

Amend CSHB 2525 (Senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION __. Section 44.0311(a), Education Code, is amended to read as follows:

(a) This subchapter does not apply [~~applies~~] to junior college districts.

SECTION __. Subchapter A, Chapter 130, Education Code, is amended by adding Section 130.0103 to read as follows:

Sec. 130.0103. POLICY AND REPORT REGARDING HISTORICALLY UNDERUTILIZED BUSINESSES. (a) In this section, "historically underutilized business" has the meaning assigned by Section 2161.001, Government Code.

(b) This section applies only to a junior college district located wholly or partially in a county with a population of one million or more.

(c) Each junior college district shall adopt a policy stating its commitment to developing, maintaining, and enhancing participation by historically underutilized businesses in all phases of the district's procurement processes in order to support, to the greatest extent feasible, the efforts of historically underutilized businesses to compete for purchases of equipment, supplies, and services and for construction project contracts.

(d) Annually, each junior college district shall publish a report of the total number of contracts awarded by the district in the preceding fiscal year and the number of those contracts awarded to historically underutilized businesses. The report must be published in a newspaper of general circulation in the county in which the majority of the territory or population of the district is located not later than the 60th day following the last day of the district's fiscal year.

SECTION __. Chapter 130, Education Code, is amended by adding Subchapters K and L to read as follows:

SUBCHAPTER K. PURCHASING CONTRACTS OTHER THAN
CONSTRUCTION CONTRACTS

Sec. 130.251. DEFINITIONS. In this subchapter:

(1) "Board of trustees" means the governing board of a

district.

(2) "District" means a public junior college district.

(3) "Purchase of goods":

(A) includes:

(i) contracting for the rights to use
rather than own goods; and

(ii) purchase of the materials and labor
incidental to the delivery and installation of personal property;
and

(B) does not include the purchase or lease of
real property.

(4) "Services" does not include:

(A) construction services; or

(B) professional services, including services of
an architect, engineer, auditor, accountant, attorney, or fiscal
agent.

Sec. 130.2511. USE OF TERMS "BIDDER," "VENDOR," AND "BID."

(a) The terms "bidder" and "vendor" may be used interchangeably to
identify an entity that responds to a request for competitive bids
or proposals, or for offers or qualifications.

(b) The term "bid" may be used to refer to a competitive bid
or proposal, or to an offer, or to a statement of qualifications.

Sec. 130.252. CONFLICT WITH OTHER LAW. To the extent of any
conflict, this subchapter prevails over any other law relating to
the purchase of goods and services by a district other than a law
relating to contracting with historically underutilized
businesses.

Sec. 130.253. PURCHASE METHODS. (a) Except as otherwise
provided by this subchapter, all contracts for the purchase by a
district of goods or services valued at \$35,000 or more in the
aggregate for each 12-month fiscal year shall be made by the method,
of the following methods, that provides the best value for the
district:

(1) competitive sealed bids;

(2) competitive sealed proposals;

(3) the reverse auction procedure defined by Section
2155.062(d), Government Code; or

(4) the formation of a political subdivision corporation under Section 304.001, Local Government Code.

(b) Only one of the methods listed in Subsection (a) may be used for any individual contract. The district must determine which method provides the best value for the district before publishing the notice required by Section 130.258.

(c) If the district uses the competitive sealed proposal method, the district shall:

(1) reveal when the proposals are opened the names of the companies submitting proposals; and

(2) keep the contents of the proposals confidential until the district concludes negotiations and awards a contract.

(d) For professional services not covered by Subchapter A, Chapter 2254, Government Code, including services rendered by a financial consultant, an auctioneer, a personnel services contractor, a travel agent, a technology or educational consultant, or a business engaged to teach approved courses, a district may contract for the professional services in the manner provided by Section 2254.003, Government Code, in lieu of the methods provided by Subsection (a).

(e) A district may purchase an item or service that is available from only one source without complying with Subsection (a), including:

(1) an item for which competition is precluded because of the existence of a patent, copyright, secret process, or monopoly;

(2) a film, recording, periodical, manuscript, or book or computer software;

(3) a utility service, including gas or water;

(4) a captive replacement part or component for equipment;

(5) a product needed to match or work with like products; and

(6) technical or specialized services, including advertising, audio/video production, and the repair and maintenance of specialized equipment.

(f) Without complying with Subsection (a), a district may

purchase advertising services, meeting and catering services, and travel services, including airfare, ground transportation, and lodging. The district shall exercise reasonable and prudent care to determine whether a contract with a company will provide the best value to the district. The district shall document the process for selecting the provider of the services and shall maintain a list of companies contacted and the basis for selecting the provider. Any company that has provided written notice to the district that it is interested in being considered as a supplier of services covered by this subsection shall be given the opportunity to make an offer to provide the services. After rating and ranking the offers, the district shall attempt to negotiate a contract with the highest ranked company. If a contract cannot be negotiated with the highest ranked company, the next highest ranked company shall be contacted.

