

1-1 By: West S.B. No. 1064
1-2 (In the Senate - Filed March 1, 2007; March 14, 2007, read
1-3 first time and referred to Subcommittee on Higher Education;
1-4 April 12, 2007, reported adversely, with favorable Committee
1-5 Substitute from Committee on Education by the following vote:
1-6 Yeas 6, Nays 0; April 12, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1064 By: West

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the purchasing and contracting practices of junior
1-11 college districts; providing criminal penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (a), Section 44.0311, Education Code,
1-14 is amended to read as follows:

1-15 (a) This subchapter does not apply [~~applies~~] to junior
1-16 college districts.

1-17 SECTION 2. Subdivision (2), Section 51.776, Education Code,
1-18 is amended to read as follows:

1-19 (2) "Board" means the governing body of an institution
1-20 other than the governing board of a junior college district.

1-21 SECTION 3. Subchapter A, Chapter 130, Education Code, is
1-22 amended by adding Sections 130.0104, 130.0105, 130.0106, and
1-23 130.0107 to read as follows:

1-24 Sec. 130.0104. POLICY AND REPORT REGARDING HISTORICALLY
1-25 UNDERUTILIZED BUSINESSES. (a) In this section, "historically
1-26 underutilized business" has the meaning assigned by Section
1-27 2161.001, Government Code.

1-28 (b) This section applies only to a junior college district
1-29 that:

1-30 (1) is located wholly or partially in a county with a
1-31 population of one million or more; and

1-32 (2) had an annual enrollment of 20,000 or more
1-33 full-time or part-time students in one or more of the most recent
1-34 five academic years.

1-35 (c) Each junior college district shall adopt a policy
1-36 stating its commitment to developing, maintaining, and enhancing
1-37 participation by historically underutilized businesses in all
1-38 phases of the district's procurement processes in order to support,
1-39 to the greatest extent feasible, the efforts of historically
1-40 underutilized businesses to compete for purchases of equipment,
1-41 supplies, services, including professional services, and
1-42 construction contracts.

1-43 (d) Annually, each junior college district shall publish a
1-44 report of the total number and total value of contracts awarded by
1-45 the district in the preceding fiscal year and the number and total
1-46 value of those contracts awarded to historically underutilized
1-47 businesses. The report must be published in a newspaper of general
1-48 circulation in the county in which the majority of the territory or
1-49 population of the district is located not later than the 60th day
1-50 following the last day of the district's fiscal year.

1-51 Sec. 130.0105. RIGHT TO WORK. (a) This section applies to
1-52 a junior college district while the district is engaged in:

1-53 (1) procuring goods or services;

1-54 (2) awarding a contract; or

1-55 (3) overseeing procurement or construction for a
1-56 public work or public improvement.

1-57 (b) Notwithstanding any other provision of this chapter, a
1-58 district:

1-59 (1) may not consider whether a vendor is a member of or
1-60 has another relationship with an organization; and

1-61 (2) shall ensure that its bid specifications and any
1-62 subsequent contract or other agreement do not deny or diminish the
1-63 right of a person to work because of the person's membership in or

2-1 other relationship status with respect to an organization.

2-2 Sec. 130.0106. CONTRACT WITH PERSON INDEBTED TO DISTRICT.

2-3 (a) The board of trustees of a junior college district by
2-4 resolution may establish rules permitting the district to refuse to
2-5 enter into a contract or other transaction with a person indebted to
2-6 the district.

2-7 (b) It is not a violation of this subchapter for a district,
2-8 under rules adopted under Subsection (a), to refuse to award a
2-9 contract to, or refuse to enter into a transaction with, an apparent
2-10 low bidder or successful proposer that is indebted to the district.

2-11 Sec. 130.0107. EFFICIENCY AND SAVINGS. In order to
2-12 increase efficiency of operations and to achieve savings through
2-13 volume purchases, on an annual basis a junior college district
2-14 shall identify common types of goods and services to be purchased
2-15 from the district's budget and, to the extent the district
2-16 determines practicable, consolidate the purchase of those goods or
2-17 services under contracts entered into under this subchapter.

2-18 SECTION 4. Chapter 130, Education Code, is amended by
2-19 adding Subchapters K, L, M, and N to read as follows:

2-20 SUBCHAPTER K. PURCHASING CONTRACTS FOR GOODS AND SERVICES OTHER
2-21 THAN CONSTRUCTION OR PROFESSIONAL SERVICES

2-22 Sec. 130.251. DEFINITIONS. In this subchapter:

2-23 (1) "Board of trustees" means the governing board of a
2-24 district.

2-25 (2) "District" means a junior college district.

2-26 (3) "Purchase of goods":

2-27 (A) includes:

2-28 (i) contracting for the rights to use
2-29 rather than own goods; and

2-30 (ii) purchase of the materials and labor
2-31 incidental to the delivery and installation of personal property;
2-32 and

2-33 (B) does not include the purchase or lease of
2-34 real property.

2-35 (4) "Services" does not include:

2-36 (A) construction services; or

2-37 (B) professional services, including services of
2-38 a consultant, to which Subchapter N applies.

2-39 Sec. 130.2511. USE OF TERMS "BIDDER," "VENDOR," AND "BID."

2-40 (a) In this subchapter, the terms "bidder" and "vendor" are used
2-41 interchangeably to identify an entity that responds to a request
2-42 for competitive bids, proposals, or qualifications.

2-43 (b) In this subchapter, the term "bid" is used to refer to a
2-44 competitive bid, proposal, or statement of qualifications.

2-45 Sec. 130.252. CONFLICT WITH OTHER LAW. To the extent of any
2-46 conflict, this subchapter prevails over any other law relating to
2-47 the purchase of goods and services by a district other than a law
2-48 relating to:

2-49 (1) contracting with historically underutilized
2-50 businesses; or

2-51 (2) the procurement of goods and services from persons
2-52 with disabilities.

2-53 Sec. 130.253. PURCHASE METHODS. (a) Except as otherwise
2-54 provided by this subchapter and subject to Section 130.264, each
2-55 contract by a district with a value of \$50,000 or more that covers
2-56 one or more fiscal years shall be made by the method, of the
2-57 following methods, that provides the best value for the district:

2-58 (1) competitive sealed bids;

2-59 (2) competitive sealed proposals;

2-60 (3) the reverse auction procedure defined by Section
2-61 2155.062(d), Government Code; or

2-62 (4) the formation of a political subdivision
2-63 corporation under Section 304.001, Local Government Code.

2-64 (b) Only one of the methods listed in Subsection (a) may be
2-65 used for any individual contract. The district must determine
2-66 which method provides the best value for the district before
2-67 publishing the notice required by Section 130.258.

2-68 (c) If the district uses the competitive sealed proposal
2-69 method, the district shall:

3-1 (1) reveal when the proposals are opened the names of
 3-2 the companies submitting proposals; and

3-3 (2) keep the contents of the proposals confidential
 3-4 until the district concludes negotiations and awards a contract.

3-5 (d) Without complying with Subsection (a), a district may
 3-6 purchase a good or service that is available from only one source,
 3-7 including:

3-8 (1) an item for which competition is precluded because
 3-9 of the existence of a patent, copyright, secret process, or
 3-10 monopoly;

3-11 (2) a film, recording, periodical, manuscript, book,
 3-12 or computer software;

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

3-14 (4) a captive replacement part or component for
 3-15 equipment;

3-16 (5) a product needed to match or work with like
 3-17 products; and

3-18 (6) technical or specialized services, including
 3-19 advertising, audio/video production, and the repair and
 3-20 maintenance of specialized equipment.

3-21 (e) Without complying with Subsection (a), a district may
 3-22 purchase perishable goods, advertising services, meeting and
 3-23 catering services, and travel services, including airfare, ground
 3-24 transportation, and all lodging. The district shall exercise
 3-25 reasonable and prudent care to determine whether a contract with a
 3-26 provider will provide the best value to the district. The district
 3-27 shall document the process for selecting the provider of the goods
 3-28 or services and shall maintain a list of prospective providers
 3-29 contacted and the basis for selecting the provider. To the extent
 3-30 practicable, the district shall state its requirements in writing
 3-31 and require written proposals or quotations from prospective
 3-32 providers. Any prospective provider that has provided written
 3-33 notice to the district that it is interested in being considered as
 3-34 a supplier of goods or services covered by this subsection shall be
 3-35 given the opportunity to make an offer to provide the goods or
 3-36 services. After rating and ranking the offers, the district shall
 3-37 attempt to negotiate a contract with the highest ranked vendor. If
 3-38 a contract cannot be negotiated with the highest ranked vendor, the
 3-39 next highest ranked vendor shall be contacted. If the value of a
 3-40 purchase to be made under this subsection is estimated to be \$50,000
 3-41 or greater, the district shall publish notice of the intent to
 3-42 purchase as provided under Section 130.258. If the value of a
 3-43 purchase to be made under this subsection is estimated to be \$10,000
 3-44 or more but less than \$50,000 during a fiscal year, the award of a
 3-45 contract must be made in accordance with a policy established by the
 3-46 board of trustees.

