

By: West

S.B. No. 1544

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the purchasing and contracting practices of public
3 junior college districts; providing criminal penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subsection (a), Section 44.0311, Education Code,
6 is amended to read as follows:

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

9 SECTION 2. Subdivision (2), Section 51.776, Education Code,
10 is amended to read as follows:

11 (2) "Board" means the governing body of an institution
12 other than a junior college or junior college district.

13 SECTION 3. Subchapter A, Chapter 130, Education Code, is
14 amended by adding Section 130.0103 to read as follows:

15 Sec. 130.0103. POLICY AND REPORT REGARDING HISTORICALLY
16 UNDERUTILIZED BUSINESSES. (a) In this section, "historically
17 underutilized business" has the meaning assigned by Section
18 2161.001, Government Code.

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

22 (c) Each junior college district shall adopt a policy
23 stating its commitment to developing, maintaining, and enhancing
24 participation by historically underutilized businesses in all

1 phases of the district's procurement processes in order to support,
2 to the greatest extent feasible, the efforts of historically
3 underutilized businesses to compete for purchases of equipment,
4 supplies, and services and for construction project contracts.

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

13 SECTION 4. Chapter 130, Education Code, is amended by
14 adding Subchapters K, L, and M to read as follows:

15 SUBCHAPTER K. PURCHASING CONTRACTS OTHER THAN
16 CONSTRUCTION CONTRACTS

17 Sec. 130.251. DEFINITIONS. In this subchapter:

18 (1) "Board of trustees" means the governing board of a
19 district.

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

21 (3) "Purchase of goods":

22 (A) includes:

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

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

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

3 (4) "Services" does not include:

4 (A) construction services; or

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

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

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

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

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

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

25 (1) competitive sealed bids;

26 (2) competitive sealed proposals;

27 (3) a catalog purchase as provided by Subchapter B,

1 Chapter 2157, Government Code;

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

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

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

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

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

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

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

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

27 (1) an item for which competition is precluded because

1 of the existence of a patent, copyright, secret process, or
2 monopoly;

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

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

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

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

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

13 (f) Without complying with Subsection (a), a district may
14 purchase advertising services, meeting and catering services, and
15 travel services, including airfare, ground transportation, and
16 lodging. The district shall exercise reasonable and prudent care
17 to determine whether a contract with a company will provide the best
18 value to the district. The district shall document the process for
19 selecting the provider of the services and shall maintain a list of
20 companies contacted and the basis for selecting the provider. Any
21 company that has provided written notice to the district that it is
22 interested in being considered as a supplier of services covered by
23 this subsection shall be given the opportunity to make an offer to
24 provide the services. After rating and ranking the offers, the
25 district shall attempt to negotiate a contract with the highest
26 ranked company. If a contract cannot be negotiated with the highest
27 ranked company, the next highest ranked company shall be contacted.

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

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

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

9 (h) If the Texas Building and Procurement Commission, an
10 institution of higher education as defined by Section 61.003, or a
11 political subdivision of this state has entered into a contract
12 with a company to provide goods or services other than construction
13 services, then during the term of the contract a district may
14 purchase the goods or services directly from the company if the
15 company agrees to sell the goods or services to the district in
16 accordance with the terms and conditions of the original contract
17 at the same or at a lower cost than that stated in the original
18 contract. The purchase satisfies the requirements of this
19 subchapter if the original contract was awarded in compliance with
20 the statutory requirements applicable to the governmental entity
21 that awarded the contract and the district's purchase order
22 references the original contract and identifies the parties to the
23 contract. If the Texas Building and Procurement Commission is a
24 party to the original contract, the district may use the contract
25 under this section only if the district is a member of the Texas
26 Building and Procurement Commission Cooperative Purchasing
27 Program.

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

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

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

22 Sec. 130.256. EVALUATION AND AWARD OF CONTRACT.
23 (a) Except as otherwise provided by this subchapter, a district
24 shall award a contract to the lowest responsible bidder offering
25 the best value to the district according to the selection criteria
26 established by the district. The district shall publish in the
27 request for bids, proposals, or qualifications the criteria the

1 district will use to evaluate the offers and the relative weights
2 given to the criteria that are known at the time of the publication.

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

5 (1) the purchase price;

6 (2) the reputation of the bidder and of the bidder's
7 goods or services;

8 (3) the quality of the bidder's goods or services;

9 (4) the extent to which the offered goods or services
10 meet the district's needs;

11 (5) the bidder's past relationship with the district;

12 (6) the total long-term cost to the district to
13 acquire the vendor's goods or services;

14 (7) the extent to which the offers comply with the
15 requirements of the request for bids, proposals, or qualifications;

16 (8) the sufficiency of the bidder's financial
17 resources and ability to perform the contract or provide
18 the service;

19 (9) the bidder's ability to provide future
20 maintenance, repair parts, and service;

21 (10) the installation cost;

22 (11) the cost of operation and maintenance;

23 (12) any other relevant factor specifically listed in
24 the request for bids or proposals;

25 (13) the impact on the ability of the district to
26 comply with laws and rules relating to historically underutilized
27 businesses;

1 (14) the bidder's compliance with a requirement for
2 attendance at a mandatory site visit or pre-bid conference; and

3 (15) the bidder's safety record, if:

4 (A) the district has adopted a written definition
5 and criteria for accurately determining the safety record of a
6 bidder;

7 (B) the district has given notice to prospective
8 bidders in the request for bids that the safety record of a bidder
9 may be considered in determining the responsibility of the bidder;
10 and

11 (C) the district's determinations are not
12 arbitrary and capricious.