(g) Without complying with Subsection (a), a district may purchase an item or service under:

(1) an interlocal contract under Chapter 791, Government Code;

(2) a catalog purchase as provided by Subchapter B, Chapter 2157, Government Code; or

(3) a contract established by the Texas Building and Procurement Commission or Department of Information Resources, including a contract for the purchase of travel services, telephone service, computers, and computer-related equipment and software.

(h) If the Texas Building and Procurement Commission, an institution of higher education as defined by Section 61.003, or a political subdivision of this state has entered into a contract with a company to provide goods or services other than construction services, then during the term of the contract a district may purchase the goods or services directly from the company if the company agrees to sell the goods or services to the district in accordance with the terms and conditions of the original contract at the same cost or at a cost lower than that stated in the original contract. The purchase satisfies the requirements of this subchapter if the original contract was awarded in compliance with the statutory requirements applicable to the governmental entity that awarded the contract and the district's purchase order

references the original contract and identifies the parties to the contract. If the Texas Building and Procurement Commission is a party to the original contract, the district may use the contract under this section only if the district is a member of the Texas Building and Procurement Commission Cooperative Purchasing Program.

Sec. 130.254. PURCHASE OF INSURANCE. (a) A district may acquire insurance using a two-step request for proposals process. In the first step, the district shall determine which insurance companies are represented by agents interested in providing insurance for the district. If more than one agent indicates a desire to represent the same company, the agent with the longest and most substantial relationship with the insurance company shall be authorized to submit a proposal for the designated insurance company. In the second step, the district shall notify the interested agents as to which insurance companies the agents represent and request the agents to submit proposals for providing insurance.

(b) In notifying the interested agents to begin the second step, the district is not required to comply with Section 130.258. However, the district in the request for proposals shall give the interested agents notice of the date, time, and place where proposals are to be submitted. Proposals received after the date and time stated in the request for proposals may not be considered.

Sec. 130.255. MULTIYEAR CONTRACTS. A multiyear contract must include a provision that permits termination at the end of each fiscal year.

Sec. 130.256. EVALUATION AND AWARD OF CONTRACT. (a) Except as otherwise provided by this subchapter, a district shall award a contract to the lowest responsible bidder offering the best value to the district according to the selection criteria established by the district. The district shall publish in the request for bids, proposals, or qualifications the criteria the district will use to evaluate the offers and the relative weights given to the criteria that are known at the time of the publication.

(b) In determining the lowest responsible bidder, the district may consider:

- (1) the purchase price;
 - (2) the reputation of the bidder and of the bidder's goods or services;
 - (3) the quality of the bidder's goods or services;
 - (4) the extent to which the offered goods or services meet the district's needs;
 - (5) the bidder's past relationship with the district;
 - (6) the total long-term cost to the district to acquire the vendor's goods or services;
 - (7) the extent to which the offers comply with the requirements of the request for bids, proposals, or qualifications;
 - (8) the sufficiency of the bidder's financial resources and ability to perform the contract or provide the service;
 - (9) the bidder's ability to provide future maintenance, repair parts, and service;
 - (10) the installation cost;
 - (11) the cost of operation and maintenance;
 - (12) any other relevant factor specifically listed in the request for bids or proposals;
 - (13) the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses;
 - (14) the bidder's compliance with a requirement for attendance at a mandatory site visit or pre-bid conference; and
 - (15) the bidder's safety record, if:
 - (A) the district has adopted a written definition and criteria for accurately determining the safety record of a bidder;
 - (B) the district has given notice to prospective bidders in the request for bids that the safety record of a bidder may be considered in determining the responsibility of the bidder; and
 - (C) the district's determinations are not arbitrary and capricious.
- (c) A district may reject all bids or proposals or parts of bids or proposals if the rejection serves the district's interest.

(d) The district shall provide all bidders with the opportunity to bid on the same items or services on equal terms and have bids judged according to the same standards as those set forth in the request for bids.

(e) The district shall receive bids under this subchapter in a fair and confidential manner.

(f) Bids may be opened only by the district at a public meeting in a district-owned or district-controlled facility. At the time the district opens a competitive bid, the district shall read aloud the name of the bidder and the total bid amount if a member of the public is present and the bid is of a type that should contain a bid amount. At least two district employees or trustees must be present at the bid opening. When opening proposals or qualifications, the district shall read aloud only the name of the respondents and may not disclose the contents of a proposal on opening the proposal or during negotiations with competing bidders.

(g) A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. If there is a discrepancy between the total price and the unit price of a bid, the unit price prevails. If there is a discrepancy between the written price and the numerical price of a bid, the written price prevails.