3-47 (f) Without complying with Subsection (a), a district may
 3-48 purchase a good or service under:

3-49 (1) an interlocal contract under Chapter 791,
 3-50 Government Code;

3-51 (2) a contract established by the Texas Building and
 3-52 Procurement Commission or Department of Information Resources,
 3-53 including a contract for the purchase of travel services, telephone
 3-54 service, computers, and computer-related equipment and software;

3-55 (3) a catalog purchase as provided by Subchapter B,
 3-56 Chapter 2157, Government Code; or

3-57 (4) a purchase made under Subchapter D, F, or G,
 3-58 Chapter 271, Local Government Code.

3-59 (g) Contracts for services that result in no cost to the
 3-60 district or that provide income to a district must be based on bids,
 3-61 proposals, or qualifications that are solicited and awarded in the
 3-62 same manner as a contract for the purchase of goods or services.
 3-63 Such contracts include contracts for bookstore services, food
 3-64 services, and vending services.

3-65 Sec. 130.254. PURCHASE OF INSURANCE. (a) A district may
 3-66 acquire insurance using a two-step process to obtain competitive
 3-67 sealed proposals. In the first step, the district shall determine
 3-68 which insurance providers are represented by agents interested in
 3-69 providing insurance for the district. If more than one agent

4-1 indicates a desire to represent the same provider, the agent with
 4-2 the longest and most substantial relationship with the insurance
 4-3 provider shall be authorized to submit a proposal for the
 4-4 designated insurance provider. In the second step, the district
 4-5 shall notify the interested agents in writing as to which insurance
 4-6 providers the agents represent and request the agents to submit
 4-7 proposals for providing insurance.

4-8 (b) In notifying the interested agents to begin the second
 4-9 step, the district is not required to comply with Section 130.258.
 4-10 However, the district in the request for proposals shall give the
 4-11 interested agents notice of the date, time, and place where
 4-12 proposals are to be submitted. Proposals received after the date
 4-13 and time stated in the request for proposals may not be considered.

4-14 Sec. 130.255. MULTIYEAR CONTRACT. A contract that extends
 4-15 past the end of a district's fiscal year must include a provision
 4-16 that permits termination at the end of each fiscal year. Contracts
 4-17 solely for the purchase of goods may not exceed five years in
 4-18 duration.

4-19 Sec. 130.256. EVALUATION AND AWARD OF CONTRACT.

4-20 (a) Except as otherwise provided by this subchapter, a district
 4-21 shall award a contract to the lowest responsible bidder offering
 4-22 the best value to the district according to the selection criteria
 4-23 established by the district. The district shall publish in the
 4-24 request for bids, proposals, or qualifications the criteria the
 4-25 district will use to evaluate the offers and the relative weights
 4-26 given to the criteria that are known at the time of the publication.

4-27 (b) In determining the lowest responsible bidder, the
 4-28 district may consider:

4-29 (1) the purchase price, including delivery and
 4-30 installation charges;

4-31 (2) the reputation of the bidder and of the bidder's
 4-32 goods or services;

4-33 (3) the quality of the bidder's goods or services;

4-34 (4) the extent to which the offered goods or services
 4-35 meet the district's needs;

4-36 (5) the bidder's past relationship with the district;

4-37 (6) the total long-term cost to the district to
 4-38 acquire the bidder's goods or services;

4-39 (7) the extent to which the offers comply with the
 4-40 requirements of the request for bids, proposals, or qualifications;

4-41 (8) any other relevant factor specifically listed in
 4-42 the request for bids or proposals; and

4-43 (9) the impact on the ability of the district to comply
 4-44 with laws and rules relating to historically underutilized
 4-45 businesses.

4-46 (c) A district may reject any or all bids, proposals,
 4-47 qualifications, or parts of bids, proposals, or qualifications if
 4-48 the rejection serves the district's interest.

4-49 (d) The district shall provide all bidders with the
 4-50 opportunity to bid to provide the same goods or services on equal
 4-51 terms and to have bids judged according to the same standards as
 4-52 those set forth in the request for bids.

4-53 (e) Bids may be opened only by the district in a
 4-54 district-owned or district-controlled facility. The meeting or
 4-55 other occasion at which bids are opened shall be open to the public.
 4-56 At the time the district opens a bid, if one or more members of the
 4-57 public are present, the appropriate employee or officer of the
 4-58 district shall read aloud the name of the bidder and the total bid
 4-59 amount, if the bid is of a type that should contain a single bid
 4-60 amount. When opening proposals or qualifications, the appropriate
 4-61 employee or officer shall read aloud only the name of the
 4-62 respondents and may not disclose the contents of a proposal or
 4-63 qualification on opening or during negotiations with competing
 4-64 bidders. At least two district employees or members of the
 4-65 district's board of trustees must be present at the bid, proposal,
 4-66 or qualification opening.

4-67 (f) A bid that has been opened may not be changed for the
 4-68 purpose of correcting an error in the bid price. If there is a
 4-69 discrepancy between the total price and the unit price of a bid, the

5-1 unit price prevails. If there is a discrepancy between the written
5-2 price and the numerical price of a bid, the written price prevails.

5-3 (g) This subchapter does not change the common law right of
5-4 a bidder to withdraw a bid due to a material mistake in the bid.

5-5 (h) The district shall document the basis of its selection
5-6 and shall make its evaluations public not later than the seventh day
5-7 after the date the contract is awarded. The district shall state in
5-8 writing in the contract file the reasons for making an award.

5-9 (i) A contract awarded in violation of this subchapter is
5-10 void.

5-11 (j) If district property is destroyed, stolen, severely
5-12 damaged, or unusable, or a contractor is unable to fulfill its
5-13 obligations in providing goods or services, and the board of
5-14 trustees, or its designee, determines that the delay posed by using
5-15 the methods required by Section 130.253(a) would pose a material
5-16 threat to personal safety or potential damage to other property or
5-17 would prevent or substantially impair the conduct of classes or
5-18 other essential district activities, then contracts for the
5-19 replacement or repair of the property may be made by methods other
5-20 than those required by Section 130.253(a).

5-21 (k) In awarding a contract by competitive sealed bid under
5-22 this section, a district that has its central administrative office
5-23 located in a municipality with a population of less than 250,000 may
5-24 consider a bidder's principal place of business in the manner
5-25 provided by Section 271.9051, Local Government Code. This
5-26 subsection does not apply to the purchase of telecommunications
5-27 services or information services, as those terms are defined by 47
5-28 U.S.C. Section 153.

5-29 Sec. 130.257. RULES AND PROCEDURES; AUDITS BY STATE
5-30 AUDITOR. (a) The board of trustees may adopt rules and procedures
5-31 for the acquisition of goods or services by the district.

5-32 (b) The state auditor may audit purchases of goods or
5-33 services by the district.

5-34 Sec. 130.258. NOTICE. (a) Except as otherwise provided by
5-35 this subchapter, for any method of contracting selected under
5-36 Section 130.253(a), the district shall, within a seven-day period,
5-37 publish the notice required by this section in at least two issues
5-38 of any newspaper of general circulation in the county in which the
5-39 district's central administrative office is located. The deadline
5-40 for receiving bids or proposals may not be less than 10 business
5-41 days after the date of the publication of the first newspaper
5-42 notice. The deadline for receiving responses to a request for
5-43 qualifications may not be less than five business days after the
5-44 date of the publication of the last newspaper notice. If there is
5-45 not a newspaper of general circulation in the county in which the
5-46 district's central administrative office is located, the notice
5-47 shall be published in a newspaper of general circulation in a
5-48 location nearest the district's central administrative office. In
5-49 a two-step procurement process, the time and place where the
5-50 second-step bids, proposals, or responses will be received are not
5-51 required to be included in the notice.

5-52 (b) The district may, as an alternative to publishing
5-53 individual notices in a newspaper, publish on a publicly accessible
5-54 Internet site the notices required by this section, provided the
5-55 district publishes in a newspaper of general circulation at least
5-56 one time per week the Internet address where district notices may be
5-57 found. Notice posted on the Internet under this subsection must be
5-58 posted every day for at least 10 business days before the deadline
5-59 for receiving the bids, proposals, or responses to a request for
5-60 qualifications.

5-61 (c) The notice required by this section must include:
5-62 (1) the location where the request for bid, proposal,
5-63 or qualification documents may be obtained or examined;
5-64 (2) the date, time, and place for receiving and
5-65 opening bids, proposals, or statements of qualifications;
5-66 (3) a general description of the goods or services;
5-67 (4) the location and time of any mandatory site
5-68 inspections or pre-bid meetings; and
5-69 (5) the amount of any required bid bond, payment bond,

6-1 or performance bond.

6-2 Sec. 130.259. DISCUSSION AND REVISION OF PROPOSALS. (a)
 6-3 As provided in a request for proposals and under rules adopted by
 6-4 the district, the district may discuss acceptable or potentially
 6-5 acceptable proposals with bidders to assess a bidder's ability to
 6-6 meet the solicitation requirements.

