

1-1 By: West S.B. No. 1544  
1-2 (In the Senate - Filed March 10, 2005; March 22, 2005, read  
1-3 first time and referred to Subcommittee on Higher Education;  
1-4 April 19, 2005, reported adversely, with favorable Committee  
1-5 Substitute to Committee on Education; May 16, 2005, reported  
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1-8 to printer.)

1-9 COMMITTEE SUBSTITUTE FOR S.B. No. 1544 By: West

1-10 A BILL TO BE ENTITLED  
1-11 AN ACT

1-12 relating to the purchasing and contracting practices of public  
1-13 junior college districts; providing criminal penalties.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Subsection (a), Section 44.0311, Education Code,  
1-16 is amended to read as follows:

1-17 (a) This subchapter does not apply [~~applies~~] to junior  
1-18 college districts.

1-19 SECTION 2. Subdivision (2), Section 51.776, Education Code,  
1-20 is amended to read as follows:

1-21 (2) "Board" means the governing body of an institution  
1-22 other than a junior college or junior college district.

1-23 SECTION 3. Subchapter A, Chapter 130, Education Code, is  
1-24 amended by adding Section 130.0103 to read as follows:

1-25 Sec. 130.0103. POLICY AND REPORT REGARDING HISTORICALLY  
1-26 UNDERUTILIZED BUSINESSES. (a) In this section, "historically  
1-27 underutilized business" has the meaning assigned by Section  
1-28 2161.001, Government Code.

1-29 (b) This section applies only to a junior college district  
1-30 located wholly or partially in a county with a population of one  
1-31 million or more.

1-32 (c) Each junior college district shall adopt a policy  
1-33 stating its commitment to developing, maintaining, and enhancing  
1-34 participation by historically underutilized businesses in all  
1-35 phases of the district's procurement processes in order to support,  
1-36 to the greatest extent feasible, the efforts of historically  
1-37 underutilized businesses to compete for purchases of equipment,  
1-38 supplies, and services and for construction project contracts.

1-39 (d) Annually, each junior college district shall publish a  
1-40 report of the total number of contracts awarded by the district in  
1-41 the preceding fiscal year and the number of those contracts awarded  
1-42 to historically underutilized businesses. The report must be  
1-43 published in a newspaper of general circulation in the county in  
1-44 which the majority of the territory or population of the district is  
1-45 located not later than the 60th day following the last day of the  
1-46 district's fiscal year.

1-47 SECTION 4. Chapter 130, Education Code, is amended by  
1-48 adding Subchapters K, L, and M to read as follows:

1-49 SUBCHAPTER K. PURCHASING CONTRACTS OTHER THAN  
1-50 CONSTRUCTION CONTRACTS

1-51 Sec. 130.251. DEFINITIONS. In this subchapter:

1-52 (1) "Board of trustees" means the governing board of a  
1-53 district.

1-54 (2) "District" means a public junior college district.

1-55 (3) "Purchase of goods":

1-56 (A) includes:

1-57 (i) contracting for the rights to use  
1-58 rather than own goods; and

1-59 (ii) purchase of the materials and labor  
1-60 incidental to the delivery and installation of personal property;  
1-61 and

1-62 (B) does not include the purchase or lease of  
1-63 real property.

(4) "Services" does not include:

(A) construction services; or

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

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

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

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

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

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

(1) competitive sealed bids;

(2) competitive sealed proposals;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Without complying with Subsection (a), a district may purchase advertising services, meeting and catering services, and travel services, including airfare, ground transportation, and lodging. The district shall exercise reasonable and prudent care to determine whether a contract with a company will provide the best

3-1 value to the district. The district shall document the process for  
 3-2 selecting the provider of the services and shall maintain a list of  
 3-3 companies contacted and the basis for selecting the provider. Any  
 3-4 company that has provided written notice to the district that it is  
 3-5 interested in being considered as a supplier of services covered by  
 3-6 this subsection shall be given the opportunity to make an offer to  
 3-7 provide the services. After rating and ranking the offers, the  
 3-8 district shall attempt to negotiate a contract with the highest  
 3-9 ranked company. If a contract cannot be negotiated with the highest  
 3-10 ranked company, the next highest ranked company shall be contacted.

3-11 (g) Without complying with Subsection (a), a district may  
 3-12 purchase an item or service under:

3-13 (1) an interlocal contract under Chapter 791,  
 3-14 Government Code; or

3-15 (2) a contract established by the Texas Building and  
 3-16 Procurement Commission or Department of Information Resources,  
 3-17 including a contract for the purchase of travel services, telephone  
 3-18 service, computers, and computer-related equipment and software.

3-19 (h) If the Texas Building and Procurement Commission, an  
 3-20 institution of higher education as defined by Section 61.003, or a  
 3-21 political subdivision of this state has entered into a contract  
 3-22 with a company to provide goods or services other than construction  
 3-23 services, then during the term of the contract a district may  
 3-24 purchase the goods or services directly from the company if the  
 3-25 company agrees to sell the goods or services to the district in  
 3-26 accordance with the terms and conditions of the original contract  
 3-27 at the same or at a lower cost than that stated in the original  
 3-28 contract. The purchase satisfies the requirements of this  
 3-29 subchapter if the original contract was awarded in compliance with  
 3-30 the statutory requirements applicable to the governmental entity  
 3-31 that awarded the contract and the district's purchase order  
 3-32 references the original contract and identifies the parties to the  
 3-33 contract. If the Texas Building and Procurement Commission is a  
 3-34 party to the original contract, the district may use the contract  
 3-35 under this section only if the district is a member of the Texas  
 3-36 Building and Procurement Commission Cooperative Purchasing  
 3-37 Program.

3-38 Sec. 130.254. PURCHASE OF INSURANCE. (a) A district may  
 3-39 acquire insurance using a two-step request for proposals process.  
 3-40 In the first step, the district shall determine which insurance  
 3-41 companies are represented by agents interested in providing  
 3-42 insurance for the district. If more than one agent indicates a  
 3-43 desire to represent the same company, the agent with the longest and  
 3-44 most substantial relationship with the insurance company shall be  
 3-45 authorized to submit a proposal for the designated insurance  
 3-46 company. In the second step, the district shall notify the  
 3-47 interested agents as to which insurance companies the agents  
 3-48 represent and request the agents to submit proposals for providing  
 3-49 insurance.

3-50 (b) In notifying the interested agents to begin the second  
 3-51 step, the district is not required to comply with Section 130.258.  
 3-52 However, the district in the request for proposals shall give the  
 3-53 interested agents notice of the date, time, and place where  
 3-54 proposals are to be submitted. Proposals received after the date  
 3-55 and time stated in the request for proposals may not be considered.

3-56 Sec. 130.255. MULTIYEAR CONTRACTS. A multiyear contract  
 3-57 must include a provision that permits termination at the end of each  
 3-58 fiscal year.

3-59 Sec. 130.256. EVALUATION AND AWARD OF CONTRACT.  
 3-60 (a) Except as otherwise provided by this subchapter, a district  
 3-61 shall award a contract to the lowest responsible bidder offering  
 3-62 the best value to the district according to the selection criteria  
 3-63 established by the district. The district shall publish in the  
 3-64 request for bids, proposals, or qualifications the criteria the  
 3-65 district will use to evaluate the offers and the relative weights  
 3-66 given to the criteria that are known at the time of the publication.

