

**SUBCHAPTER F: DISTRICT ACTIONS RELATED TO CONSTRUCTION
PROJECTS AND PURCHASE OF FACILITIES**

§§293.62 - 293.70

Effective November 13, 2014

§293.62. Construction Related Documents To Be Submitted to the Agency.

Every district required to obtain commission approval of its projects relating to the issuance and sale of bonds as indicated in §293.41 of this title (relating to Approval of Projects and Issuance of Bonds), is required to submit the following construction related reports and/or documents:

(1) Within 10 days after construction contract execution, the district shall furnish to the appropriate agency field office true copies of the following documents.

- (A) notice to contractors (advertisement affidavit for bids);
- (B) addenda to plans and specifications;
- (C) bid tabulation;
- (D) engineer's letter recommending award of contract;
- (E) executed contract and bid proposal documents with bonds; and
- (F) notice to proceed (submit copy when issued).

(2) As the construction progresses, provide to the appropriate agency field office:

(A) engineer's monthly construction progress reports and monthly pay estimates for contract partial payments within 10 days after payment;

(B) copies of proposed change orders;

(C) copies of infiltration/exfiltration tests for wastewater lines and test results of water lines prior to final construction inspection;

(D) notice of date and time of final inspection at least five days prior to the inspection;

(E) engineer's certification of completion for each construction contract within 10 days of the project acceptance; and

(F) letter of acceptance by owner within 10 days after project acceptance.

(3) At the time the district requests approval for funding of the project from the commission or executive director and subsequently thereafter as appropriate, the district shall provide to the executive director copies of the items listed in paragraphs (1) and (2) of this section.

Adopted May 7, 1998

Effective June 5, 1998

§293.63. Contract Documents for Water District Projects.

Contract documents for water district construction projects shall be prepared in general conformance with those adopted and recommended by the Texas Section of the American Society of Civil Engineers (latest revision). The following specific requirements must apply, unless otherwise provided by a district's special law.

(1) All contract documents shall be prepared in such a manner as to promote competitive bidding and to ensure that all bids are prepared on a common basis.

(2) The instruction to bidders section of the contract documents shall give special attention to the following items.

(A) The basis of award shall be clearly defined. If alternate proposals are to be considered, the instructions to bidders shall clearly state in which order the alternates will be considered in determining the most advantageous bid. If two or more contracts are to be awarded, the instructions to bidders shall clearly indicate if combined bids, or tied bids, will be allowed, or if each contract will be awarded separately.

(B) The contract should clearly provide that alternate bids will not be considered, unless specifically allowed by instructions to bidders and requested in the proposal form.

(C) Specific notice shall be given that qualifying statements or accompanying qualifying letters will be cause for rejection of the bid.

(D) Provision shall be made for prospective bidders to request additional information, explanations, or interpretations regarding contract documents

prior to the bid opening. All requests and answers to all such requests shall be given in writing. Answers will be in addendum form to all prospective bidders.

(3) The district shall require the bidder to whom the district proposes to award the contract to submit a statement of qualifications. The statement shall include such data as the district may reasonably require to determine whether the contractor is responsible and capable of completing the proposed project.

(4) For contracts over \$50,000, the district shall require bidders to submit certified or cashier's checks or a bid bond issued by a surety legally authorized to do business in this state in an amount of at least 2.0% of the total amount of the bid. For a contract greater than \$250,000, the district must accept a bid bond if it meets all requirements. If cashier's checks are required, the checks for all bidders except the three most qualified bidders shall be returned within three days of the bid opening.

(5) The district shall require that bidders submit, along with the bid, the name of the person, firm, or corporation that will execute payment and performance bonds.

(6) The district may establish criteria for acceptability of the surety company issuing payment and performance bonds including, but not limited to:

(A) authorization to do business in Texas; and

(B) authorization to issue payment and performance bonds in the amount required for the contract and:

(i) a rating of at least B from Best's Key Rating Guide; or

(ii) if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the United States Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 570. Such performance and payment bonds shall meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury with respect to performance and payment bonds for federal jobs, including specifically the rules related to the underwriting limitation. The district shall satisfy itself that such surety company and bonds meet such criteria.

