

By: West

S.B. No. 1064

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

SECTION 3. Subchapter A, Chapter 130, Education Code, is amended by adding Sections 130.0104, 130.0105, 130.0106, and 130.0107 to read as follows:

Sec. 130.0104. POLICY AND REPORT REGARDING HISTORICALLY UNDERUTILIZED BUSINESSES. (a) In this section, "historically underutilized business" has the meaning assigned by Section 2161.001, Government Code.

(b) This section applies only to a junior college district that:

(1) is located wholly or partially in a county with a population of one million or more; and

(2) had an annual enrollment of 20,000 or more

1 full-time or part-time students in one or more of the most recent
2 five academic years.

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

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

19 Sec. 130.0105. RIGHT TO WORK. (a) This section applies to
20 a junior college district while the district is engaged in:

- 21 (1) procuring goods or services;
- 22 (2) awarding a contract; or
- 23 (3) overseeing procurement or construction for a
24 public work or public improvement.

25 (b) Notwithstanding any other provision of this chapter, a
26 district:

- 27 (1) may not consider whether a vendor is a member of or

1 has another relationship with an organization; and

2 (2) shall ensure that its bid specifications and any
3 subsequent contract or other agreement do not deny or diminish the
4 right of a person to work because of the person's membership in or
5 other relationship status with respect to an organization.

6 Sec. 130.0106. CONTRACT WITH PERSON INDEBTED TO DISTRICT.

7 (a) The board of trustees of a junior college district by
8 resolution may establish rules permitting the district to refuse to
9 enter into a contract or other transaction with a person indebted to
10 the district.

11 (b) It is not a violation of this subchapter for a district,
12 under rules adopted under Subsection (a), to refuse to award a
13 contract to, or refuse to enter into a transaction with, an apparent
14 low bidder or successful proposer that is indebted to the district.

15 Sec. 130.0107. EFFICIENCY AND SAVINGS. In order to
16 increase efficiency of operations and to achieve savings through
17 volume purchases, on an annual basis a junior college district
18 shall identify common types of goods and services to be purchased
19 from the district's budget and, to the extent the district
20 determines practicable, consolidate the purchase of those goods or
21 services under contracts entered into under this subchapter.

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

24 SUBCHAPTER K. PURCHASING CONTRACTS FOR GOODS AND SERVICES OTHER
25 THAN CONSTRUCTION OR PROFESSIONAL SERVICES

26 Sec. 130.251. DEFINITIONS. In this subchapter:

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

1 district.

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

3 (3) "Purchase of goods":

4 (A) includes:

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

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

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

12 (4) "Services" does not include:

13 (A) construction services; or

14 (B) professional services, including services of
15 a consultant, to which Subchapter N applies.

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

17 (a) In this subchapter, the terms "bidder" and "vendor" are used
18 interchangeably to identify an entity that responds to a request
19 for competitive bids, proposals, or qualifications.

20 (b) In this subchapter, the term "bid" is used to refer to a
21 competitive bid, proposal, or statement of qualifications.

22 Sec. 130.252. CONFLICT WITH OTHER LAW. To the extent of any
23 conflict, this subchapter prevails over any other law relating to
24 the purchase of goods and services by a district other than a law
25 relating to:

26 (1) contracting with historically underutilized
27 businesses; or

1 (2) the procurement of goods and services from persons
2 with disabilities.

3 Sec. 130.253. PURCHASE METHODS. (a) Except as otherwise
4 provided by this subchapter and subject to Section 130.264, each
5 contract by a district with a value of \$50,000 or more that covers
6 one or more fiscal years shall be made by the method, of the
7 following methods, that provides the best value for the district:

8 (1) competitive sealed bids;

9 (2) competitive sealed proposals;

10 (3) the reverse auction procedure defined by Section
11 2155.062(d), Government Code; or

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

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

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

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

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

24 (d) Without complying with Subsection (a), a district may
25 purchase a good or service that is available from only one source,
26 including:

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

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

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

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

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

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

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

13 (e) Without complying with Subsection (a), a district may
14 purchase perishable goods, advertising services, meeting and
15 catering services, and travel services, including airfare, ground
16 transportation, and all lodging. The district shall exercise
17 reasonable and prudent care to determine whether a contract with a
18 provider will provide the best value to the district. The district
19 shall document the process for selecting the provider of the goods
20 or services and shall maintain a list of prospective providers
21 contacted and the basis for selecting the provider. To the extent
22 practicable, the district shall state its requirements in writing
23 and require written proposals or quotations from prospective
24 providers. Any prospective provider that has provided written
25 notice to the district that it is interested in being considered as
26 a supplier of goods or services covered by this subsection shall be
27 given the opportunity to make an offer to provide the goods or

1 services. After rating and ranking the offers, the district shall
2 attempt to negotiate a contract with the highest ranked vendor. If
3 a contract cannot be negotiated with the highest ranked vendor, the
4 next highest ranked vendor shall be contacted. If the value of a
5 purchase to be made under this subsection is estimated to be \$50,000
6 or greater, the district shall publish notice of the intent to
7 purchase as provided under Section 130.258. If the value of a
8 purchase to be made under this subsection is estimated to be \$10,000
9 or more but less than \$50,000 during a fiscal year, the award of a
10 contract must be made in accordance with a policy established by the
11 board of trustees.

12 (f) Without complying with Subsection (a), a district may
13 purchase a good or service under:

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

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

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

22 (4) a purchase made under Subchapter D, F, or G,
23 Chapter 271, Local Government Code.