13 (c) A district may reject all bids, proposals, or parts of
14 bids or proposals if the rejection serves the district's interest.

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

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

21 (f) Bids may be opened only by the district at a public
22 meeting in a district-owned or district-controlled facility. At
23 the time the district opens a competitive bid, the district shall
24 read aloud the name of the bidder and the total bid amount if a
25 member of the public is present and the bid is of a type that should
26 contain a bid amount. At least two district employees or trustees
27 must be present at the bid opening. When opening proposals or

1 qualifications, the district shall read aloud only the name of the
2 respondents and may not disclose the contents of a proposal on
3 opening the proposal or during negotiations with competing bidders.

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

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

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

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

17 (k) If a purchase is made at the campus level in a district
18 with independently accredited junior colleges, and the district
19 delegates purchasing decisions to the campus level, this section
20 applies only to the campus and this subchapter does not require the
21 district to aggregate and jointly award the different campus
22 purchasing contracts. A district that adopts site-based purchasing
23 under this subsection shall adopt a policy to ensure that campus
24 purchases achieve the best value to the district and are not
25 intended or used to avoid the requirement that a district aggregate
26 purchases under Section 130.253(a).

27 (l) If district property is destroyed, stolen, or severely

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

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

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

16 Sec. 130.258. NOTICE. (a) Except as otherwise provided by
17 this subchapter, for any method of contracting selected under
18 Section 130.253(a), the district shall publish the notice required
19 by this section in at least two successive issues of any newspaper
20 of general circulation in the county in which the district's
21 central administrative office is located. The deadline for
22 receiving bids or proposals may not be less than 10 business days
23 after the date of the publication of the last newspaper notice. The
24 deadline for receiving responses to a request for qualifications
25 may not be less than five business days after the date of the
26 publication of the last newspaper notice. If there is not a
27 newspaper in the county in which the district's central

1 administrative office is located, the notice shall be published in
2 a newspaper in the county nearest the county seat of the county in
3 which the district's central administrative office is located. In
4 a two-step procurement process, the time and place where the
5 second-step bids, proposals, or responses will be received are not
6 required to be published separately.

7 (b) The district may, as an alternative to publishing
8 individual notices in a newspaper, publish on a publicly accessible
9 Internet site the notices required by this section, provided the
10 district publishes in a newspaper of general circulation at least
11 one time per week the Internet address where district notices may be
12 found. Notice posted on the Internet under this subsection must be
13 posted every day for at least 10 business days before the deadline
14 for receiving the bids, proposals, or responses to a request for
15 qualifications.

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

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

19 (2) a description of the goods or services;

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

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

25 Sec. 130.259. DISCUSSION AND REVISION OF PROPOSALS.

26 (a) As provided in a request for proposals and under rules adopted
27 by the district, the district may discuss acceptable or potentially

1 acceptable proposals with bidders to assess a bidder's ability to
2 meet the solicitation requirements.

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

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

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

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

17 (b) After the district conducts a mandatory pre-bid
18 conference, the district may send any additional required notice
19 for the proposed contract only to prospective bidders who attended
20 the conference.

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

1 trustees.

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

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

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

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

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

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

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

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

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

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

14 (c) An officer, employee, or agent of a district commits an
15 offense if the person with criminal negligence violates Section
16 130.253 or 130.256 other than by conduct described by Subsection
17 (b). An offense under this subsection is a Class B misdemeanor and
18 is an offense involving moral turpitude that causes a forfeiture of
19 an officer's public office.

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

24 (e) The final conviction of a person other than a trustee of
25 a district for an offense under Subsection (b) or (c) results in the
26 immediate removal from office or employment of that person. A
27 trustee who is convicted of an offense under this section is subject

1 to removal as provided by Chapter 66, Civil Practice and Remedies
2 Code. For four years after the date of the final conviction, the
3 removed person is ineligible to be a candidate for or to be
4 appointed or elected to a public office in this state, is ineligible
5 to be employed by or act as an agent for this state or a political
6 subdivision of this state, and is ineligible to receive any
7 compensation through a contract with this state or a political
8 subdivision of this state. This subsection does not prohibit the
9 payment of retirement benefits to the removed person or the payment
10 of workers' compensation benefits to the removed person for an
11 injury that occurred before the commission of the offense for which
12 the person was removed. This subsection does not make a person
13 ineligible for an office for which the federal or state
14 constitution prescribes exclusive eligibility requirements.

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

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

25 (1) the purchase of tangible personal property,
26 including produce, gasoline, and fuel oil, where the cost of the
27 commodity is expected to exceed \$35,000 during a fiscal year and

1 must be determined at the time the need for the commodity arises;
2 and

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

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

14 (c) Before the district makes a purchase subject to this
15 section in a category specified by the district, the district must
16 obtain written or telephone price quotations from at least three
17 vendors from the list created by the district for that category. If
18 fewer than three vendors are on the list, the district shall contact
19 each vendor on the list. Whenever possible, the district shall
20 confirm telephone quotes in writing, including electronic mail or
21 facsimile transmission. The bidding records must be retained with
22 the district's competitive bidding records and are subject to
23 audit. In determining from whom to purchase the property or
24 services, the district may consider the provisions of Section
25 130.256.

26 Sec. 130.266. NOTIFICATION OF CRIMINAL HISTORY OF
27 CONTRACTOR. (a) A person or business entity that enters into a

1 contract with a district must give advance notice to the district if
2 the person or an owner or operator of the business entity has been
3 convicted of a felony. The notice must include a general
4 description of the conduct resulting in the conviction of a felony.

