAS STATUTORY TOOLBOX

Topic	Primary authority
Purchasing & best value	Education Code § 44.031
Construction delivery methods	Government Code Ch. 2269
Architect / engineer required	Occupations Code Ch. 1051 / Ch. 1001
A/E & professional selection	Government Code Ch. 2254
Bonds & bond elections	Education Code Ch. 45; Election Code Ch. 1251
Electioneering	Election Code § 255.003
Conflicts of interest	Local Gov't Code Ch. 171 & Ch. 176
Prompt payment / retainage	Gov't Code Ch. 2251 / § 2252.032
Prevailing wage / payment bonds	Gov't Code Ch. 2258 / Ch. 2253

WHO DOES WHAT: GOVERNANCE VS. MANAGEMENT

Board of Trustees

- Sets policy & calls the bond election
- Awards or delegates contracts; approves budget
- Approves major change orders
- Acts only as a body, in open meeting

Superintendent / Admin

- Recommends; runs the procurement
- Negotiates & administers contracts
- Executes within delegated authority
- Brings issues to the board

Business / Finance

- Guards the dollar thresholds
- Maintains the procurement file
- Tracks fund 600 & bond proceeds
- Owns audit readiness



TRUSTEES vs. ADMINISTRATION

The line that prevents most problems

Board acts as a body; administration executes within delegated authority. A board member negotiating with a contractor, or staff awarding a contract the board never approved, is a governance failure waiting to become a legal one.

Key authority: Ed. Code § 11.1511; Gov't Code Ch. 551; district policy

02

PLANNING THE PROJECT

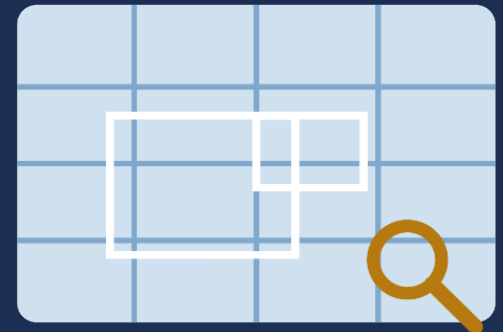
Define what you are building before you buy it — because the definition decides which rules apply.



DISCUSS · SHARE YOUR EXPERIENCE

Have you ever had a project labeled “maintenance” to move it faster? How did that turn out?

Needs, definitions & design professionals



NEEDS COMMITTEES & HIRING A CONSULTANT

Facility needs / bond committee

- Community members vet needs & priorities
- Reviews assessments, demographics, options
- Recommends a package — **advisory only**
- Builds a transparent, defensible record

Owner's consultant / program manager

- Manages scope, budget & schedule for the owner
- Coordinates the A/E, contractors & reporting
- Hired by best-value method — often RFQ/RFP (Ed. Code § 44.031)
- Not a design professional unless separately licensed



TRUSTEES vs. ADMINISTRATION

Define the engagement and its limits

A consultant advises and coordinates; the consultant does **not** hold board authority, approve change orders, or perform architecture or engineering without a license. Fix scope, fee, term, conflicts and reporting lines in a written agreement.

Ed. Code § 44.031 (best value)

Gov't Code §§ 2254.003–.004 (if licensed A/E)

RENOVATION, NEW CONSTRUCTION — OR JUST MAINTENANCE?

The label is not cosmetic. It decides whether TEA facility standards apply and whether you must hire an architect, an engineer, or neither.

Category	Working definition	A/E required
New construction	A design and construction of new facility for educational / assembly / office use including modular building	Architect
Major renovation	Construction, addition, rehabilitation, alteration or repair of an existing facility > \$50,000	Architect + engineer
Minor renovation	Construction, addition, rehabilitation, alteration or repair of an existing facility > \$50,000	Engineer only
Maintenance / repair	Repairs necessary to preserve property in working order	Often neither

19 TAC § 61.1040

Occ. Code Ch. 1051

Occ. Code Ch. 1001

WHEN IS AN ENGINEER REQUIRED — AND HOW YOU HIRE THEM

Engineering is generally triggered by

- Structural systems & foundations
- Mechanical, electrical, plumbing
- Civil — drainage, utilities, paving
- Fire/life-safety systems

Selection rule — qualifications, not price

- Select the **most highly qualified** provider on demonstrated competence
- Then negotiate a fair & reasonable fee (§ 2254.004)
- Price is **not** the selection basis
- Separate from construction procurement



RED FLAG • TRAP

A/E cannot be procured like a contractor

Selecting architects or engineers on competitive price violates the Professional Services Procurement Act. Select on qualifications first, negotiate fee second.

