

BUSINESS AND COMMERCE CODE

TITLE 4. BUSINESS OPPORTUNITIES AND AGREEMENTS

CHAPTER 59. RESPONSIBILITY FOR DEFECTS IN PLANS AND SPECIFICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 59.001. DEFINITIONS. In this chapter:

(1) "Construction" includes:

(A) the initial construction of an improvement to real property;

(B) the construction of an addition to an improvement to real property; or

(C) the repair, alteration, or remodeling of an improvement to real property.

(2) "Contractor" means a person engaged in the business of developing, constructing, fabricating, repairing, altering, or remodeling improvements to real property.

(3) "Critical infrastructure facility" includes:

(A) a petroleum or alumina refinery;

(B) an electrical power generating facility, substation, switching station, or control center;

(C) a chemical, polymer, or rubber manufacturing facility;

(D) a water intake structure, water treatment facility, wastewater treatment plant, or pump station;

(E) a natural gas compressor station;

(F) a liquid natural gas terminal or storage facility;

(G) a telecommunications central switching office or any structure used as part of a system to provide wired or wireless telecommunications services;

(H) a port, railroad switching yard, trucking terminal, or other freight transportation facility;

(I) a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas;

(J) a transmission facility used by a federally licensed radio or television station;

(K) a steelmaking facility that uses an electric arc furnace to make steel;

(L) a dam that is classified as a high hazard by the Texas Commission on Environmental Quality;

(M) a concentrated animal feeding operation, as defined by Section 26.048, Water Code;

(N) any portion of an aboveground oil, gas, or chemical pipeline;

(O) an oil or gas drilling site;

(P) a group of tanks used to store crude oil, such as a tank battery;

(Q) an oil, gas, or chemical production facility;

(R) an oil or gas wellhead;

(S) any oil and gas facility that has an active flare;

(T) pipelines and pipeline appurtenances or facilities, including pipes, valves, meters, pumps, compressors, treating and processing facilities, cathodic protection facilities, and any other equipment, facilities, devices, structures, and buildings used or intended for use in the gathering, transportation, treating, storage, or processing of CO₂, oil, gas, or other minerals, and the liquefied or gaseous substances, constituents, products, or mixtures derived from those minerals through refining, processing, or other methods;

(U) utility-scale equipment or facilities to transmit or distribute electricity;

(V) utility-scale water or wastewater storage, treatment, or transmission facilities;

(W) facilities used to manufacture or produce transportation fuels and similar products, including gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, propane, ethanol, biodiesel, and renewable diesel; and

(X) commercial airport facilities used for the landing, parking, refueling, shelter, or takeoff of aircraft, maintenance or servicing of aircraft, aircraft equipment storage, or navigation of aircraft.

(4) "Design" means work that is required under Title

6, Occupations Code, to be performed by or under the supervision of a person licensed or registered under the statute.

(5) "Design-build contract" means a contract in which a contractor agrees to:

(A) construct, repair, alter, or remodel an improvement to real property; and

(B) be responsible for the development of plans, specifications, or other design documents used by the contractor to construct, repair, alter, or remodel the improvement.

(6) "Engineering, procurement, and construction contract" means a construction contract where the contractor is responsible for all of the engineering, procurement, and construction activities to deliver the completed project.

Added by Acts 2021, 87th Leg., R.S., Ch. 838 (S.B. 219), Sec. 1, eff. September 1, 2021.

Sec. 59.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a contract for the construction or repair of an improvement to real property.

(b) This chapter does not apply to a contract entered into by a person for the construction or repair of a critical infrastructure facility owned or operated by the person or any building, structure, improvement, appurtenance, or other facility owned by the person that is necessary to the operation of and directly related to the critical infrastructure facility. For purposes of this subsection, "person" has the meaning assigned by Section 311.005, Government Code, and includes a parent, subsidiary, affiliated entity, joint venture partner, or owner of the person.

(c) Except as provided by Section 59.052, this chapter does not apply to the construction, repair, alteration, or remodeling of an improvement to real property if:

(1) the construction, repair, alteration, or remodeling is performed under a design-build contract and the part of the plans, specifications, or other design documents for which the contractor is responsible under the contract is the part alleged to be defective; or

(2) the construction, repair, alteration, or remodeling is performed under an engineering, procurement, and construction contract and the part of the plans, specifications, or other design documents for which the contractor is responsible under the contract is the part alleged to be defective.

(d) Except as provided by Section 59.052, this chapter does not apply to the portion of a contract between a person and a contractor under which the contractor agrees to provide input and guidance on plans, specifications, or other design documents to the extent that:

(1) the contractor's input and guidance are provided as the signed and sealed work product of a person licensed or registered under Title 6, Occupations Code; and

(2) the work product is incorporated into the plans, specifications, or other design documents used in construction.
Added by Acts 2021, 87th Leg., R.S., Ch. 838 (S.B. 219), Sec. 1, eff. September 1, 2021.

Sec. 59.003. WAIVER PROHIBITED. This chapter may not be waived. A purported waiver of this chapter in violation of this section is void.

Added by Acts 2021, 87th Leg., R.S., Ch. 838 (S.B. 219), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. CONTRACTOR RESPONSIBILITY

Sec. 59.051. LIMITATION ON CONTRACTOR'S LIABILITY AND RESPONSIBILITY FOR CERTAIN DEFECTS. (a) A contractor is not responsible for the consequences of design defects in and may not warranty the accuracy, adequacy, sufficiency, or suitability of plans, specifications, or other design documents provided to the contractor by a person other than the contractor's agents, contractors, fabricators, or suppliers, or its consultants, of any tier.

(b) A contractor must, within a reasonable time of learning of a defect, inaccuracy, inadequacy, or insufficiency in the plans, specifications, or other design documents, disclose in writing to

the person with whom the contractor enters into a contract the existence of any known defect in the plans, specifications, or other design documents that is discovered by the contractor, or that reasonably should have been discovered by the contractor using ordinary diligence, before or during construction. In this subsection, ordinary diligence means the observations of the plans, specifications, or other design documents or the improvement to real property that a contractor would make in the reasonable preparation of a bid or fulfillment of its scope of work under normal circumstances. Ordinary diligence does not require that the contractor engage a person licensed or registered under Title 6, Occupations Code, or any other person with specialized skills. A disclosure under this subsection is made in the contractor's capacity as contractor and not as a licensed professional under Title 6, Occupations Code.

(c) A contractor who fails to disclose a defect as required by Subsection (b) may be liable for the consequences of defects that result from the failure to disclose.

Added by Acts 2021, 87th Leg., R.S., Ch. 838 (S.B. 219), Sec. 1, eff. September 1, 2021.

Sec. 59.052. STANDARD OF CARE FOR CERTAIN DESIGNS. Design services provided under a contract described by Section 59.002(c) or (d) are subject to the same standard of care requirements provided in Section 130.0021, Civil Practice and Remedies Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 838 (S.B. 219), Sec. 1, eff. September 1, 2021.