6-7 (b) After receiving a proposal but before making an award,
 6-8 the district may permit the three highest-ranking bidders to revise
 6-9 their proposals, within the scope of the published specifications,
 6-10 to obtain the best final offer.

6-11 (c) Before an award, the district may not disclose
 6-12 information derived from proposals submitted from competing
 6-13 bidders in conducting discussions under this section.

6-14 Sec. 130.260. PRE-BID CONFERENCE. (a) The district may
 6-15 require a principal, officer, or employee of each prospective
 6-16 bidder to attend a mandatory pre-bid conference conducted for the
 6-17 purpose of discussing contract requirements and answering
 6-18 questions from prospective bidders. Notice under this subsection
 6-19 must be included in the notice published under Section 130.258.

6-20 (b) After the district conducts a mandatory pre-bid
 6-21 conference, the district may send any additional required notice
 6-22 for the proposed contract only to prospective bidders who attended
 6-23 or were represented at the conference.

6-24 Sec. 130.261. IDENTICAL BIDS. If, after considering the
 6-25 factors described by Section 130.256, the district determines that
 6-26 the district has received identical bids, the district shall cast
 6-27 lots to determine which bidder will be awarded the contract. The
 6-28 district shall invite the bidders to witness the selection process
 6-29 under this section. The selection process must be conducted by at
 6-30 least two district employees or members of the district's board of
 6-31 trustees.

6-32 Sec. 130.262. BID DEPOSIT. (a) The district may, as the
 6-33 district determines necessary, require a bid deposit in an amount
 6-34 determined by the district. The amount of the deposit, if any, must
 6-35 be stated in the notice required by Section 130.258 of the
 6-36 invitation to bid.

6-37 (b) On the award of a contract or the rejection of all bids,
 6-38 the district shall return the bid deposit of an unsuccessful
 6-39 bidder. The bid deposit of the successful bidder may be retained
 6-40 until the contract is signed by the district. A bid deposit may not
 6-41 be held longer than 90 days.

6-42 (c) The bid deposit required by the district, if any, must
 6-43 be in the form of a cashier's check, certified check, or bid bond
 6-44 written by a surety authorized to conduct business in this state. A
 6-45 district may elect to require a bid deposit to be in the form of a
 6-46 bid bond.

6-47 Sec. 130.263. PERFORMANCE BOND. A district may require a
 6-48 contractor to provide a performance bond in the amount of the
 6-49 contract before executing a contract for the purchase of goods or
 6-50 services with a value of \$100,000 or more. The bond must be written
 6-51 by a surety authorized to conduct business in this state and
 6-52 generally comply with the performance bond requirements of Chapter
 6-53 2253, Government Code.

6-54 Sec. 130.264. ENFORCEMENT OF PURCHASING PROCEDURES:
 6-55 CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY; INJUNCTION. (a) In
 6-56 this section:

6-57 (1) "Component purchases" means purchases of the
 6-58 component parts of an item that in normal purchasing practices
 6-59 would be purchased in one purchase.

6-60 (2) "Separate purchases" means purchases, made
 6-61 separately, of goods or services that in normal purchasing
 6-62 practices would be purchased in one purchase.

6-63 (3) "Sequential purchases" means purchases, made over
 6-64 a period, of goods or services that in normal purchasing practices
 6-65 would be purchased in one purchase.

6-66 (b) An officer, employee, or agent of a district commits an
 6-67 offense if the person with criminal negligence makes or authorizes
 6-68 separate, sequential, or component purchases for the purpose of
 6-69 avoiding the requirements of Section 130.253, 130.256, or 130.266.

7-1 An offense under this subsection is a Class B misdemeanor and is an
7-2 offense involving moral turpitude that results in a forfeiture of
7-3 an officer's public office.

7-4 (c) An officer, employee, or agent of a district commits an
7-5 offense if the person with criminal negligence violates Section
7-6 130.253, 130.256, or 130.266 other than by conduct described by
7-7 Subsection (b). An offense under this subsection is a Class B
7-8 misdemeanor and is an offense involving moral turpitude that
7-9 results in a forfeiture of an officer's public office.

7-10 (d) An officer or employee of a district commits an offense
7-11 if the officer or employee knowingly violates Section 130.253,
7-12 130.256, or 130.266 other than by conduct described by Subsection
7-13 (b) or (c). An offense under this subsection is a Class C
7-14 misdemeanor.

7-15 (e) The final conviction of a person other than a member of
7-16 the board of trustees of a district for an offense under Subsection
7-17 (b) or (c) results in the immediate removal from office or
7-18 employment of that person. A trustee who is convicted of an offense
7-19 under this section is subject to removal as provided by Chapter 66,
7-20 Civil Practice and Remedies Code. For four years after the date of
7-21 the final conviction, the removed person is ineligible to be a
7-22 candidate for or to be appointed or elected to a public office in
7-23 this state, is ineligible to be employed by or act as an agent for
7-24 this state or a political subdivision of this state, and is
7-25 ineligible to receive any compensation through a contract with this
7-26 state or a political subdivision of this state. This subsection
7-27 does not prohibit the payment of retirement benefits to the removed
7-28 person or the payment of workers' compensation benefits to the
7-29 removed person for an injury that occurred before the commission of
7-30 the offense for which the person was removed. This subsection does
7-31 not make a person ineligible for an office for which the federal or
7-32 state constitution prescribes exclusive eligibility requirements.

7-33 (f) A court may enjoin performance of a contract made in
7-34 violation of this subchapter. A county attorney, district
7-35 attorney, criminal district attorney, citizen of the county in
7-36 which the district is located, or an interested party may bring an
7-37 action for an injunction. A party who prevails in an action brought
7-38 under this subsection is entitled to reasonable attorney's fees as
7-39 approved by the court.

7-40 Sec. 130.265. PURCHASE AGREEMENTS AND VENDOR LISTS FOR
7-41 MISCELLANEOUS PURCHASES. (a) This section applies only to the
7-42 selection and engagement of vendors from which a district may
7-43 purchase goods or services, including produce, gasoline, and fuel
7-44 oil, where the total cost of the goods and services is expected to
7-45 be \$50,000 or more during a fiscal year but the selling price must
7-46 be determined at the time the need for the goods and services
7-47 arises.

7-48 (b) The notice requirements of Section 130.258 apply to
7-49 purchases made under this section, except that the notice must
7-50 specify the categories of goods or services to be purchased under
7-51 this section and solicit the names, addresses, and telephone
7-52 numbers of bidders that are interested in supplying the goods or
7-53 services to the district. The district shall create and provide a
7-54 proposal form to be used by interested bidders. The form must
7-55 describe the goods or services that may be required, and the terms
7-56 and conditions of, and method for, determining the price of the
7-57 bidders' products and services. Bidders desiring to be included on
7-58 the list must complete and sign the district's form. The district
7-59 shall determine which bidders are qualified to be included on a list
7-60 of bidders from which goods and services may be purchased during the
7-61 applicable fiscal year.

7-62 (c) Before the district makes a purchase covered by this
7-63 section, the district must obtain written price quotations from at
7-64 least three bidders from the list created by the district for that
7-65 category. If fewer than three bidders are on the list, the district
7-66 shall contact each bidder on the list. If more than three bidders
7-67 are on the list, the district may invite all bidders to provide a
7-68 quotation or may select three bidders on a rotational basis each
7-69 time a purchase is to be made. The bidding records must be retained

8-1 with the district's competitive bidding records and are subject to
8-2 audit. In determining from whom to purchase the goods or services,
8-3 the district may consider the provisions of Section 130.256.

8-4 Sec. 130.266. PURCHASES MADE WITHOUT ADVERTISING.

8-5 (a) Except as provided under Sections 130.253(d), (f), and (g),
8-6 and Section 130.256(j), a purchase of goods or services with a cost
8-7 of \$10,000 or more but less than \$50,000 must be made by written
8-8 competitive bids or proposals. A minimum of three bids or proposals
8-9 must be considered before the award of a contract or order for the
8-10 specified goods or services. A district is not required to
8-11 advertise the purchase.

8-12 (b) In determining from whom to purchase the goods or
8-13 services under this section, the district shall consider the
8-14 provisions of Section 130.256.

8-15 (c) A person may not use the process described by this
8-16 section to knowingly violate Section 130.264.

8-17 Sec. 130.267. NOTIFICATION OF CRIMINAL HISTORY OF

8-18 CONTRACTOR. (a) A person or business entity that enters into a
8-19 contract with a district must give advance notice to the district if
8-20 the person or an owner or operator of the business entity has been
8-21 convicted of a felony. The notice must include a general
8-22 description of the conduct resulting in the conviction of a felony.

8-23 (b) A district may refuse to enter into a contract or other
8-24 transaction with a person who has been convicted of a felony or with
8-25 a business entity if an owner or operator of the entity has been
8-26 convicted of a felony.

8-27 (c) A district may terminate a contract with a person or
8-28 business entity if the district determines that the person or
8-29 business entity failed to give notice as required by Subsection (a)
8-30 or misrepresented the conduct resulting in the conviction. The
8-31 district must compensate the person or business entity for goods
8-32 delivered or services performed before the termination of the
8-33 contract.