24 (g) Contracts for services that result in no cost to the
25 district or that provide income to a district must be based on bids,
26 proposals, or qualifications that are solicited and awarded in the
27 same manner as a contract for the purchase of goods or services.

1 Such contracts include contracts for bookstore services, food
2 services, and vending services.

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

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

21 Sec. 130.255. MULTIYEAR CONTRACT. A contract that extends
22 past the end of a district's fiscal year must include a provision
23 that permits termination at the end of each fiscal year. Contracts
24 solely for the purchase of goods may not exceed five years in
25 duration.

26 Sec. 130.256. EVALUATION AND AWARD OF CONTRACT.
27 (a) Except as otherwise provided by this subchapter, a district

1 shall award a contract to the lowest responsible bidder offering
2 the best value to the district according to the selection criteria
3 established by the district. The district shall publish in the
4 request for bids, proposals, or qualifications the criteria the
5 district will use to evaluate the offers and the relative weights
6 given to the criteria that are known at the time of the publication.

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

9 (1) the purchase price, including delivery and
10 installation charges;

11 (2) the reputation of the bidder and of the bidder's
12 goods or services;

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

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

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

17 (6) the total long-term cost to the district to
18 acquire the bidder's goods or services;

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

21 (8) any other relevant factor specifically listed in
22 the request for bids or proposals; and

23 (9) the impact on the ability of the district to comply
24 with laws and rules relating to historically underutilized
25 businesses.

26 (c) A district may reject any or all bids, proposals,
27 qualifications, or parts of bids, proposals, or qualifications if

1 the rejection serves the district's interest.

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

6 (e) Bids may be opened only by the district in a
7 district-owned or district-controlled facility. The meeting or
8 other occasion at which bids are opened shall be open to the public.
9 At the time the district opens a bid, if one or more members of the
10 public are present, the appropriate employee or officer of the
11 district shall read aloud the name of the bidder and the total bid
12 amount, if the bid is of a type that should contain a single bid
13 amount. When opening proposals or qualifications, the appropriate
14 employee or officer shall read aloud only the name of the
15 respondents and may not disclose the contents of a proposal or
16 qualification on opening or during negotiations with competing
17 bidders. At least two district employees or members of the
18 district's board of trustees must be present at the bid, proposal,
19 or qualification opening.

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

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

27 (h) The district shall document the basis of its selection

1 and shall make its evaluations public not later than the seventh day
2 after the date the contract is awarded. The district shall state in
3 writing in the contract file the reasons for making an award.

4 (i) A contract awarded in violation of this subchapter is
5 void.

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

16 (k) In awarding a contract by competitive sealed bid under
17 this section, a district that has its central administrative office
18 located in a municipality with a population of less than 250,000 may
19 consider a bidder's principal place of business in the manner
20 provided by Section 271.9051, Local Government Code. This
21 subsection does not apply to the purchase of telecommunications
22 services or information services, as those terms are defined by 47
23 U.S.C. Section 153.

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

27 (b) The state auditor may audit purchases of goods or

1 services by the district.

2 Sec. 130.258. NOTICE. (a) Except as otherwise provided by
3 this subchapter, for any method of contracting selected under
4 Section 130.253(a), the district shall, within a seven-day period,
5 publish the notice required by this section in at least two issues
6 of any newspaper of general circulation in the county in which the
7 district's central administrative office is located. The deadline
8 for receiving bids or proposals may not be less than 10 business
9 days after the date of the publication of the first newspaper
10 notice. The deadline for receiving responses to a request for
11 qualifications may not be less than five business days after the
12 date of the publication of the last newspaper notice. If there is
13 not a newspaper of general circulation in the county in which the
14 district's central administrative office is located, the notice
15 shall be published in a newspaper of general circulation in a
16 location nearest the district's central administrative office. In
17 a two-step procurement process, the time and place where the
18 second-step bids, proposals, or responses will be received are not
19 required to be included in the notice.

20 (b) The district may, as an alternative to publishing notice
21 in a newspaper exclusively under Subsection (a), publish on a
22 publicly accessible Internet site the notice required by this
23 section. Before or at the same time the district first publishes
24 the Internet notice, the district shall publish a notice in a
25 newspaper of general circulation, as described by Subsection (a),
26 that includes the name of the goods or services to be purchased, the
27 date, time, and place for receiving and opening bids, proposals, or

1 statements of qualifications, and the Internet address of the
2 Internet site where detailed requirements may be found. The notice
3 posted on the Internet under this subsection must be posted every
4 day for at least:

5 (1) 10 business days before the deadline for receiving
6 the bids or proposals; or

7 (2) five business days before the deadline for
8 receiving responses to a request for qualifications.

9 (c) Except as otherwise provided by Subsection (b) for the
10 newspaper notice required by that subsection, the notice required
11 by this section must include:

12 (1) the location where the request for bid, proposal,
13 or qualification documents may be obtained or examined;

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

16 (3) a general description of the goods or services;

17 (4) the location and time of any mandatory site
18 inspections or pre-bid meetings; and

19 (5) the amount of any required bid bond, payment bond,
20 or performance bond.

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

26 (b) After receiving a proposal but before making an award,
27 the district may permit the three highest-ranking bidders to revise

1 their proposals, within the scope of the published specifications,
2 to obtain the best final offer.

3 (c) Before an award, the district may not disclose
4 information derived from proposals submitted from competing
5 bidders in conducting discussions under this section.

