

By: West

S.B. No. 1544

A BILL TO BE ENTITLED

AN ACT

relating to purchasing practices of public junior college and community college districts.

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

SECTION 1. SHORT TITLE. This Act may be cited as the Public Junior College and Community College District Purchasing Act.

SECTION 2. Title 2, Subchapter B, Education Code is amended by changing Section 44.0311 to read:

APPLICABILITY TO JUNIOR COLLEGE DISTRICTS. (a) This subchapter does not apply [~~applies~~] to junior college districts.

SECTION 3. LOCAL GOVERNMENT CODE TITLE 8. ACQUISITION, SALE, OR LEASE OF PROPERTY, Section 271.023. CONFLICT OF LAWS. is amended as follows:

To the extent of any conflict:

(a) the provisions of Education Code Subchapter B, Chapter 44, relating to the purchase of goods and services under contract by a school district prevail over this subchapter; and

(b) the provisions of Education Code Title 3, Higher Education, Subchapter K, Chapter 130, relating to the purchase of goods and services under contract by a junior college prevail over this subchapter.

SECTION 4. Education Code Title 3, HIGHER EDUCATION, CHAPTER 51. JUNIOR COLLEGE DISTRICTS, Subchapter T, CONSTRUCTION AND REPAIR OF PERMANENT IMPROVEMENTS Chapter 51.776 (2) definitions

1 is amended as follows: "Board" means the governing body of an  
2 institution other than a junior college.

3 SECTION 5. Education Code Title 3, HIGHER EDUCATION,  
4 CHAPTER 130. JUNIOR COLLEGE DISTRICTS, Subchapter G, Chapter 130.  
5 is amended by deleting Section 130.010 and Section 130.0101.

6 SECTION 6. Education Code Title 3, HIGHER EDUCATION,  
7 CHAPTER 130. JUNIOR COLLEGE DISTRICTS, is amended by adding  
8 Subchapter K, Chapter 130.3, PURCHASING CONTRACTS OTHER THAN  
9 CONSTRUCTION

10 130.301. Definitions:

11 (a) "district" means a public junior college or community  
12 college district.

13 (b) "board of trustees" means the governing board of a  
14 junior college or community college district.

15 (c) purchase of goods includes:

16 (1) contracting for the rights to use rather than own  
17 goods,

18 (2) materials and labor incidental to the delivery and  
19 installation of personal property.

20 (3) The definition of goods does not include real  
21 property.

22 (d) "bidder" or "vendor" may be used interchangeably to  
23 identify an entity that responds to a competitive bid, proposal or  
24 qualification. Additionally, the word "bid" may be used to  
25 identify the solicitation of, or response to a competitive bid,  
26 proposal or qualification.

27 (e) "Services" does not include construction services and

1 does not apply to a contract for professional services rendered,  
2 including services of an architect, engineer, auditor, accountant,  
3 attorney, or fiscal agent. For other professional services  
4 including those rendered by a financial consultant, auctioneer,  
5 personnel services contractor, travel agent, a technology or  
6 educational consultant, or a business engaged to teach approved  
7 courses, a district may contract for such professional services in  
8 the manner provided by Section 2254.003, Government Code, in lieu  
9 of the methods provided by this section.

10 130.302. To the extent of any conflict, this subchapter  
11 prevails over any other law relating to the purchasing of goods and  
12 services except a law relating to contracting with historically  
13 underutilized businesses.

14 130.303. PURCHASING CONTRACTS METHODS

15 (a) Except as provided by this subchapter, all contracts for  
16 the purchase of goods or services valued at \$25,000 or more in the  
17 aggregate for each twelve (12) month fiscal year or other permitted  
18 period shall be made by the method, of the following methods, that  
19 provides the best value for the district:

20 (1) competitive sealed bids;

21 (2) competitive sealed proposals;

22 (3) a catalogue purchase as provided by Subchapter B,  
23 Chapter 2157, Government Code;

24 (4) an interlocal contract as provided under Chapter  
25 791 Government Code;

26 (5) the reverse auction procedure as defined by  
27 Section 2155.062(d), Government Code;

1           (6) the formation of a political subdivision  
2 corporation under Section 304.001, Local Government Code;

3           (b) Only one of the methods listed in section 130.303(a) may  
4 be used for any individual contract and prior to advertising as  
5 required in Section 130.306, the district must determine which  
6 method provides the best value for the district.

7           (c) When the method of contracting uses the competitive  
8 sealed proposal method, when the proposals are opened, the district  
9 shall reveal the names of the companies submitting proposals, but  
10 may at its sole option, keep the contents of the proposals  
11 confidential until concluding negotiations and award of a contract.

12           (d) Contracts for goods or services that will result in an  
13 income of \$25,000 or more during the term of the contract, shall be  
14 solicited and awarded in the same manner as a purchase contract.  
15 Such contracts include the sale of personal property.

16           (e) A district may acquire insurance using a two step  
17 request for proposal process. The first step shall be to determine  
18 which insurance companies are represented by agents interested in  
19 providing insurance for the district. In the second step, the  
20 district shall notify the agents as to which insurance companies  
21 the agents represent and submit offers for providing insurance. In  
22 the first step, should more than one agent indicate a desire to  
23 represent the same company, the agent with the longest and largest  
24 relationship with the insurance company shall be authorized to  
25 submit a proposal for the designated insurance company. When the  
26 notice of the request for proposal for insurance is published as  
27 required under Section 130.306, notice of the second step is not

1 required to be advertised. However, the interested parties shall  
2 be given notice of the date, time and place where their proposals  
3 are to be submitted. Proposal received after the date and time  
4 stated in the request for proposals shall not be considered.

5 (f) Without complying with Section 130.303(a), a district  
6 may purchase an item or service that is available from only one  
7 source, including:

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

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

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

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

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

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

21 (g) Without complying with Section 103.303(a), a district  
22 may purchase advertising services, meeting and catering services,  
23 and travel services including airfare, ground transportation and  
24 lodging. A district shall exercise reasonable and prudent efforts  
25 to determine whether a contract with a company will provide the best  
26 value to the district. The district shall document the process for  
27 selecting the provider of said services including a list of

1 companies contacted and the basis for selecting the provider. Any  
2 company that has provided written notice to the district that it is  
3 interested in being considered as a supplier of the subject  
4 services shall be given the opportunity to make an offer to provide  
5 the services. After rating and ranking the offers, the district  
6 shall attempt to negotiate a contract with the highest ranked  
7 company. If a contract cannot be negotiated with the highest ranked  
8 company, the next highest company shall be contacted.