Occupations Code Ch. 1001

Gov't Code §§ 2254.003–.004 (Professional Services)

DESIGN PROFESSIONAL LIABILITY & THE STANDARD OF CARE

- **Standard of care** — the ordinary skill of a similarly situated professional, not perfection or a guarantee
- **Professional liability (E&O) insurance** — confirm coverage limits; general-liability policies exclude professional services
- **Certificate of merit** — a covered claim against a design professional generally requires a third-party expert affidavit filed with the petition
- **Indemnity / duty-to-defend limits** — CPRC Ch. 130 and Texas anti-indemnity rules constrain what an A/E can be required to defend or indemnify



REQUIRED CERTIFICATION

The certificate-of-merit requirement

A covered claim generally must be supported, at filing, by an affidavit from a like-licensed Texas expert identifying the alleged error or omission. Absence of the affidavit can result in dismissal, subject to statutory exceptions and case posture, subject to statutory exceptions and case posture — an important consideration before and during a design dispute.

Civ. Prac. & Rem. Code § 150.002

CPRC Ch. 130; Ins. Code Ch. 151

TEXAS SCHOOL-SAFETY REQUIREMENTS NOW IN FORCE

- SB 11 (2019) / Ed. Code §§ 37.108, .109, .115 / Ed. Code §§ 37.108, .109, .115 — multi-hazard emergency operations plans, school safety & security committees, recurring facility security audits, threat-assessment teams
- HB 3 (2023) / Ed. Code § 37.0814 / Ed. Code § 37.0814 — an armed security officer at every campus during school hours; intruder-detection audits; TEA Office of School
- SB 838 (2023, “Alyssa’s Law”) / Ed. Code § 37.117 / Ed. Code § 37.117 — silent panic-alert technology in every classroom
- Safety & Security; mental-health training
- Funding — school-safety allotment/per-campus funds and grants, checked against current Ed. Code § 48.115 and appropriations



NEW LAW • WATCH

Confirm the governing standard before design

These requirements arrived across recent sessions and continue to be refined by TEA rule and the Texas School Safety Center. Verify the version that applies to the project’s design and bid date with counsel and the architect.

SB 11 (2019) / Ed. Code §§ 37.108, .109, .115 / Ed. Code §§ 37.108, .109, .115

HB 3 (2023) / Ed. Code § 37.0814 / Ed. Code § 37.0814

SB 838 (2023)

Texas School Safety Center

03



FUNDING THE PROJECT

Bonds, elections, and the bright line between informing voters and unlawfully campaigning with public funds.



DISCUSS · SHARE YOUR EXPERIENCE

What is the trickiest electioneering question your team has faced during a bond campaign?

Bonds · Ballots · Electioneering



HOW DISTRICTS PAY FOR BUILDINGS

Two tax pockets

- **M&O** — operations & salaries
- **I&S** (debt service) — repays bonds
- Capital projects are built with **bond** proceeds
- Proceeds live in **Fund 600** capital projects

Other tools

- Maintenance tax notes (limited)
- Lease-purchase & certificates
- Interlocal & cooperative purchasing
- Grants & (rarely) federal capital dollars



BUSINESS OFFICE

Proceeds are restricted — and Fund 600 tracks them

Bond proceeds must tie to voter-authorized purposes, proposition language, bond covenants, and bond-counsel guidance. They are accounted for in Fund 600, the capital projects fund in TEA's FASRG used for bond-financed construction. Trace every dollar to an authorized purpose and monitor federal tax arbitrage under IRC § 148.

CALLING THE BOND ELECTION

- **Board order** calls the election and sets the propositions — adopted in open meeting
- Must use a **uniform election date** (typically May or November) with statutory notice
- Review ballot & proposition language with bond counsel; pre-clear with the Attorney General when appropriate
- Authority and tax pledge flow from **Education Code Ch. 45**



BUSINESS OFFICE

Calendar is law

Order deadlines, uniform-date rules, and notice windows are mandatory. Noncompliance can create election-contest or bond-approval risk. Build the calendar backward from election day with bond counsel.

Education Code § 45.003

Elec. Code §§ 41.001, 3.005, 4.003; Gov't Code Ch. 1202

MANDATORY BALLOT LANGUAGE

Texas requires specific voter-warning language on every school bond proposition. Confirm the exact current statutory wording before you call the election.



NEW LAW • WATCH

Confirm the exact required statement

Education Code § 45.003 currently requires the warning “THIS IS A PROPERTY TAX INCREASE.” Do not rely on prior-cycle wording; confirm the exact current statement with bond counsel before calling the election.