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

12 (b) After the district conducts a mandatory pre-bid
13 conference, the district may send any additional required notice
14 for the proposed contract only to prospective bidders who attended
15 or were represented at the conference.

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

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

1 invitation to bid.

2 (b) On the award of a contract or the rejection of all bids,
3 the district shall return the bid deposit of an unsuccessful
4 bidder. The bid deposit of the successful bidder may be retained
5 until the contract is signed by the district. A bid deposit may not
6 be held longer than 90 days.

7 (c) The bid deposit required by the district, if any, must
8 be in the form of a cashier's check, certified check, or bid bond
9 written by a surety authorized to conduct business in this state. A
10 district may elect to require a bid deposit to be in the form of a
11 bid bond.

12 Sec. 130.263. PERFORMANCE BOND. A district may require a
13 contractor to provide a performance bond in the amount of the
14 contract before executing a contract for the purchase of goods or
15 services with a value of \$100,000 or more. The bond must be written
16 by a surety authorized to conduct business in this state and
17 generally comply with the performance bond requirements of Chapter
18 2253, Government Code.

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

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

25 (2) "Separate purchases" means purchases, made
26 separately, of goods or services that in normal purchasing
27 practices would be purchased in one purchase.

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

4 (b) An officer, employee, or agent of a district commits an
5 offense if the person with criminal negligence makes or authorizes
6 separate, sequential, or component purchases for the purpose of
7 avoiding the requirements of Section 130.253, 130.256, or 130.266.
8 An offense under this subsection is a Class B misdemeanor and is an
9 offense involving moral turpitude that results in a forfeiture of
10 an officer's public office.

11 (c) An officer, employee, or agent of a district commits an
12 offense if the person with criminal negligence violates Section
13 130.253, 130.256, or 130.266 other than by conduct described by
14 Subsection (b). An offense under this subsection is a Class B
15 misdemeanor and is an offense involving moral turpitude that
16 results in a forfeiture of an officer's public office.

17 (d) An officer or employee of a district commits an offense
18 if the officer or employee knowingly violates Section 130.253,
19 130.256, or 130.266 other than by conduct described by Subsection
20 (b) or (c). An offense under this subsection is a Class C
21 misdemeanor.

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

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

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

20 Sec. 130.265. PURCHASE AGREEMENTS AND VENDOR LISTS FOR
21 MISCELLANEOUS PURCHASES. (a) This section applies only to the
22 selection and engagement of vendors from which a district may
23 purchase goods or services, including produce, gasoline, and fuel
24 oil, where the total cost of the goods and services is expected to
25 be \$50,000 or more during a fiscal year but the selling price must
26 be determined at the time the need for the goods and services
27 arises.

1 (b) The notice requirements of Section 130.258 apply to
2 purchases made under this section, except that the notice must
3 specify the categories of goods or services to be purchased under
4 this section and solicit the names, addresses, and telephone
5 numbers of bidders that are interested in supplying the goods or
6 services to the district. The district shall create and provide a
7 proposal form to be used by interested bidders. The form must
8 describe the goods or services that may be required, and the terms
9 and conditions of, and method for, determining the price of the
10 bidders' products and services. Bidders desiring to be included on
11 the list must complete and sign the district's form. The district
12 shall determine which bidders are qualified to be included on a list
13 of bidders from which goods and services may be purchased during the
14 applicable fiscal year.

15 (c) Before the district makes a purchase covered by this
16 section, the district must obtain written price quotations from at
17 least three bidders from the list created by the district for that
18 category. If fewer than three bidders are on the list, the district
19 shall contact each bidder on the list. If more than three bidders
20 are on the list, the district may invite all bidders to provide a
21 quotation or may select three bidders on a rotational basis each
22 time a purchase is to be made. The bidding records must be retained
23 with the district's competitive bidding records and are subject to
24 audit. In determining from whom to purchase the goods or services,
25 the district may consider the provisions of Section 130.256.

26 Sec. 130.266. PURCHASES MADE WITHOUT ADVERTISING.

27 (a) Except as provided under Sections 130.253(d), (f), and (g),

1 and Section 130.256(j), a purchase of goods or services with a cost
2 of \$10,000 or more but less than \$50,000 must be made by written
3 competitive bids or proposals. A minimum of three bids or proposals
4 must be considered before the award of a contract or order for the
5 specified goods or services. A district is not required to
6 advertise the purchase.

7 (b) In determining from whom to purchase the goods or
8 services under this section, the district shall consider the
9 provisions of Section 130.256.

10 (c) A person may not use the process described by this
11 section to knowingly violate Section 130.264.

12 Sec. 130.267. NOTIFICATION OF CRIMINAL HISTORY OF
13 CONTRACTOR. (a) A person or business entity that enters into a
14 contract with a district must give advance notice to the district if
15 the person or an owner or operator of the business entity has been
16 convicted of a felony. The notice must include a general
17 description of the conduct resulting in the conviction of a felony.

18 (b) A district may refuse to enter into a contract or other
19 transaction with a person who has been convicted of a felony or with
20 a business entity if an owner or operator of the entity has been
21 convicted of a felony.

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

1 contract.

2 (d) This section does not apply to a publicly held
3 corporation.

4 Sec. 130.268. PREFERENCE TO TEXAS AND UNITED STATES
5 PRODUCTS. (a) A district that purchases agricultural products
6 shall give preference to those products produced, processed, or
7 grown in this state if the cost to the district for those products
8 is equal to or less than the cost of other products and the quality
9 of those products is equal to or exceeds the quality of other
10 products.