9 (h) Without complying with Section 103.303(a), a district  
10 may purchase an item or service under:

11 (1) an interlocal contract;

12 (2) a contract established by the Texas Building and  
13 Procurement Commission or Department of Information Resources in  
14 accordance with Chapter 2157, Government Code, including travel  
15 services, telephone service, computers and computer-related  
16 equipment and software;

17 (i) Where the Texas Building and Procurement Commission, an  
18 Institution of higher education, as defined by Education Code  
19 61.003(8), or a Texas political subdivision, county, or  
20 municipality has entered into a contract with a company to provide  
21 goods or services other than construction services, during the term  
22 of the contract a district may purchase such goods or services,  
23 directly from the company if the company agrees to sell such goods  
24 or services to the district at the same or lower costs stated in the  
25 contract. Provided that the original contract was awarded in  
26 compliance with the statutory requirements applicable to the  
27 governmental entity that awarded the contract, purchases made under

1 such contracts shall satisfy the competitive bid requirements of  
2 this subchapter, provided the district's purchase order references  
3 the original contract and identifies the parties thereto.

4 130.304. EVALUATION AND AWARDING CONTRACTS:

5 (a) Except as provided by this subchapter, a contract  
6 awarded by a district shall be to the lowest responsible vendor  
7 offering the best value to the district according to the selection  
8 criteria that were established by the district. The district shall  
9 publish in the request for bids, proposals, or qualifications the  
10 criteria that will be used to evaluate the offer's and the relative  
11 weights given to the criteria that are known at the time of the  
12 publication.

13 (b) In determining the lowest responsible vendor to whom to  
14 award a contract, the district may consider:

15 (1) the purchase price;

16 (2) the reputation of the vendor and of the vendor's  
17 goods or services;

18 (3) the quality of the vendor's goods or services;

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

21 (5) the vendor's past relationship with the district;

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

24 (7) the extent to which the offers comply with the  
25 requirements of the request for bid, proposal or qualifications.

26 (8) the sufficiency of the bidder's financial  
27 resources and ability to perform the contract or provide the

1 service;

2 (9) the bidder's ability to provide future  
3 maintenance, repair parts, and service for the use of the  
4 contract's subject.

5 (10) the installation cost;

6 (11) the cost of operation and maintenance of the  
7 contract's subject;

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

10 (13) the impact on the ability of the district to  
11 comply with laws and rules relating to historically underutilized  
12 businesses;

13 (14) compliance with a requirement for attendance at a  
14 mandatory site visit or pre-bid conference.

15 (15) the bidders safety record, if the district:

16 (a) has adopted a written definition and criteria  
17 for accurately determining the safety record of a bidder;

18 (b) has given notice to prospective bidders in  
19 the bid specifications that the safety record of a bidder may be  
20 considered in determining the responsibility of the bidder; and

21 (c) the determinations are not arbitrary and  
22 capricious.

23 (c) A district may reject all bids, proposals or parts  
24 thereof if the rejection serves the district's interest.

25 (d) In the method used under 130.303 (a), the district shall  
26 provide all bidders with the opportunity to bid on the same items on  
27 equal terms and have bids judged according to the same standards as



1 set forth in the specifications.

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

4 (f) Bids may be opened only by the district at a public  
5 meeting in a district owned or controlled facility. At the time a  
6 competitive bid is opened, the name of the bidder and the total bid  
7 amount shall be read out loud if a member of the public is present.  
8 At least two district employees or trustees must be present at the  
9 bid opening. When proposals or qualifications are opened, only the  
10 name of the respondents shall be read and the district shall avoid  
11 disclosing the contents of each proposal on opening the proposal  
12 and during negotiations with competing offerors.

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

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

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

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

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

25 (l) If a purchase is made at the campus level in a community  
26 college district with independently accredited colleges, and the  
27 district delegates purchasing decisions to the campus level, this

1 section applies only to the campus and does not require the district  
2 to aggregate and jointly award purchasing contracts. A district  
3 that adopts site-based purchasing under this subsection shall adopt  
4 a policy to ensure that campus purchases achieve the best value to  
5 the district and are not intended or used to avoid the requirement  
6 that a district aggregate purchases under Subsection (a).

7 (m) If district property is destroyed, stolen or severely  
8 damaged or a building or equipment, undergoes major operational or  
9 structural failure, or a contractor is unable to fulfill its  
10 obligations in providing goods or services, and the board of  
11 trustees determines that the delay posed by the methods provided  
12 for in this section would pose material threat to personal safety or  
13 potential damage to other property, prevent or substantially impair  
14 the conduct of classes or other essential district activities, then  
15 contracts for the replacement or repair of the property may be made  
16 by methods other than those required by section 103.303(a).

17 130.305. RULES AND PROCEDURES ADOPTED BY A DISTRICT

18 (a) The board of trustees of the district may adopt rules  
19 and procedures for the acquisition of goods or services.

20 (b) Except as provided in this subchapter, to increase  
21 efficiency of operations, the rules and procedures must include a  
22 requirement for the district to purchase like goods or services on a  
23 scheduled basis.

24 (c) To achieve efficiencies of operations, contracts for  
25 the purchase of goods may cover a period of up to three years and  
26 contracts for the purchase of services may cover a term of up to  
27 five years. Such multi-year contracts must include a provision

1 that permits termination at the end on each fiscal year.

2 130.306. NOTICES

3 (a) Except as provided in this subchapter, for the method of  
4 contracting selected under section 130.303(a), notice of the time  
5 by when and place where the bids, proposals or the responses to a  
6 request for qualifications will be received and opened shall be  
7 published in the county in which the district's central  
8 administrative office is located, in at least two successive issues  
9 of any newspaper of general circulation in the county in which the  
10 district is located. The deadline for receiving bids, proposals,  
11 or responses to a request for qualifications shall not be less than  
12 ten (10) business days after the date of the last newspaper notice.  
13 If there is not a newspaper in that county, the advertising shall be  
14 published in a newspaper in the county nearest the county seat of  
15 the county in which the district's central administrative office is  
16 located. In a two-step procurement process, the time and place  
17 where the second-step bids, proposals, or responses will be  
18 received are not required to be published separately.