RED FLAG • TRAP

Wrong wording = approval risk

Defective ballot language can jeopardize Attorney General approval or validation even after voter approval. Treat the wording as a no-improvisation requirement.

[Education Code § 45.003](#)[HB 3 \(2019\)](#)[Gov't Code Ch. 1202 \(AG approval\)](#)

ELECTIONEERING: THE BRIGHT LINE

Lawful — INFORM

- Factual description of the projects
- “What is on the ballot and why”
- Neutral fact sheets & FAQs
- Answering questions accurately

Unlawful — ADVOCATE

- “Vote FOR the bond” messaging
- Persuasive appeals with public funds
- Spending district money to campaign
- Using staff time/resources to support



RED FLAG • TRAP

Real penalties

Using public funds for political advertising is a Class A misdemeanor; separate Ethics Commission civil/administrative enforcement may also apply.

TEC guidance asks whether the communication is reasonably likely to influence a voter, not merely inform.

Election Code § 255.003

Ed. Code § 11.169 — verify current scope

04

PROCUREMENT & DELIVERY

How you legally buy construction in Texas — six delivery methods, one duty of best value.



DISCUSS · SHARE YOUR EXPERIENCE

Which delivery method has worked best for you — and which one burned you?

Methods · Best value · Red flags



CONSTRUCTION = A CHAPTER 2269 METHOD

Method	Best for	Selection
Competitive bidding	Simple, well-defined scope	Lowest responsible bid
Competitive sealed proposals	Most school buildings	Best value, scored
Construction Manager-Agent	Owner keeps risk; CM advises	Qualifications
Construction Manager-at-Risk	Complex projects, GMP	One Step or Two-step, best value
Design-Build	Speed, single point of resp.	Best value
Job Order Contracting	Recurring minor work	Qualifications + unit pricing



BUSINESS OFFICE

You must document the choice

Chapter 2269 requires a best-value method determination. A written comparison of available methods is best practice and your protest/audit defense.

COMPETITIVE SEALED PROPOSALS (CSP)

How it works

- Publish **weighted selection criteria**
- Proposers submit price + qualifications
- Score, then may **negotiate** with top firms
- Award on documented **best value**

Why districts love it

- Weigh experience, schedule & approach
- Most common method for school buildings
- Flexibility bidding does not allow



RED FLAG • TRAP

Publish criteria & score consistently

The evaluation must follow the **published** weighted criteria. Scoring toward a predetermined result, or adding criteria after proposals arrive, is the most common basis for a protest.

Gov't Code Ch. 2269

District policy CV / CVB — verify LEGAL/LOCAL

CONSTRUCTION MANAGER-AT-RISK (CMAR)

Structure

- Separate **A/E** contract for design
- CM joins early to advise on design
- CM commits to a **Guaranteed Maximum Price**
- CM holds trade contracts; risk above GMP depends on the GMP exclusions, changes and contingency terms

Selection — One-step or Two-step

- **One-step:** single RFP; may request fee & general-conditions prices
- **Two-step:** RFQ first, then ≤ 5 firms give fee/prices
- Best-value award; evaluate within 45 days



RED FLAG · TRAP

Mind the GMP & contingency

Negotiate what the GMP includes, who owns the contingency, and how savings are shared **before** signing. Vague GMP terms are a leading source of construction disputes.

Gov't Code §§ 2269.251–.255

District policy CV / CVD
verify LEGAL/LOCAL

CM-AGENT VS. CM-AT-RISK: THE KEY DIFFERENCES

	CM-Agent (CMA)	CM-at-Risk (CMAR)
Role	Owner's agent / advisor	Contractor that builds the work
Trade contracts	Held by the district	Held by the CMAR
Price risk	Stays with the district	CMAR risk above GMP depends on contract/GMP terms
Price commitment	Fee for services; no GMP	Guaranteed Maximum Price
Authority	§§ 2269.201–.209	§§ 2269.251–.256



BUSINESS OFFICE

Agency vs. risk-bearing is the dividing line

Under CMA the district remains the contracting party and carries coordination and cost risk; under CMAR a single firm guarantees the price and holds the subcontracts. Choose based on the district's risk tolerance and project-management capacity.

DESIGN-BUILD (DB)

How it works

- **One** entity delivers design **and** construction
- Single point of responsibility
- Best-value selection of the DB team
- Owner must designate an independent criteria A/E to define & check

Trade-off

- Speed & fewer owner-vs-designer gaps
- Less owner control over design details
- Define requirements tightly up front



BUSINESS OFFICE

Define before you delegate

Design-build shifts design responsibility to the team, but only to the extent your criteria are clear. The district must designate an independent A/E representative and invest in performance criteria.