11 (b) If a district determines that agricultural products
12 produced, processed, or grown in this state are not entitled to a
13 preference under Subsection (a), the district shall give preference
14 to agricultural products produced, processed, or grown in other
15 states of the United States over foreign products if the cost to the
16 district for those products is equal to or less than the cost of
17 foreign products and the quality of those products is equal to or
18 exceeds the quality of the foreign products.

19 (c) A district that purchases vegetation for landscaping
20 purposes, including plants, shall give preference to Texas
21 vegetation if the cost to the district for that vegetation is equal
22 to or less than the cost of other vegetation and the quality of that
23 vegetation is not inferior to the quality of other vegetation.

24 (d) In implementing this section, a district may receive
25 assistance from and use the resources of the Department of
26 Agriculture, including information on the availability of
27 agricultural products.

1 (e) A district may not adopt product purchasing
2 specifications that unnecessarily exclude agricultural products
3 produced, processed, or grown in this state.

4 Sec. 130.269. EFFICIENCY AND SAVINGS. In order to increase
5 efficiency of operations and to achieve savings through volume
6 purchases, on an annual basis a district shall identify common
7 types of goods and services to be purchased from the district's
8 budget and, to the extent the district determines practicable,
9 consolidate the purchase of those goods or services under contracts
10 entered into under this subchapter.

11 SUBCHAPTER L. CONSTRUCTION CONTRACTS

12 Sec. 130.301. DEFINITIONS. In this subchapter:

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

15 (2) "Board of trustees" means the governing board of a
16 district.

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

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

26 (5) "District" means a junior college district.

27 (6) "Engineer" means an individual licensed as a

1 professional engineer under Chapter 1001, Occupations Code.

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

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

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

14 Sec. 130.302. USE OF TERMS "BIDDER," "OFFEROR," "VENDOR,"
15 AND "BID." (a) In this subchapter, the terms "bidder," "offeror,"
16 and "vendor" are used interchangeably to identify an entity that
17 responds to a request for competitive bids or proposals, or for
18 offers or qualifications.

19 (b) In this subchapter, the term "bid" is used to refer to a
20 competitive bid or proposal or to a statement of qualifications.

21 Sec. 130.303. METHODS OF CONTRACTING. (a) Except as
22 otherwise provided by this subchapter and subject to Section
23 130.313, all contracts for construction, rehabilitation,
24 alteration, or repair of facilities valued at \$50,000 or more shall
25 be made by the method, of the following methods, that provides the
26 best value for the district:

27 (1) competitive sealed bids;

- 1 (2) competitive sealed proposals;
- 2 (3) a design-build contract;
- 3 (4) a construction manager-at-risk; or
- 4 (5) a job order contract for the minor construction,
- 5 repair, rehabilitation, or alteration of a facility.

6 (b) Only one of the methods listed in Subsection (a) may be
7 used for any individual contract. A district must determine which
8 method provides the best value for the district before providing
9 the notice required by Section 130.306.

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

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

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

16 (d) A district may contract for the services of a
17 construction manager-agent as provided by Section 130.318 in
18 conjunction with the method of construction selected under
19 Subsection (a).

20 Sec. 130.304. EVALUATION AND AWARD OF CONTRACT.

21 (a) Except as otherwise provided by this subchapter, a district
22 shall award a contract to the lowest responsible bidder offering
23 the best value to the district according to the selection criteria
24 established by the district. The district shall publish in the
25 request for bids, proposals, or qualifications the criteria the
26 district will use to evaluate the offers and the relative weights
27 given to the criteria that are known at the time of the publication.

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

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

4 (2) the reputation of the bidder;

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

6 (4) the extent to which the offered services meet the
7 district's needs;

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

9 (6) the extent to which the offers comply with the
10 requirements of the request for bids, proposals, or qualifications;

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

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

16 (9) the bidder's safety record, if:

17 (A) the district has adopted a written definition
18 and criteria for accurately determining the safety record of a
19 bidder;

20 (B) the district has given notice to prospective
21 bidders in the request for bids that the safety record of a bidder
22 may be considered in determining the responsibility of the bidder;
23 and

24 (C) the district's determinations are not
25 arbitrary and capricious.

26 (c) A district may reject any or all bids, proposals,
27 qualifications, or parts of bids, proposals, or qualifications if

1 the rejection serves the district's interest.

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

6 (e) Bids may be opened only by the district in a
7 district-owned or district-controlled facility. The meeting or
8 other occasion at which bids are opened must be open to the public.
9 At the time the district opens a bid, if one or more members of the
10 public are present, the appropriate employee or officer of the
11 district shall read aloud the name of the bidder and the total bid
12 amount if the bid is of a type that should contain a single bid
13 amount. At least two district employees or members of the board of
14 trustees must be present at the bid opening. When opening proposals
15 or qualifications, the appropriate employee or officer shall read
16 aloud only the names of the respondents and may not disclose the
17 contents of a proposal or qualification on opening the proposal or
18 qualification or during negotiations with competing bidders.

19 (f) A bid that has been opened may not be changed for the
20 purpose of correcting an error in the bid price.

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

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

27 (i) A contract awarded in violation of this subchapter is

1 void.