3-67 (b) In determining the lowest responsible bidder, the  
 3-68 district may consider:

3-69 (1) the purchase price;

- 4-1                   (2) the reputation of the bidder and of the bidder's  
4-2 goods or services;
- 4-3                   (3) the quality of the bidder's goods or services;
- 4-4                   (4) the extent to which the offered goods or services  
4-5 meet the district's needs;
- 4-6                   (5) the bidder's past relationship with the district;
- 4-7                   (6) the total long-term cost to the district to  
4-8 acquire the vendor's goods or services;
- 4-9                   (7) the extent to which the offers comply with the  
4-10 requirements of the request for bids, proposals, or qualifications;
- 4-11                   (8) the sufficiency of the bidder's financial  
4-12 resources and ability to perform the contract or provide  
4-13 the service;
- 4-14                   (9) the bidder's ability to provide future  
4-15 maintenance, repair parts, and service;
- 4-16                   (10) the installation cost;
- 4-17                   (11) the cost of operation and maintenance;
- 4-18                   (12) any other relevant factor specifically listed in  
4-19 the request for bids or proposals;
- 4-20                   (13) the impact on the ability of the district to  
4-21 comply with laws and rules relating to historically underutilized  
4-22 businesses;
- 4-23                   (14) the bidder's compliance with a requirement for  
4-24 attendance at a mandatory site visit or pre-bid conference; and
- 4-25                   (15) the bidder's safety record, if:
- 4-26                   (A) the district has adopted a written definition  
4-27 and criteria for accurately determining the safety record of a  
4-28 bidder;
- 4-29                   (B) the district has given notice to prospective  
4-30 bidders in the request for bids that the safety record of a bidder  
4-31 may be considered in determining the responsibility of the bidder;  
4-32 and
- 4-33                   (C) the district's determinations are not  
4-34 arbitrary and capricious.
- 4-35                   (c) A district may reject all bids, proposals, or parts of  
4-36 bids or proposals if the rejection serves the district's interest.
- 4-37                   (d) The district shall provide all bidders with the  
4-38 opportunity to bid on the same items or services on equal terms and  
4-39 have bids judged according to the same standards as those set forth  
4-40 in the request for bids.
- 4-41                   (e) The district shall receive bids under this subchapter in  
4-42 a fair and confidential manner.
- 4-43                   (f) Bids may be opened only by the district at a public  
4-44 meeting in a district-owned or district-controlled facility. At  
4-45 the time the district opens a competitive bid, the district shall  
4-46 read aloud the name of the bidder and the total bid amount if a  
4-47 member of the public is present and the bid is of a type that should  
4-48 contain a bid amount. At least two district employees or trustees  
4-49 must be present at the bid opening. When opening proposals or  
4-50 qualifications, the district shall read aloud only the name of the  
4-51 respondents and may not disclose the contents of a proposal on  
4-52 opening the proposal or during negotiations with competing bidders.
- 4-53                   (g) A bid that has been opened may not be changed for the  
4-54 purpose of correcting an error in the bid price. If there is a  
4-55 discrepancy between the total price and the unit price of a bid, the  
4-56 unit price prevails. If there is a discrepancy between the written  
4-57 price and the numerical price of a bid, the written price prevails.
- 4-58                   (h) This subchapter does not change the common law right of  
4-59 a bidder to withdraw a bid due to a material mistake in the bid.
- 4-60                   (i) The district shall document the basis of its selection  
4-61 and shall make its evaluations public not later than the seventh day  
4-62 after the date the contract is awarded. The district shall state in  
4-63 writing in the contract file the reasons for making an award.
- 4-64                   (j) A contract awarded in violation of this subchapter is  
4-65 void.
- 4-66                   (k) If a purchase is made at the campus level in a district  
4-67 with independently accredited junior colleges, and the district  
4-68 delegates purchasing decisions to the campus level, this section  
4-69 applies only to the campus and this subchapter does not require the

5-1 district to aggregate and jointly award the different campus  
 5-2 purchasing contracts. A district that adopts site-based purchasing  
 5-3 under this subsection shall adopt a policy to ensure that campus  
 5-4 purchases achieve the best value to the district and are not  
 5-5 intended or used to avoid the requirement that a district aggregate  
 5-6 purchases under Section 130.253(a).

5-7 (1) If district property is destroyed, stolen, or severely  
 5-8 damaged, a building or equipment undergoes major operational or  
 5-9 structural failure, or a contractor is unable to fulfill its  
 5-10 obligations in providing goods or services, and the board of  
 5-11 trustees determines that the delay posed by using the methods  
 5-12 required by Section 130.253(a) would pose a material threat to  
 5-13 personal safety or potential damage to other property or would  
 5-14 prevent or substantially impair the conduct of classes or other  
 5-15 essential district activities, then contracts for the replacement  
 5-16 or repair of the property may be made by methods other than those  
 5-17 required by Section 130.253(a).

5-18 Sec. 130.257. RULES AND PROCEDURES; AUDITS BY STATE  
 5-19 AUDITOR. (a) The board of trustees may adopt rules and procedures  
 5-20 for the acquisition of goods or services by the district.

5-21 (b) The state auditor may audit purchases of goods or  
 5-22 services by the district.

5-23 Sec. 130.258. NOTICE. (a) Except as otherwise provided by  
 5-24 this subchapter, for any method of contracting selected under  
 5-25 Section 130.253(a), the district shall publish the notice required  
 5-26 by this section in at least two successive issues of any newspaper  
 5-27 of general circulation in the county in which the district's  
 5-28 central administrative office is located. The deadline for  
 5-29 receiving bids or proposals may not be less than 10 business days  
 5-30 after the date of the publication of the last newspaper notice. The  
 5-31 deadline for receiving responses to a request for qualifications  
 5-32 may not be less than five business days after the date of the  
 5-33 publication of the last newspaper notice. If there is not a  
 5-34 newspaper in the county in which the district's central  
 5-35 administrative office is located, the notice shall be published in  
 5-36 a newspaper in the county nearest the county seat of the county in  
 5-37 which the district's central administrative office is located. In  
 5-38 a two-step procurement process, the time and place where the  
 5-39 second-step bids, proposals, or responses will be received are not  
 5-40 required to be published separately.

5-41 (b) The district may, as an alternative to publishing  
 5-42 individual notices in a newspaper, publish on a publicly accessible  
 5-43 Internet site the notices required by this section, provided the  
 5-44 district publishes in a newspaper of general circulation at least  
 5-45 one time per week the Internet address where district notices may be  
 5-46 found. Notice posted on the Internet under this subsection must be  
 5-47 posted every day for at least 10 business days before the deadline  
 5-48 for receiving the bids, proposals, or responses to a request for  
 5-49 qualifications.

5-50 (c) The notice required by this section must include:

5-51 (1) the date, time, and place for receiving and  
 5-52 opening bids, proposals, or statements of qualifications;

5-53 (2) a description of the goods or services;

5-54 (3) the location of any mandatory site inspections or  
 5-55 pre-bid meetings at which bid, proposal, or qualification documents  
 5-56 may be obtained or examined; and

5-57 (4) the amount of any required bid bond, payment bond,  
 5-58 or performance bond.

5-59 Sec. 130.259. DISCUSSION AND REVISION OF PROPOSALS.  
 5-60 (a) As provided in a request for proposals and under rules adopted  
 5-61 by the district, the district may discuss acceptable or potentially  
 5-62 acceptable proposals with bidders to assess a bidder's ability to  
 5-63 meet the solicitation requirements.

5-64 (b) After receiving a proposal but before making an award,  
 5-65 the district may permit the bidder to revise the proposal to obtain  
 5-66 the best final offer.

5-67 (c) The district may not disclose information derived from  
 5-68 proposals submitted from competing bidders in conducting  
 5-69 discussions under this section.

6-1           (d) The district shall provide each bidder an equal  
 6-2 opportunity to discuss and revise the bidder's proposal.

6-3           Sec. 130.260. PRE-BID CONFERENCE. (a) The district may  
 6-4 require a principal, officer, or employee of each prospective  
 6-5 bidder to attend a mandatory pre-bid conference conducted for the  
 6-6 purpose of discussing contract requirements and answering  
 6-7 questions from prospective bidders. Notice under this subsection  
 6-8 must be included in the notice published under Section 130.258.

6-9           (b) After the district conducts a mandatory pre-bid  
 6-10 conference, the district may send any additional required notice  
 6-11 for the proposed contract only to prospective bidders who attended  
 6-12 the conference.

6-13           Sec. 130.261. IDENTICAL BIDS. If, after considering the  
 6-14 factors described by Section 130.256, the district determines that  
 6-15 the district has received identical bids, the district shall cast  
 6-16 lots to determine which bidder will be awarded the contract. The  
 6-17 district shall invite the bidders to witness the selection process  
 6-18 under this section. The selection process must be conducted by at  
 6-19 least two district employees or members of the district's board of  
 6-20 trustees.