Gov't Code §§ 2269.303–.310 (Design-Build)

District policy CV / CVE
— verify LEGAL/LOCAL

ENERGY SAVINGS PERFORMANCE CONTRACTS (ESPCS)

What it is & how it works

- A provider designs, installs & finances energy / water conservation measures
- Provider guarantees savings under statute and contract — confirm cost/term mechanics
- Savings repay the project over the term; any shortfall remedy follows the savings guarantee and contract terms
- Scope: HVAC, lighting, controls, building envelope, water, metering

How it is procured

- Let under **professional-services / qualifications** procedures
- RFQ noticed like competitive bidding; awarded on **best value**
- Payment & performance bond required; a savings bond is optional
- Term limited so payments never exceed the guaranteed savings



REQUIRED CERTIFICATION

Licensed P.E. review required; independence is best practice

Before signing, the board must have projected savings reviewed by a licensed professional engineer. Best practice is to use an independent, owner-side reviewer to check the engineering, methodology and savings calculations. An architect is generally not required unless the work itself triggers architectural scope.

Education Code § 44.901

Loc. Gov't Code Ch. 302 — as applicable

Texas Comptroller SECO

CHOOSING — AND PROVING — BEST VALUE

- **Document the method decision** — why this delivery method beats the others
- **Publish weighted criteria** and score only against them
- **Procure the A/E separately** on qualifications (Ch. 2254) — never on price
- **Prequalify** contractors: bonding capacity, safety, past performance



TRUSTEES vs. ADMINISTRATION

Who signs off

Staff runs the evaluation and recommends; the **board awards** the contract in open meeting. Keep the evaluation file — it is the district's defense if a proposer protests.

PROCURING THE PEOPLE: PROFESSIONALS, CONSULTANTS & CONTRACTORS

Who	How you procure them	Key requirements
Architects · Engineers · Surveyors	Gov't Code §§ 2254.003–.004 — most highly qualified first, fee negotiated	Licensed & sealed; never price-bid; separate from CMAR
Other consultants — program mgr, owner's rep, demographer, financial advisor (check profession-specific rules) (check profession-specific rules)	Ed. Code § 44.031 best-value RFQ / RFP	Defined scope & deliverables; conflicts disclosure
Construction managers — CMAR · CM-Agent · Design-Builder	Gov't Code Ch. 2269 — best value / two-step	GMP terms; bonding capacity; published criteria
General & trade contractors	Gov't Code Ch. 2269 delivery method	Statutory bonds, prevailing wage, prequalification, certifications



RED FLAG • TRAP

Match the rulebook to the role

The classic misstep is using the wrong track — price-bidding an architect or slipping a construction manager into the professional-services exemption. The role dictates the procurement path.

05

FEDERAL FUNDS

When federal dollars touch the work, the EDGAR / Uniform Guidance overlay adds rules on top of Texas law.



DISCUSS · SHARE YOUR EXPERIENCE

Has a federal-funds requirement ever caught your project by surprise at audit time?

2 CFR Part 200 · EDGAR



WHEN DOES THE FEDERAL OVERLAY SWITCH ON?

If federal grant dollars are charged to or reimburse a procurement, the Uniform Guidance procurement rules and award terms apply to that procurement.



RED FLAG • TRAP

Satisfy all applicable rules

Federal rules add to Texas law; they do not replace it. On thresholds, competition and clauses, use a process that satisfies every applicable federal, state, local and award-specific rule.



BUSINESS OFFICE

Decide it at planning, not at bid

Tag federally funded projects up front. The procurement file, advertising, and contract clauses all have to be built the federal way from day one — you cannot retrofit them later.

2 CFR Part 200

2 CFR §§ 200.317–.327; EDGAR award terms

§§ 200.317–200.327

WHERE FEDERAL CONSTRUCTION DOLLARS COME FROM

FEMA Public Assistance

Disaster recovery — repair or replace eligible facilities (including HVAC); federal share generally $\geq 75\%$, subject to declaration/award terms. The most common ongoing federal construction money for districts.

ESSER (pandemic relief)

Funded HVAC / air-quality and door and window work; check the ESSER tranche, obligation/liquidation deadlines and audit period.

USDA Rural Development

Loans and grants for facilities in eligible rural communities.

Tax-credit / QSCB bonds

Federal interest subsidy on qualified school construction bonds — largely sunset, but legacy issues remain.