2 (j) If district property is destroyed, stolen, severely
3 damaged, unusable, or undergoes major operational or structural
4 failure, or a contractor is unable to fulfill its obligations in
5 providing goods or services, and the board of trustees, or its
6 designee, determines that the delay posed by using the methods
7 required by Section 130.303(a) would pose a material threat to
8 personal safety or potential damage to other property or would
9 prevent or substantially impair the conduct of classes or other
10 essential district activities, then contracts for the replacement
11 or repair of the property may be made by methods other than those
12 required by Section 130.303(a).

13 (k) In awarding a contract by competitive sealed bid under
14 this section, a district that has its central administrative office
15 located in a municipality with a population of less than 250,000 may
16 consider a bidder's principal place of business in the manner
17 provided by Section 271.9051, Local Government Code. This
18 subsection does not apply to the purchase of telecommunications
19 services or information services, as those terms are defined by 47
20 U.S.C. Section 153.

21 Sec. 130.305. RULES AND PROCEDURES; AUDITS BY STATE
22 AUDITOR. (a) The board of trustees may adopt rules and procedures
23 for the acquisition of construction services by the district.

24 (b) The state auditor may audit district construction
25 contracts.

26 Sec. 130.306. NOTICE. (a) For any method of contracting
27 selected under Section 130.303(a), the district shall, within a

1 seven-day period, publish the notice required by this section in at
2 least two issues of any newspaper of general circulation in the
3 county in which the district's central administrative office is
4 located. The deadline for receiving bids, proposals, or responses
5 to a request for qualifications may not be less than 10 business
6 days after the date of the publication of the first newspaper
7 notice. If there is not a newspaper of general circulation in the
8 county in which the district's central administrative office is
9 located, the notice shall be published in a newspaper of general
10 circulation in a location nearest the district's central
11 administrative office. In a two-step procurement process, the time
12 and place where the second-step bids, proposals, or responses will
13 be received are not required to be included in the notice.

14 (b) The notice required by this section must include:

15 (1) the location where the request for bid, proposal,
16 or qualification documents may be obtained or examined;

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

19 (3) a general description of the work to be performed;

20 (4) the location and time of any mandatory site
21 inspections or pre-bid meetings; and

22 (5) the amount of any required bid bond, payment bond,
23 or performance bond.

24 Sec. 130.307. DISCUSSION AND REVISION OF PROPOSALS.

25 (a) After receipt of proposals, under rules adopted by the
26 district, the district may discuss acceptable or potentially
27 acceptable proposals with bidders to assess a bidder's ability to

1 meet the solicitation requirements.

2 (b) After receiving a proposal but before making an award,
3 the district may permit the three highest-ranking bidders to revise
4 their proposals, within the scope of the published specifications,
5 to obtain the best final offer.

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

9 Sec. 130.308. PRE-BID CONFERENCE. (a) The district may
10 require a principal, officer, or employee of each prospective
11 bidder to attend a mandatory pre-bid conference conducted for the
12 purpose of discussing contract requirements and answering
13 questions from prospective bidders. Notice under this subsection
14 must be included in the notice published under Section 130.306.

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

19 Sec. 130.309. IDENTICAL BIDS. If, after considering the
20 factors described by Section 130.304, the district determines that
21 the district has received identical bids, the district shall cast
22 lots to determine which bidder will be awarded the contract. The
23 district shall invite the bidders to witness the selection process
24 under this section. The selection process must be conducted by at
25 least two district employees or members of the district's board of
26 trustees.

27 Sec. 130.310. BID DEPOSIT. (a) The district may, as the

1 district determines necessary, require a bid deposit in an amount
2 determined by the district. The amount of the deposit, if any, must
3 be stated in the notice required by Section 130.306 of the
4 invitation to bid.

5 (b) Within 10 days from the date of the award of a contract
6 or the rejection of all bids, the district shall refund the bid
7 deposit of an unsuccessful bidder. The bid bonds may not be held
8 for more than 90 days. Before the award of a contract, the district
9 may return bid bonds of bidders that are not being considered for
10 award of a contract.

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

14 Sec. 130.311. PERFORMANCE AND PAYMENT BONDS. For a
15 contract for construction, the contractor must execute a good and
16 sufficient payment bond and a performance bond in accordance with
17 Chapter 2253, Government Code.

18 Sec. 130.312. DELEGATION. (a) Except as provided by
19 Subsection (b), the board of trustees of a district may, as
20 appropriate, delegate its authority under this subchapter to a
21 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 specifically authorized or required by this
4 subchapter to be taken by the board of trustees of a district.

5 Sec. 130.313. ENFORCEMENT OF CONTRACT SOLICITATION
6 PROCEDURES: CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY;
7 INJUNCTION. (a) In this section:

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

11 (2) "Separate procurements" means procurements, made
12 separately, of goods or services that in normal practice would be
13 made in one procurement.

14 (3) "Sequential procurement" means procurements, made
15 over a period, of goods or services that in normal practice would be
16 made in one procurement.

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 procurements for the purpose of
20 avoiding the requirements of Section 130.303 or 130.304. An
21 offense under this subsection is a Class B misdemeanor and is an
22 offense involving moral turpitude that results in a forfeiture of
23 an officer's public office.

24 (c) An officer, employee, or agent of a district commits an
25 offense if the person with criminal negligence violates Section
26 130.303, 130.304, or 130.315 other than by conduct described by
27 Subsection (b). An offense under this subsection is a Class B

1 misdemeanor and is an offense involving moral turpitude that
2 results in a forfeiture of an officer's public office.