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

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

13 SUBCHAPTER L. CONSTRUCTION CONTRACTS

14 Sec. 130.281. DEFINITIONS. In this subchapter:

15 (1) "Architect" means an individual registered as an
16 architect under Chapter 1051, Occupations Code.

17 (2) "Board of trustees" means the governing board of a
18 district.

19 (3) "Construction" means the construction,
20 rehabilitation, alteration, or repair of a facility, including all
21 goods and labor incidental to the construction.

22 (4) "Contractor" in the context of a contract for the
23 construction, rehabilitation, alteration, or repair of a facility
24 means a sole proprietorship, partnership, corporation, or other
25 legal entity that assumes the risk for constructing,
26 rehabilitating, altering, or repairing all or part of the facility
27 at the contracted price.

1 (5) "District" means a public junior college district.

2 (6) "Engineer" means an individual licensed as a
3 professional engineer under Chapter 1001, Occupations Code.

4 (7) "Facility" means real property or a public work,
5 including buildings and associated systems, structures, and
6 components, and improved or unimproved land.

7 (8) "Fee" in the context of a contract for the
8 construction, rehabilitation, alteration, or repair of a facility
9 means the payment a construction manager receives for its overhead
10 and profit in performing its services.

11 (9) "General conditions" in the context of a contract
12 for the construction, rehabilitation, alteration, or repair of a
13 facility means on-site management, administrative personnel,
14 insurance, bonds, equipment, utilities, and incidental work,
15 including minor field labor and materials.

16 Sec. 130.2811. USE OF TERMS "BIDDER," "OFFEROR," "VENDOR,"
17 AND "BID." (a) The terms "bidder," "offeror," and "vendor" may be
18 used interchangeably to identify an entity that responds to a
19 request for competitive bids or proposals, or for offers or
20 qualifications.

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

23 Sec. 130.282. METHODS OF CONTRACTING. (a) Except as
24 otherwise provided by this subchapter, all contracts for
25 construction valued at \$35,000 or more in the aggregate shall be
26 made by the method, of the following methods, that provides the best
27 value for the district:

1 (1) competitive sealed bids;

2 (2) competitive sealed proposals;

3 (3) a design-build contract;

4 (4) a contract to construct, rehabilitate, alter, or
5 repair facilities that involves using a construction manager agent;

6 (5) a contract to construct, rehabilitate, alter, or
7 repair facilities that involves using a construction manager at
8 risk; or

9 (6) a job order contract for the minor construction,
10 repair, rehabilitation, or alteration of facilities.

11 (b) Only one of the methods listed in Subsection (a) may be
12 used for any individual contract. A district must determine which
13 method provides the best value for the district before providing
14 the notice required by Section 130.285.

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

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

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

21 (d) This section does not apply to a contract for
22 consultants or professional services, including services of an
23 architect, engineer, auditor, accountant, attorney, or fiscal
24 agent. For professional services and consultants not covered by
25 Subchapter A or B, Chapter 2254, Government Code, a district may
26 contract for the professional services in the manner provided by
27 Section 2254.003, Government Code, or by Subchapter K.

Sec. 130.283. 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 immediate and long-term cost of the service;
- (2) the reputation of the bidder;
- (3) the quality of the bidder's services;
- (4) the extent to which the offered services meet the district's needs;
- (5) the bidder's past relationship with the district;
- (6) the extent to which the offers comply with the requirements of the request for bids, proposals, or qualifications;
- (7) the sufficiency of the bidder's financial resources and ability to perform the contract or provide the service;
- (8) the bidder's ability to provide future maintenance, repair parts, and service;
- (9) the installation cost;
- (10) the cost of operation and maintenance;
- (11) any other relevant factor specifically listed in the request for bids or proposals;

1 (12) the impact on the ability of the district to
2 comply with laws and rules relating to historically underutilized
3 businesses;

4 (13) the bidder's compliance with a requirement for
5 attendance at a mandatory site visit or pre-bid conference; and

6 (14) the bidder's safety record, if:

7 (A) the district has adopted a written definition
8 and criteria for accurately determining the safety record of a
9 bidder;

10 (B) the district has given notice to prospective
11 bidders in the request for bids that the safety record of a bidder
12 may be considered in determining the responsibility of the bidder;
13 and

14 (C) the district's determinations are not
15 arbitrary and capricious.

16 (c) A district may reject all bids, proposals,
17 qualifications, or parts of bids, proposals, or qualifications if
18 the rejection serves the district's interest.

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

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

25 (f) Bids may be opened only by the district at a public
26 meeting in a district-owned or district-controlled facility. At
27 the time the district opens a competitive bid, the district shall

1 read aloud the name of the bidder and the total bid amount if a
2 member of the public is present and the bid is of a type that should
3 contain a bid amount. At least two district employees or trustees
4 must be present at the bid opening. When opening proposals or
5 qualifications, the district shall read aloud only the name of the
6 respondents and may not disclose the contents of a proposal on
7 opening the proposal or during negotiations with competing bidders.

8 (g) A bid that has been opened may not be changed for the
9 purpose of correcting an error in the bid price.

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

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

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

18 (k) If district property is destroyed, stolen, or severely
19 damaged, a building or equipment undergoes major operational or
20 structural failure, or a contractor is unable to fulfill its
21 obligations in providing goods or services, and the board of
22 trustees determines that the delay posed by using the methods
23 required by Section 130.282(a) would pose a material threat to
24 personal safety or potential damage to other property or would
25 prevent or substantially impair the conduct of classes or other
26 essential district activities, then contracts for the replacement
27 or repair of the property may be made by methods other than those

1 required by Section 130.282(a).