6-21           Sec. 130.262. BID DEPOSIT. (a) The district may, as the  
 6-22 district determines necessary, require a bid deposit in an amount  
 6-23 determined by the district. The amount of the deposit, if any, must  
 6-24 be stated in the notice required by Section 130.258 of the  
 6-25 invitation to bid.

6-26           (b) On the award of a contract or the rejection of all bids,  
 6-27 the district shall refund the bid deposit of an unsuccessful  
 6-28 bidder.

6-29           (c) For public work contracts, the bid deposit required by  
 6-30 the district, if any, may only be in the form of a bid bond written  
 6-31 by a surety authorized to conduct business in this state.

6-32           (d) For contracts other than public work contracts, the bid  
 6-33 deposit required by the district, if any, may only be in the form of  
 6-34 a bid bond written by a surety authorized to conduct business in  
 6-35 this state or a cashier's check.

6-36           Sec. 130.263. PERFORMANCE BOND. A district may require a  
 6-37 contractor to provide a performance bond in the amount of the  
 6-38 contract before executing a contract for the purchase of goods or  
 6-39 services with a value of \$100,000 or more. The bond must be written  
 6-40 by a surety authorized to conduct business in this state.

6-41           Sec. 130.264. ENFORCEMENT OF PURCHASING PROCEDURES:  
 6-42 CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY; INJUNCTION. (a) In  
 6-43 this section:

6-44           (1) "Component purchases" means purchases of the  
 6-45 component parts of an item that in normal purchasing practices  
 6-46 would be purchased in one purchase.

6-47           (2) "Separate purchases" means purchases, made  
 6-48 separately, of items that in normal purchasing practices would be  
 6-49 purchased in one purchase.

6-50           (3) "Sequential purchases" means purchases, made over  
 6-51 a period, of items that in normal purchasing practices would be  
 6-52 purchased in one purchase.

6-53           (b) An officer, employee, or agent of a district commits an  
 6-54 offense if the person with criminal negligence makes or authorizes  
 6-55 separate, sequential, or component purchases for the purpose of  
 6-56 avoiding the requirements of Section 130.253 or 130.256. An  
 6-57 offense under this subsection is a Class B misdemeanor and is an  
 6-58 offense involving moral turpitude that causes a forfeiture of an  
 6-59 officer's public office.

6-60           (c) An officer, employee, or agent of a district commits an  
 6-61 offense if the person with criminal negligence violates Section  
 6-62 130.253 or 130.256 other than by conduct described by Subsection  
 6-63 (b). An offense under this subsection is a Class B misdemeanor and  
 6-64 is an offense involving moral turpitude that causes a forfeiture of  
 6-65 an officer's public office.

6-66           (d) An officer or employee of a district commits an offense  
 6-67 if the officer or employee knowingly violates Section 130.253 or  
 6-68 Section 130.256 other than by conduct described by Subsection (b)  
 6-69 or (c). An offense under this subsection is a Class C misdemeanor.

7-1           (e) The final conviction of a person other than a trustee of  
 7-2 a district for an offense under Subsection (b) or (c) results in the  
 7-3 immediate removal from office or employment of that person. A  
 7-4 trustee who is convicted of an offense under this section is subject  
 7-5 to removal as provided by Chapter 66, Civil Practice and Remedies  
 7-6 Code. For four years after the date of the final conviction, the  
 7-7 removed person is ineligible to be a candidate for or to be  
 7-8 appointed or elected to a public office in this state, is ineligible  
 7-9 to be employed by or act as an agent for this state or a political  
 7-10 subdivision of this state, and is ineligible to receive any  
 7-11 compensation through a contract with this state or a political  
 7-12 subdivision of this state. This subsection does not prohibit the  
 7-13 payment of retirement benefits to the removed person or the payment  
 7-14 of workers' compensation benefits to the removed person for an  
 7-15 injury that occurred before the commission of the offense for which  
 7-16 the person was removed. This subsection does not make a person  
 7-17 ineligible for an office for which the federal or state  
 7-18 constitution prescribes exclusive eligibility requirements.

7-19           (f) A court may enjoin performance of a contract made in  
 7-20 violation of this subchapter. A county attorney, district  
 7-21 attorney, criminal district attorney, citizen of the county in  
 7-22 which the district is located, or interested party may bring an  
 7-23 action for an injunction. A party who prevails in an action brought  
 7-24 under this subsection is entitled to reasonable attorney's fees as  
 7-25 approved by the court.

7-26           Sec. 130.265. ADDITIONAL REQUIREMENTS FOR PURCHASING  
 7-27 SERVICES AND CERTAIN COMMODITIES. (a) This section applies only  
 7-28 to:

7-29                     (1) the purchase of tangible personal property,  
 7-30 including produce, gasoline, and fuel oil, where the cost of the  
 7-31 commodity is expected to exceed \$35,000 during a fiscal year and  
 7-32 must be determined at the time the need for the commodity arises;  
 7-33 and

7-34                     (2) the purchase of services other than construction  
 7-35 services or professional services.

7-36           (b) The notice requirements of Section 130.258 apply to  
 7-37 purchases made under this section, except that the notice must  
 7-38 specify the categories of property or services to be purchased  
 7-39 under this section and solicit the names, addresses, and telephone  
 7-40 numbers of vendors that are interested in supplying the property or  
 7-41 services to the district. For each category specified by the  
 7-42 district, the district shall create a vendor list consisting of  
 7-43 each qualified vendor that responds to the notice and any other  
 7-44 vendors the district elects to include.

7-45           (c) Before the district makes a purchase subject to this  
 7-46 section in a category specified by the district, the district must  
 7-47 obtain written or telephone price quotations from at least three  
 7-48 vendors from the list created by the district for that category. If  
 7-49 fewer than three vendors are on the list, the district shall contact  
 7-50 each vendor on the list. Whenever possible, the district shall  
 7-51 confirm telephone quotes in writing, including electronic mail or  
 7-52 facsimile transmission. The bidding records must be retained with  
 7-53 the district's competitive bidding records and are subject to  
 7-54 audit. In determining from whom to purchase the property or  
 7-55 services, the district may consider the provisions of Section  
 7-56 130.256.

7-57           Sec. 130.266. NOTIFICATION OF CRIMINAL HISTORY OF  
 7-58 CONTRACTOR. (a) A person or business entity that enters into a  
 7-59 contract with a district must give advance notice to the district if  
 7-60 the person or an owner or operator of the business entity has been  
 7-61 convicted of a felony. The notice must include a general  
 7-62 description of the conduct resulting in the conviction of a felony.

7-63           (b) A district may terminate a contract with a person or  
 7-64 business entity if the district determines that the person or  
 7-65 business entity failed to give notice as required by Subsection (a)  
 7-66 or misrepresented the conduct resulting in the conviction. The  
 7-67 district must compensate the person or business entity for services  
 7-68 performed before the termination of the contract.

7-69           (c) This section does not apply to a publicly held

8-1 corporation.

8-2 SUBCHAPTER L. CONSTRUCTION CONTRACTS

8-3 Sec. 130.281. DEFINITIONS. In this subchapter:

8-4 (1) "Architect" means an individual registered as an  
8-5 architect under Chapter 1051, Occupations Code.

8-6 (2) "Board of trustees" means the governing board of a  
8-7 district.

8-8 (3) "Construction" means the construction,  
8-9 rehabilitation, alteration, or repair of a facility, including all  
8-10 goods and labor incidental to the construction.

8-11 (4) "Contractor" in the context of a contract for the  
8-12 construction, rehabilitation, alteration, or repair of a facility  
8-13 means a sole proprietorship, partnership, corporation, or other  
8-14 legal entity that assumes the risk for constructing,  
8-15 rehabilitating, altering, or repairing all or part of the facility  
8-16 at the contracted price.

8-17 (5) "District" means a public junior college district.

8-18 (6) "Engineer" means an individual licensed as a  
8-19 professional engineer under Chapter 1001, Occupations Code.

8-20 (7) "Facility" means real property or a public work,  
8-21 including buildings and associated systems, structures, and  
8-22 components, and improved or unimproved land.

8-23 (8) "Fee" in the context of a contract for the  
8-24 construction, rehabilitation, alteration, or repair of a facility  
8-25 means the payment a construction manager receives for its overhead  
8-26 and profit in performing its services.