RED FLAG • TRAP

Charging federal funds triggers the EDGAR overlay

Once federal dollars are charged to the procurement — most often FEMA after a disaster, or recent ESSER-funded HVAC — the Uniform Guidance procurement rules and Appendix II clauses apply on top of Texas law for that procurement.

[FEMA Public Assistance](#)[ESSER / ARP](#)[2 CFR Part 200 \(EDGAR\)](#)

REQUIRED FEDERAL CONTRACT PROVISIONS

- Appendix II clauses — applicable contract-language checklist (2 CFR Part 200)
- **Equal opportunity, Davis-Bacon** (if the program requires), Contract Work Hours & Safety
- **Suspension & debarment** — verify the firm in SAM.gov before award
- Byrd anti-lobbying certification (contracts exceeding \$100,000)
- **Recovered-materials & record-retention/access** provisions



REQUIRED CERTIFICATION

Written standards of conduct

2 CFR § 200.318 requires the district to maintain written conflict-of-interest standards governing employees, officers, agents and board members in federal procurements — and to enforce them.

2 CFR Part 200, App. II

§ 200.318 (conflicts)

§ 200.214; 2 CFR Part 180
(debarment)

PREVAILING WAGE: DAVIS-BACON VS. TEXAS CH. 2258

Texas (always)

- Ch. 2258 applies to Texas public works
- District sets prevailing rates (survey or adopt federal)
- Penalty: **\$60/day** per underpaid worker
- No minimum project threshold

Davis-Bacon (sometimes)

- Federal rates on covered federal construction
- Only when the **program statute requires** it
- Triggers **certified payroll** reporting
- Check the program statute; many ED grants do not trigger it



RED FLAG • TRAP

Do not assume — and pay the higher rate

Wrongly assuming Davis-Bacon applies (or does not) creates wage-claim and audit exposure. Where both apply, pay the **higher** classification rate and keep certified payroll.

Gov't Code Ch. 2258

40 U.S.C. §§ 3141–3148; 29 CFR
Parts 3 & 5

06

CONTRACTS & CERTIFICATIONS

The construction contract is your risk-allocation document — and Texas & federal law require specific certifications inside it.



DISCUSS · SHARE YOUR EXPERIENCE

What is the one contract clause you now always add — or always strike?

Terms · Bonds · Certifications



ANATOMY OF A CONSTRUCTION CONTRACT

Scope & price

Defined scope, price/GMP, allowances, unit prices, and what is excluded.

Time

Schedule, milestones, liquidated damages, and time-extension rules.

Risk allocation

Indemnity, insurance, bonds, warranties, differing-site-conditions.

Administration

Submittals, pay applications, change-order process, dispute steps.



BUSINESS OFFICE

Liquidated damages — set a defensible daily rate

LDs must be a reasonable estimate made at contract formation, when actual delay damages are difficult to measure, and not a penalty. Amounts range from \$500–\$5,000 per day, but that is not universal; larger amounts are negotiated for larger/high-impact projects. Document the project-specific basis.



RED FLAG • TRAP

Protections must flow down to subcontractors

Owner protections in the prime contract must **flow down** to subcontractors. Gaps between the prime contract and the subs are where claims slip through.

THE AIA & EJCDC CONTRACT FAMILIES

Relationship	Standard form
Owner ↔ Architect	AIA B101 (confirm current ed.) (B103 (confirm current ed.) for large/complex); engineers often EJCDC E-500 (confirm current ed.)
Owner ↔ Contractor	AIA A101 (confirm current ed.) (stipulated sum) or A102 (confirm current ed.) (cost + fee, GMP) + A201 general conditions
Owner ↔ CM-at-Risk	AIA A133 (confirm current ed.) (CM as Constructor, GMP) + A201
Owner ↔ Design-Builder	AIA A141 (confirm current ed.)
Architect ↔ Consultant	AIA C401 (confirm current ed.)



BUSINESS OFFICE

The G-forms run the job

Day-to-day construction administration rides on the G-series: **G701** change orders, **G702/G703** payment applications, **G704** substantial completion, and **G706 / G706A / G707** lien releases & consent of surety.