2 Sec. 130.284. RULES AND PROCEDURES. The board of trustees
3 may adopt rules and procedures for the acquisition of construction
4 services.

5 Sec. 130.285. NOTICE. (a) Except as otherwise provided by
6 this subchapter, for any method of contracting selected under
7 Section 130.282(a), the district shall publish the notice required
8 by this section in at least two successive issues of any newspaper
9 of general circulation in the county in which the district's
10 central administrative office is located. The deadline for
11 receiving bids, proposals, or responses to a request for
12 qualifications may not be less than 10 business days after the date
13 of the publication of the last newspaper notice. If there is not a
14 newspaper in the county in which the district's central
15 administrative office is located, the notice shall be published in
16 a newspaper in the county nearest the county seat of the county in
17 which the district's central administrative office is located. In
18 a two-step procurement process, the time and place where the
19 second-step bids, proposals, or responses will be received are not
20 required to be published separately.

21 (b) The district may, as an alternative to publishing
22 individual notices in a newspaper, publish on a publicly accessible
23 Internet site the notices required by this section, provided the
24 district publishes in a newspaper of general circulation at least
25 one time per week the Internet address where district notices may be
26 found. Notice posted on the Internet under this subsection must be
27 posted every day for at least 10 business days before the deadline

1 for receiving bids, proposals, or responses to a request for
2 qualifications.

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

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

6 (2) a description of the work to be performed;

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

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

12 Sec. 130.286. DISCUSSION AND REVISION OF PROPOSALS.

13 (a) As provided in a request for proposals and under rules adopted
14 by the district, the district may discuss acceptable or potentially
15 acceptable proposals with bidders to assess a bidder's ability to
16 meet the solicitation requirements.

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

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

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

25 Sec. 130.287. PRE-BID CONFERENCE. (a) The district may
26 require a principal, officer, or employee of each prospective
27 bidder to attend a mandatory pre-bid conference conducted for the

1 purpose of discussing contract requirements and answering
2 questions from prospective bidders. Notice under this subsection
3 must be included in the notice published under Section 130.285.

4 (b) After the district conducts a mandatory pre-bid
5 conference, the district may send any additional required notice
6 for the proposed contract only to prospective bidders who attended
7 the conference.

8 Sec. 130.288. IDENTICAL BIDS. If, after considering the
9 factors described by Section 130.283, the district determines that
10 the district has received identical bids, the district shall cast
11 lots to determine which bidder will be awarded the contract. The
12 district shall invite the bidders to witness the selection process
13 under this section. The selection process must be conducted by at
14 least two district employees or members of the district's board of
15 trustees.

16 Sec. 130.289. BID DEPOSIT. (a) The district may, as the
17 district determines necessary, require a bid deposit in an amount
18 determined by the district. The amount of the deposit, if any, must
19 be stated in the notice required by Section 130.285 of the
20 invitation to bid.

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

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

27 Sec. 130.290. PERFORMANCE AND PAYMENT BONDS. For a

1 contract for construction, the contractor must execute a good and
2 sufficient payment bond if the contract is for \$25,000 or more and a
3 performance bond if the contract is \$100,000 or more. Each bond
4 must be executed with a surety company authorized to conduct
5 business in this state in accordance with Chapter 2253, Government
6 Code.

7 Sec. 130.291. DELEGATION. (a) Except as provided by
8 Subsection (b), the board of trustees of a district may, as
9 appropriate, delegate its authority under this subchapter to a
10 designated person, representative, or committee. In procuring
11 construction services, the district shall provide notice of the
12 delegation and the limits of the delegation in the request for bids,
13 proposals, or qualifications or in an addendum to the request. If
14 the district fails to provide that notice, a ranking, selection, or
15 evaluation of bids, proposals, or qualifications for construction
16 services other than by the board of trustees in an open public
17 meeting is advisory only.

18 (b) The board may not delegate the authority to act
19 regarding an action specifically authorized or required by this
20 subchapter to be taken by the board of trustees of a district.

21 Sec. 130.292. ENFORCEMENT OF CONTRACT SOLICITATION
22 PROCEDURES: CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY;
23 INJUNCTION. (a) In this section:

24 (1) "Component procurements" means procuring the
25 component parts of an item or service that in normal practice would
26 be made in one procurement.

27 (2) "Separate procurements" means procurements, made

1 separately, of items or services that in normal practice would be
2 made in one procurement.

3 (3) "Sequential procurement" means procurements, made
4 over a period, of items or services that in normal practice would be
5 made in one procurement.

6 (b) An officer, employee, or agent of a district commits an
7 offense if the person with criminal negligence makes or authorizes
8 separate, sequential, or component procurements for the purpose of
9 avoiding the requirements of Section 130.282 or 130.283. An
10 offense under this subsection is a Class B misdemeanor and is an
11 offense involving moral turpitude that causes a forfeiture of an
12 officer's public office.

13 (c) An officer, employee, or agent of a district commits an
14 offense if the person with criminal negligence violates Section
15 130.282 or 130.283 other than by conduct described by Subsection
16 (b). An offense under this subsection is a Class B misdemeanor and
17 is an offense involving moral turpitude that causes a forfeiture of
18 an officer's public office.

19 (d) An officer or employee of a district commits an offense
20 if the officer or employee knowingly violates Section 130.282 or
21 130.283 other than by conduct described by Subsection (b) or (c).
22 An offense under this subsection is a Class C misdemeanor.