19 (b) As an alternative to publishing individual notices in a  
20 newspaper, provided at least one time per week the district  
21 publishes in a newspaper of general circulation, the internet  
22 address where notices may be found, the district may publish on a  
23 public accessible Internet site, notice of bids, proposals, or  
24 responses to a request for qualifications. Such publication shall  
25 be posted every day for at least ten (10) business days prior to the  
26 deadline.

27 (c) The notice must include the date, time and place for

1 receiving bids, proposals or request for qualifications, a  
2 description of the goods or services, any mandatory site  
3 inspections or pre-bid meetings, where bid, proposal or  
4 qualification documents may be obtained or examined, and any  
5 required bid bond, payment bond or performance bond.

6 130.307. DISCUSSION AND REVISION OF PROPOSALS.

7 (a) As provided in a request for proposals and under rules  
8 adopted by a district, the district may discuss acceptable or  
9 potentially acceptable proposals with offerors to assess an  
10 offeror's ability to meet the solicitation requirements.

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

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

17 (d) The district shall provide each offeror an equal  
18 opportunity to discuss and revise proposals.

19 130.308. PRE-BID CONFERENCE

20 (a) The district may require a principal, officer, or  
21 employee of each prospective bidder to attend a mandatory pre-bid  
22 conference conducted for the purpose of discussing contract  
23 requirements and answering questions of prospective bidders.  
24 Notice under this subsection must be included in the notice  
25 published under Section 130.306

26 (b) After a mandatory pre-bid conference is conducted, any  
27 additional required notice for the proposed contract may be sent

1 only to prospective bidders who attended the conference.

2 130.309. TIE BIDS

3 (a) In the case of tie bids with all factors being equal, a  
4 contract shall be awarded under rules established by the board of  
5 trustees.

6 130.310. BID DEPOSIT.

7 (a) The district, as considered necessary, may require a bid  
8 deposit in an amount determined by the district. The amount of the  
9 deposit, if any, must be stated in the public notice and the  
10 invitation to bid.

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

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

16 130.310. PERFORMANCE BOND FOR CONTRACTS OTHER THAN  
17 CONSTRUCTION.

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

23 130.311. DELEGATION.

24 (a) The board of trustees of a district may, as appropriate,  
25 delegate its authority under this subchapter regarding an action  
26 authorized or required by this subchapter to be taken by a district  
27 to a designated person, representative, or committee. The district

1 shall provide notice of the delegation and the limits of the  
2 delegation in the request for bids, proposals, or qualifications or  
3 in an addendum to the request. If the district fails to provide  
4 that notice, a ranking, selection, or evaluation of bids,  
5 proposals, or qualifications other than by the board of trustees in  
6 an open public meeting is advisory only.

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

10 130.312. ENFORCEMENT OF PURCHASE PROCEDURES: CRIMINAL  
11 PENALTIES; REMOVAL; INELIGIBILITY.

12 (a) In this section:

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

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

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

22 (b) An officer, employee, or agent of a district commits an  
23 offense if the person with criminal negligence makes or authorizes  
24 separate, sequential, or component purchases to avoid the  
25 requirements of Sections 130.303 or 130.304. An offense under this  
26 subsection is a Class B misdemeanor and is an offense involving  
27 moral turpitude.

1       (c) An officer, employee, or agent of a district commits an  
2 offense if the person with criminal negligence violates Sections  
3 130.303 or 130.304 other than by conduct described by Subsection  
4 (b). An offense under this subsection is a Class B misdemeanor and  
5 is an offense involving moral turpitude.

6       (d) An officer or employee of a district commits an offense  
7 if the officer or employee knowingly violates Section 130.010,  
8 other than by conduct described by Subsection (b) or (c). An  
9 offense under this subsection is a Class C misdemeanor.

10       (e) The final conviction of a person other than a trustee of  
11 a district for an offense under Subsection (b) or (c) results in the  
12 immediate removal from office or employment of that person. A  
13 trustee who is convicted of an offense under this section is  
14 considered to have committed official misconduct for purposes of  
15 Chapter 87, Local Government Code, and is subject to removal as  
16 provided by that chapter and Section 24, Article V, Texas  
17 Constitution. For four years after the date of the final  
18 conviction, the removed person is ineligible to be a candidate for  
19 or to be appointed or elected to a public office in this state, is  
20 ineligible to be employed by or act as an agent for the state or a  
21 political subdivision of the state, and is ineligible to receive  
22 any compensation through a contract with the state or a political  
23 subdivision of the state. This subsection does not prohibit the  
24 payment of retirement benefits to the removed person or the payment  
25 of workers' compensation benefits to the removed person for an  
26 injury that occurred before the commission of the offense for which  
27 the person was removed. This subsection does not make a person

1 ineligible for an office for which the federal or state  
2 constitution prescribes exclusive eligibility requirements.

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

10 130.313. MISCELLANEOUS COMMODITY PURCHASES.

11 (a) This section shall apply to the purchase of tangible  
12 personal property, including produce, gasoline and fuel oil where  
13 the price of the commodity must be determined at the time the need  
14 arises. This section shall also apply to services other than  
15 construction services job order contracts.

16 (b) The notice requirements under section 130.306 shall  
17 apply to this section. The notices shall specify the categories of  
18 personal property or services to be purchased under this section  
19 and soliciting the names, addresses, and telephone numbers of  
20 vendors that are interested in supplying any of the categories to  
21 the district. For each category, the district shall create a vendor  
22 list consisting of each qualified vendor that responds to the  
23 published notice and any additional vendors the district elects to  
24 include.