8-27 (9) "General conditions" in the context of a contract  
8-28 for the construction, rehabilitation, alteration, or repair of a  
8-29 facility means on-site management, administrative personnel,  
8-30 insurance, bonds, equipment, utilities, and incidental work,  
8-31 including minor field labor and materials.

8-32 Sec. 130.2811. USE OF TERMS "BIDDER," "OFFEROR," "VENDOR,"  
8-33 AND "BID." (a) The terms "bidder," "offeror," and "vendor" may be  
8-34 used interchangeably to identify an entity that responds to a  
8-35 request for competitive bids or proposals, or for offers or  
8-36 qualifications.

8-37 (b) The term "bid" may be used to refer to a competitive bid  
8-38 or proposal, to an offer, or to a statement of qualifications.

8-39 Sec. 130.282. METHODS OF CONTRACTING. (a) Except as  
8-40 otherwise provided by this subchapter, all contracts for  
8-41 construction valued at \$35,000 or more in the aggregate shall be  
8-42 made by the method, of the following methods, that provides the best  
8-43 value for the district:

8-44 (1) competitive sealed bids;

8-45 (2) competitive sealed proposals;

8-46 (3) a design-build contract;

8-47 (4) a contract to construct, rehabilitate, alter, or  
8-48 repair facilities that involves using a construction manager agent;

8-49 (5) a contract to construct, rehabilitate, alter, or  
8-50 repair facilities that involves using a construction manager at  
8-51 risk; or

8-52 (6) a job order contract for the minor construction,  
8-53 repair, rehabilitation, or alteration of facilities.

8-54 (b) Only one of the methods listed in Subsection (a) may be  
8-55 used for any individual contract. A district must determine which  
8-56 method provides the best value for the district before providing  
8-57 the notice required by Section 130.285.

8-58 (c) If the district uses the competitive sealed proposal  
8-59 method, the district shall:

8-60 (1) reveal when the proposals are opened the names of  
8-61 the companies submitting proposals; and

8-62 (2) keep the contents of the proposals confidential  
8-63 until the district concludes negotiations and awards a contract.

8-64 (d) This section does not apply to a contract for  
8-65 consultants or professional services, including services of an  
8-66 architect, engineer, auditor, accountant, attorney, or fiscal  
8-67 agent. For professional services and consultants not covered by  
8-68 Subchapter A or B, Chapter 2254, Government Code, a district may  
8-69 contract for the professional services in the manner provided by



9-1 Section 2254.003, Government Code, or by Subchapter K.

9-2 Sec. 130.283. EVALUATION AND AWARD OF CONTRACT.

9-3 (a) Except as otherwise provided by this subchapter, a district  
 9-4 shall award a contract to the lowest responsible bidder offering  
 9-5 the best value to the district according to the selection criteria  
 9-6 established by the district. The district shall publish in the  
 9-7 request for bids, proposals, or qualifications the criteria the  
 9-8 district will use to evaluate the offers and the relative weights  
 9-9 given to the criteria that are known at the time of the publication.

9-10 (b) In determining the lowest responsible bidder, the  
 9-11 district may consider:

9-12 (1) the immediate and long-term cost of the service;  
 9-13 (2) the reputation of the bidder;  
 9-14 (3) the quality of the bidder's services;  
 9-15 (4) the extent to which the offered services meet the  
 9-16 district's needs;

9-17 (5) the bidder's past relationship with the district;  
 9-18 (6) the extent to which the offers comply with the  
 9-19 requirements of the request for bids, proposals, or qualifications;

9-20 (7) the sufficiency of the bidder's financial  
 9-21 resources and ability to perform the contract or provide the  
 9-22 service;

9-23 (8) the bidder's ability to provide future  
 9-24 maintenance, repair parts, and service;

9-25 (9) the installation cost;  
 9-26 (10) the cost of operation and maintenance;

9-27 (11) any other relevant factor specifically listed in  
 9-28 the request for bids or proposals;

9-29 (12) the impact on the ability of the district to  
 9-30 comply with laws and rules relating to historically underutilized  
 9-31 businesses;

9-32 (13) the bidder's compliance with a requirement for  
 9-33 attendance at a mandatory site visit or pre-bid conference; and

9-34 (14) the bidder's safety record, if:  
 9-35 (A) the district has adopted a written definition  
 9-36 and criteria for accurately determining the safety record of a  
 9-37 bidder;

9-38 (B) the district has given notice to prospective  
 9-39 bidders in the request for bids that the safety record of a bidder  
 9-40 may be considered in determining the responsibility of the bidder;  
 9-41 and

9-42 (C) the district's determinations are not  
 9-43 arbitrary and capricious.

9-44 (c) A district may reject all bids, proposals,  
 9-45 qualifications, or parts of bids, proposals, or qualifications if  
 9-46 the rejection serves the district's interest.

9-47 (d) The district shall provide all bidders with the  
 9-48 opportunity to bid on the same items or services on equal terms and  
 9-49 have bids judged according to the same standards as those set forth  
 9-50 in the request for bids.

9-51 (e) The district shall receive bids under this subchapter in  
 9-52 a fair and confidential manner.

9-53 (f) Bids may be opened only by the district at a public  
 9-54 meeting in a district-owned or district-controlled facility. At  
 9-55 the time the district opens a competitive bid, the district shall  
 9-56 read aloud the name of the bidder and the total bid amount if a  
 9-57 member of the public is present and the bid is of a type that should  
 9-58 contain a bid amount. At least two district employees or trustees  
 9-59 must be present at the bid opening. When opening proposals or  
 9-60 qualifications, the district shall read aloud only the name of the  
 9-61 respondents and may not disclose the contents of a proposal on  
 9-62 opening the proposal or during negotiations with competing bidders.

9-63 (g) A bid that has been opened may not be changed for the  
 9-64 purpose of correcting an error in the bid price.

9-65 (h) This subchapter does not change the common law right of  
 9-66 a bidder to withdraw a bid due to a material mistake in the bid.

9-67 (i) The district shall document the basis of its selection  
 9-68 and shall make its evaluations public not later than the seventh day  
 9-69 after the date the contract is awarded. The district shall state in

10-1 writing in the contract file the reasons for making an award.

10-2 (j) A contract awarded in violation of this subchapter is  
 10-3 void.

10-4 (k) If district property is destroyed, stolen, or severely  
 10-5 damaged, a building or equipment undergoes major operational or  
 10-6 structural failure, or a contractor is unable to fulfill its  
 10-7 obligations in providing goods or services, and the board of  
 10-8 trustees determines that the delay posed by using the methods  
 10-9 required by Section 130.282(a) would pose a material threat to  
 10-10 personal safety or potential damage to other property or would  
 10-11 prevent or substantially impair the conduct of classes or other  
 10-12 essential district activities, then contracts for the replacement  
 10-13 or repair of the property may be made by methods other than those  
 10-14 required by Section 130.282(a).

10-15 Sec. 130.284. RULES AND PROCEDURES. The board of trustees  
 10-16 may adopt rules and procedures for the acquisition of construction  
 10-17 services.

10-18 Sec. 130.285. NOTICE. (a) Except as otherwise provided by  
 10-19 this subchapter, for any method of contracting selected under  
 10-20 Section 130.282(a), the district shall publish the notice required  
 10-21 by this section in at least two successive issues of any newspaper  
 10-22 of general circulation in the county in which the district's  
 10-23 central administrative office is located. The deadline for  
 10-24 receiving bids, proposals, or responses to a request for  
 10-25 qualifications may not be less than 10 business days after the date  
 10-26 of the publication of the last newspaper notice. If there is not a  
 10-27 newspaper in the county in which the district's central  
 10-28 administrative office is located, the notice shall be published in  
 10-29 a newspaper in the county nearest the county seat of the county in  
 10-30 which the district's central administrative office is located. In  
 10-31 a two-step procurement process, the time and place where the  
 10-32 second-step bids, proposals, or responses will be received are not  
 10-33 required to be published separately.

10-34 (b) The district may, as an alternative to publishing  
 10-35 individual notices in a newspaper, publish on a publicly accessible  
 10-36 Internet site the notices required by this section, provided the  
 10-37 district publishes in a newspaper of general circulation at least  
 10-38 one time per week the Internet address where district notices may be  
 10-39 found. Notice posted on the Internet under this subsection must be  
 10-40 posted every day for at least 10 business days before the deadline  
 10-41 for receiving bids, proposals, or responses to a request for  
 10-42 qualifications.