23 (e) The final conviction of a person other than a trustee of
24 a district for an offense under Subsection (b) or (c) results in the
25 immediate removal from office or employment of that person. A
26 trustee who is convicted of an offense under this section is subject
27 to removal as provided by Chapter 66, Civil Practice and Remedies

1 Code. For four years after the date of the final conviction, the
2 removed person is ineligible to be a candidate for or to be
3 appointed or elected to a public office in this state, is ineligible
4 to be employed by or act as an agent for this state or a political
5 subdivision of this state, and is ineligible to receive any
6 compensation through a contract with this state or a political
7 subdivision of this state. This subsection does not prohibit the
8 payment of retirement benefits to the removed person or the payment
9 of workers' compensation benefits to the removed person for an
10 injury that occurred before the commission of the offense for which
11 the person was removed. This subsection does not make a person
12 ineligible for an office for which the federal or state
13 constitution prescribes exclusive eligibility requirements.

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

21 Sec. 130.293. NOTIFICATION OF CRIMINAL HISTORY OF
22 CONTRACTOR. (a) A person or business entity that enters into a
23 contract with a district must give advance notice to the district if
24 the person or an owner or operator of the business entity has been
25 convicted of a felony. The notice must include a general
26 description of the conduct resulting in the conviction of a felony.

27 (b) A district may terminate a contract with a person or

1 business entity if the district determines that the person or
2 business entity failed to give notice as required by Subsection (a)
3 or misrepresented the conduct resulting in the conviction. The
4 district must compensate the person or business entity for services
5 performed before the termination of the contract.

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

8 Sec. 130.294. CHANGE ORDERS. (a) After performance of a
9 construction contract begins, a district may approve change orders
10 if necessary to:

11 (1) make changes in plans or specifications; or

12 (2) decrease or increase the quantity of work to be
13 performed or materials, equipment, or supplies to be furnished.

14 (b) The total price of a contract may not be increased by a
15 change order unless provision has been made for the payment of the
16 added cost by the appropriation of current funds or bond funds for
17 that purpose, by the authorization of the issuance of certificates,
18 or by a combination of those procedures. The original contract
19 price may not be increased by more than 25 percent. The original
20 price may not be decreased by more than 25 percent without the
21 consent of the contractor.

22 Sec. 130.295. ERRORS AND OMISSIONS INSURANCE. For any
23 public work contract awarded under this subchapter, to protect the
24 interest of the district, the architect or engineer who prepared
25 the plans and specifications for the public work shall, at the
26 architect's or engineer's expense, carry an errors and omissions
27 insurance policy in an amount not less than the amount of the public

1 work contract.

2 Sec. 130.296. DESIGN-BUILD CONTRACTS FOR FACILITIES.

3 (a) In this section:

4 (1) "Design-build contract" means a single contract
5 with a design-build firm for the design and construction of a
6 facility.

7 (2) "Design-build firm" means a partnership,
8 corporation, or other legal entity or team that includes an
9 engineer or architect and a builder qualified to engage in building
10 construction in this state.

11 (3) "Design criteria package" means a set of documents
12 that provides sufficient information, including criteria for
13 selection, to permit a design-build firm to prepare a response to a
14 district's request for qualifications and to the district's request
15 for any additional information. The design criteria package must
16 specify criteria the district considers necessary to describe the
17 project and may include, as appropriate, the legal description of
18 the site, survey information concerning the site, interior space
19 requirements, special material requirements, material quality
20 standards, conceptual criteria for the project, special equipment
21 requirements, cost or budget estimates, time schedules, quality
22 assurance and quality control requirements, site development
23 requirements, applicable codes and ordinances, provisions for
24 utilities, parking requirements, or any other requirement, as
25 applicable.

26 (b) A district may use the design-build method for the
27 construction, rehabilitation, alteration, or repair of a facility.

1 In using that method and in entering into a contract for the
2 services of a design-build firm, the contracting district and the
3 design-build firm shall follow the procedures provided by
4 Subsections (c)-(j).

5 (c) The district may designate an engineer or architect to
6 act as its representative. If the district's engineer or architect
7 is not a full-time employee of the district, any engineer or
8 architect designated shall be selected on the basis of demonstrated
9 competence and qualifications in accordance with Subchapter A,
10 Chapter 2254, Government Code.

11 (d) The district shall prepare a request for qualifications
12 that includes general information on the project site, project
13 scope, budget, special systems, selection criteria, and other
14 information that may assist potential design-build firms in
15 submitting proposals for the project. The district shall also
16 prepare a design criteria package that includes more detailed
17 information on the project. If the preparation of the design
18 criteria package requires engineering or architectural services
19 that constitute the practice of engineering within the meaning of
20 Chapter 1001, Occupations Code, or the practice of architecture
21 within the meaning of Chapter 1051, Occupations Code, those
22 services shall be provided in accordance with the applicable law.

23 (e) The district shall evaluate statements of
24 qualifications and select a design-build firm in two phases:

25 (1) In phase one, the district shall prepare a request
26 for qualifications and evaluate each offeror's experience,
27 technical competence, and capability to perform, the past

1 performance of the offeror's team and members of the team, and other
2 appropriate factors submitted by the team or firm in response to the
3 request for qualifications, except that cost-related or
4 price-related evaluation factors are not permitted. Each offeror
5 must certify to the district that each engineer or architect who is
6 a member of its team was selected based on demonstrated competence
7 and qualifications. The district shall qualify a maximum of five
8 offerors to submit additional information and, if the district
9 chooses, to interview for final selection.