3 (d) An officer or employee of a district commits an offense
4 if the officer or employee knowingly violates Section 130.303,
5 130.304, or 130.315 other than by conduct described by Subsection
6 (b) or (c). An offense under this subsection is a Class C
7 misdemeanor.

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

27 (f) A court may enjoin performance of a contract made in

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

7 Sec. 130.314. NOTIFICATION OF CRIMINAL HISTORY OF
8 CONTRACTOR. (a) A person or business entity that enters into a
9 contract with a district must give advance notice to the district if
10 the person or an owner or operator of the business entity has been
11 convicted of a felony. The notice must include a general
12 description of the conduct resulting in the conviction of a felony.

13 (b) A district may refuse to enter into a contract or other
14 transaction with a person who has been convicted of a felony or with
15 a business entity if an owner or operator of the entity has been
16 convicted of a felony.

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

24 (d) This section does not apply to a publicly held
25 corporation.

26 Sec. 130.315. CHANGE ORDERS. (a) After performance of a
27 construction contract begins, a district may approve change orders

1 if necessary to:

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

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

5 (b) The total price of a contract may not be increased by a
6 change order unless provision has been made for the payment of the
7 added cost by the appropriation of current funds or bond funds for
8 that purpose, by the authorization of the issuance of certificates,
9 or by a combination of those procedures. The original contract
10 price may not be increased by more than 25 percent unless the board
11 of trustees determines the change is due to causes beyond the
12 reasonable control of the district or contractor.

13 (c) Except as provided by Subsection (b) or Section
14 130.304(j), a person, including a member of the board of trustees,
15 who knowingly authorizes one or more change orders that, in the
16 aggregate, exceed 25 percent of the original contract price, is
17 subject to Section 130.313.

18 Sec. 130.316. ERRORS AND OMISSIONS INSURANCE. For any
19 public work contract awarded under this subchapter, to protect the
20 interest of the district, the architect or engineer that prepared
21 the plans and specifications for the public work shall, at the
22 architect's or engineer's expense, carry an errors and omissions
23 insurance policy in an amount not less than \$1 million or the value
24 of the work if the work has a value of less than \$1 million.

25 Sec. 130.317. DESIGN-BUILD CONTRACTS FOR FACILITIES.

26 (a) In this section:

27 (1) "Design-build contract" means a single contract

1 with a design-build firm for the design and construction of a
2 facility.

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

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

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

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

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

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

21 (1) In phase one, the district shall prepare a request
22 for qualifications and evaluate each offeror's experience,
23 technical competence, and capability to perform, the past
24 performance of the offeror's team and members of the team, and other
25 appropriate factors submitted by the team or firm in response to the
26 request for qualifications, except that cost-related or
27 price-related evaluation factors are not permitted. Each offeror

1 must certify to the district that each engineer or architect who is
2 a member of its team was selected based on demonstrated competence
3 and qualifications. The district shall qualify a maximum of five
4 offerors to submit additional information and, if the district
5 chooses, to interview for final selection.

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

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

7 (g) An engineer shall have responsibility for compliance
8 with the engineering design requirements and all other applicable
9 requirements of Chapter 1001, Occupations Code. An architect shall
10 have responsibility for compliance with the requirements of Chapter
11 1051, Occupations Code.

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

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

21 (j) A payment or performance bond is not required for, and
22 may not provide coverage for, the portion of a design-build
23 contract under this section that includes design services only. If
24 a fixed contract amount or guaranteed maximum price has not been
25 determined at the time a design-build contract is awarded, the
26 penal sums of the performance and payment bonds delivered to the
27 district must each be in an amount equal to the project budget, as

1 specified in the design criteria package. The design-build firm
2 shall deliver the bonds not later than the 10th day after the date
3 the design-build firm executes the contract unless the design-build
4 firm furnishes a bid bond or other financial security acceptable to
5 the district to ensure that the design-build firm will furnish the
6 required performance and payment bonds when a guaranteed maximum
7 price is established.

8 Sec. 130.318. CONTRACTS FOR FACILITIES: CONSTRUCTION
9 MANAGER-AGENT. (a) A district may contract with a construction
10 manager-agent in conjunction with a contract for the construction,
11 rehabilitation, alteration, or repair of a facility. In entering
12 into a contract for the services of a construction manager-agent, a
13 district shall follow the procedures prescribed by this section.

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

25 (c) Before or concurrently with selecting a construction
26 manager-agent, the district shall select or designate an engineer
27 or architect who shall prepare the construction documents for the

1 project and who has full responsibility for complying with Chapter
2 1001 or 1051, Occupations Code, as applicable. If the engineer or
3 architect is not a full-time employee of the district, the district
4 shall select the engineer or architect on the basis of demonstrated
5 competence and qualifications as provided by Section 2254.004,
6 Government Code. The district's engineer or architect may not
7 serve, alone or in combination with another person, as the
8 construction manager-agent unless the engineer or architect is
9 hired to serve as the construction manager-agent under a separate
10 or concurrent procurement conducted in accordance with this
11 subchapter. This subsection does not prohibit the district's
12 engineer or architect from providing customary construction phase
13 services under the engineer's or architect's original professional
14 service agreement with the district and in accordance with
15 applicable licensing laws.

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

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

25 (f) The district or the construction manager-agent shall
26 procure in accordance with Section 2254.004, Government Code, all
27 of the testing of construction materials engineering, the

1 inspection services, and the verification testing services
2 necessary for acceptance of the facility by the district.