25 (c) Before the district makes a purchase from a category of  
26 personal property or service, the district must obtain written or  
27 telephone price quotations from at least three vendors from the



1 list for that category. If fewer than three vendors are on the  
2 list, the district shall contact each vendor on the list. Whenever  
3 possible, telephone quotes should be confirmed in writing,  
4 including email or facsimile. The bidding records must be retained  
5 with the district's competitive bidding records and are subject to  
6 audit. In determining from whom to purchase the products or  
7 services, the district may consider the provisions of section  
8 130.304.

9 130.314. NOTIFICATION OF CRIMINAL HISTORY OF CONTRACTOR.

10 (a) A person or business entity that enters into a contract  
11 with a district must give advance notice to the district if the  
12 person or an owner or operator of the business entity has been  
13 convicted of a felony. The notice must include a general  
14 description of the conduct resulting in the conviction of a felony.

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

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

23 SECTION 7. Education Code Title 3, HIGHER EDUCATION,  
24 CHAPTER 130. JUNIOR COLLEGE DISTRICTS, is amended by adding  
25 Subchapter L, Chapter 130.4, CONSTRUCTION CONTRACTS.

26 130.401. Definitions in this Subchapter L:

27 (a) "district" means a public junior college or community

1 college district.

2 (b) "board of trustees" means the governing board of a  
3 junior college or community college district.

4 (c) "Construction" means the construction, rehabilitation,  
5 alteration, or repair of a facility, including all goods and labor  
6 incidental to the construction.

7 (d) "Architect" means an individual registered as an  
8 architect under Chapter 478, Acts of the 45th Legislature, Regular  
9 Session, 1937 (Article 249a, Vernon's Texas Civil Statutes).

10 (e) "Engineer" means an individual registered as a  
11 professional engineer under The Texas Engineering Practice Act  
12 (Article 3271a, Vernon's Texas Civil Statutes).

13 (f) "bidder" or "vendor" may be used interchangeably to  
14 identify an entity that responds to a competitive bid, proposal or  
15 qualification. Additionally, the word "bid" may be used to  
16 identify the solicitation of, or response to a competitive bid,  
17 proposal or qualification.

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

24 (h) "Facility" means real property or public work,  
25 including buildings and associated systems, structures and  
26 components, and improved or unimproved land.

27 (i) "Fee" in the context of a contract for the construction,

1 rehabilitation, alteration, or repair of a facility means the  
2 payment a construction manager receives for its overhead and profit  
3 in performing its services.

4 (j) "General conditions" in the context of a contract for  
5 the construction, rehabilitation, alteration, or repair of a  
6 facility means on-site management, administrative personnel,  
7 insurance, bonds, equipment, utilities, and incidental work,  
8 including minor field labor and materials.

9 130.402. METHODS OF CONSTRUCTION CONTRACTING

10 (a) Except as provided by this subchapter, all contracts for  
11 construction valued at \$25,000 or more in the aggregate shall be  
12 made by the method, of the following methods, that provides the best  
13 value for the district:

14 (1) competitive sealed bids;

15 (2) competitive sealed proposals;

16 (3) a design/build contract;

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

19 (5) a contract to construct, rehabilitate, alter, or  
20 repair facilities that involves using a construction manager at  
21 risk ; or

22 (6) a job order contract for the minor construction,  
23 repair, rehabilitation, or alteration of a facility;

24 (b) Only one of the methods listed in section 130.402(a) may  
25 be used for any individual contract and prior to advertising as  
26 required in Section 130.306, a district must determine which method  
27 provides the best value for the district.

1       (c) When the method of contracting uses the competitive  
2 sealed proposal method, when the proposals are opened, the district  
3 shall reveal the names of the companies submitting proposals, but  
4 may at its sole option, keep the contents of the proposals  
5 confidential until concluding negotiations and award of a contract.

6       (d) Job order contracts that will or may result in spending  
7 \$25,000 or more with a contractor or to the district during the term  
8 of the contract, shall be solicited and awarded in the same manner  
9 as a purchase contract.

10       (e) This section does not apply to a contract for  
11 consultants or professional services rendered, including services  
12 of an architect, engineer, auditor, accountant, attorney, or fiscal  
13 agent. For other professional services and consultants, a district  
14 may contract for such professional services in the manner provided  
15 by Section 2254.003, Government Code. or Education Code chapter  
16 130, Subchapter K, 130.3.

17       (f) In the method used under 130.402 (a), the district shall  
18 provide all bidders with the opportunity to bid on the same items on  
19 equal terms and have bids judged according to the same standards as  
20 set forth in the specifications.

21       (g) A district shall receive bids under this subchapter in a  
22 fair and confidential manner.

23       (h) Bids may be opened only by the district at a public  
24 meeting in a district owned or controlled facility. At the time a  
25 competitive bid is opened, the name of the bidder and the total bid  
26 amount shall be read out loud if a member of the public is present.  
27 At least two district employees or trustees must be present at the

1 bid opening. When proposals or qualifications are opened, only the  
2 name of the respondents shall be read and the district shall avoid  
3 disclosing the contents of each proposal on opening the proposal  
4 and during negotiations with competing offerors.

5 (i) A bid that has been opened may not be changed for the  
6 purpose of correcting an error in the bid price.

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

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

11 130.403. EVALUATION AND AWARDING CONTRACTS:

12 (a) Except as provided by this subchapter, a contract  
13 awarded by a district shall be to the lowest responsible vendor  
14 offering the best value to the district according to the selection  
15 criteria that were established by the district. The district shall  
16 publish in the request for bids, proposals, or qualifications the  
17 criteria that will be used to evaluate the offer's and the relative  
18 weights given to the criteria that are known at the time of the  
19 publication.

20 (b) In determining the lowest responsible bidder to whom to  
21 award a contract, the district may consider:

22 (1) the immediate and long term cost of the service;

23 (2) the reputation of the bidder;

24 (3) the quality of the bidder's services;

25 (4) the extent to which the offered services meet the  
26 district's needs;

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

1           (6) the extent to which the offer complies with the  
2 requirements of the request for bid, proposal or qualifications.

3           (7) the sufficiency of the bidder's financial  
4 resources and ability to perform the contract or provide the  
5 service;

6           (8) the bidder's ability to provide future  
7 maintenance, repair parts, and service for the use of the  
8 contract's subject.