10 (2) In phase two, the district shall evaluate the
11 information submitted by the offerors on the basis of the selection
12 criteria stated in the request for qualifications and the results
13 of any interview. The district may request additional information
14 regarding demonstrated competence and qualifications,
15 considerations of the safety and long-term durability of the
16 project, the feasibility of implementing the project as proposed,
17 the ability of the offeror to meet schedules, costing methodology,
18 or other factors as appropriate. The district may not require
19 offerors to submit detailed engineering or architectural designs as
20 part of the proposal. The district shall rank each proposal
21 submitted on the basis of the criteria set forth in the request for
22 qualifications. The district shall select the design-build firm
23 that submits the proposal offering the best value for the district
24 on the basis of the published selection criteria and on its ranking
25 evaluations. The district shall first attempt to negotiate a
26 contract with the selected offeror. If the district is unable to
27 negotiate a satisfactory contract with the selected offeror, the

1 district shall, formally and in writing, end negotiations with that
2 offeror and proceed to negotiate with the next offeror in the order
3 of the selection ranking until a contract is reached or
4 negotiations with all ranked offerors end.

5 (f) Following selection of a design-build firm under
6 Subsection (e), that firm's engineers or architects shall complete
7 the design, submitting all design elements for review and
8 determination of scope compliance to the district or to the
9 district's engineer or architect before or concurrently with
10 construction.

11 (g) An engineer shall have responsibility for compliance
12 with the engineering design requirements and all other applicable
13 requirements of Chapter 1001, Occupations Code. An architect shall
14 have responsibility for compliance with the requirements of Chapter
15 1051, Occupations Code.

16 (h) The district shall provide or contract for,
17 independently of the design-build firm, the inspection services,
18 testing of construction materials engineering, and verification
19 testing services necessary for acceptance of the facility by the
20 district. The district shall select those services for which it
21 contracts in accordance with Section 2254.004, Government Code.

22 (i) The design-build firm shall supply a signed and sealed
23 set of construction documents for the project to the district at the
24 conclusion of construction.

25 (j) A payment or performance bond is not required for, and
26 may not provide coverage for, the portion of a design-build
27 contract under this section that includes design services only. If

1 a fixed contract amount or guaranteed maximum price has not been
2 determined at the time a design-build contract is awarded, the
3 penal sums of the performance and payment bonds delivered to the
4 district must each be in an amount equal to the project budget, as
5 specified in the design criteria package. The design-build firm
6 shall deliver the bonds not later than the 10th day after the date
7 the design-build firm executes the contract unless the design-build
8 firm furnishes a bid bond or other financial security acceptable to
9 the district to ensure that the design-build firm will furnish the
10 required performance and payment bonds when a guaranteed maximum
11 price is established.

12 Sec. 130.297. CONTRACTS FOR FACILITIES: CONSTRUCTION
13 MANAGER-AGENT. (a) A district may use the construction
14 manager-agent method for the construction, rehabilitation,
15 alteration, or repair of a facility. In using that method and in
16 entering into a contract for the services of a construction
17 manager-agent, a district shall follow the procedures prescribed by
18 this section.

19 (b) A construction manager-agent is a sole proprietorship,
20 partnership, corporation, or other legal entity that provides
21 consultation to the district regarding construction,
22 rehabilitation, alteration, or repair of a facility. A district
23 using the construction manager-agent method may, under the contract
24 between the district and the construction manager-agent, require
25 the construction manager-agent to provide administrative
26 personnel, equipment necessary to perform duties under this
27 section, and on-site management and other services specified in the

1 contract. A construction manager-agent represents the district in
2 a fiduciary capacity.

3 (c) Before or concurrently with selecting a construction
4 manager-agent, the district shall select or designate an engineer
5 or architect who shall prepare the construction documents for the
6 project and who has full responsibility for complying with Chapter
7 1001 or 1051, Occupations Code, as applicable. If the engineer or
8 architect is not a full-time employee of the district, the district
9 shall select the engineer or architect on the basis of demonstrated
10 competence and qualifications as provided by Section 2254.004,
11 Government Code. The district's engineer or architect may not
12 serve, alone or in combination with another person, as the
13 construction manager-agent unless the engineer or architect is
14 hired to serve as the construction manager-agent under a separate
15 or concurrent procurement conducted in accordance with this
16 subchapter. This subsection does not prohibit the district's
17 engineer or architect from providing customary construction phase
18 services under the engineer's or architect's original professional
19 service agreement with the district and in accordance with
20 applicable licensing laws.

21 (d) A district shall select a construction manager-agent on
22 the basis of demonstrated competence and qualifications in the same
23 manner as provided for the selection of engineers or architects
24 under Section 2254.004, Government Code.

25 (e) A district using the construction manager-agent method
26 shall procure, in accordance with applicable law and in any manner
27 authorized by this chapter, a general contractor, trade

1 contractors, or subcontractors who will serve as the prime
2 contractor for their specific portion of the work.

3 (f) The district or the construction manager-agent shall
4 procure in accordance with Section 2254.004, Government Code, all
5 of the testing of construction materials engineering, the
6 inspection services, and the verification testing services
7 necessary for acceptance of the facility by the district.

8 Sec. 130.298. CONTRACTS FOR FACILITIES: CONSTRUCTION
9 MANAGER-AT-RISK. (a) A district may use the construction
10 manager-at-risk method for the construction, rehabilitation,
11 alteration, or repair of a facility. In using that method and in
12 entering into a contract for the services of a construction
13 manager-at-risk, a district shall follow the procedures prescribed
14 by this section.

15 (b) A construction manager-at-risk is a sole
16 proprietorship, partnership, corporation, or other legal entity
17 that assumes the risk for construction, rehabilitation,
18 alteration, or repair of a facility at the contracted price as a
19 general contractor and provides consultation to the district
20 regarding construction during and after the design of the facility.