10-43 (c) The notice required by this section must include:  
 10-44 (1) the date, time, and place for receiving and  
 10-45 opening bids, proposals, or statements of qualifications;

10-46 (2) a description of the work to be performed;  
 10-47 (3) the location of any mandatory site inspections or  
 10-48 pre-bid meetings at which bid, proposal, or qualification documents  
 10-49 may be obtained or examined; and

10-50 (4) the amount of any required bid bond, payment bond,  
 10-51 or performance bond.

10-52 Sec. 130.286. DISCUSSION AND REVISION OF PROPOSALS.  
 10-53 (a) As provided in a request for proposals and under rules adopted  
 10-54 by the district, the district may discuss acceptable or potentially  
 10-55 acceptable proposals with bidders to assess a bidder's ability to  
 10-56 meet the solicitation requirements.

10-57 (b) After receiving a proposal but before making an award,  
 10-58 the district may permit the bidder to revise the proposal to obtain  
 10-59 the best final offer.

10-60 (c) The district may not disclose information derived from  
 10-61 proposals submitted from competing bidders in conducting  
 10-62 discussions under this section.

10-63 (d) The district shall provide each bidder an equal  
 10-64 opportunity to discuss and revise the bidder's proposal.

10-65 Sec. 130.287. PRE-BID CONFERENCE. (a) The district may  
 10-66 require a principal, officer, or employee of each prospective  
 10-67 bidder to attend a mandatory pre-bid conference conducted for the  
 10-68 purpose of discussing contract requirements and answering  
 10-69 questions from prospective bidders. Notice under this subsection

11-1 must be included in the notice published under Section 130.285.

11-2 (b) After the district conducts a mandatory pre-bid  
11-3 conference, the district may send any additional required notice  
11-4 for the proposed contract only to prospective bidders who attended  
11-5 the conference.

11-6 Sec. 130.288. IDENTICAL BIDS. If, after considering the  
11-7 factors described by Section 130.283, the district determines that  
11-8 the district has received identical bids, the district shall cast  
11-9 lots to determine which bidder will be awarded the contract. The  
11-10 district shall invite the bidders to witness the selection process  
11-11 under this section. The selection process must be conducted by at  
11-12 least two district employees or members of the district's board of  
11-13 trustees.

11-14 Sec. 130.289. BID DEPOSIT. (a) The district may, as the  
11-15 district determines necessary, require a bid deposit in an amount  
11-16 determined by the district. The amount of the deposit, if any, must  
11-17 be stated in the notice required by Section 130.285 of the  
11-18 invitation to bid.

11-19 (b) On the award of a contract or the rejection of all bids,  
11-20 the district shall refund the bid deposit of an unsuccessful  
11-21 bidder.

11-22 (c) For public work contracts, the bid deposit required by  
11-23 the district, if any, may only be in the form of a bid bond written  
11-24 by a surety authorized to conduct business in this state.

11-25 Sec. 130.290. PERFORMANCE AND PAYMENT BONDS. For a  
11-26 contract for construction, the contractor must execute a good and  
11-27 sufficient payment bond if the contract is for \$25,000 or more and a  
11-28 performance bond if the contract is \$100,000 or more. Each bond  
11-29 must be executed with a surety company authorized to conduct  
11-30 business in this state in accordance with Chapter 2253, Government  
11-31 Code.

11-32 Sec. 130.291. DELEGATION. (a) Except as provided by  
11-33 Subsection (b), the board of trustees of a district may, as  
11-34 appropriate, delegate its authority under this subchapter to a  
11-35 designated person, representative, or committee. In procuring  
11-36 construction services, the district shall provide notice of the  
11-37 delegation and the limits of the delegation in the request for bids,  
11-38 proposals, or qualifications or in an addendum to the request. If  
11-39 the district fails to provide that notice, a ranking, selection, or  
11-40 evaluation of bids, proposals, or qualifications for construction  
11-41 services other than by the board of trustees in an open public  
11-42 meeting is advisory only.

11-43 (b) The board may not delegate the authority to act  
11-44 regarding an action specifically authorized or required by this  
11-45 subchapter to be taken by the board of trustees of a district.

11-46 Sec. 130.292. ENFORCEMENT OF CONTRACT SOLICITATION  
11-47 PROCEDURES: CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY;  
11-48 INJUNCTION. (a) In this section:

11-49 (1) "Component procurements" means procuring the  
11-50 component parts of an item or service that in normal practice would  
11-51 be made in one procurement.

11-52 (2) "Separate procurements" means procurements, made  
11-53 separately, of items or services that in normal practice would be  
11-54 made in one procurement.

11-55 (3) "Sequential procurement" means procurements, made  
11-56 over a period, of items or services that in normal practice would be  
11-57 made in one procurement.

11-58 (b) An officer, employee, or agent of a district commits an  
11-59 offense if the person with criminal negligence makes or authorizes  
11-60 separate, sequential, or component procurements for the purpose of  
11-61 avoiding the requirements of Section 130.282 or 130.283. An  
11-62 offense under this subsection is a Class B misdemeanor and is an  
11-63 offense involving moral turpitude that causes a forfeiture of an  
11-64 officer's public office.

11-65 (c) An officer, employee, or agent of a district commits an  
11-66 offense if the person with criminal negligence violates Section  
11-67 130.282 or 130.283 other than by conduct described by Subsection  
11-68 (b). An offense under this subsection is a Class B misdemeanor and  
11-69 is an offense involving moral turpitude that causes a forfeiture of

12-1 an officer's public office.

12-2 (d) An officer or employee of a district commits an offense  
 12-3 if the officer or employee knowingly violates Section 130.282 or  
 12-4 130.283 other than by conduct described by Subsection (b) or (c).  
 12-5 An offense under this subsection is a Class C misdemeanor.

12-6 (e) The final conviction of a person other than a trustee of  
 12-7 a district for an offense under Subsection (b) or (c) results in the  
 12-8 immediate removal from office or employment of that person. A  
 12-9 trustee who is convicted of an offense under this section is subject  
 12-10 to removal as provided by Chapter 66, Civil Practice and Remedies  
 12-11 Code. For four years after the date of the final conviction, the  
 12-12 removed person is ineligible to be a candidate for or to be  
 12-13 appointed or elected to a public office in this state, is ineligible  
 12-14 to be employed by or act as an agent for this state or a political  
 12-15 subdivision of this state, and is ineligible to receive any  
 12-16 compensation through a contract with this state or a political  
 12-17 subdivision of this state. This subsection does not prohibit the  
 12-18 payment of retirement benefits to the removed person or the payment  
 12-19 of workers' compensation benefits to the removed person for an  
 12-20 injury that occurred before the commission of the offense for which  
 12-21 the person was removed. This subsection does not make a person  
 12-22 ineligible for an office for which the federal or state  
 12-23 constitution prescribes exclusive eligibility requirements.

12-24 (f) A court may enjoin performance of a contract made in  
 12-25 violation of this subchapter. A county attorney, district  
 12-26 attorney, criminal district attorney, citizen of the county in  
 12-27 which the district is located, or interested party may bring an  
 12-28 action for an injunction. A party who prevails in an action brought  
 12-29 under this subsection is entitled to reasonable attorney's fees as  
 12-30 approved by the court.

12-31 Sec. 130.293. NOTIFICATION OF CRIMINAL HISTORY OF  
 12-32 CONTRACTOR. (a) A person or business entity that enters into a  
 12-33 contract with a district must give advance notice to the district if  
 12-34 the person or an owner or operator of the business entity has been  
 12-35 convicted of a felony. The notice must include a general  
 12-36 description of the conduct resulting in the conviction of a felony.

12-37 (b) A district may terminate a contract with a person or  
 12-38 business entity if the district determines that the person or  
 12-39 business entity failed to give notice as required by Subsection (a)  
 12-40 or misrepresented the conduct resulting in the conviction. The  
 12-41 district must compensate the person or business entity for services  
 12-42 performed before the termination of the contract.