(h) This subchapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

(i) The district shall document the basis of its selection and shall make its evaluations public not later than the seventh day after the date the contract is awarded. The district shall state in writing in the contract file the reasons for making an award.

(j) A contract awarded in violation of this subchapter is void.

(k) If a purchase is made at the campus level in a district with independently accredited junior colleges, and the district delegates purchasing decisions to the campus level, this section applies only to the campus and this subchapter does not require the district to aggregate and jointly award the different campus purchasing contracts. A district that adopts site-based purchasing under this subsection shall adopt a policy to ensure that campus purchases achieve the best value to the district and are not

intended or used to avoid the requirement that a district aggregate purchases under Section 130.253(a).

(1) If district property is destroyed, stolen, or severely damaged, a building or equipment undergoes major operational or structural failure, or a contractor is unable to fulfill its obligations in providing goods or services, and the board of trustees determines that the delay posed by using the methods required by Section 130.253(a) would pose a material threat to personal safety or potential damage to other property or would prevent or substantially impair the conduct of classes or other essential district activities, then contracts for the replacement or repair of the property may be made by methods other than those required by Section 130.253(a).

Sec. 130.257. RULES AND PROCEDURES; AUDITS BY STATE AUDITOR. (a) The board of trustees may adopt rules and procedures for the acquisition of goods or services by the district.

(b) The state auditor may audit purchases of goods or services by the district.

Sec. 130.258. NOTICE. (a) Except as otherwise provided by this subchapter, for any method of contracting selected under Section 130.253(a), the district shall publish the notice required by this section in at least two successive issues of any newspaper of general circulation in the county in which the district's central administrative office is located. The deadline for receiving bids or proposals may not be less than 10 business days after the date of the publication of the last newspaper notice. The deadline for receiving responses to a request for qualifications may not be less than five business days after the date of the publication of the last newspaper notice. If there is not a newspaper in the county in which the district's central administrative office is located, the notice shall be published in a newspaper in the county nearest the county seat of the county in which the district's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately.

(b) The district may, as an alternative to publishing

individual notices in a newspaper, publish on a publicly accessible Internet site the notices required by this section, provided the district publishes in a newspaper of general circulation at least one time per week the Internet address where district notices may be found. Notice posted on the Internet under this subsection must be posted every day for at least 10 business days before the deadline for receiving the bids, proposals, or responses to a request for qualifications.

(c) The notice required by this section must include:

(1) the date, time, and place for receiving and opening bids, proposals, or statements of qualifications;

(2) a description of the goods or services;

(3) the location of any mandatory site inspections or pre-bid meetings at which bid, proposal, or qualification documents may be obtained or examined; and

(4) the amount of any required bid bond, payment bond, or performance bond.

Sec. 130.259. DISCUSSION AND REVISION OF PROPOSALS. (a) As provided in a request for proposals and under rules adopted by the district, the district may discuss acceptable or potentially acceptable proposals with bidders to assess a bidder's ability to meet the solicitation requirements.

(b) After receiving a proposal but before making an award, the district may permit the bidder to revise the proposal to obtain the best final offer.

(c) The district may not disclose information derived from proposals submitted from competing bidders in conducting discussions under this section.

(d) The district shall provide each bidder an equal opportunity to discuss and revise the bidder's proposal.

Sec. 130.260. PRE-BID CONFERENCE. (a) The district may require a principal, officer, or employee of each prospective bidder to attend a mandatory pre-bid conference conducted for the purpose of discussing contract requirements and answering questions from prospective bidders. Notice under this subsection must be included in the notice published under Section 130.258.

(b) After the district conducts a mandatory pre-bid

conference, the district may send any additional required notice for the proposed contract only to prospective bidders who attended the conference.

Sec. 130.261. IDENTICAL BIDS. If, after considering the factors described by Section 130.256, the district determines that the district has received identical bids, the district shall cast lots to determine which bidder will be awarded the contract. The district shall invite the bidders to witness the selection process under this section. The selection process must be conducted by at least two district employees or members of the district's board of trustees.

Sec. 130.262. BID DEPOSIT. (a) The district may, as the district determines necessary, require a bid deposit in an amount determined by the district. The amount of the deposit, if any, must be stated in the notice required by Section 130.258 of the invitation to bid.

(b) On the award of a contract or the rejection of all bids, the district shall refund the bid deposit of an unsuccessful bidder.

(c) For public work contracts, the bid deposit required by the district, if any, may only be in the form of a bid bond written by a surety authorized to conduct business in this state.

(d) For contracts other than public work contracts, the bid deposit required by the district, if any, may only be in the form of a bid bond written by a surety authorized to conduct business in this state or a cashier's check.