21 (c) Before or concurrently with selecting a construction
22 manager-at-risk, the district shall select or designate an engineer
23 or architect who shall prepare the construction documents for the
24 project and who has full responsibility for complying with Chapter
25 1001 or 1051, Occupations Code, as applicable. If the engineer or
26 architect is not a full-time employee of the district, the district
27 shall select the engineer or architect on the basis of demonstrated

1 competence and qualifications as provided by Section 2254.004,
2 Government Code. The district's engineer, architect, or
3 construction manager-agent for a project may not serve, alone or in
4 combination with another, as the construction manager-at-risk.

5 (d) The district shall provide or contract for,
6 independently of the construction manager-at-risk, the inspection
7 services, testing of construction materials engineering, and
8 verification testing services necessary for acceptance of the
9 facility by the district. The district shall select those services
10 for which it contracts in accordance with Section 2254.004,
11 Government Code.

12 (e) The district shall select the construction
13 manager-at-risk in either a one-step or two-step process. The
14 district shall prepare a request for proposals, in the case of a
15 one-step process, or a request for qualifications, in the case of a
16 two-step process, that includes general information on the project
17 site, project scope, schedule, selection criteria, estimated
18 budget, the time and place for receipt of, as applicable, proposals
19 or qualifications, a statement as to whether the selection process
20 is a one-step or two-step process, and other information that may
21 assist the district in its selection of a construction
22 manager-at-risk. The district shall state the selection criteria
23 in the request for proposals or qualifications, as applicable. The
24 selection criteria may include the offeror's experience, past
25 performance, safety record, proposed personnel and methodology,
26 and other appropriate factors that demonstrate the capability of
27 the construction manager-at-risk. If a one-step process is used,

1 the district may request, as part of the offeror's proposal,
2 proposed fees and prices for fulfilling the general conditions. If
3 a two-step process is used, the district may not request fees or
4 prices in step one. In step two, the district may request that five
5 or fewer offerors, selected solely on the basis of qualifications,
6 provide additional information, including the construction
7 manager-at-risk's proposed fee and its price for fulfilling the
8 general conditions.

9 (f) At each step, the district shall receive, publicly open,
10 and read aloud the names of the offerors. At the appropriate step,
11 the district shall also read aloud the fees and prices, if any,
12 stated in each proposal as the proposal is opened. Within 45 days
13 after the date of opening the proposals, the district shall
14 evaluate and rank each proposal submitted in relation to the
15 criteria set forth in the request for proposals.

16 (g) The district shall select the offeror that submits the
17 proposal that offers the best value for the district based on the
18 published selection criteria and on its ranking evaluation. The
19 district shall first attempt to negotiate a contract with the
20 selected offeror. If the district is unable to negotiate a
21 satisfactory contract with the selected offeror, the district
22 shall, formally and in writing, end negotiations with that offeror
23 and proceed to negotiate with the next offeror in the order of the
24 selection ranking until a contract is reached or negotiations with
25 all ranked offerors end.

26 (h) A construction manager-at-risk shall publicize notice,
27 in accordance with Section 130.285, and receive bids or proposals

1 from trade contractors or subcontractors for the performance of all
2 major elements of the work other than the minor work that may be
3 included in the general conditions. A construction manager-at-risk
4 may seek to perform portions of the work itself if the construction
5 manager-at-risk submits its bid or proposal for those portions of
6 the work in the same manner as all other trade contractors or
7 subcontractors and if the district determines that the construction
8 manager-at-risk's bid or proposal provides the best value for the
9 district.

10 (i) The construction manager-at-risk and the district or
11 its representative shall review all trade contractor or
12 subcontractor bids or proposals in a manner that does not disclose
13 the contents of the bid or proposal during the selection process to
14 a person not employed by the construction manager-at-risk,
15 engineer, architect, or district. All bids or proposals shall be
16 made public after the award of the contract or within seven days
17 after the date of final selection of bids or proposals, whichever is
18 later.

19 (j) If the construction manager-at-risk reviews, evaluates,
20 and recommends to the district a bid or proposal from a trade
21 contractor or subcontractor but the district requires another bid
22 or proposal to be accepted, the district shall compensate the
23 construction manager-at-risk by a change in price, time, or
24 guaranteed maximum cost for any additional cost and risk that the
25 construction manager-at-risk may incur because of the district's
26 requirement that another bid or proposal be accepted.

27 (k) If a selected trade contractor or subcontractor

1 defaults in the performance of its work or fails to execute a
2 subcontract after being selected in accordance with this section,
3 the construction manager-at-risk may, without advertising, fulfill
4 the contract requirements or select a replacement trade contractor
5 or subcontractor to fulfill the contract requirements.

6 (1) If a fixed contract amount or guaranteed maximum price
7 has not been determined at the time the contract is awarded, the
8 penal sums of the performance and payment bonds delivered to the
9 district must each be in an amount equal to the project budget, as
10 specified in the request for qualifications. The construction
11 manager-at-risk shall deliver the bonds not later than the 10th day
12 after the date the construction manager-at-risk executes the
13 contract unless the construction manager-at-risk furnishes a bid
14 bond or other financial security acceptable to the district to
15 ensure that the construction manager will furnish the required
16 performance and payment bonds when a guaranteed maximum price is
17 established.

18 Sec. 130.299. SELECTING CONTRACTOR FOR CONSTRUCTION
19 SERVICES THROUGH COMPETITIVE SEALED PROPOSALS. (a) In selecting a
20 contractor for construction, rehabilitation, alteration, or repair
21 services for a facility through competitive sealed proposals, a
22 district shall follow the procedures prescribed by this section.