12-43 (c) This section does not apply to a publicly held  
 12-44 corporation.

12-45 Sec. 130.294. CHANGE ORDERS. (a) After performance of a  
 12-46 construction contract begins, a district may approve change orders  
 12-47 if necessary to:

12-48 (1) make changes in plans or specifications; or  
 12-49 (2) decrease or increase the quantity of work to be  
 12-50 performed or materials, equipment, or supplies to be furnished.

12-51 (b) The total price of a contract may not be increased by a  
 12-52 change order unless provision has been made for the payment of the  
 12-53 added cost by the appropriation of current funds or bond funds for  
 12-54 that purpose, by the authorization of the issuance of certificates,  
 12-55 or by a combination of those procedures. The original contract  
 12-56 price may not be increased by more than 25 percent. The original  
 12-57 price may not be decreased by more than 25 percent without the  
 12-58 consent of the contractor.

12-59 Sec. 130.295. ERRORS AND OMISSIONS INSURANCE. For any  
 12-60 public work contract awarded under this subchapter, to protect the  
 12-61 interest of the district, the architect or engineer who prepared  
 12-62 the plans and specifications for the public work shall, at the  
 12-63 architect's or engineer's expense, carry an errors and omissions  
 12-64 insurance policy in an amount not less than the amount of the public  
 12-65 work contract.

12-66 Sec. 130.296. DESIGN-BUILD CONTRACTS FOR FACILITIES.  
 12-67 (a) In this section:

12-68 (1) "Design-build contract" means a single contract  
 12-69 with a design-build firm for the design and construction of a

13-1 facility.

13-2 (2) "Design-build firm" means a partnership,  
 13-3 corporation, or other legal entity or team that includes an  
 13-4 engineer or architect and a builder qualified to engage in building  
 13-5 construction in this state.

13-6 (3) "Design criteria package" means a set of documents  
 13-7 that provides sufficient information, including criteria for  
 13-8 selection, to permit a design-build firm to prepare a response to a  
 13-9 district's request for qualifications and to the district's request  
 13-10 for any additional information. The design criteria package must  
 13-11 specify criteria the district considers necessary to describe the  
 13-12 project and may include, as appropriate, the legal description of  
 13-13 the site, survey information concerning the site, interior space  
 13-14 requirements, special material requirements, material quality  
 13-15 standards, conceptual criteria for the project, special equipment  
 13-16 requirements, cost or budget estimates, time schedules, quality  
 13-17 assurance and quality control requirements, site development  
 13-18 requirements, applicable codes and ordinances, provisions for  
 13-19 utilities, parking requirements, or any other requirement, as  
 13-20 applicable.

13-21 (b) A district may use the design-build method for the  
 13-22 construction, rehabilitation, alteration, or repair of a facility.  
 13-23 In using that method and in entering into a contract for the  
 13-24 services of a design-build firm, the contracting district and the  
 13-25 design-build firm shall follow the procedures provided by  
 13-26 Subsections (c)-(j).

13-27 (c) The district may designate an engineer or architect to  
 13-28 act as its representative. If the district's engineer or architect  
 13-29 is not a full-time employee of the district, any engineer or  
 13-30 architect designated shall be selected on the basis of demonstrated  
 13-31 competence and qualifications in accordance with Subchapter A,  
 13-32 Chapter 2254, Government Code.

13-33 (d) The district shall prepare a request for qualifications  
 13-34 that includes general information on the project site, project  
 13-35 scope, budget, special systems, selection criteria, and other  
 13-36 information that may assist potential design-build firms in  
 13-37 submitting proposals for the project. The district shall also  
 13-38 prepare a design criteria package that includes more detailed  
 13-39 information on the project. If the preparation of the design  
 13-40 criteria package requires engineering or architectural services  
 13-41 that constitute the practice of engineering within the meaning of  
 13-42 Chapter 1001, Occupations Code, or the practice of architecture  
 13-43 within the meaning of Chapter 1051, Occupations Code, those  
 13-44 services shall be provided in accordance with the applicable law.

13-45 (e) The district shall evaluate statements of  
 13-46 qualifications and select a design-build firm in two phases:

13-47 (1) In phase one, the district shall prepare a request  
 13-48 for qualifications and evaluate each offeror's experience,  
 13-49 technical competence, and capability to perform, the past  
 13-50 performance of the offeror's team and members of the team, and other  
 13-51 appropriate factors submitted by the team or firm in response to the  
 13-52 request for qualifications, except that cost-related or  
 13-53 price-related evaluation factors are not permitted. Each offeror  
 13-54 must certify to the district that each engineer or architect who is  
 13-55 a member of its team was selected based on demonstrated competence  
 13-56 and qualifications. The district shall qualify a maximum of five  
 13-57 offerors to submit additional information and, if the district  
 13-58 chooses, to interview for final selection.

13-59 (2) In phase two, the district shall evaluate the  
 13-60 information submitted by the offerors on the basis of the selection  
 13-61 criteria stated in the request for qualifications and the results  
 13-62 of any interview. The district may request additional information  
 13-63 regarding demonstrated competence and qualifications,  
 13-64 considerations of the safety and long-term durability of the  
 13-65 project, the feasibility of implementing the project as proposed,  
 13-66 the ability of the offeror to meet schedules, costing methodology,  
 13-67 or other factors as appropriate. The district may not require  
 13-68 offerors to submit detailed engineering or architectural designs as  
 13-69 part of the proposal. The district shall rank each proposal

14-1 submitted on the basis of the criteria set forth in the request for  
 14-2 qualifications. The district shall select the design-build firm  
 14-3 that submits the proposal offering the best value for the district  
 14-4 on the basis of the published selection criteria and on its ranking  
 14-5 evaluations. The district shall first attempt to negotiate a  
 14-6 contract with the selected offeror. If the district is unable to  
 14-7 negotiate a satisfactory contract with the selected offeror, the  
 14-8 district shall, formally and in writing, end negotiations with that  
 14-9 offeror and proceed to negotiate with the next offeror in the order  
 14-10 of the selection ranking until a contract is reached or  
 14-11 negotiations with all ranked offerors end.

14-12 (f) Following selection of a design-build firm under  
 14-13 Subsection (e), that firm's engineers or architects shall complete  
 14-14 the design, submitting all design elements for review and  
 14-15 determination of scope compliance to the district or to the  
 14-16 district's engineer or architect before or concurrently with  
 14-17 construction.

14-18 (g) An engineer shall have responsibility for compliance  
 14-19 with the engineering design requirements and all other applicable  
 14-20 requirements of Chapter 1001, Occupations Code. An architect shall  
 14-21 have responsibility for compliance with the requirements of Chapter  
 14-22 1051, Occupations Code.

14-23 (h) The district shall provide or contract for,  
 14-24 independently of the design-build firm, the inspection services,  
 14-25 testing of construction materials engineering, and verification  
 14-26 testing services necessary for acceptance of the facility by the  
 14-27 district. The district shall select those services for which it  
 14-28 contracts in accordance with Section 2254.004, Government Code.

14-29 (i) The design-build firm shall supply a signed and sealed  
 14-30 set of construction documents for the project to the district at the  
 14-31 conclusion of construction.

14-32 (j) A payment or performance bond is not required for, and  
 14-33 may not provide coverage for, the portion of a design-build  
 14-34 contract under this section that includes design services only. If  
 14-35 a fixed contract amount or guaranteed maximum price has not been  
 14-36 determined at the time a design-build contract is awarded, the  
 14-37 penal sums of the performance and payment bonds delivered to the  
 14-38 district must each be in an amount equal to the project budget, as  
 14-39 specified in the design criteria package. The design-build firm  
 14-40 shall deliver the bonds not later than the 10th day after the date  
 14-41 the design-build firm executes the contract unless the design-build  
 14-42 firm furnishes a bid bond or other financial security acceptable to  
 14-43 the district to ensure that the design-build firm will furnish the  
 14-44 required performance and payment bonds when a guaranteed maximum  
 14-45 price is established.

14-46 Sec. 130.297. CONTRACTS FOR FACILITIES: CONSTRUCTION  
 14-47 MANAGER-AGENT. (a) A district may use the construction  
 14-48 manager-agent method for the construction, rehabilitation,  
 14-49 alteration, or repair of a facility. In using that method and in  
 14-50 entering into a contract for the services of a construction  
 14-51 manager-agent, a district shall follow the procedures prescribed by  
 14-52 this section.