8-34 (d) This section does not apply to a publicly held
8-35 corporation.

8-36 Sec. 130.268. PREFERENCE TO TEXAS AND UNITED STATES

8-37 PRODUCTS. (a) A district that purchases agricultural products
8-38 shall give preference to those products produced, processed, or
8-39 grown in this state if the cost to the district for those products
8-40 is equal to or less than the cost of other products and the quality
8-41 of those products is equal to or exceeds the quality of other
8-42 products.

8-43 (b) If a district determines that agricultural products
8-44 produced, processed, or grown in this state are not entitled to a
8-45 preference under Subsection (a), the district shall give preference
8-46 to agricultural products produced, processed, or grown in other
8-47 states of the United States over foreign products if the cost to the
8-48 district for those products is equal to or less than the cost of
8-49 foreign products and the quality of those products is equal to or
8-50 exceeds the quality of the foreign products.

8-51 (c) A district that purchases vegetation for landscaping
8-52 purposes, including plants, shall give preference to Texas
8-53 vegetation if the cost to the district for that vegetation is equal
8-54 to or less than the cost of other vegetation and the quality of that
8-55 vegetation is not inferior to the quality of other vegetation.

8-56 (d) In implementing this section, a district may receive
8-57 assistance from and use the resources of the Department of
8-58 Agriculture, including information on the availability of
8-59 agricultural products.

8-60 (e) A district may not adopt product purchasing
8-61 specifications that unnecessarily exclude agricultural products
8-62 produced, processed, or grown in this state.

8-63 Sec. 130.269. EFFICIENCY AND SAVINGS. In order to increase

8-64 efficiency of operations and to achieve savings through volume
8-65 purchases, on an annual basis a district shall identify common
8-66 types of goods and services to be purchased from the district's
8-67 budget and, to the extent the district determines practicable,
8-68 consolidate the purchase of those goods or services under contracts
8-69 entered into under this subchapter.

SUBCHAPTER L. CONSTRUCTION CONTRACTS

Sec. 130.301. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

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

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

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

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

Sec. 130.303. METHODS OF CONTRACTING. (a) Except as otherwise provided by this subchapter and subject to Section 130.313, all contracts for construction, rehabilitation, alteration, or repair of facilities valued at \$50,000 or more 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 design-build contract;

(4) a construction manager-at-risk; or

(5) a job order contract for the minor construction, repair, rehabilitation, or alteration of a facility.

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

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

Sec. 130.304. EVALUATION AND AWARD OF CONTRACT.

(a) Except as otherwise provided by this subchapter, a district shall award a contract to the lowest responsible bidder offering the best value to the district according to the selection criteria established by the district. The district shall publish in the request for bids, proposals, or qualifications the criteria the

10-1 district will use to evaluate the offers and the relative weights
10-2 given to the criteria that are known at the time of the publication.

10-3 (b) In determining the lowest responsible bidder, the
10-4 district may consider:

10-5 (1) the immediate and long-term cost of the service;
10-6 (2) the reputation of the bidder;
10-7 (3) the quality of the bidder's services;
10-8 (4) the extent to which the offered services meet the
10-9 district's needs;

10-10 (5) the bidder's past relationship with the district;
10-11 (6) the extent to which the offers comply with the
10-12 requirements of the request for bids, proposals, or qualifications;

10-13 (7) any other relevant factor specifically listed in
10-14 the request for bids or proposals;

10-15 (8) the impact on the ability of the district to comply
10-16 with laws and rules relating to historically underutilized
10-17 businesses; and

10-18 (9) the bidder's safety record, if:
10-19 (A) the district has adopted a written definition
10-20 and criteria for accurately determining the safety record of a
10-21 bidder;

10-22 (B) the district has given notice to prospective
10-23 bidders in the request for bids that the safety record of a bidder
10-24 may be considered in determining the responsibility of the bidder;
10-25 and

10-26 (C) the district's determinations are not
10-27 arbitrary and capricious.

10-28 (c) A district may reject any or all bids, proposals,
10-29 qualifications, or parts of bids, proposals, or qualifications if
10-30 the rejection serves the district's interest.

10-31 (d) The district shall provide all bidders with the
10-32 opportunity to submit a bid or proposal to provide the same items or
10-33 services on equal terms and have bids judged according to the same
10-34 standards as those set forth in the request for bids.

10-35 (e) Bids may be opened only by the district in a
10-36 district-owned or district-controlled facility. The meeting or
10-37 other occasion at which bids are opened must be open to the public.
10-38 At the time the district opens a bid, if one or more members of the
10-39 public are present, the appropriate employee or officer of the
10-40 district shall read aloud the name of the bidder and the total bid
10-41 amount if the bid is of a type that should contain a single bid
10-42 amount. At least two district employees or members of the board of
10-43 trustees must be present at the bid opening. When opening proposals
10-44 or qualifications, the appropriate employee or officer shall read
10-45 aloud only the names of the respondents and may not disclose the
10-46 contents of a proposal or qualification on opening the proposal or
10-47 qualification or during negotiations with competing bidders.

10-48 (f) A bid that has been opened may not be changed for the
10-49 purpose of correcting an error in the bid price.

10-50 (g) This subchapter does not change the common law right of
10-51 a bidder to withdraw a bid due to a material mistake in the bid.

10-52 (h) The district shall document the basis of its selection
10-53 and shall make its evaluations public not later than the seventh day
10-54 after the date the contract is awarded. The district shall state in
10-55 writing in the contract file the reasons for making an award.

10-56 (i) A contract awarded in violation of this subchapter is
10-57 void.

10-58 (j) If district property is destroyed, stolen, severely
10-59 damaged, unusable, or undergoes major operational or structural
10-60 failure, or a contractor is unable to fulfill its obligations in
10-61 providing goods or services, and the board of trustees, or its
10-62 designee, determines that the delay posed by using the methods
10-63 required by Section 130.303(a) would pose a material threat to
10-64 personal safety or potential damage to other property or would
10-65 prevent or substantially impair the conduct of classes or other
10-66 essential district activities, then contracts for the replacement
10-67 or repair of the property may be made by methods other than those
10-68 required by Section 130.303(a).

10-69 (k) In awarding a contract by competitive sealed bid under

11-1 this section, a district that has its central administrative office
 11-2 located in a municipality with a population of less than 250,000 may
 11-3 consider a bidder's principal place of business in the manner
 11-4 provided by Section 271.9051, Local Government Code. This
 11-5 subsection does not apply to the purchase of telecommunications
 11-6 services or information services, as those terms are defined by 47
 11-7 U.S.C. Section 153.

11-8 Sec. 130.305. RULES AND PROCEDURES; AUDITS BY STATE
 11-9 AUDITOR. (a) The board of trustees may adopt rules and procedures
 11-10 for the acquisition of construction services by the district.

11-11 (b) The state auditor may audit district construction
 11-12 contracts.

11-13 Sec. 130.306. NOTICE. (a) Except as otherwise provided by
 11-14 this subchapter, for any method of contracting selected under
 11-15 Section 130.303(a), the district shall, within a seven-day period,
 11-16 publish the notice required by this section in at least two issues
 11-17 of any newspaper of general circulation in the county in which the
 11-18 district's central administrative office is located. The deadline
 11-19 for receiving bids, proposals, or responses to a request for
 11-20 qualifications may not be less than 10 business days after the date
 11-21 of the publication of the first newspaper notice. If there is not a
 11-22 newspaper of general circulation in the county in which the
 11-23 district's central administrative office is located, the notice
 11-24 shall be published in a newspaper of general circulation in a
 11-25 location nearest the district's central administrative office. In
 11-26 a two-step procurement process, the time and place where the
 11-27 second-step bids, proposals, or responses will be received are not
 11-28 required to be included in the notice.

11-29 (b) The district may, as an alternative to publishing
 11-30 individual notices in a newspaper, publish on a publicly accessible
 11-31 Internet site the notices required by this section, provided the
 11-32 district publishes in a newspaper of general circulation at least
 11-33 one time per week the Internet address where district notices may be
 11-34 found. Notice posted on the Internet under this subsection must be
 11-35 posted every day for at least 10 business days before the deadline
 11-36 for receiving bids, proposals, or responses to a request for
 11-37 qualifications.

11-38 (c) The notice required by this section must include:

11-39 (1) the location where the request for bid, proposal,
 11-40 or qualification documents may be obtained or examined;

11-41 (2) the date, time, and place for receiving and
 11-42 opening bids, proposals, or statements of qualifications;

11-43 (3) a general description of the work to be performed;

11-44 (4) the location and time of any mandatory site
 11-45 inspections or pre-bid meetings; and

11-46 (5) the amount of any required bid bond, payment bond,
 11-47 or performance bond.

11-48 Sec. 130.307. DISCUSSION AND REVISION OF PROPOSALS.
 11-49 (a) After receipt of proposals, under rules adopted by the
 11-50 district, the district may discuss acceptable or potentially
 11-51 acceptable proposals with bidders to assess a bidder's ability to
 11-52 meet the solicitation requirements.