9           (9) the installation cost;

10           (10) the cost of operation and maintenance of the  
11 contract's subject;

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

14           (12) the impact on the ability of the district to  
15 comply with laws and rules relating to historically underutilized  
16 businesses;

17           (13) compliance with a requirement for attendance at a  
18 mandatory site visit or pre-bid conference.

19           (14) the bidders safety record, if the district:

20                   (a) has adopted a written definition and criteria  
21 for accurately determining the safety record of a bidder;

22                   (b) has given notice to prospective bidders in  
23 the bid specifications that the safety record of a bidder may be  
24 considered in determining the responsibility of the bidder; and

25                   (c) the determinations are not arbitrary and  
26 capricious.

27           (c) A district may reject all bids, proposals,

1 qualifications or parts thereof if the rejection serves the  
2 district's interest.

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

7 (e) A contract awarded in violation of this subchapter is  
8 void.

9 (f) If district property is destroyed, stolen or severely  
10 damaged or a building or equipment, undergoes major operational or  
11 structural failure, or a contractor is unable to fulfill its  
12 obligations in providing goods or services, and the board of  
13 trustees determines that the delay posed by the methods provided  
14 for in Section 103.402(a) would pose material threat to personal  
15 safety or potential damage to other property, prevent or  
16 substantially impair the conduct of classes or other essential  
17 district activities, then contracts for the replacement or repair  
18 of the property may be made by methods other than those required by  
19 Section 103.402(a).

20 130.404. RULES AND PROCEDURES ADOPTED BY A DISTRICT

21 (a) The board of trustees of the district may adopt rules  
22 and procedures for the acquisition of construction services.

23 130.405. NOTICES

24 (a) Except as provided in this subchapter, for the method of  
25 contracting selected under section 130.402(a), notice of the time  
26 by when and place where the bids, proposals or the responses to a  
27 request for qualifications will be received and opened shall be

1 published in the county in which the district's central  
2 administrative office is located, in at least two successive issues  
3 of any newspaper of general circulation in the county in which the  
4 district is located. The deadline for receiving bids, proposals,  
5 or responses to a request for qualifications shall not be less than  
6 ten (10) business days after the date of the last newspaper notice.  
7 If there is not a newspaper in that county, the advertising shall be  
8 published in a newspaper in the county nearest the county seat of  
9 the county in which the district's central administrative office is  
10 located. In a two-step procurement process, the time and place  
11 where the second-step bids, proposals, or responses will be  
12 received are not required to be published separately.

13 (b) As an alternative to publishing individual notices in a  
14 newspaper, provided at least one time per week the district  
15 publishes in a newspaper of general circulation, the internet  
16 address where notices may be found, the district may publish on a  
17 public accessible Internet site, notice of bids, proposals, or  
18 responses to a request for qualifications. Such publication shall  
19 be posted every day for at least ten (10) business days prior to the  
20 deadline.

21 (c) The notice must include the date, time and place for  
22 receiving bids, proposals or request for qualifications, a  
23 description of the goods or services, any mandatory site  
24 inspections or pre-bid meetings, where bid, proposal or  
25 qualification documents may be obtained or examined, and any  
26 required bid bond, payment bond or performance bond.

27 130.406. DISCUSSION AND REVISION OF PROPOSALS.



1       (a) As provided in a request for proposals and under rules  
2 adopted by a district, the district may discuss acceptable or  
3 potentially acceptable proposals with offerors to assess an  
4 offeror's ability to meet the solicitation requirements.

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

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

11       (d) The district shall provide each offeror an equal  
12 opportunity to discuss and revise proposals.

13       130.407. PRE-BID CONFERENCE

14       (a) The district may require a principal, officer, or  
15 employee of each prospective bidder to attend a mandatory pre-bid  
16 conference conducted for the purpose of discussing contract  
17 requirements and answering questions of prospective bidders.  
18 Notice under this subsection must be included in the notice  
19 published under Section 130.405

20       (b) After a mandatory pre-bid conference is conducted, any  
21 additional required notice for the proposed contract may be sent  
22 only to prospective bidders who attended the conference.

23       130.408. TIE BIDS

24       (a) In the case of tie bids with all factors being equal, a  
25 contract shall be awarded under rules established by the board of  
26 trustees.

27       130.309. BID DEPOSIT.

1       (a) The district, as considered necessary, may require a bid  
2 deposit in an amount determined by the district. The amount of the  
3 deposit, if any, must be stated in the public notice and the  
4 invitation to bid.

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

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

10       130.410. PERFORMANCE AND PAYMENT BONDS FOR CONSTRUCTION

11       (a) For a contract for construction, the contractor must  
12 execute a good and sufficient payment bond if the contract is for  
13 \$25,000 or greater and a performance bond if the contract is  
14 \$100,000 or greater. The bonds must each be executed, in accordance  
15 with Chapter 2253, Government Code, with a surety company  
16 authorized to conduct business in this state.

17       130.411. DELEGATION.

18       (a) The board of trustees of a district may, as appropriate,  
19 delegate its authority under this subchapter regarding an action  
20 authorized or required by this subchapter to be taken by a district  
21 to a designated person, representative, or committee. In procuring  
22 construction services, the district shall provide notice of the  
23 delegation and the limits of the delegation in the request for bids,  
24 proposals, or qualifications or in an addendum to the request. If  
25 the district fails to provide that notice, a ranking, selection, or  
26 evaluation of bids, proposals, or qualifications for construction  
27 services other than by the board of trustees in an open public

1 meeting is advisory only.

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

5 130.412. ENFORCEMENT OF PURCHASE PROCEDURES: CRIMINAL  
6 PENALTIES; REMOVAL; INELIGIBILITY.

7 (a) In this section:

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

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

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

17 (b) An officer, employee, or agent of a district commits an  
18 offense if the person with criminal negligence makes or authorizes  
19 separate, sequential, or component purchases to avoid the  
20 requirements of Section 130.011(a) or (b). An offense under this  
21 subsection is a Class B misdemeanor and is an offense involving  
22 moral turpitude.

23 (c) An officer, employee, or agent of a district commits an  
24 offense if the person with criminal negligence violates Section  
25 130.011(a) or (b) other than by conduct described by Subsection  
26 (b). An offense under this subsection is a Class B misdemeanor and  
27 is an offense involving moral turpitude.