14-53 (b) A construction manager-agent is a sole proprietorship,  
 14-54 partnership, corporation, or other legal entity that provides  
 14-55 consultation to the district regarding construction,  
 14-56 rehabilitation, alteration, or repair of a facility. A district  
 14-57 using the construction manager-agent method may, under the contract  
 14-58 between the district and the construction manager-agent, require  
 14-59 the construction manager-agent to provide administrative  
 14-60 personnel, equipment necessary to perform duties under this  
 14-61 section, and on-site management and other services specified in the  
 14-62 contract. A construction manager-agent represents the district in  
 14-63 a fiduciary capacity.

14-64 (c) Before or concurrently with selecting a construction  
 14-65 manager-agent, the district shall select or designate an engineer  
 14-66 or architect who shall prepare the construction documents for the  
 14-67 project and who has full responsibility for complying with Chapter  
 14-68 1001 or 1051, Occupations Code, as applicable. If the engineer or  
 14-69 architect is not a full-time employee of the district, the district

15-1 shall select the engineer or architect on the basis of demonstrated  
 15-2 competence and qualifications as provided by Section 2254.004,  
 15-3 Government Code. The district's engineer or architect may not  
 15-4 serve, alone or in combination with another person, as the  
 15-5 construction manager-agent unless the engineer or architect is  
 15-6 hired to serve as the construction manager-agent under a separate  
 15-7 or concurrent procurement conducted in accordance with this  
 15-8 subchapter. This subsection does not prohibit the district's  
 15-9 engineer or architect from providing customary construction phase  
 15-10 services under the engineer's or architect's original professional  
 15-11 service agreement with the district and in accordance with  
 15-12 applicable licensing laws.

15-13 (d) A district shall select a construction manager-agent on  
 15-14 the basis of demonstrated competence and qualifications in the same  
 15-15 manner as provided for the selection of engineers or architects  
 15-16 under Section 2254.004, Government Code.

15-17 (e) A district using the construction manager-agent method  
 15-18 shall procure, in accordance with applicable law and in any manner  
 15-19 authorized by this chapter, a general contractor, trade  
 15-20 contractors, or subcontractors who will serve as the prime  
 15-21 contractor for their specific portion of the work.

15-22 (f) The district or the construction manager-agent shall  
 15-23 procure in accordance with Section 2254.004, Government Code, all  
 15-24 of the testing of construction materials engineering, the  
 15-25 inspection services, and the verification testing services  
 15-26 necessary for acceptance of the facility by the district.

15-27 Sec. 130.298. CONTRACTS FOR FACILITIES: CONSTRUCTION  
 15-28 MANAGER-AT-RISK. (a) A district may use the construction  
 15-29 manager-at-risk method for the construction, rehabilitation,  
 15-30 alteration, or repair of a facility. In using that method and in  
 15-31 entering into a contract for the services of a construction  
 15-32 manager-at-risk, a district shall follow the procedures prescribed  
 15-33 by this section.

15-34 (b) A construction manager-at-risk is a sole  
 15-35 proprietorship, partnership, corporation, or other legal entity  
 15-36 that assumes the risk for construction, rehabilitation,  
 15-37 alteration, or repair of a facility at the contracted price as a  
 15-38 general contractor and provides consultation to the district  
 15-39 regarding construction during and after the design of the facility.

15-40 (c) Before or concurrently with selecting a construction  
 15-41 manager-at-risk, the district shall select or designate an engineer  
 15-42 or architect who shall prepare the construction documents for the  
 15-43 project and who has full responsibility for complying with Chapter  
 15-44 1001 or 1051, Occupations Code, as applicable. If the engineer or  
 15-45 architect is not a full-time employee of the district, the district  
 15-46 shall select the engineer or architect on the basis of demonstrated  
 15-47 competence and qualifications as provided by Section 2254.004,  
 15-48 Government Code. The district's engineer, architect, or  
 15-49 construction manager-agent for a project may not serve, alone or in  
 15-50 combination with another, as the construction manager-at-risk.

15-51 (d) The district shall provide or contract for,  
 15-52 independently of the construction manager-at-risk, the inspection  
 15-53 services, testing of construction materials engineering, and  
 15-54 verification testing services necessary for acceptance of the  
 15-55 facility by the district. The district shall select those services  
 15-56 for which it contracts in accordance with Section 2254.004,  
 15-57 Government Code.

15-58 (e) The district shall select the construction  
 15-59 manager-at-risk in either a one-step or two-step process. The  
 15-60 district shall prepare a request for proposals, in the case of a  
 15-61 one-step process, or a request for qualifications, in the case of a  
 15-62 two-step process, that includes general information on the project  
 15-63 site, project scope, schedule, selection criteria, estimated  
 15-64 budget, the time and place for receipt of, as applicable, proposals  
 15-65 or qualifications, a statement as to whether the selection process  
 15-66 is a one-step or two-step process, and other information that may  
 15-67 assist the district in its selection of a construction  
 15-68 manager-at-risk. The district shall state the selection criteria  
 15-69 in the request for proposals or qualifications, as applicable. The

16-1 selection criteria may include the offeror's experience, past  
16-2 performance, safety record, proposed personnel and methodology,  
16-3 and other appropriate factors that demonstrate the capability of  
16-4 the construction manager-at-risk. If a one-step process is used,  
16-5 the district may request, as part of the offeror's proposal,  
16-6 proposed fees and prices for fulfilling the general conditions. If  
16-7 a two-step process is used, the district may not request fees or  
16-8 prices in step one. In step two, the district may request that five  
16-9 or fewer offerors, selected solely on the basis of qualifications,  
16-10 provide additional information, including the construction  
16-11 manager-at-risk's proposed fee and its price for fulfilling the  
16-12 general conditions.

16-13 (f) At each step, the district shall receive, publicly open,  
16-14 and read aloud the names of the offerors. At the appropriate step,  
16-15 the district shall also read aloud the fees and prices, if any,  
16-16 stated in each proposal as the proposal is opened. Within 45 days  
16-17 after the date of opening the proposals, the district shall  
16-18 evaluate and rank each proposal submitted in relation to the  
16-19 criteria set forth in the request for proposals.

16-20 (g) The district shall select the offeror that submits the  
16-21 proposal that offers the best value for the district based on the  
16-22 published selection criteria and on its ranking evaluation. The  
16-23 district shall first attempt to negotiate a contract with the  
16-24 selected offeror. If the district is unable to negotiate a  
16-25 satisfactory contract with the selected offeror, the district  
16-26 shall, formally and in writing, end negotiations with that offeror  
16-27 and proceed to negotiate with the next offeror in the order of the  
16-28 selection ranking until a contract is reached or negotiations with  
16-29 all ranked offerors end.

16-30 (h) A construction manager-at-risk shall publicize notice,  
16-31 in accordance with Section 130.285, and receive bids or proposals  
16-32 from trade contractors or subcontractors for the performance of all  
16-33 major elements of the work other than the minor work that may be  
16-34 included in the general conditions. A construction manager-at-risk  
16-35 may seek to perform portions of the work itself if the construction  
16-36 manager-at-risk submits its bid or proposal for those portions of  
16-37 the work in the same manner as all other trade contractors or  
16-38 subcontractors and if the district determines that the construction  
16-39 manager-at-risk's bid or proposal provides the best value for the  
16-40 district.

16-41 (i) The construction manager-at-risk and the district or  
16-42 its representative shall review all trade contractor or  
16-43 subcontractor bids or proposals in a manner that does not disclose  
16-44 the contents of the bid or proposal during the selection process to  
16-45 a person not employed by the construction manager-at-risk,  
16-46 engineer, architect, or district. All bids or proposals shall be  
16-47 made public after the award of the contract or within seven days  
16-48 after the date of final selection of bids or proposals, whichever is  
16-49 later.

16-50 (j) If the construction manager-at-risk reviews, evaluates,  
16-51 and recommends to the district a bid or proposal from a trade  
16-52 contractor or subcontractor but the district requires another bid  
16-53 or proposal to be accepted, the district shall compensate the  
16-54 construction manager-at-risk by a change in price, time, or  
16-55 guaranteed maximum cost for any additional cost and risk that the  
16-56 construction manager-at-risk may incur because of the district's  
16-57 requirement that another bid or proposal be accepted.