11-53 (b) After receiving a proposal but before making an award,
 11-54 the district may permit the three highest-ranking bidders to revise
 11-55 their proposals, within the scope of the published specifications,
 11-56 to obtain the best final offer.

11-57 (c) Before an award, the district may not disclose
 11-58 information derived from proposals submitted from competing
 11-59 bidders in conducting discussions under this section.

11-60 Sec. 130.308. PRE-BID CONFERENCE. (a) The district may
 11-61 require a principal, officer, or employee of each prospective
 11-62 bidder to attend a mandatory pre-bid conference conducted for the
 11-63 purpose of discussing contract requirements and answering
 11-64 questions from prospective bidders. Notice under this subsection
 11-65 must be included in the notice published under Section 130.306.

11-66 (b) After the district conducts a mandatory pre-bid
 11-67 conference, the district may send any additional required notice
 11-68 for the proposed contract only to prospective bidders who attended
 11-69 the conference.

12-1 Sec. 130.309. IDENTICAL BIDS. If, after considering the
 12-2 factors described by Section 130.304, the district determines that
 12-3 the district has received identical bids, the district shall cast
 12-4 lots to determine which bidder will be awarded the contract. The
 12-5 district shall invite the bidders to witness the selection process
 12-6 under this section. The selection process must be conducted by at
 12-7 least two district employees or members of the district's board of
 12-8 trustees.

12-9 Sec. 130.310. BID DEPOSIT. (a) The district may, as the
 12-10 district determines necessary, require a bid deposit in an amount
 12-11 determined by the district. The amount of the deposit, if any, must
 12-12 be stated in the notice required by Section 130.306 of the
 12-13 invitation to bid.

12-14 (b) Within 10 days from the date of the award of a contract
 12-15 or the rejection of all bids, the district shall refund the bid
 12-16 deposit of an unsuccessful bidder. The bid bonds may not be held
 12-17 for more than 90 days. Before the award of a contract, the district
 12-18 may return bid bonds of bidders that are not being considered for
 12-19 award of a contract.

12-20 (c) For public work contracts, the bid deposit required by
 12-21 the district, if any, may only be in the form of a bid bond written
 12-22 by a surety authorized to conduct business in this state.

12-23 Sec. 130.311. PERFORMANCE AND PAYMENT BONDS. For a
 12-24 contract for construction, the contractor must execute a good and
 12-25 sufficient payment bond and a performance bond in accordance with
 12-26 Chapter 2253, Government Code.

12-27 Sec. 130.312. DELEGATION. (a) Except as provided by
 12-28 Subsection (b), the board of trustees of a district may, as
 12-29 appropriate, delegate its authority under this subchapter to a
 12-30 designated person, representative, or committee. In procuring
 12-31 construction services, the district shall provide notice of the
 12-32 delegation and the limits of the delegation in the request for bids,
 12-33 proposals, or qualifications or in an addendum to the request. If
 12-34 the district fails to provide that notice, a ranking, selection, or
 12-35 evaluation of bids, proposals, or qualifications for construction
 12-36 services other than by the board of trustees in an open public
 12-37 meeting is advisory only.

12-38 (b) The board may not delegate the authority to act
 12-39 regarding an action specifically authorized or required by this
 12-40 subchapter to be taken by the board of trustees of a district.

12-41 Sec. 130.313. ENFORCEMENT OF CONTRACT SOLICITATION
 12-42 PROCEDURES: CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY;
 12-43 INJUNCTION. (a) In this section:

12-44 (1) "Component procurements" means procuring the
 12-45 component parts of an item or service that in normal practice would
 12-46 be made in one procurement.

12-47 (2) "Separate procurements" means procurements, made
 12-48 separately, of goods or services that in normal practice would be
 12-49 made in one procurement.

12-50 (3) "Sequential procurement" means procurements, made
 12-51 over a period, of goods or services that in normal practice would be
 12-52 made in one procurement.

12-53 (b) An officer, employee, or agent of a district commits an
 12-54 offense if the person with criminal negligence makes or authorizes
 12-55 separate, sequential, or component procurements for the purpose of
 12-56 avoiding the requirements of Section 130.303 or 130.304. An
 12-57 offense under this subsection is a Class B misdemeanor and is an
 12-58 offense involving moral turpitude that results in a forfeiture of
 12-59 an officer's public office.

12-60 (c) An officer, employee, or agent of a district commits an
 12-61 offense if the person with criminal negligence violates Section
 12-62 130.303, 130.304, or 130.315 other than by conduct described by
 12-63 Subsection (b). An offense under this subsection is a Class B
 12-64 misdemeanor and is an offense involving moral turpitude that
 12-65 results in a forfeiture of an officer's public office.

12-66 (d) An officer or employee of a district commits an offense
 12-67 if the officer or employee knowingly violates Section 130.303,
 12-68 130.304, or 130.315 other than by conduct described by Subsection
 12-69 (b) or (c). An offense under this subsection is a Class C

13-1 misdemeanor.

13-2 (e) The final conviction of a person other than a member of
 13-3 the board of trustees of a district for an offense under Subsection
 13-4 (b) or (c) results in the immediate removal from office or
 13-5 employment of that person. A member of the board of trustees who is
 13-6 convicted of an offense under this section is subject to removal as
 13-7 provided by Chapter 66, Civil Practice and Remedies Code. For four
 13-8 years after the date of the final conviction, the removed person is
 13-9 ineligible to be a candidate for or to be appointed or elected to a
 13-10 public office in this state, is ineligible to be employed by or act
 13-11 as an agent for this state or a political subdivision of this state,
 13-12 and is ineligible to receive any compensation through a contract
 13-13 with this state or a political subdivision of this state. This
 13-14 subsection does not prohibit the payment of retirement benefits to
 13-15 the removed person or the payment of workers' compensation benefits
 13-16 to the removed person for an injury that occurred before the
 13-17 commission of the offense for which the person was removed. This
 13-18 subsection does not make a person ineligible for an office for which
 13-19 the federal or state constitution prescribes exclusive eligibility
 13-20 requirements.

13-21 (f) A court may enjoin performance of a contract made in
 13-22 violation of this subchapter. A county attorney, district
 13-23 attorney, criminal district attorney, citizen of the county in
 13-24 which the district is located, or an interested party may bring an
 13-25 action for an injunction. A party who prevails in an action brought
 13-26 under this subsection is entitled to reasonable attorney's fees as
 13-27 approved by the court.

13-28 Sec. 130.314. NOTIFICATION OF CRIMINAL HISTORY OF
 13-29 CONTRACTOR. (a) A person or business entity that enters into a
 13-30 contract with a district must give advance notice to the district if
 13-31 the person or an owner or operator of the business entity has been
 13-32 convicted of a felony. The notice must include a general
 13-33 description of the conduct resulting in the conviction of a felony.

13-34 (b) A district may refuse to enter into a contract or other
 13-35 transaction with a person who has been convicted of a felony or with
 13-36 a business entity if an owner or operator of the entity has been
 13-37 convicted of a felony.

13-38 (c) A district may terminate a contract with a person or
 13-39 business entity if the district determines that the person or
 13-40 business entity failed to give notice as required by Subsection (a)
 13-41 or misrepresented the conduct resulting in the conviction. The
 13-42 district must compensate the person or business entity for goods
 13-43 delivered or services performed before the termination of the
 13-44 contract.

13-45 (d) This section does not apply to a publicly held
 13-46 corporation.

13-47 Sec. 130.315. CHANGE ORDERS. (a) After performance of a
 13-48 construction contract begins, a district may approve change orders
 13-49 if necessary to:

13-50 (1) make changes in plans or specifications; or
 13-51 (2) decrease or increase the quantity of work to be
 13-52 performed or materials, equipment, or supplies to be furnished.

13-53 (b) The total price of a contract may not be increased by a
 13-54 change order unless provision has been made for the payment of the
 13-55 added cost by the appropriation of current funds or bond funds for
 13-56 that purpose, by the authorization of the issuance of certificates,
 13-57 or by a combination of those procedures. The original contract
 13-58 price may not be increased by more than 25 percent unless the board
 13-59 of trustees determines the change is due to causes beyond the
 13-60 reasonable control of the district or contractor.

13-61 (c) Except as provided by Subsection (b) or Section
 13-62 130.304(j), a person, including a member of the board of trustees,
 13-63 who knowingly authorizes one or more change orders that, in the
 13-64 aggregate, exceed 25 percent of the original contract price, is
 13-65 subject to Section 130.313.

13-66 Sec. 130.316. ERRORS AND OMISSIONS INSURANCE. For any
 13-67 public work contract awarded under this subchapter, to protect the
 13-68 interest of the district, the architect or engineer that prepared
 13-69 the plans and specifications for the public work shall, at the

14-1 architect's or engineer's expense, carry an errors and omissions
14-2 insurance policy in an amount not less than \$1 million or the value
14-3 of the work if the work has a value of less than \$1 million.

14-4 Sec. 130.317. DESIGN-BUILD CONTRACTS FOR FACILITIES.