WHO HOLDS WHOM: THE A/E IN EACH DELIVERY METHOD

Delivery method	Design contract	Build contract & A/E relationship
Design-Bid-Build (CB / CSP)	Owner ↔ Architect (B101); engineers under the architect (C401)	Owner ↔ Contractor (A101/A102 (confirm current ed.) + A201); architect administers
CM-at-Risk	Owner ↔ Architect (B101 / B103 (confirm current ed.))	Owner ↔ CMAR (A133 (confirm current ed.) + A201); architect designs, CMAR builds to GMP
CM-Agent	Owner ↔ Architect	Owner ↔ trade contractors; CMA coordinates as the owner's agent
Design-Build	Owner ↔ Design-Builder (A141 (confirm current ed.) (confirm current ed.)) — A/E sits inside the team	Owner may keep a criteria A/E to set requirements & verify
Engineering / civil (EJCDC)	Owner ↔ Engineer (E-500)	Owner ↔ Contractor (C-700 (confirm current ed.)); engineer administers



BUSINESS OFFICE

The relationship decides who answers for design

In design-bid-build and CMAR the architect contracts with the **owner** and administers the work; in design-build the A/E sits inside the builder's team, so the owner must designate an independent A/E representative under the design-build statute.

COMMON TEXAS SCHOOL-DISTRICT CONTRACT REQUIREMENTS

Texas-law overrides to AIA defaults

- Payment & retainage per **Gov't Code 2251 / 2252**
- Statutory bonds — **McGregor Act, Ch. 2253**
- Prevailing wage — **Ch. 2258**
- Indemnity within Ins. Code Ch. 151; design-professional limits under CPRC Ch. 130

District protections to add

- Do not waive immunity except as required by Local Gov't Code Ch. 271
- Texas law, local venue; limit or strike arbitration
- Attach current certifications (1295, CIQ, anti-boycott/list certifications only as enforceable)
- Criminal history (Ed. Code Ch. 22); records access; sub flow-down



RED FLAG • TRAP

Never sign the AIA form “as is”

Off-the-shelf AIA defaults on arbitration, indemnity, payment, and immunity must be modified for a Texas public school district. Use a district rider reviewed by counsel.

BONDS, INSURANCE & WARRANTIES

Statutory bonds (McGregor Act)

- Payment bond required if school-district contract > \$25,000
- **Performance bond** required if > **\$100,000**
- Protects subs/suppliers & the district
- Verify surety & bond forms before notice to proceed

Insurance & warranty

- CGL, builder's risk, auto, umbrella
- District as additional insured
- One-year (or longer) warranty
- Watch waiver-of-subrogation terms



BUSINESS OFFICE

Check the paper before work starts

No bonds, no certificates of insurance, no notice to proceed. Confirm coverage limits and that the surety is authorized in Texas.

Gov't Code Ch. 2253 (McGregor Act)

STATE-REQUIRED CERTIFICATIONS & FORMS

Certification / form	Authority
Certificate of Interested Parties (Form 1295)	Gov't Code § 2252.908
Conflict of Interest Questionnaire (CIQ)	Loc. Gov't Code Ch. 176 (trigger-based)
Felony-conviction notification	Education Code § 44.034
Criminal history / fingerprinting (student contact)	Ed. Code Ch. 22 / §§ 22.0834–.0836
Israel anti-boycott verification	Gov't Code Ch. 2271 (verify thresholds)
Energy / firearm boycott verification	Verify current law/status
Iran / Sudan / FTO certification	Gov't Code §§ 2252.151–.154; lists



NEW LAW • WATCH

Thresholds & chapters shift

Several of these apply only over \$100,000 or to firms of 10+ employees, and chapter numbers have been recodified. Confirm the current triggers in your contract template.

FEDERAL-REQUIRED CERTIFICATIONS

- **Suspension & debarment** certification — confirm not excluded in SAM.gov (covered transactions \$25K+)
- **Byrd anti-lobbying** certification — contracts over \$100,000
- **Davis-Bacon** compliance + **certified payroll** — when the program requires
- **Equal employment opportunity** & other Appendix II assurances



REQUIRED CERTIFICATION

These ride on top of the state set

On a federally funded project the contract carries **both** the Texas certifications and the federal ones. Build a single federal-funds addendum so nothing is missed.

2 CFR Part 200, App. II

2 CFR § 200.214

31 U.S.C. 1352 (Byrd)

DISTRICT CONTRACTOR COMPLIANCE REQUIREMENTS

Weapons-free campus

Firearms & prohibited weapons barred on school premises, subject to statutory exceptions and written authorization (Penal Code § 46.03).

Drug- & alcohol-free

No alcohol or controlled substances on site; drug-free workplace on federal awards.

Tobacco- & vape-free

Prohibited at district facilities & activities (Education Code § 38.006).

Harassment & nondiscrimination

Applicable nondiscrimination/harassment laws and contract-policy clauses for covered employers/programs.