1       (d) An officer or employee of a district commits an offense  
2 if the officer or employee knowingly violates Section 130.010,  
3 other than by conduct described by Subsection (b) or (c). An  
4 offense under this subsection is a Class C misdemeanor.

5       (e) The final conviction of a person other than a trustee of  
6 a district for an offense under Subsection (b) or (c) results in the  
7 immediate removal from office or employment of that person. A  
8 trustee who is convicted of an offense under this section is  
9 considered to have committed official misconduct for purposes of  
10 Chapter 87, Local Government Code, and is subject to removal as  
11 provided by that chapter and Section 24, Article V, Texas  
12 Constitution. For four years after the date of the final  
13 conviction, the removed person is ineligible to be a candidate for  
14 or to be appointed or elected to a public office in this state, is  
15 ineligible to be employed by or act as an agent for the state or a  
16 political subdivision of the state, and is ineligible to receive  
17 any compensation through a contract with the state or a political  
18 subdivision of the state. This subsection does not prohibit the  
19 payment of retirement benefits to the removed person or the payment  
20 of workers' compensation benefits to the removed person for an  
21 injury that occurred before the commission of the offense for which  
22 the person was removed. This subsection does not make a person  
23 ineligible for an office for which the federal or state  
24 constitution prescribes exclusive eligibility requirements.

25       (f) A court may enjoin performance of a contract made in  
26 violation of this subchapter. A county attorney, a district  
27 attorney, a criminal district attorney, a citizen of the county in

1 which the district is located, or any interested party may bring an  
2 action for an injunction. A party who prevails in an action brought  
3 under this subsection is entitled to reasonable attorney's fees as  
4 approved by the court.

5 130.413. NOTIFICATION OF CRIMINAL HISTORY OF CONTRACTOR.

6 (a) A person or business entity that enters into a contract  
7 with a district must give advance notice to the district if the  
8 person or an owner or operator of the business entity has been  
9 convicted of a felony. The notice must include a general  
10 description of the conduct resulting in the conviction of a felony.

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

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

19 130.414. CHANGE ORDERS.

20 (a) After performance of a construction contract begins, a  
21 district may approve change orders if necessary to:

- 22 (1) make changes in plans or specifications; or  
23 (2) decrease or increase the quantity of work to be  
24 performed or materials, equipment, or supplies to be furnished.

25 (b) The total price of a contract may not be increased by a  
26 change order unless provision has been made for the payment of the  
27 added cost by the appropriation of current funds or bond funds for

1 that purpose, by the authorization of the issuance of certificates,  
2 or by a combination of those procedures. The original contract  
3 price may not be increased by more than 25 percent. The original  
4 price may not be decreased by more than 25 percent without the  
5 consent of the contractor.

6 130.415. ERRORS & OMISSION INSURANCE

7 (a) For any public work contract awarded under this  
8 subchapter, to protect the interest of the district, the architect  
9 or engineer that prepared the plans and specification for the  
10 public work, shall, at its expense, carry errors and omissions  
11 insurance in an amount not less than the amount of the public work  
12 contract.

13 130.416. DESIGN-BUILD CONTRACTS FOR FACILITIES.

14 (a) In this section:

15 (1) "Design-build contract" means a single contract  
16 with a design-build firm for the design and construction of a  
17 facility.

18 (2) "Design-build firm" means a partnership,  
19 corporation, or other legal entity or team that includes an  
20 engineer or architect and builder qualified to engage in building  
21 construction in Texas.

22 (3) "Design criteria package" means a set of documents  
23 that provides sufficient information to permit a design-build firm  
24 to prepare a response to a district's request for qualifications  
25 and any additional information requested, including criteria for  
26 selection. The design criteria package must specify criteria the  
27 district considers necessary to describe the project and may

1 include, as appropriate, the legal description of the site, survey  
2 information concerning the site, interior space requirements,  
3 special material requirements, material quality standards,  
4 conceptual criteria for the project, special equipment  
5 requirements, cost or budget estimates, time schedules, quality  
6 assurance and quality control requirements, site development  
7 requirements, applicable codes and ordinances, provisions for  
8 utilities, parking requirements, or any other requirement, as  
9 applicable.

10 (b) A district may use the design-build method for the  
11 construction, rehabilitation, alteration, or repair of a facility.  
12 In using that method and in entering into a contract for the  
13 services of a design-build firm, the contracting district and the  
14 design-build firm shall follow the procedures provided by  
15 Subsections (c)-(j).

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

22 (d) The district shall prepare a request for qualifications  
23 that includes general information on the project site, project  
24 scope, budget, special systems, selection criteria, and other  
25 information that may assist potential design-build firms in  
26 submitting proposals for the project. The district shall also  
27 prepare the design criteria package that includes more detailed

1 information on the project. If the preparation of the design  
2 criteria package requires engineering or architectural services  
3 that constitute the practice of engineering within the meaning of  
4 The Texas Engineering Practice Act (Article 3271a, Vernon's Texas  
5 Civil Statutes) or the practice of architecture within the meaning  
6 of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937  
7 (Article 249a, Vernon's Texas Civil Statutes), those services shall  
8 be provided in accordance with the applicable law.

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

11 (1) In phase one, the district shall prepare a request  
12 for qualifications and evaluate each offeror's experience,  
13 technical competence, and capability to perform, the past  
14 performance of the offeror's team and members of the team, and other  
15 appropriate factors submitted by the team or firm in response to the  
16 request for qualifications, except that cost-related or  
17 price-related evaluation factors are not permitted. Each offeror  
18 must certify to the district that each engineer or architect that is  
19 a member of its team was selected based on demonstrated competence  
20 and qualifications. The district shall qualify a maximum of five  
21 offerors to submit additional information and, if the district  
22 chooses, to interview for final selection.