14-5 (a) In this section:

14-6 (1) "Design-build contract" means a single contract
14-7 with a design-build firm for the design and construction of a
14-8 facility.

14-9 (2) "Design-build firm" means a partnership,
14-10 corporation, or other legal entity or team that includes an
14-11 engineer or architect and a builder qualified to engage in building
14-12 construction in this state.

14-13 (3) "Design criteria package" means a set of documents
14-14 that provides sufficient information, including criteria for
14-15 selection, to permit a design-build firm to prepare a response to a
14-16 district's request for qualifications and to the district's request
14-17 for any additional information. The design criteria package must
14-18 specify criteria the district considers necessary to describe the
14-19 project and may include, as appropriate, the legal description of
14-20 the site, survey information concerning the site, interior space
14-21 requirements, special material requirements, material quality
14-22 standards, conceptual criteria for the project, special equipment
14-23 requirements, cost or budget estimates, time schedules, quality
14-24 assurance and quality control requirements, site development
14-25 requirements, applicable codes and ordinances, provisions for
14-26 utilities, parking requirements, or any other requirement, as
14-27 applicable.

14-28 (b) A district may use the design-build method for the
14-29 construction, rehabilitation, alteration, or repair of a facility.
14-30 In using that method and in entering into a contract for the
14-31 services of a design-build firm, the contracting district and the
14-32 design-build firm shall follow the procedures provided by
14-33 Subsections (c)-(j).

14-34 (c) The district may designate an engineer or architect to
14-35 act as its representative. If the district's engineer or architect
14-36 is not a full-time employee of the district, any engineer or
14-37 architect designated shall be selected on the basis of demonstrated
14-38 competence and qualifications in accordance with Subchapter A,
14-39 Chapter 2254, Government Code.

14-40 (d) The district shall prepare a request for qualifications
14-41 that includes general information on the project site, project
14-42 scope, budget, special systems, selection criteria, and other
14-43 information that may assist potential design-build firms in
14-44 submitting proposals for the project. The district shall also
14-45 prepare a design criteria package that includes more detailed
14-46 information on the project. If the preparation of the design
14-47 criteria package requires engineering or architectural services
14-48 that constitute the practice of engineering within the meaning of
14-49 Chapter 1001, Occupations Code, or the practice of architecture
14-50 within the meaning of Chapter 1051, Occupations Code, those
14-51 services shall be provided in accordance with the applicable law.

14-52 (e) The district shall evaluate statements of
14-53 qualifications and select a design-build firm in two phases:

14-54 (1) In phase one, the district shall prepare a request
14-55 for qualifications and evaluate each offeror's experience,
14-56 technical competence, and capability to perform, the past
14-57 performance of the offeror's team and members of the team, and other
14-58 appropriate factors submitted by the team or firm in response to the
14-59 request for qualifications, except that cost-related or
14-60 price-related evaluation factors are not permitted. Each offeror
14-61 must certify to the district that each engineer or architect who is
14-62 a member of its team was selected based on demonstrated competence
14-63 and qualifications. The district shall qualify a maximum of five
14-64 offerors to submit additional information and, if the district
14-65 chooses, to interview for final selection.

14-66 (2) In phase two, the district shall evaluate the
14-67 information submitted by the offerors on the basis of the selection
14-68 criteria stated in the request for qualifications and the results
14-69 of any interview. The district may request additional information

15-1 regarding demonstrated competence and qualifications,
 15-2 considerations of the safety and long-term durability of the
 15-3 project, the feasibility of implementing the project as proposed,
 15-4 the ability of the offeror to meet schedules, costing methodology,
 15-5 or other factors as appropriate. The district may not require
 15-6 offerors to submit detailed engineering or architectural designs as
 15-7 part of the proposal. The district shall rank each proposal
 15-8 submitted on the basis of the criteria set forth in the request for
 15-9 qualifications. The district shall select the design-build firm
 15-10 that submits the proposal offering the best value for the district
 15-11 on the basis of the published selection criteria and on its ranking
 15-12 evaluations. The district shall first attempt to negotiate a
 15-13 contract with the selected offeror. If the district is unable to
 15-14 negotiate a satisfactory contract with the selected offeror, the
 15-15 district shall, formally and in writing, end negotiations with that
 15-16 offeror and proceed to negotiate with the next offeror in the order
 15-17 of the selection ranking until a contract is reached or
 15-18 negotiations with all ranked offerors end.

15-19 (f) Following selection of a design-build firm under
 15-20 Subsection (e), that firm's engineers or architects shall complete
 15-21 the design, submitting all design elements for review and
 15-22 determination of scope compliance to the district or to the
 15-23 district's engineer or architect before or concurrently with
 15-24 construction.

15-25 (g) An engineer shall have responsibility for compliance
 15-26 with the engineering design requirements and all other applicable
 15-27 requirements of Chapter 1001, Occupations Code. An architect shall
 15-28 have responsibility for compliance with the requirements of Chapter
 15-29 1051, Occupations Code.

15-30 (h) The district shall provide or contract for,
 15-31 independently of the design-build firm, the inspection services,
 15-32 testing of construction materials engineering, and verification
 15-33 testing services necessary for acceptance of the facility by the
 15-34 district. The district shall select those services for which it
 15-35 contracts in accordance with Section 2254.004, Government Code.

15-36 (i) The design-build firm shall supply a signed and sealed
 15-37 set of construction documents for the project to the district at the
 15-38 conclusion of construction.

15-39 (j) A payment or performance bond is not required for, and
 15-40 may not provide coverage for, the portion of a design-build
 15-41 contract under this section that includes design services only. If
 15-42 a fixed contract amount or guaranteed maximum price has not been
 15-43 determined at the time a design-build contract is awarded, the
 15-44 penal sums of the performance and payment bonds delivered to the
 15-45 district must each be in an amount equal to the project budget, as
 15-46 specified in the design criteria package. The design-build firm
 15-47 shall deliver the bonds not later than the 10th day after the date
 15-48 the design-build firm executes the contract unless the design-build
 15-49 firm furnishes a bid bond or other financial security acceptable to
 15-50 the district to ensure that the design-build firm will furnish the
 15-51 required performance and payment bonds when a guaranteed maximum
 15-52 price is established.

15-53 Sec. 130.318. CONTRACTS FOR FACILITIES: CONSTRUCTION
 15-54 MANAGER-AGENT. (a) A district may contract with a construction
 15-55 manager-agent in conjunction with a contract for the construction,
 15-56 rehabilitation, alteration, or repair of a facility. In entering
 15-57 into a contract for the services of a construction manager-agent, a
 15-58 district shall follow the procedures prescribed by this section.

15-59 (b) A construction manager-agent is a sole proprietorship,
 15-60 partnership, corporation, or other legal entity that provides
 15-61 consultation to the district regarding construction,
 15-62 rehabilitation, alteration, or repair of a facility. A district
 15-63 using the services of a construction manager-agent may, under the
 15-64 contract between the district and the construction manager-agent,
 15-65 require the construction manager-agent to provide administrative
 15-66 personnel, equipment necessary to perform duties under this
 15-67 section, and on-site management and other services specified in the
 15-68 contract. A construction manager-agent represents the district in
 15-69 a fiduciary capacity.

16-1 (c) Before or concurrently with selecting a construction
 16-2 manager-agent, the district shall select or designate an engineer
 16-3 or architect who shall prepare the construction documents for the
 16-4 project and who has full responsibility for complying with Chapter
 16-5 1001 or 1051, Occupations Code, as applicable. If the engineer or
 16-6 architect is not a full-time employee of the district, the district
 16-7 shall select the engineer or architect on the basis of demonstrated
 16-8 competence and qualifications as provided by Section 2254.004,
 16-9 Government Code. The district's engineer or architect may not
 16-10 serve, alone or in combination with another person, as the
 16-11 construction manager-agent unless the engineer or architect is
 16-12 hired to serve as the construction manager-agent under a separate
 16-13 or concurrent procurement conducted in accordance with this
 16-14 subchapter. This subsection does not prohibit the district's
 16-15 engineer or architect from providing customary construction phase
 16-16 services under the engineer's or architect's original professional
 16-17 service agreement with the district and in accordance with
 16-18 applicable licensing laws.

16-19 (d) A district shall select a construction manager-agent on
 16-20 the basis of demonstrated competence and qualifications in the same
 16-21 manner as provided for the selection of engineers or architects
 16-22 under Section 2254.004, Government Code.

16-23 (e) A district using the services of a construction
 16-24 manager-agent shall procure, in accordance with applicable law and
 16-25 in any manner authorized by this chapter, a general contractor,
 16-26 trade contractors, or subcontractors who will serve as the prime
 16-27 contractor for their specific portion of the work.

16-28 (f) The district or the construction manager-agent shall
 16-29 procure in accordance with Section 2254.004, Government Code, all
 16-30 of the testing of construction materials engineering, the
 16-31 inspection services, and the verification testing services
 16-32 necessary for acceptance of the facility by the district.