OSHA & jobsite safety

Comply with OSHA construction standards (29 CFR 1926).

Criminal history & badging

Fingerprinting; no unsupervised student contact; sign-in (Ed. Code Ch. 22).



REQUIRED CERTIFICATION

Flow these into the contract — and match your LOCAL policy

These obligations pass to the contractor and its subcontractors through the contract and the district rider. Confirm each against your district's adopted (LOCAL) policy, which may be stricter.

GKA — conduct on premises

DH — employee conduct

DIA / FFH — anti-harassment

GKG / DBAA — criminal history

CK — safety

07

BUILDING IT

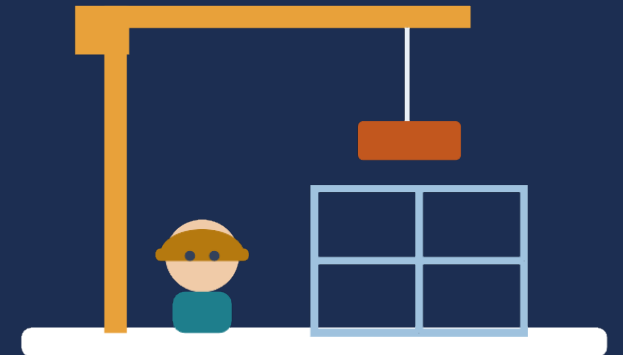
Construction administration is where the contract meets reality — changes, payment, and cash discipline.



DISCUSS · SHARE YOUR EXPERIENCE

Tell us about a change order or payment dispute that got away from you.

Change Orders · Payment · Retainage



CHANGE ORDERS: THE 25% RULE

25%

Cap on increasing the contract price by change order (§ 271.060)

\$50K

Amount of a change order the board may delegate to staff to approve

Board

Major changes return to the board — in open meeting



RED FLAG · TRAP

Document scope & price before the work

Verbal “just do it” directives, undocumented scope, and change orders that creep past 25% are the leading sources of construction claims and audit findings.

Local Gov't Code § 271.060

District policy CV / CH (LOCAL)
— verify current delegation

GETTING PEOPLE PAID: PROMPT PAYMENT ACT

- District pays the contractor by the **30th day** after receiving a proper pay application
- The prime must pay subcontractors within **10 days** of receiving payment
- Overdue payments **accrue interest** by statute
- You may withhold only for **good-faith disputes** — and should document them



BUSINESS OFFICE

Slow pay has a price

Late payment is not free leverage — it runs up statutory interest and sours the project. Build a pay-app review SLA so approvals do not stall in the business office.

Gov't Code Ch. 2251 (Prompt Payment)

RETAINAGE & CASH DISCIPLINE

The caps

- $\leq 5\%$ retainage on contracts \$5M+
- $\leq 10\%$ on smaller contracts
- If over 5%, hold in an **interest-bearing** account
- Release per statute and contract; hold only lawful punch-list/claim/security amounts

Cash & budget

- Reconcile draws to fund 600
- Tie each pay-app to authorized budget
- No retainage withheld after acceptance except lawful offsets/security
- Plan close-out cash flow



NEW LAW • WATCH

Retainage rules were tightened

Recent amendments capped retainage and required interest-bearing accounts above 5%. Confirm your contract's retainage terms match **current** Chapter 2252.

Gov't Code Ch. 2252 (§ 2252.032)

08



CLOSE-OUT, CLAIMS & DISPUTES

How projects end — cleanly with documentation, or expensively in court.



DISCUSS · SHARE YOUR EXPERIENCE

What is the closest your district has come to construction litigation — and what saved you?

Completion · Claims · Litigation



CLOSING OUT THE PROJECT

- **Substantial completion** — usable for its purpose; starts warranties & retainage release
- **Punch list** — remaining items completed to reach **final completion**
- **Record documents** — as-builts, O&M manuals, warranties, lien releases
- **Commissioning** & final inspections / certificate of occupancy



BUSINESS OFFICE

No close-out, no clean audit

Final lien waivers, consent of surety, and a reconciled budget are what let you release final payment and retainage safely.

FINAL ACCOUNTING & AUDIT READINESS

Release retainage

After acceptance, lien releases & surety consent, subject to lawful offsets/security.

Reconcile proceeds

Every bond dollar traced to a voted purpose in **Fund 600**.

Records retention

Follow exact TSLAC Local Schedule SD record series; many building-plan records are life-of-building or permanent.



BUSINESS OFFICE

Build the audit file as you go

The most efficient audit is one where the file already exists: method determination, scoring, contract, certifications, change log, pay applications, and close-out — all in one place.