23 (b) The district shall select or designate an engineer or
24 architect to prepare construction documents for the project. The
25 selected or designated engineer or architect has full
26 responsibility for complying with Chapter 1001 or 1051, Occupations
27 Code, as applicable. If the engineer or architect is not a

1 full-time employee of the district, the district shall select the
2 engineer or architect on the basis of demonstrated competence and
3 qualifications as provided by Section 2254.004, Government Code.

4 (c) The district shall provide or contract for,
5 independently of the contractor, the inspection services, testing
6 of construction materials engineering, and verification testing
7 services necessary for acceptance of the facility by the district.
8 The district shall select those services for which it contracts in
9 accordance with Section 2254.004, Government Code, and shall
10 identify them in the request for proposals.

11 (d) The district shall prepare a request for competitive
12 sealed proposals that includes construction documents, selection
13 criteria, estimated budget, project scope, schedule, and other
14 information that contractors may require to respond to the request.

15 (e) The district shall receive, publicly open, and read
16 aloud the names of the offerors and if any are required to be stated
17 in the request for proposals, all prices stated in each proposal.
18 Within 45 days after the date of opening the proposals, the district
19 shall evaluate and rank each proposal submitted in relation to the
20 published selection criteria.

21 (f) The district shall first attempt to negotiate a contract
22 with the selected offeror. The district and its engineer or
23 architect may discuss with the selected offeror options for a scope
24 or time modification and any price change associated with the
25 modification. If the district is unable to negotiate a contract
26 with the selected offeror, the district shall, formally and in
27 writing, end negotiations with that offeror and proceed to the next

1 offeror in the order of the selection ranking until a contract is
2 reached or all proposals are rejected.

3 Sec. 130.300. SELECTING CONTRACTOR FOR CONSTRUCTION
4 SERVICES THROUGH COMPETITIVE BIDDING. Except to the extent
5 prohibited by other law and to the extent consistent with this
6 subchapter, a district may use competitive bidding to select a
7 contractor to perform construction, rehabilitation, alteration, or
8 repair services for a facility.

9 Sec. 130.301. JOB ORDER CONTRACTS FOR CONSTRUCTION
10 SERVICES. (a) A district may award job order contracts for the
11 minor construction, repair, rehabilitation, or alteration of a
12 facility if the work is of a recurring nature but the delivery times
13 are indefinite and indefinite quantities and orders are awarded
14 substantially on the basis of prescribed and prepriced tasks.

15 (b) The district may establish contractual unit prices for a
16 job order contract by:

17 (1) specifying one or more published construction unit
18 price books and the applicable divisions or line items; or

19 (2) providing a list of work items and requiring the
20 offerors to bid or propose one or more coefficients or multipliers
21 to be applied to the price book or work items as the price proposal.

22 (c) The district shall advertise for, receive, and publicly
23 open sealed proposals for job order contracts.

24 (d) The district may require offerors to submit additional
25 information besides rates, including experience, past performance,
26 and proposed personnel and methodology.

27 (e) The district may award job order contracts to one or

1 more job order contractors in connection with each solicitation of
2 bids or proposals.

3 (f) An order for a job or project under the job order
4 contract must be signed by the district's representative and the
5 contractor. The order may be a fixed price, lump-sum contract based
6 substantially on contractual unit pricing applied to estimated
7 quantities or may be a unit price order based on the quantities and
8 line items delivered.

9 (g) The contractor shall provide payment and performance
10 bonds, if required by law, based on the amount or estimated amount
11 of any order.

12 (h) The base term of a job order contract is for the period
13 and with any renewal option that the district sets forth in the
14 request for proposals. If the district fails to advertise that
15 term, the base term may not exceed two years and is not renewable
16 without further advertisement and solicitation of proposals.

17 (i) If a job order contract or an order issued under the
18 contract requires engineering or architectural services that
19 constitute the practice of engineering within the meaning of
20 Chapter 1001, Occupations Code, or the practice of architecture
21 within the meaning of Chapter 1051, Occupations Code, those
22 services shall be provided in accordance with applicable law.

23 SUBCHAPTER M. SALE OF PERSONAL PROPERTY

24 BY DISTRICT AND AWARD OF MISCELLANEOUS CONTRACTS FOR SERVICES

25 Sec. 130.311. SALE OF PERSONAL PROPERTY BY DISTRICT. A sale
26 of personal property by a junior college district that is not
27 covered by Chapter 791, Government Code, shall be solicited and

1 awarded in the same manner as a contract for a purchase of personal
2 property or services under Subchapter K.

3 Sec. 130.312. AWARD OF MISCELLANEOUS CONTRACTS FOR
4 SERVICES. Miscellaneous contracts for services, including
5 contracts for bookstore services, food services, and vending
6 services, shall be solicited and awarded in the same manner as a
7 contract for a purchase of personal property or services under
8 Subchapter K.

9 SECTION 5. Section 271.023, Local Government Code, is
10 amended to read as follows:

11 Sec. 271.023. CONFLICT OF LAWS. To the extent of any
12 conflict, the provisions of Subchapter B, Chapter 44, Education
13 Code, relating to the purchase of goods and services under contract
14 by a school district and the provisions of Subchapters K and L,
15 Chapter 130, Education Code, relating to the purchase of goods and
16 services and construction services under contract by a junior
17 college prevail over this subchapter.

18 SECTION 6. Subsection (b), Section 44.0311, and Sections
19 130.010 and 130.0101, Education Code, are repealed.

20 SECTION 7. The changes in law made by this Act apply only to
21 a contract for which requests for bids, requests for proposals, or
22 requests for qualifications are published or distributed on or
23 after the effective date of this Act.

24 SECTION 8. This Act takes effect September 1, 2005.