(7) The district shall satisfy itself that all persons executing the bonds are duly authorized by the laws of the State of Texas and the surety company to do so.

(8) For contracts over \$75,000, a district's board shall advertise the project once a week for two consecutive weeks. For contracts over \$25,000 but not more than \$75,000, a district's board shall solicit written competitive bids on the project from at least three bidders. For contracts not more than \$25,000, a district's board is not required to advertise or seek competitive bids.

(9) A board of a special law district may elect to contract in accordance with the requirements in Texas Water Code, §49.273, even if those requirements conflict with provisions in the district's special law.

(10) A district with a population of more than 100,000 may utilize the design-build procedure for limited projects as provided in Local Government Code, Chapter 271, Subchapter J.

Adopted October 22, 2014

Effective November 13, 2014

§293.64. Control of Work.

The governing board shall have control of contracts for construction work being done for the district, and shall direct the district's engineer to provide a qualified project representative to perform periodic or continuous on-site observation of the progress and quality of the executed work to determine if construction is in substantial accordance with and includes all items in plans and specifications approved by the executive director. The scope of work and construction schedules shall govern the amount of on-site observation that is necessary to effectively monitor construction activities. The governing board shall authorize the services of a resident project representative if necessary to further protect the district against defects and deficiencies in construction. The responsibility for determining the optimum amount of on-site observation should remain with the consulting engineer who is required during the progress of the construction work to submit to the governing board and the executive director detailed written reports showing whether or not the contractor is complying with the contract.

Adopted May 7, 1998

Effective June 5, 1998

§293.65. Commission Inspection.

The executive director or his designated representative may inspect a district construction project at any time. When individual contracts for construction are substantially complete, the engineer for the district will notify the agency's regional office of date and time of final inspection. The engineer will conduct, in company with the owner or his representative, a final inspection of the work for conformance with the design concept and compliance with the contract documents. The district shall not accept the project or release the statutory retainage on partial payments until work is

determined to be in substantial compliance with plans and specifications as approved by the executive director.

Adopted May 7, 1998

Effective June 5, 1998

§293.66. Construction Deficiencies.

If inspection by the executive director reveals construction deficiencies in facilities being installed, the engineer shall be notified of such deficiencies. Upon verification of deficiencies, the engineer for the district shall issue notice to the contractor. If the executive director finds that the construction deficiencies are not corrected and/or the project is not being constructed in accordance with approved plans and specifications, it shall give written notice immediately by certified mail to each member of the board of the district and the district's manager. If within 10 days after the notice is mailed the board does not take steps to insure that the project is being constructed in accordance with approved plans and specifications, the executive director shall give written notice of this fact to the Attorney General of Texas.

§293.67. Project Completion and Acceptance by District.

(a) Upon completion of the project, the district's engineer shall submit to the governing board a final detailed report including revised contract "as built" drawings showing the work as actually constructed, and the engineer shall certify to the executive director that the work was substantially completed in accordance with and includes all items in plans and specifications submitted to, or approved by the executive director.

(b) Prior to accepting facilities for operation and maintenance, the district shall adopt rules as required by §293.112 of this title (relating to Water, Wastewater and Drainage Facilities).

Adopted May 7, 1998

Effective June 5, 1998

§293.68. Document Identification.

All bond related documents submitted to the executive director should be properly labeled in the upper right hand corner of the cover page with the name of the district, amount of bonds approved which included funding for the project and the date of approval. If the project is to be funded by a future bond issue, state "future bond issue" under the name of the district.

Adopted September 30, 1996

Effective October 22, 1996

§293.69. Purchase of Facilities.