16-33 Sec. 130.319. CONTRACTS FOR FACILITIES: CONSTRUCTION
 16-34 MANAGER-AT-RISK. (a) A district may use the construction
 16-35 manager-at-risk method for the construction, rehabilitation,
 16-36 alteration, or repair of a facility. In using that method and in
 16-37 entering into a contract for the services of a construction
 16-38 manager-at-risk, a district shall follow the procedures prescribed
 16-39 by this section.

16-40 (b) A construction manager-at-risk is a sole
 16-41 proprietorship, partnership, corporation, or other legal entity
 16-42 that assumes the risk for construction, rehabilitation,
 16-43 alteration, or repair of a facility at the contracted price as a
 16-44 general contractor and provides consultation to the district
 16-45 regarding construction during and after the design of the facility.

16-46 (c) Before or concurrently with selecting a construction
 16-47 manager-at-risk, the district shall select or designate an engineer
 16-48 or architect who shall prepare the construction documents for the
 16-49 project and who has full responsibility for complying with Chapter
 16-50 1001 or 1051, Occupations Code, as applicable. If the engineer or
 16-51 architect is not a full-time employee of the district, the district
 16-52 shall select the engineer or architect on the basis of demonstrated
 16-53 competence and qualifications as provided by Section 2254.004,
 16-54 Government Code. The district's engineer, architect, or
 16-55 construction manager-agent for a project may not serve, alone or in
 16-56 combination with another, as the construction manager-at-risk.

16-57 (d) The district shall provide or contract for,
 16-58 independently of the construction manager-at-risk, the inspection
 16-59 services, testing of construction materials engineering, and
 16-60 verification testing services necessary for acceptance of the
 16-61 facility by the district. The district shall select those services
 16-62 for which it contracts in accordance with Section 2254.004,
 16-63 Government Code.

16-64 (e) The district shall select the construction
 16-65 manager-at-risk in either a one-step or two-step process. The
 16-66 district shall prepare a request for competitive sealed proposals,
 16-67 in the case of a one-step process, or a request for qualifications,
 16-68 in the case of a two-step process, that includes general
 16-69 information on the project site, project scope, schedule, selection

17-1 criteria, estimated budget, the time and place for receipt of, as
17-2 applicable, proposals or qualifications, a statement as to whether
17-3 the selection process is a one-step or two-step process, and other
17-4 information that may assist the district in its selection of a
17-5 construction manager-at-risk. The district shall state the
17-6 selection criteria in the request for proposals or qualifications,
17-7 as applicable. The selection criteria may include the offeror's
17-8 experience, past performance, safety record, proposed personnel
17-9 and methodology, and other appropriate factors that demonstrate the
17-10 capability of the construction manager-at-risk. If a one-step
17-11 process is used, the district may request, as part of the offeror's
17-12 proposal, proposed fees and prices for fulfilling the general
17-13 conditions. If a two-step process is used, the district may not
17-14 request fees or prices in step one. In step two, the district may
17-15 request that five or fewer offerors, selected solely on the basis of
17-16 qualifications, provide additional information, including the
17-17 construction manager-at-risk's proposed fee and its price for
17-18 fulfilling the general conditions.

17-19 (f) At each step, the district shall receive, publicly open,
17-20 and read aloud the names of the offerors. Within 45 days after the
17-21 date of opening the proposals, the district shall evaluate and rank
17-22 each proposal submitted in relation to the criteria set forth in the
17-23 request for proposals. Within seven days from the date of the award
17-24 of the contract, the district shall make public all proposals,
17-25 including the fees and prices stated in each proposal.

17-26 (g) The district shall select the offeror that submits the
17-27 proposal that offers the best value for the district based on the
17-28 published selection criteria and on its ranking evaluation. The
17-29 district shall first attempt to negotiate a contract with the
17-30 selected offeror. If the district is unable to negotiate a
17-31 satisfactory contract with the selected offeror, the district
17-32 shall, formally and in writing, end negotiations with that offeror
17-33 and proceed to negotiate with the next offeror in the order of the
17-34 selection ranking until a contract is reached or negotiations with
17-35 all ranked offerors end.

17-36 (h) A construction manager-at-risk shall publicize notice,
17-37 in accordance with Section 130.306, and receive bids or proposals
17-38 from trade contractors or subcontractors for the performance of all
17-39 major elements of the work other than the minor work that may be
17-40 included in the general conditions. A construction manager-at-risk
17-41 may seek to perform portions of the work itself if the construction
17-42 manager-at-risk submits its bid or proposal for those portions of
17-43 the work in the same manner as all other trade contractors or
17-44 subcontractors and if the district determines that the construction
17-45 manager-at-risk's bid or proposal provides the best value for the
17-46 district.

17-47 (i) The construction manager-at-risk and the district or
17-48 its representative shall review all trade contractor or
17-49 subcontractor bids or proposals in a manner that does not disclose
17-50 the contents of the bid or proposal during the selection process to
17-51 a person not employed by the construction manager-at-risk,
17-52 engineer, architect, or district. All bids or proposals shall be
17-53 made public after the award of the contract or within seven days
17-54 after the date of final selection of bids or proposals, whichever is
17-55 later.

17-56 (j) If the construction manager-at-risk reviews, evaluates,
17-57 and recommends to the district a bid or proposal from a trade
17-58 contractor or subcontractor but the district requires another bid
17-59 or proposal to be accepted, the district shall compensate the
17-60 construction manager-at-risk by a change in price, time, or
17-61 guaranteed maximum cost for any additional cost and risk that the
17-62 construction manager-at-risk may incur because of the district's
17-63 requirement that another bid or proposal be accepted.

17-64 (k) If a selected trade contractor or subcontractor
17-65 defaults in the performance of its work or fails to execute a
17-66 subcontract after being selected in accordance with this section,
17-67 the construction manager-at-risk may, without advertising, fulfill
17-68 the contract requirements or select a replacement trade contractor
17-69 or subcontractor to fulfill the contract requirements.

18-1 (1) If a fixed contract amount or guaranteed maximum price
 18-2 has not been determined at the time the contract is awarded, the
 18-3 penal sums of the performance and payment bonds delivered to the
 18-4 district must each be in an amount equal to the project budget, as
 18-5 specified in the request for qualifications. The construction
 18-6 manager-at-risk shall deliver the bonds not later than the 10th day
 18-7 after the date the construction manager-at-risk executes the
 18-8 contract unless the construction manager-at-risk furnishes a bid
 18-9 bond acceptable to the district to ensure that the construction
 18-10 manager will furnish the required performance and payment bonds
 18-11 when a guaranteed maximum price is established.

18-12 Sec. 130.320. SELECTING CONTRACTOR FOR CONSTRUCTION
 18-13 SERVICES THROUGH COMPETITIVE SEALED PROPOSALS. (a) In selecting a
 18-14 contractor for construction, rehabilitation, alteration, or repair
 18-15 services for a facility through competitive sealed proposals, a
 18-16 district shall follow the procedures prescribed by this section.

18-17 (b) The district shall select or designate an engineer or
 18-18 architect to prepare construction documents for the project. The
 18-19 selected or designated engineer or architect has full
 18-20 responsibility for complying with Chapter 1001 or 1051, Occupations
 18-21 Code, as applicable. If the engineer or architect is not a
 18-22 full-time employee of the district, the district shall select the
 18-23 engineer or architect on the basis of demonstrated competence and
 18-24 qualifications as provided by Section 2254.004, Government Code.

18-25 (c) The district shall provide or contract for,
 18-26 independently of the contractor, the inspection services, testing
 18-27 of construction materials engineering, and verification testing
 18-28 services necessary for acceptance of the facility by the district.
 18-29 The district shall select those services for which it contracts in
 18-30 accordance with Section 2254.004, Government Code, and shall
 18-31 identify them in the request for proposals.

18-32 (d) The district shall prepare a request for competitive
 18-33 sealed proposals that includes construction documents, selection
 18-34 criteria, estimated budget, project scope, schedule, and other
 18-35 information that contractors may require to respond to the request.

18-36 (e) The district shall receive, publicly open, and read
 18-37 aloud the names of the offerors. Within 45 days after the date of
 18-38 opening the proposals, the district shall evaluate and rank each
 18-39 proposal submitted in relation to the published selection criteria.

18-40 (f) The district shall first attempt to negotiate a contract
 18-41 with the highest-ranked offeror. The district and its engineer or
 18-42 architect may discuss with the selected offeror options for a scope
 18-43 or time modification and any price change associated with the
 18-44 modification. If the district is unable to negotiate a contract
 18-45 with the selected offeror, the district shall, formally and in
 18-46 writing, end negotiations with that offeror and proceed to the next
 18-47 offeror in the order of the selection ranking until a contract is
 18-48 reached or all proposals are rejected.

18-49 Sec. 130.321. SELECTING CONTRACTOR FOR CONSTRUCTION
 18-50 SERVICES THROUGH COMPETITIVE BIDDING. Except to the extent
 18-51 prohibited by other law and to the extent consistent with this
 18-52 subchapter, a district may use competitive bidding to select a
 18-53 contractor to perform construction, rehabilitation, alteration, or
 18-54 repair services for a facility.