3 Sec. 130.319. CONTRACTS FOR FACILITIES: CONSTRUCTION
4 MANAGER-AT-RISK. (a) A district may use the construction
5 manager-at-risk method for the construction, rehabilitation,
6 alteration, or repair of a facility. In using that method and in
7 entering into a contract for the services of a construction
8 manager-at-risk, a district shall follow the procedures prescribed
9 by this section.

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

16 (c) Before or concurrently with selecting a construction
17 manager-at-risk, the district shall select or designate an engineer
18 or architect who shall prepare the construction documents for the
19 project and who has full responsibility for complying with Chapter
20 1001 or 1051, Occupations Code, as applicable. If the engineer or
21 architect is not a full-time employee of the district, the district
22 shall select the engineer or architect on the basis of demonstrated
23 competence and qualifications as provided by Section 2254.004,
24 Government Code. The district's engineer, architect, or
25 construction manager-agent for a project may not serve, alone or in
26 combination with another, as the construction manager-at-risk.

27 (d) The district shall provide or contract for,

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

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

1 qualifications, provide additional information, including the
2 construction manager-at-risk's proposed fee and its price for
3 fulfilling the general conditions.

4 (f) At each step, the district shall receive, publicly open,
5 and read aloud the names of the offerors. Within 45 days after the
6 date of opening the proposals, the district shall evaluate and rank
7 each proposal submitted in relation to the criteria set forth in the
8 request for proposals. Within seven days from the date of the award
9 of the contract, the district shall make public all proposals,
10 including the fees and prices stated in each proposal.

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

21 (h) A construction manager-at-risk shall publicize notice,
22 in accordance with Section 130.306, and receive bids or proposals
23 from trade contractors or subcontractors for the performance of all
24 major elements of the work other than the minor work that may be
25 included in the general conditions. A construction manager-at-risk
26 may seek to perform portions of the work itself if the construction
27 manager-at-risk submits its bid or proposal for those portions of

1 the work in the same manner as all other trade contractors or
2 subcontractors and if the district determines that the construction
3 manager-at-risk's bid or proposal provides the best value for the
4 district.

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

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

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

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

12 Sec. 130.320. SELECTING CONTRACTOR FOR CONSTRUCTION
13 SERVICES THROUGH COMPETITIVE SEALED PROPOSALS. (a) In selecting a
14 contractor for construction, rehabilitation, alteration, or repair
15 services for a facility through competitive sealed proposals, a
16 district shall follow the 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 Chapter 1001 or 1051, Occupations
21 Code, as applicable. If the engineer or architect is not a
22 full-time employee of the district, the district shall select the
23 engineer or architect on the basis of demonstrated competence and
24 qualifications as provided by Section 2254.004, Government Code.

25 (c) The district shall provide or contract for,
26 independently of the contractor, the inspection services, testing
27 of construction materials engineering, and verification testing

1 services necessary for acceptance of the facility by the district.
2 The district shall select those services for which it contracts in
3 accordance with Section 2254.004, Government Code, and shall
4 identify them in the request for proposals.

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

9 (e) The district shall receive, publicly open, and read
10 aloud the names of the offerors. Within 45 days after the date of
11 opening the proposals, the district shall evaluate and rank each
12 proposal submitted in relation to the published selection criteria.

13 (f) The district shall first attempt to negotiate a contract
14 with the highest-ranked offeror. The district and its engineer or
15 architect may discuss with the selected offeror options for a scope
16 or time modification and any price change associated with the
17 modification. If the district is unable to negotiate a contract
18 with the selected offeror, the district shall, formally and in
19 writing, end negotiations with that offeror and proceed to the next
20 offeror in the order of the selection ranking until a contract is
21 reached or all proposals are rejected.

22 Sec. 130.321. SELECTING CONTRACTOR FOR CONSTRUCTION
23 SERVICES THROUGH COMPETITIVE BIDDING. Except to the extent
24 prohibited by other law and to the extent consistent with this
25 subchapter, a district may use competitive bidding to select a
26 contractor to perform construction, rehabilitation, alteration, or
27 repair services for a facility.

1 Sec. 130.322. JOB ORDER CONTRACTS FOR FACILITIES
2 CONSTRUCTION OR REPAIR. (a) A district may award job order
3 contracts for the minor construction, repair, rehabilitation, or
4 alteration of a facility if the work is of a recurring nature but
5 the delivery times are indefinite and indefinite quantities and
6 orders are awarded substantially on the basis of prescribed and
7 prepriced tasks.

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

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

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

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

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

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

23 (f) An order for a job or project under the job order
24 contract must be signed by the district's representative and the
25 contractor. The order may be a fixed price, lump-sum contract based
26 substantially on contractual unit pricing applied to estimated
27 quantities or may be a unit price order based on the quantities and

1 line items delivered.

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

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

10 (i) If a job order contract or an order issued under the
11 contract requires engineering or architectural services that
12 constitute the practice of engineering within the meaning of
13 Chapter 1001, Occupations Code, or the practice of architecture
14 within the meaning of Chapter 1051, Occupations Code, those
15 services shall be provided in accordance with applicable law.

16 Sec. 130.323. CONTRACTS MADE WITHOUT ADVERTISING.

17 (a) Except as provided by Subsection (d) and Section 130.304(j), a
18 contract for construction with a cost of \$10,000 or more but less
19 than \$50,000, including contingency or reserve amounts, must be
20 made through written competitive bids or proposals. A minimum of
21 three bids or proposals must be considered before awarding a
22 contract. A district is not required to advertise the contract.