(a) A district shall not purchase facilities financed or constructed by a developer, investor owned utility or water supply corporation in contemplation of sale to the district or assume facility contracts from the developer or reimburse the developer, investor owned utility or water supply corporation for funds advanced to finance construction of facilities until the executive director has given written authorization to finalize the purchase or reimbursemen. Prior to requesting authorization to purchase, the district shall require its engineer to inspect the facilities and provide a written report of the condition of the facilities as they relate to the plans and specifications and note any deficiencies. A copy of the report must be submitted to the executive director along with the request for authorization to purchase. The executive director may inspect the facilities. Subject to the requirements contained in this subsection, the executive director shall issue his written approval or disapproval of such proposed purchase within 30 days after receipt of written request from a district or a district's authorized representative. If substantial deficiencies are found, the executive director may require the district to obtain an appraisal reflecting the adjusted value of the deficient facilities or deny purchase until repairs are made. The written approval shall be valid for 120 days.

(b) If the purchase of facilities or reimbursement of funds to the developer, investor owned utility or water supply corporation is not completed within 120 days after the date of the executive director's written approval, the district shall again obtain the written approval as provided herein.

(c) If the purchase is for existing facilities which have no active meters or connections (dormant), the following shall apply:

(1) water lines shall be flushed and disinfected to meet minimum standards as outlined in §290.44(f) of this title (relating to Sanitary Precautions and Disinfection);

(2) water lines must have been pressure tested within the two years prior to the purchase; and

(3) for wastewater lines, an infiltration, exfiltration, or low-pressure air test is recommended and may be required if the line has been dormant for the previous 12 months.

(d) The inspection of all underground lines should include a visual inspection above ground for depressions or sinkholes.

(e) The seller of the facilities shall be responsible for cleaning out all pipes, inlets or manholes, and outfalls which are not properly operating.

(f) The district shall not be responsible for the cost of repairs needed as a result of negligence or improper construction.

(g) Costs for testing of the facilities may be eligible for reimbursement by the district upon commission approval.

(h) This section is applicable whether a district intends on operating facilities itself or intends on conveying the facilities to a third party; however, if the conveyance is to a municipality in whose limit or extraterritorial jurisdiction the district is located, the municipality assumes all costs of operation, repair, and maintenance, and the municipality has indicated in writing to the district that it waives any requirement for an inspection under this section, then this section is not applicable.

Adopted October 4, 2006

Effective October 26, 2006

§293.70. Audit of Payments to Developer.

(a) Prior to the payment of funds to a developer from bond proceeds, bond anticipation note proceeds, funds to be derived from future bond proceeds, or maintenance tax revenue the governing board of directors of the district shall engage an auditor to perform certain agreed upon procedures applicable to all items and amounts for which a reimbursement request has been received. The auditor must be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy.

(b) As a minimum, the following procedures shall be included to the extent applicable.

(1) All documentation supporting items, amounts, and proof of payment for which reimbursement is requested shall be reviewed.

(2) Interoffice memoranda, orders and rules of the commission relative to the reimbursement request shall be reviewed.

(3) The calculations of interest on amounts reimbursable are to be tested and determined to be in accordance with interoffice memorandums, orders and rules of the commission.

(4) All items and amounts shall be disclosed to and discussed with the district's attorney, engineer, financial advisor, and bookkeeper.

(5) A determination shall be made that the items and amounts to be reimbursed are appropriate and in accordance with commitments or policies of the

district and interoffice memorandums, orders and rules of the commission as a result of the procedures followed and subject to such limitations as may apply.

(c) Upon completion, the auditor shall prepare a reimbursement report to the district. Such report shall include sufficient details and disclosures to serve the needs of the district and the commission. Within 10 days after approval by the governing board of the district, a copy of this report shall be submitted to the executive director. The contents of the report shall include the following:

(1) auditor's report;

(2) schedules of amounts reimbursable to each developer; and

(3) comparison of amounts included in the interoffice memoranda with amounts reimbursable and anticipated amounts, if any, to be expended in the future.

Adopted May 7, 1998

Effective June 5, 1998