18-55 Sec. 130.322. JOB ORDER CONTRACTS FOR FACILITIES
 18-56 CONSTRUCTION OR REPAIR. (a) A district may award job order
 18-57 contracts for the minor construction, repair, rehabilitation, or
 18-58 alteration of a facility if the work is of a recurring nature but
 18-59 the delivery times are indefinite and indefinite quantities and
 18-60 orders are awarded substantially on the basis of predescribed and
 18-61 prepriced tasks.

18-62 (b) The district may establish contractual unit prices for a
 18-63 job order contract by:

18-64 (1) specifying one or more published construction unit
 18-65 price books and the applicable divisions or line items; or

18-66 (2) providing a list of work items and requiring the
 18-67 offerors to bid or propose one or more coefficients or multipliers
 18-68 to be applied to the price book or work items as the price proposal.

18-69 (c) The district shall advertise for, receive, and publicly

19-1 open sealed proposals for job order contracts.

19-2 (d) The district may require offerors to submit additional
 19-3 information besides rates, including experience, past performance,
 19-4 and proposed personnel and methodology.

19-5 (e) The district may award job order contracts to one or
 19-6 more job order contractors in connection with each solicitation of
 19-7 bids or proposals.

19-8 (f) An order for a job or project under the job order
 19-9 contract must be signed by the district's representative and the
 19-10 contractor. The order may be a fixed price, lump-sum contract based
 19-11 substantially on contractual unit pricing applied to estimated
 19-12 quantities or may be a unit price order based on the quantities and
 19-13 line items delivered.

19-14 (g) The contractor shall provide payment and performance
 19-15 bonds, if required by law, based on the amount or estimated amount
 19-16 of any order.

19-17 (h) The base term of a job order contract is for the period
 19-18 and with any renewal option that the district sets forth in the
 19-19 request for proposals. If the district fails to advertise that
 19-20 term, the base term may not exceed two years and is not renewable
 19-21 without further advertisement and solicitation of proposals.

19-22 (i) If a job order contract or an order issued under the
 19-23 contract requires engineering or architectural services that
 19-24 constitute the practice of engineering within the meaning of
 19-25 Chapter 1001, Occupations Code, or the practice of architecture
 19-26 within the meaning of Chapter 1051, Occupations Code, those
 19-27 services shall be provided in accordance with applicable law.

19-28 Sec. 130.323. CONTRACTS MADE WITHOUT ADVERTISING.

19-29 (a) Except as provided by Subsection (d) and Section 130.304(j), a
 19-30 contract for construction with a cost of \$10,000 or more but less
 19-31 than \$50,000, including contingency or reserve amounts, must be
 19-32 made through written competitive bids or proposals. A minimum of
 19-33 three bids or proposals must be considered before awarding a
 19-34 contract. A district is not required to advertise the contract.

19-35 (b) In determining to whom to award a contract under this
 19-36 section, the district shall consider the factors described by
 19-37 Section 130.304(b).

19-38 (c) A person may not use this section to knowingly violate
 19-39 Section 130.313.

19-40 (d) A contract is not required to be made through
 19-41 competitive bids or proposals under this section if the contract is
 19-42 for the repair or replacement of a captive replacement part or
 19-43 component for equipment or a specialized service that is available
 19-44 from only one source.

19-45 SUBCHAPTER M. DISPOSAL OF SURPLUS PERSONAL PROPERTY BY DISTRICT

19-46 Sec. 130.351. SALE OF PERSONAL PROPERTY BY DISTRICT. A
 19-47 district shall dispose of surplus personal property in an
 19-48 accountable manner that best serves the interest of the district. A
 19-49 sale of personal property that is not covered by Chapter 791,
 19-50 Government Code, must be solicited and awarded in the same manner as
 19-51 a contract for the purchase of goods or services under Subchapter K.

19-52 Sec. 130.352. METHODS OF DISPOSAL. (a) A junior college
 19-53 district may use any of the following methods to dispose of surplus
 19-54 personal property:

19-55 (1) the use of a licensed auctioneer to conduct live or
 19-56 Internet-based auctions;

19-57 (2) a direct sale by the district to a person
 19-58 submitting the highest and best bid through a competitive process,
 19-59 including an Internet-based bidding system;

19-60 (3) the trade-in of items when purchasing new items;

19-61 (4) a sale or transfer to another governmental entity
 19-62 at a mutually agreed price; or

19-63 (5) a donation to a public school in this state.

19-64 (b) If the district is unable to find a buyer for surplus
 19-65 property, the property may be:

19-66 (1) discarded in accordance with applicable federal,
 19-67 state, and local laws, ordinances, and rules; or

19-68 (2) removed by an interested party at no charge or for
 19-69 a nominal charge.

20-1 (c) Except as provided by this section, a district may not
 20-2 give, donate, loan, or transfer surplus property to any person or
 20-3 entity.

20-4 SUBCHAPTER N. PROFESSIONAL SERVICES AND CONSULTANT SERVICES

20-5 Sec. 130.401. PROFESSIONAL SERVICES. (a) For purposes of
 20-6 this section, "professional services provider" means a person who
 20-7 provides services of a predominantly mental or intellectual matter
 20-8 and who is a member of a discipline requiring special knowledge or
 20-9 the attainment of a high order of learning, skill, or intelligence.
 20-10 The term includes a person who provides professional services, as
 20-11 defined by Section 2254.002, Government Code.

20-12 (b) A junior college district shall select and enter into
 20-13 contracts for professional services in accordance with Subchapter
 20-14 A, Chapter 2254, Government Code. If the estimated value of a
 20-15 contract for professional services is \$50,000 or more during a
 20-16 fiscal year, or during the contract's term if the contract is a
 20-17 multiple year contract, the district shall publish notice of the
 20-18 request for qualifications as provided by Section 130.258.

20-19 (c) If the estimated value of a contract for professional
 20-20 services is \$10,000 or more but less than \$50,000 during a fiscal
 20-21 year or during the contract's term if the contract is a multiple
 20-22 year contract, requests for qualifications must be solicited from
 20-23 at least three professional services providers and the publication
 20-24 of notice is not required.

20-25 (d) A professional services provider selected by the
 20-26 district may be selected for a specific project or for various
 20-27 projects that arise during the term of the provider's contract. The
 20-28 term of a contract with a professional services provider may not
 20-29 exceed five years, except that the professional services provider
 20-30 shall complete services for projects started before the end of the
 20-31 contract term.

20-32 Sec. 130.402. CONSULTANTS. (a) For purposes of this
 20-33 section, "consultant" includes a financial advisor, fiscal agent,
 20-34 auctioneer, personnel services provider, travel agent, technology
 20-35 or educational services provider or advisor, and a business engaged
 20-36 to teach approved courses.

20-37 (b) A junior college district shall select and enter into
 20-38 contracts with consultants in accordance with Section 130.253 or
 20-39 Subchapter B, Chapter 2254, Government Code. If the estimated
 20-40 value of a contract for consulting services is \$50,000 or more
 20-41 during a fiscal year, or during the contract's term if the contract
 20-42 is a multiple year contract, the district shall advertise the
 20-43 request for qualifications, bids, or proposals as provided by
 20-44 Section 130.258.

20-45 (c) If the estimated value of a contract for consulting
 20-46 services is \$10,000 or more but less than \$50,000 during a fiscal
 20-47 year or during the contract's term if the contract is a multiple
 20-48 year contract, requests for qualifications, bids, or proposals must
 20-49 be solicited from at least three consulting service providers and
 20-50 the publication of notice is not required.

20-51 (d) A consulting service provider selected by the district
 20-52 may be selected for a specific project or for various projects that
 20-53 arise during the term of the consultant's contract. The term of a
 20-54 contract with a consulting service provider may not exceed five
 20-55 years, except that the consulting service provider shall complete
 20-56 services for projects started before the end of the contract term.

20-57 Sec. 130.403. RULES AND PROCEDURES; AUDITS BY STATE
 20-58 AUDITOR. (a) The board of trustees of the junior college district
 20-59 may adopt rules and procedures for the acquisition of professional
 20-60 services and consultants by the district.

20-61 (b) The state auditor may audit a district's contracts for
 20-62 professional services or consultants.

20-63 SECTION 5. Section 271.023, Local Government Code, is
 20-64 amended to read as follows:

20-65 Sec. 271.023. CONFLICT OF LAWS. To the extent of any
 20-66 conflict, the provisions of Subchapter B, Chapter 44, Education
 20-67 Code, relating to the purchase of goods and services under contract
 20-68 by a school district and the provisions of Subchapters K and L,
 20-69 Chapter 130, Education Code, relating to the purchase of goods and

services and construction services under contract by a junior college prevail over this subchapter.

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

SECTION 7. The change in law made by this Act applies only to a contract for which requests for bids, requests for proposals, or requests for qualifications are published or distributed on or after the effective date of this Act. A contract for which requests for bids, requests for proposals, or requests for qualifications are published or distributed before the effect date of this Act is covered by the law in effect when the requests were published or distributed, and the former law is continued in effect for that purpose.

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

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