23 (2) In phase two, the district shall evaluate the  
24 information submitted by the offerors on the basis of the selection  
25 criteria stated in the request for qualifications and the results  
26 of any interview. The district may request additional information  
27 regarding demonstrated competence and qualifications,



1 considerations of the safety and long-term durability of the  
2 project, the feasibility of implementing the project as proposed,  
3 the ability of the offeror to meet schedules, costing methodology,  
4 or other factors as appropriate. The district may not require  
5 offerors to submit detailed engineering or architectural designs as  
6 part of the proposal. The district shall rank each proposal  
7 submitted on the basis of the criteria set forth in the request for  
8 qualifications. The district shall select the design-build firm  
9 that submits the proposal offering the best value for the district  
10 on the basis of the published selection criteria and on its ranking  
11 evaluations. The district shall first attempt to negotiate with  
12 the selected offeror a contract. If the district is unable to  
13 negotiate a satisfactory contract with the selected offeror, the  
14 district shall, formally and in writing, end negotiations with that  
15 offeror and proceed to negotiate with the next offeror in the order  
16 of the selection ranking until a contract is reached or  
17 negotiations with all ranked offerors end.

18 (f) Following selection of a design-build firm under  
19 Subsection (e), that firm's engineers or architects shall complete  
20 the design, submitting all design elements for review and  
21 determination of scope compliance to the district or district's  
22 engineer or architect before or concurrently with construction.

23 (g) An engineer shall have responsibility for compliance  
24 with the engineering design requirements and all other applicable  
25 requirements of The Texas Engineering Practice Act (Article 3271a,  
26 Vernon's Texas Civil Statutes). An architect shall have  
27 responsibility for compliance with the requirements of Chapter 478,

1 Acts of the 45th Legislature, Regular Session, 1937 (Article 249a,  
2 Vernon's Texas Civil Statutes).

3 (h) The district shall provide or contract for,  
4 independently of the design-build firm, the inspection services,  
5 the testing of construction materials engineering, and the  
6 verification testing services necessary for acceptance of the  
7 facility by the district. The district shall select those services  
8 for which it contracts in accordance with Section 2254.004,  
9 Government Code.

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

13 (j) A payment or performance bond is not required for, and  
14 may not provide coverage for, the portion of a design-build  
15 contract under this section that includes design services only. If  
16 a fixed contract amount or guaranteed maximum price has not been  
17 determined at the time a design-build contract is awarded, the  
18 penal sums of the performance and payment bonds delivered to the  
19 district must each be in an amount equal to the project budget, as  
20 specified in the design criteria package. The design-build firm  
21 shall deliver the bonds not later than the 10th day after the date  
22 the design-build firm executes the contract unless the design-build  
23 firm furnishes a bid bond or other financial security acceptable to  
24 the district to ensure that the design-build firm will furnish the  
25 required performance and payment bonds when a guaranteed maximum  
26 price is established.

27 130.417. CONTRACTS FOR FACILITIES: CONSTRUCTION

1 MANAGER-AGENT.

2 (a) A district may use the construction manager-agent  
3 method for the construction, rehabilitation, alteration, or repair  
4 of a facility. In using that method and in entering into a contract  
5 for the services of a construction manager-agent, a district shall  
6 follow the procedures prescribed by this section.

7 (b) A construction manager-agent is a sole proprietorship,  
8 partnership, corporation, or other legal entity that provides  
9 consultation to the district regarding construction,  
10 rehabilitation, alteration, or repair of the facility. A district  
11 using the construction manager-agent method may, under the contract  
12 between the district and the construction manager-agent, require  
13 the construction manager-agent to provide administrative  
14 personnel, equipment necessary to perform duties under this  
15 section, and on-site management and other services specified in the  
16 contract. A construction manager-agent represents the district in  
17 a fiduciary capacity.

18 (c) Before or concurrently with selecting a construction  
19 manager-agent, the district shall select or designate an engineer  
20 or architect who shall prepare the construction documents for the  
21 project and who has full responsibility for complying with The  
22 Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil  
23 Statutes) or Chapter 478, Acts of the 45th Legislature, Regular  
24 Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), as  
25 applicable. If the engineer or architect is not a full-time  
26 employee of the district, the district shall select the engineer or  
27 architect on the basis of demonstrated competence and

1 qualifications as provided by Section 2254.004, Government Code.  
2 The district's engineer or architect may not serve, alone or in  
3 combination with another person, as the construction manager-agent  
4 unless the engineer or architect is hired to serve as the  
5 construction manager-agent under a separate or concurrent  
6 procurement conducted in accordance with this subchapter. This  
7 subsection does not prohibit the district's engineer or architect  
8 from providing customary construction phase services under the  
9 engineer's or architect's original professional service agreement  
10 in accordance with applicable licensing laws.

11 (d) A district shall select a construction manager-agent on  
12 the basis of demonstrated competence and qualifications in the same  
13 manner as provided for the selection of

14 engineers or architects under Section 2254.004, Government  
15 Code.

16 (e) A district using the construction manager-agent method  
17 shall procure, in accordance with applicable law and in any manner  
18 authorized by this chapter, a general contractor, trade  
19 contractors, or subcontractors who will serve as the prime  
20 contractor for their specific portion of the work.

21 (f) The district or the construction manager-agent shall  
22 procure in accordance with Section 2254.004, Government Code, all  
23 of the testing of construction materials engineering, the  
24 inspection services, and the verification testing services  
25 necessary for acceptance of the facility by the district.

26 130.418. CONTRACTS FOR FACILITIES: CONSTRUCTION  
27 MANAGER-AT-RISK.

1       (a) A district may use the construction manager-at-risk  
2 method for the construction, rehabilitation, alteration, or repair  
3 of a facility. In using that method and in entering into a contract  
4 for the services of a construction manager-at-risk, a district  
5 shall follow the procedures prescribed by this section.

6       (b) A construction manager-at-risk is a sole  
7 proprietorship, partnership, corporation, or other legal entity  
8 that assumes the risk for construction, rehabilitation,  
9 alteration, or repair of a facility at the contracted price as a  
10 general contractor and provides consultation to the district  
11 regarding construction during and after the design of the facility.