23 (b) In determining to whom to award a contract under this
24 section, the district shall consider the factors described by
25 Section 130.304(b).

26 (c) A person may not use this section to knowingly violate
27 Section 130.313.

1 (d) A contract is not required to be made through
2 competitive bids or proposals under this section if the contract is
3 for the repair or replacement of a captive replacement part or
4 component for equipment or a specialized service that is available
5 from only one source.

6 SUBCHAPTER M. DISPOSAL OF SURPLUS PERSONAL PROPERTY BY DISTRICT

7 Sec. 130.351. SALE OF PERSONAL PROPERTY BY DISTRICT. A
8 district shall dispose of surplus personal property in an
9 accountable manner that best serves the interest of the district. A
10 sale of personal property that is not covered by Chapter 791,
11 Government Code, must be solicited and awarded in the same manner as
12 a contract for the purchase of goods or services under Subchapter K.

13 Sec. 130.352. METHODS OF DISPOSAL. (a) A junior college
14 district may use any of the following methods to dispose of surplus
15 personal property:

16 (1) the use of a licensed auctioneer to conduct live or
17 Internet-based auctions;

18 (2) a direct sale by the district to a person
19 submitting the highest and best bid through a competitive process,
20 including an Internet-based bidding system;

21 (3) the trade-in of items when purchasing new items;

22 (4) a sale or transfer to another governmental entity
23 at a mutually agreed price; or

24 (5) a donation to a public school in this state.

25 (b) If the district is unable to find a buyer for surplus
26 property, the property may be:

27 (1) discarded in accordance with applicable federal,

1 state, and local laws, ordinances, and rules; or

2 (2) removed by an interested party at no charge or for
3 a nominal charge.

4 (c) Except as provided by this section, a district may not
5 give, donate, loan, or transfer surplus property to any person or
6 entity.

7 SUBCHAPTER N. PROFESSIONAL SERVICES AND CONSULTANT SERVICES

8 Sec. 130.401. PROFESSIONAL SERVICES. (a) For purposes of
9 this section, "professional services provider" means a person who
10 provides services of a predominantly mental or intellectual matter
11 and who is a member of a discipline requiring special knowledge or
12 the attainment of a high order of learning, skill, or intelligence.
13 The term includes a person who provides professional services, as
14 defined by Section 2254.002, Government Code.

15 (b) A junior college district shall select and enter into
16 contracts for professional services in accordance with Subchapter
17 A, Chapter 2254, Government Code. If the estimated value of a
18 contract for professional services is \$50,000 or more during a
19 fiscal year, or during the contract's term if the contract is a
20 multiple year contract, the district shall publish notice of the
21 request for qualifications as provided by Section 130.258.

22 (c) If the estimated value of a contract for professional
23 services is \$10,000 or more but less than \$50,000 during a fiscal
24 year or during the contract's term if the contract is a multiple
25 year contract, requests for qualifications must be solicited from
26 at least three professional services providers and the publication
27 of notice is not required.

1 (d) A professional services provider selected by the
2 district may be selected for a specific project or for various
3 projects that arise during the term of the provider's contract. The
4 term of a contract with a professional services provider may not
5 exceed five years, except that the professional services provider
6 shall complete services for projects started before the end of the
7 contract term.

8 Sec. 130.402. CONSULTANTS. (a) For purposes of this
9 section, "consultant" includes a financial advisor, fiscal agent,
10 auctioneer, personnel services provider, travel agent, technology
11 or educational services provider or advisor, and a business engaged
12 to teach approved courses.

13 (b) A junior college district shall select and enter into
14 contracts with consultants in accordance with Section 130.253 or
15 Subchapter B, Chapter 2254, Government Code. If the estimated
16 value of a contract for consulting services is \$50,000 or more
17 during a fiscal year, or during the contract's term if the contract
18 is a multiple year contract, the district shall advertise the
19 request for qualifications, bids, or proposals as provided by
20 Section 130.258.

21 (c) If the estimated value of a contract for consulting
22 services is \$10,000 or more but less than \$50,000 during a fiscal
23 year or during the contract's term if the contract is a multiple
24 year contract, requests for qualifications, bids, or proposals must
25 be solicited from at least three consulting service providers and
26 the publication of notice is not required.

27 (d) A consulting service provider selected by the district

1 may be selected for a specific project or for various projects that
2 arise during the term of the consultant's contract. The term of a
3 contract with a consulting service provider may not exceed five
4 years, except that the consulting service provider shall complete
5 services for projects started before the end of the contract term.

6 Sec. 130.403. RULES AND PROCEDURES; AUDITS BY STATE
7 AUDITOR. (a) The board of trustees of the junior college district
8 may adopt rules and procedures for the acquisition of professional
9 services and consultants by the district.

10 (b) The state auditor may audit a district's contracts for
11 professional services or consultants.

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

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

21 SECTION 6. Subsection (b), Section 44.0311, and Sections
22 130.010 and 130.0101, Education Code, are repealed.

23 SECTION 7. The change in law made by this Act applies only
24 to a contract for which requests for bids, requests for proposals,
25 or requests for qualifications are published or distributed on or
26 after the effective date of this Act. A contract for which requests
27 for bids, requests for proposals, or requests for qualifications

1 are published or distributed before the effective date of this Act
2 is covered by the law in effect when the requests were published or
3 distributed, and the former law is continued in effect for that
4 purpose.

5 SECTION 8. This Act takes effect September 1, 2007.