Sec. 130.263. PERFORMANCE BOND. A district may require a contractor to provide a performance bond in the amount of the contract before executing a contract for the purchase of goods or services with a value of \$100,000 or more. The bond must be written by a surety authorized to conduct business in this state.

Sec. 130.264. ENFORCEMENT OF PURCHASING PROCEDURES: CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY; INJUNCTION. (a) In this section:

(1) "Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

(2) "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

(3) "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

(b) An officer, employee, or agent of a district commits an offense if the person with criminal negligence makes or authorizes separate, sequential, or component purchases for the purpose of avoiding the requirements of Section 130.253 or 130.256. An offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude that causes a forfeiture of an officer's public office.

(c) An officer, employee, or agent of a district commits an offense if the person with criminal negligence violates Section 130.253 or 130.256 other than by conduct described by Subsection (b). An offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude that causes a forfeiture of an officer's public office.

(d) An officer or employee of a district commits an offense if the officer or employee knowingly violates Section 130.253 or Section 130.256 other than by conduct described by Subsection (b) or (c). An offense under this subsection is a Class C misdemeanor.

(e) The final conviction of a person other than a trustee of a district for an offense under Subsection (b) or (c) results in the immediate removal from office or employment of that person. A trustee who is convicted of an offense under this section is subject to removal as provided by Chapter 66, Civil Practice and Remedies Code. For four years after the date of the final conviction, the removed person is ineligible to be a candidate for or to be appointed or elected to a public office in this state, is ineligible to be employed by or act as an agent for this state or a political subdivision of this state, and is ineligible to receive any compensation through a contract with this state or a political subdivision of this state. This subsection does not prohibit the payment of retirement benefits to the removed person or the payment of workers' compensation benefits to the removed person for an

injury that occurred before the commission of the offense for which the person was removed. This subsection does not make a person ineligible for an office for which the federal or state constitution prescribes exclusive eligibility requirements.

(f) A court may enjoin performance of a contract made in violation of this subchapter. A county attorney, district attorney, criminal district attorney, citizen of the county in which the district is located, or interested party may bring an action for an injunction. A party who prevails in an action brought under this subsection is entitled to reasonable attorney's fees as approved by the court.

Sec. 130.265. ADDITIONAL REQUIREMENTS FOR PURCHASING SERVICES AND CERTAIN COMMODITIES. (a) This section applies only to:

(1) the purchase of tangible personal property, including produce, gasoline, and fuel oil, if the cost of the commodity is expected to exceed \$35,000 during a fiscal year and must be determined at the time the need for the commodity arises; and

(2) the purchase of services other than construction services or professional services.

(b) The notice requirements of Section 130.258 apply to purchases made under this section, except that the notice must specify the categories of property or services to be purchased under this section and solicit the names, addresses, and telephone numbers of vendors that are interested in supplying the property or services to the district. For each category specified by the district, the district shall create a vendor list consisting of each qualified vendor that responds to the notice and any other vendors the district elects to include.

(c) Before the district makes a purchase subject to this section in a category specified by the district, the district must obtain written or telephone price quotations from at least three vendors from the list created by the district for that category. If fewer than three vendors are on the list, the district shall contact each vendor on the list. Whenever possible, the district shall confirm telephone quotes in writing, including electronic mail or

facsimile transmission. The bidding records must be retained with the district's competitive bidding records and are subject to audit. In determining from whom to purchase the property or services, the district may consider the provisions of Section 130.256.

Sec. 130.266. NOTIFICATION OF CRIMINAL HISTORY OF CONTRACTOR. (a) A person or business entity that enters into a contract with a district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.

(b) A district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract.

(c) This section does not apply to a publicly held corporation.

SUBCHAPTER L. SALE OF PERSONAL PROPERTY BY DISTRICT
AND AWARD OF MISCELLANEOUS CONTRACTS FOR SERVICES

Sec. 130.301. SALE OF PERSONAL PROPERTY BY DISTRICT. A sale of personal property by a junior college district that is not covered by Chapter 791, Government Code, shall be solicited and awarded in the same manner as a contract for a purchase of personal property or services under Subchapter K.

Sec. 130.302. AWARD OF MISCELLANEOUS CONTRACTS FOR SERVICES. Miscellaneous contracts for services, including contracts for bookstore services, food services, and vending services, shall be solicited and awarded in the same manner as a contract for a purchase of personal property or services under Subchapter K.

SECTION __. Section 271.023, Local Government Code, is amended to read as follows:

Sec. 271.023. CONFLICT OF LAWS. To the extent of any conflict, the provisions of Subchapter B, Chapter 44, Education Code, relating to the purchase of goods and services under contract

by a school district and the provisions of Subchapter K, Chapter 130, Education Code, relating to the purchase of goods and services under contract by a junior college prevail over this subchapter.

SECTION __. Sections 44.0311(b), 130.010, and 130.0101, Education Code, are repealed.