12       (c) Before or concurrently with selecting a construction  
13 manager-at-risk, the district shall select or designate an engineer  
14 or architect who shall prepare the construction documents for the  
15 project and who has full responsibility for complying with The  
16 Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil  
17 Statutes) or Chapter 478, Acts of the 45th Legislature, Regular  
18 Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), as  
19 applicable. If the engineer or architect is not a full-time  
20 employee of the district, the district shall select the engineer or  
21 architect on the basis of demonstrated competence and  
22 qualifications as provided by Section 2254.004, Government Code.  
23 The district's engineer, architect, or construction manager-agent  
24 for a project may not serve, alone or in combination with another,  
25 as the construction manager-at-risk.

26       (d) The district shall provide or contract for,  
27 independently of the construction manager-at-risk, the inspection

1 services, the testing of construction materials engineering, and  
2 the verification testing services necessary for acceptance of the  
3 facility by the district. The district shall select those services  
4 for which it contracts in accordance with Section 2254.004,  
5 Government Code.

6 (e) The district shall select the construction  
7 manager-at-risk in either a one-step or two-step process. The  
8 district shall prepare a request for proposals, in the case of a  
9 one-step process, or a request for qualifications, in the case of a  
10 two-step process, that includes general information on the project  
11 site, project scope, schedule, selection criteria, estimated  
12 budget, and the time and place for receipt of proposals or  
13 qualifications, as applicable, a statement as to whether the  
14 selection process is a one-step or two-step process, and other  
15 information that may assist the district in its selection of a  
16 construction manager-at-risk. The district shall state the  
17 selection criteria in the request for proposals or qualifications,  
18 as applicable. The selection criteria may include the offeror's  
19 experience, past performance, safety record, proposed personnel  
20 and methodology, and other appropriate factors that demonstrate the  
21 capability of the construction manager-at-risk. If a one-step  
22 process is used, the district may request, as part of the offeror's  
23 proposal, proposed fees and prices for fulfilling the general  
24 conditions. If a two-step process is used, the district may not  
25 request fees or prices in step one. In step two, the district may  
26 request that five or fewer offerors, selected solely on the basis of  
27 qualifications, provide additional information, including the

1 construction manager-at-risk's proposed fee and its price for  
2 fulfilling the general conditions.

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

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

20 (h) A construction manager-at-risk shall publicly  
21 advertise, in accordance with Section 130.405, and receive bids or  
22 proposals from trade contractors or subcontractors for the  
23 performance of all major elements of the work other than the minor  
24 work that may be included in the general conditions. A construction  
25 manager-at-risk may seek to perform portions of the work itself if  
26 the construction manager-at-risk submits its bid or proposal for  
27 those portions of the work in the same manner as all other trade

1 contractors or subcontractors and if the district determines that  
2 the construction manager-at-risk's bid or proposal provides the  
3 best value for the district.

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

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

21 (k) If a selected trade contractor or subcontractor  
22 defaults in the performance of its work or fails to execute a  
23 subcontract after being selected in accordance with this section,  
24 the construction manager-at-risk may, without advertising, itself  
25 fulfill the contract requirements or select a replacement trade  
26 contractor or subcontractor to fulfill the contract requirements.

27 (l) If a fixed contract amount or guaranteed maximum price



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

11 130.419. SELECTING CONTRACTOR FOR CONSTRUCTION PURPOSES  
12 THROUGH COMPETITIVE SEALED PROPOSALS.

13 (a) In selecting a contractor for construction,  
14 rehabilitation, alteration, or repair services for a facility  
15 through competitive sealed proposals, a district shall follow the  
16 procedures prescribed by this section.

17 (b) The district shall select or designate an engineer or  
18 architect to prepare construction documents for the project. The  
19 selected or designated engineer or architect has full  
20 responsibility for complying with The Texas Engineering Practice  
21 Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478,  
22 Acts of the 45th Legislature, Regular Session, 1937 (Article 249a,  
23 Vernon's Texas Civil Statutes), as applicable. If the engineer or  
24 architect is not a full-time employee of the district, the district  
25 shall select the engineer or architect on the basis of demonstrated  
26 competence and qualifications as provided by Section 2254.004,  
27 Government Code.

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

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

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

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

1       130.420. SELECTING CONTRACTOR FOR CONSTRUCTION SERVICES  
2 THROUGH COMPETITIVE BIDDING.

3       (a) Except to the extent prohibited by other law and to the  
4 extent consistent with this subchapter, a district may use  
5 competitive bidding to select a contractor to perform construction,  
6 rehabilitation, alteration, or repair services for a facility.

7       130.421. JOB ORDER CONTRACTS FOR CONSTRUCTION SERVICES.

8       (a) A district may award job order contracts for the minor  
9 construction, repair, rehabilitation, or alteration of a facility  
10 if the work is of a recurring nature but the delivery times are  
11 indefinite and indefinite quantities and orders are awarded  
12 substantially on the basis of pre-described and pre-priced tasks.

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

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

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

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

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

25       (e) The district may award job order contracts to one or  
26 more job order contractors in connection with each solicitation of  
27 bids or proposals.

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

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

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

15       (i) If a job order contract or an order issued under the  
16 contract requires engineering or architectural services that  
17 constitute the practice of engineering within the meaning of The  
18 Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil  
19 Statutes) or the practice of architecture within the meaning of  
20 Chapter 478, Acts of the 45th Legislature, Regular Session, 1937  
21 (Article 249a, Vernon's Texas Civil Statutes), those services shall  
22 be provided in accordance with applicable law.

23       SECTION 8. Education Code Title 3, HIGHER EDUCATION,  
24 CHAPTER 130. JUNIOR COLLEGE DISTRICTS, is amended by adding  
25 Subchapter M, Chapter 130.5, HISTORICALLY UNDERUTILIZED  
26 BUSINESSES.

27       130.501. On an annual basis, a district located in a county

1 with a population of one million or more shall prepare a plan  
2 stating their objectives and methods to be used to achieve their  
3 objectives regarding purchases to be made from historically  
4 underutilized businesses as defined under the Texas Government  
5 Code.

6 130.502. On an annual basis the district shall publish a  
7 report that shows the extent to which contracts awarded to  
8 historically underutilized businesses compare to the total  
9 contracts awarded. The report shall be published in a newspaper of  
10 general circulation in the county where the district is located  
11 within sixty days following the end of the district's fiscal year.

12 SECTION 9. This Act takes effect September 1, 2005