



August 8, 2024

Mr. Joshua Crawford, P.E.
Burns & McDonnell
Via e-mail

Re: Formal Response to Request for Policy Advisory Opinion Regarding The Definition of
“Specification” as Found in Section 1001.401 of the Texas Engineering Practice Act (Policy
Advisory Request No. 69)

Dear Mr. Crawford:

The Texas Board of Professional Engineers and Land Surveyors (Board) met in public session on August 8, 2024, and approved this response to a policy advisory opinion request from Mr. Josh Crawford, P.E., dated June 17, 2024.

Request:

The requestor seeks guidance on the following issue:

- What constitutes a “specification” as it relates to Section 1001.401 of the Texas Engineering Practice Act (the Act)? Specifically, does assembling contract documents for a client to utilize in the subsequent procurement of engineering and construction services constitute an “engineering specification”? For this request, you indicate the contract documents in question cannot be utilized to purchase, engineer, or construct anything as they do not contain sufficient detail. Rather, the documents will be used to define certain minimum technical expectations and performance requirements to allow a subsequent engineer to prepare a price and proposal for the client.

You indicate one common example encountered is in the utility industry where your firm has been asked to develop documentation to detail requirements for a project. If the project moves forward, a licensed professional engineer would then develop detailed specifications and drawings for the project. Examples of the information contained in the documents in question would be performance expectations for the facility, such as power production and voltage requirements and a list of major components, structures, or systems typically included in the facility.

Response:

As you indicate, Section 1001.401 of the Act relates to the use of a seal when a licensed professional engineer engages in the practice of engineering in Texas. Specifically, Section 1001.401(b) requires a plan, specification, plat or report issued by a license holder for a project to be constructed or used in Texas to be sealed by the license holder. The term “specification” is not further defined in the Act or in Section 131.2 of the Board Rules, relating to Definitions.

Section 1001.401 applies to a Texas professional engineer when he or she is engaged in the practice of engineering. In order to determine if the specification indicated in this request must be sealed, one must first determine if the preparation of the specification would fall under the definition of the “practice of engineering.” The term “practice of engineering” is defined in Section 1001.003 of the Act. Generally speaking, the practice of engineering means the performance of or an offer or attempt to perform a public or private service or creative work, the adequate performance of which requires

engineering education, training, and experience in applying special knowledge or judgment of the mathematical, physical, or engineering sciences to that service or creative work.

As the term “specification” is not defined, the evaluation of whether the information in this request falls under the practice of engineering must be done on a case-by-case basis. Based solely on the information provided in your request, it appears that the performance specifications of which you question may not qualify as the practice of engineering. It seems the information being provided is not site specific and is not detailed enough to allow for a detailed design that could be used for construction. Therefore, it does not appear that specialized knowledge or judgement of mathematical, physical, or engineering sciences would be necessary to prepare this information. As such, the information in this request would not meet the definition of the “practice of engineering” and would not need to be signed and sealed according to the Act and Board rules.

However, an employer, client, or local authority could still request or require a seal as part of a contract or to comply with local ordinances.

Please note, this response only applies to the questions in this request and should not be extrapolated to be a wider policy position of the Board.

Conclusion:

No new Policy Advisory Opinion will be developed for this request as the Act and Board rules adequately address the questions posed.

If you have any further questions, please contact Mr. Michael Sims, P.E., Director of Compliance & Enforcement at 512.440.7723.

Sincerely,

A handwritten signature in black ink, appearing to read "Lance Kinney". The signature is fluid and cursive, with a long horizontal stroke at the end.

Lance Kinney, Ph.D., P.E.
Executive Director

LK:MZS:asm