16-58 (k) If a selected trade contractor or subcontractor  
16-59 defaults in the performance of its work or fails to execute a  
16-60 subcontract after being selected in accordance with this section,  
16-61 the construction manager-at-risk may, without advertising, fulfill  
16-62 the contract requirements or select a replacement trade contractor  
16-63 or subcontractor to fulfill the contract requirements.

16-64 (l) If a fixed contract amount or guaranteed maximum price  
16-65 has not been determined at the time the contract is awarded, the  
16-66 penal sums of the performance and payment bonds delivered to the  
16-67 district must each be in an amount equal to the project budget, as  
16-68 specified in the request for qualifications. The construction  
16-69 manager-at-risk shall deliver the bonds not later than the 10th day



17-1 after the date the construction manager-at-risk executes the  
 17-2 contract unless the construction manager-at-risk furnishes a bid  
 17-3 bond or other financial security acceptable to the district to  
 17-4 ensure that the construction manager will furnish the required  
 17-5 performance and payment bonds when a guaranteed maximum price is  
 17-6 established.

17-7 Sec. 130.299. SELECTING CONTRACTOR FOR CONSTRUCTION  
 17-8 SERVICES THROUGH COMPETITIVE SEALED PROPOSALS. (a) In selecting a  
 17-9 contractor for construction, rehabilitation, alteration, or repair  
 17-10 services for a facility through competitive sealed proposals, a  
 17-11 district shall follow the procedures prescribed by this section.

17-12 (b) The district shall select or designate an engineer or  
 17-13 architect to prepare construction documents for the project. The  
 17-14 selected or designated engineer or architect has full  
 17-15 responsibility for complying with Chapter 1001 or 1051, Occupations  
 17-16 Code, as applicable. If the engineer or architect is not a  
 17-17 full-time employee of the district, the district shall select the  
 17-18 engineer or architect on the basis of demonstrated competence and  
 17-19 qualifications as provided by Section 2254.004, Government Code.

17-20 (c) The district shall provide or contract for,  
 17-21 independently of the contractor, the inspection services, testing  
 17-22 of construction materials engineering, and verification testing  
 17-23 services necessary for acceptance of the facility by the district.  
 17-24 The district shall select those services for which it contracts in  
 17-25 accordance with Section 2254.004, Government Code, and shall  
 17-26 identify them in the request for proposals.

17-27 (d) The district shall prepare a request for competitive  
 17-28 sealed proposals that includes construction documents, selection  
 17-29 criteria, estimated budget, project scope, schedule, and other  
 17-30 information that contractors may require to respond to the request.

17-31 (e) The district shall receive, publicly open, and read  
 17-32 aloud the names of the offerors and if any are required to be stated  
 17-33 in the request for proposals, all prices stated in each proposal.  
 17-34 Within 45 days after the date of opening the proposals, the district  
 17-35 shall evaluate and rank each proposal submitted in relation to the  
 17-36 published selection criteria.

17-37 (f) The district shall first attempt to negotiate a contract  
 17-38 with the selected offeror. The district and its engineer or  
 17-39 architect may discuss with the selected offeror options for a scope  
 17-40 or time modification and any price change associated with the  
 17-41 modification. If the district is unable to negotiate a contract  
 17-42 with the selected offeror, the district shall, formally and in  
 17-43 writing, end negotiations with that offeror and proceed to the next  
 17-44 offeror in the order of the selection ranking until a contract is  
 17-45 reached or all proposals are rejected.

17-46 Sec. 130.300. SELECTING CONTRACTOR FOR CONSTRUCTION  
 17-47 SERVICES THROUGH COMPETITIVE BIDDING. Except to the extent  
 17-48 prohibited by other law and to the extent consistent with this  
 17-49 subchapter, a district may use competitive bidding to select a  
 17-50 contractor to perform construction, rehabilitation, alteration, or  
 17-51 repair services for a facility.

17-52 Sec. 130.301. JOB ORDER CONTRACTS FOR CONSTRUCTION  
 17-53 SERVICES. (a) A district may award job order contracts for the  
 17-54 minor construction, repair, rehabilitation, or alteration of a  
 17-55 facility if the work is of a recurring nature but the delivery times  
 17-56 are indefinite and indefinite quantities and orders are awarded  
 17-57 substantially on the basis of predescribed and prepriced tasks.

17-58 (b) The district may establish contractual unit prices for a  
 17-59 job order contract by:

17-60 (1) specifying one or more published construction unit  
 17-61 price books and the applicable divisions or line items; or

17-62 (2) providing a list of work items and requiring the  
 17-63 offerors to bid or propose one or more coefficients or multipliers  
 17-64 to be applied to the price book or work items as the price proposal.

17-65 (c) The district shall advertise for, receive, and publicly  
 17-66 open sealed proposals for job order contracts.

17-67 (d) The district may require offerors to submit additional  
 17-68 information besides rates, including experience, past performance,  
 17-69 and proposed personnel and methodology.

18-1 (e) The district may award job order contracts to one or  
18-2 more job order contractors in connection with each solicitation of  
18-3 bids or proposals.

18-4 (f) An order for a job or project under the job order  
18-5 contract must be signed by the district's representative and the  
18-6 contractor. The order may be a fixed price, lump-sum contract based  
18-7 substantially on contractual unit pricing applied to estimated  
18-8 quantities or may be a unit price order based on the quantities and  
18-9 line items delivered.

18-10 (g) The contractor shall provide payment and performance  
18-11 bonds, if required by law, based on the amount or estimated amount  
18-12 of any order.

18-13 (h) The base term of a job order contract is for the period  
18-14 and with any renewal option that the district sets forth in the  
18-15 request for proposals. If the district fails to advertise that  
18-16 term, the base term may not exceed two years and is not renewable  
18-17 without further advertisement and solicitation of proposals.

18-18 (i) If a job order contract or an order issued under the  
18-19 contract requires engineering or architectural services that  
18-20 constitute the practice of engineering within the meaning of  
18-21 Chapter 1001, Occupations Code, or the practice of architecture  
18-22 within the meaning of Chapter 1051, Occupations Code, those  
18-23 services shall be provided in accordance with applicable law.

18-24 SUBCHAPTER M. SALE OF PERSONAL PROPERTY

18-25 BY DISTRICT AND AWARD OF MISCELLANEOUS CONTRACTS FOR SERVICES

18-26 Sec. 130.311. SALE OF PERSONAL PROPERTY BY DISTRICT. A sale  
18-27 of personal property by a junior college district that is not  
18-28 covered by Chapter 791, Government Code, shall be solicited and  
18-29 awarded in the same manner as a contract for a purchase of personal  
18-30 property or services under Subchapter K.

18-31 Sec. 130.312. AWARD OF MISCELLANEOUS CONTRACTS FOR  
18-32 SERVICES. Miscellaneous contracts for services, including  
18-33 contracts for bookstore services, food services, and vending  
18-34 services, shall be solicited and awarded in the same manner as a  
18-35 contract for a purchase of personal property or services under  
18-36 Subchapter K.

18-37 SECTION 5. Section 271.023, Local Government Code, is  
18-38 amended to read as follows:

18-39 Sec. 271.023. CONFLICT OF LAWS. To the extent of any  
18-40 conflict, the provisions of Subchapter B, Chapter 44, Education  
18-41 Code, relating to the purchase of goods and services under contract  
18-42 by a school district and the provisions of Subchapters K and L,  
18-43 Chapter 130, Education Code, relating to the purchase of goods and  
18-44 services and construction services under contract by a junior  
18-45 college prevail over this subchapter.

18-46 SECTION 6. Subsection (b), Section 44.0311, and Sections  
18-47 130.010 and 130.0101, Education Code, are repealed.

18-48 SECTION 7. The changes in law made by this Act apply only to  
18-49 a contract for which requests for bids, requests for proposals, or  
18-50 requests for qualifications are published or distributed on or  
18-51 after the effective date of this Act.

18-52 SECTION 8. This Act takes effect September 1, 2005.

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