TSLAC Local Schedule SD

2 CFR § 200.334 (federal)

CLAIMS & GOVERNMENTAL IMMUNITY

- Districts have **governmental immunity** — but Texas **waives** it for breach of certain written contracts
- Local Gov't Code Ch. 271, **Subchapter I** waives immunity for goods/services (incl. construction) contracts
- Recovery is **limited** — balance due & defined damages; generally, **no** consequential damages
- Contractual notice and claim procedures apply; prompt counsel review is essential



RED FLAG • TRAP

Notice deadlines are unforgiving

Both sides must honor contractual claim-notice provisions. Missing a deadline may bar recovery or create exposure; effect depends on the contract, statute and case law.

Local Gov't Code §§ 271.151–.160

RESOLVING DISPUTES

The resolution ladder

- Negotiation & the contract's claim process
- **Mediation** — usually contractual, often required first
- **Arbitration** — generally not recommended check with legal counsel
- Litigation when needed

Why districts often prefer the courthouse

- Arbitration awards have very limited appeal rights
- Arbitrator & administration fees can rival litigation
- Arbitrators may **split the difference** and set no precedent
- Public courts provide transparency & a public record



BUSINESS OFFICE

Resolve early, and set terms when you draft

District counsel often avoids binding arbitration for these reasons. District dispute resolution is governed by the contract and informed by Local Gov't Code Ch. 271 — set venue, mediation and fee terms during drafting, and resolve issues at the lowest rung that will hold.

WHAT ACTUALLY CAUSES LITIGATION

Poor or incomplete design

Errors, omissions, or coordination gaps in the construction documents.

Defects missed in the field

Construction defects not caught during inspection and observation.

Undercapitalized contractors

Thin balance sheets and cash-flow failures that stall the work.

Delays — most often weather

Schedule slippage, with weather the most common cause, and time-extension disputes.

Payment disputes

Slow pay, disputed retainage, and unresolved change orders.

Documentation & authority gaps

Verbal changes, missing decisions, and acting outside authority.



RED FLAG • TRAP

Most causes are foreseeable — and manageable

Thorough design review, prequalified and adequately bonded contractors, diligent field observation, realistic schedules with clear weather and time-extension terms, and disciplined documentation prevent the majority of disputes.

THE ADMINISTRATOR'S PRE-PROJECT LEGAL CHECKLIST

Before you buy

- Project correctly **defined** (reno vs. new)?
- **A/E** engaged on qualifications?
- **Delivery method** chosen & documented?
- **Federal funds** in the mix? Flag EDGAR

Before you sign

- **Best-value** evaluation in the file?
- All **certifications** (state + federal) attached?
- **Bonds & insurance** verified?
- **Board award** + counsel review done?



BUSINESS OFFICE

Make it a standing form

Turn this into a one-page checklist the project team signs at two gates — “before buy” and “before sign.” It is among the most effective risk controls available to the district.

KEY TAKEAWAYS

1 • Define accurately

The project's definition decides which rules apply — classify it correctly from the start.

2 • Compete & document

Best value, published criteria, and a contemporaneous file.

3 • Stack the layers

Federal funds add to Texas law — build a process that satisfies all applicable rules.

4 • Respect the roles

Board acts as a body; administration executes within delegated authority; counsel reviews.



FIRST PRINCIPLE

The focus of the day

The goal is the best possible buildings for Texas students. Identify each legal issue while it is still a planning question — that is when it is least costly to resolve and least likely to delay the project.

LET'S BUILD ON SOLID GROUND.

The goal is the best possible buildings for Texas students -
and a standing resource for your next project.

THANK YOU · QUESTIONS WELCOME

Presented By:

O'Hanlon, Demerath & Castillo

Oscar G. Treviño, Partner

otrevino@808west.com

(512) 922-2558

This presentation is general legal education for a Texas audience and is not legal advice. It does not create an attorney-client relationship. Statutes and regulations cited are subject to amendment and recodification — confirm current law and your district's adopted policy with your own counsel and bond counsel before acting.



Contact us:

www.808west.com

facebook.com/ODCLawFirm

AUSTIN

808 West Avenue
Austin, TX 78701
(512) 494-9949

RIO GRANDE VALLEY

426 West Caffery Avenue
Pharr, TX 78577
and
220 South Jackson Road
Edinburg, TX 78539
(956) 318-0555

SAN ANTONIO

117 West Craig Place
San Antonio, TX 78212
(210) 310-3030

FORT WORTH

209 West 8th Street
Fort Worth, TX 76102
(512) 494-9949