

By: West

S.B. No. 857

Substitute the following for S.B. No. 857:

By: Berman

C.S.S.B. No. 857

A BILL TO BE ENTITLED

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

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

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

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

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

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

13 SECTION 3. Subchapter A, Chapter 130, Education Code, is
14 amended by adding Sections 130.0104, 130.0105, 130.0106, and
15 130.0107 to read as follows:

16 Sec. 130.0104. POLICY AND REPORT REGARDING HISTORICALLY
17 UNDERUTILIZED BUSINESSES. (a) In this section, "historically
18 underutilized business" has the meaning assigned by Section
19 2161.001, Government Code.

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

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

24 (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 junior college 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 junior
12 college district, under rules adopted under Subsection (a), to
13 refuse to award a contract to, or refuse to enter into a transaction
14 with, an apparent low bidder or successful proposer that is
15 indebted to the district.

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

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

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

27 Sec. 130.251. DEFINITIONS. In this subchapter:

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

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

4 (3) "Purchase of goods":

5 (A) includes:

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

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

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

13 (4) "Services" does not include:

14 (A) construction services; or

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

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

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

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

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

27 (1) contracting with historically underutilized

1 businesses; or

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

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

9 (1) competitive sealed bids;

10 (2) competitive sealed proposals;

11 (3) the reverse auction procedure defined by Section
12 2155.062(d), Government Code; or

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

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

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

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

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

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

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

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

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

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

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

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

14 (e) Without complying with Subsection (a), a district may
15 purchase perishable goods, advertising services, meeting and
16 catering services, and travel services, including airfare, ground
17 transportation, and all lodging. The district shall exercise
18 reasonable and prudent care to determine whether a contract with a
19 provider will provide the best value to the district. The district
20 shall document the process for selecting the provider of the goods
21 or services and shall maintain a list of prospective providers
22 contacted and the basis for selecting the provider. To the extent
23 practicable, the district shall state its requirements in writing
24 and require written proposals or quotations from prospective
25 providers. After rating and ranking all offers received, the
26 district shall attempt to negotiate a contract with the highest
27 ranked vendor. If a contract cannot be negotiated with the highest

1 ranked vendor, the next-highest-ranked vendor shall be contacted.
2 If the value of a purchase to be made under this section is
3 estimated to be \$50,000 or greater, the district shall publish
4 notice of the intent to purchase as provided under Section 130.258.
5 If the value of a purchase to be made under this section is
6 estimated to be \$10,000 or more but less than \$50,000 during a
7 fiscal year, the award of a contract must be made in accordance with
8 a policy established by the board of trustees.

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

11 (1) an interlocal contract under Chapter 791,
12 Government Code;

13 (2) a contract established by the comptroller or
14 Department of Information Resources, including a contract for the
15 purchase of travel services, telephone service, computers, and
16 computer-related equipment, service, and software; or

17 (3) a purchase made under Subchapter D, F, or G,
18 Chapter 271, Local Government Code.

19 (g) Contracts for services that result in no cost to the
20 district or that provide income to a district must be based on bids,
21 proposals, or qualifications that are solicited and awarded in the
22 same manner as a contract for the purchase of goods or services.
23 Such contracts include contracts for bookstore services, food
24 services, and vending services.

25 (h) If district property is destroyed, stolen, severely
26 damaged, or unusable, or a contractor is unable to fulfill its
27 obligations in providing goods or services, and the board of

1 trustees, or its designee, determines that the delay posed by using
2 the methods required by Subsection (a) would pose a material threat
3 to personal safety or potential damage to other property or would
4 prevent or substantially impair the conduct of classes or other
5 essential district activities, then contracts for the replacement
6 or repair of the property may be made by methods other than those
7 required by Subsection (a).

8 (i) Without complying with Subsection (a), a district may
9 purchase, license, or otherwise acquire library goods and services,
10 including in any manner authorized by law for the purchase,
11 license, or acquisition of library goods and services by a public
12 senior college or university, as defined by Section 61.003. In this
13 subsection, "library goods and services" means:

14 (1) serial and journal subscriptions, including
15 electronic databases, digital content, and information products;

16 (2) other library materials and resources, including
17 books, e-books, and media not available under a statewide contract
18 and papers;

19 (3) library services, including periodical jobber and
20 binding services not available under a statewide contract;

21 (4) equipment and supplies specific to the storage and
22 access of library content; and

23 (5) library or resource-sharing programs operated by
24 the Texas State Library and Archives Commission.

25 Sec. 130.254. PURCHASE OF INSURANCE. (a) A district may
26 acquire insurance using a two-step process to obtain competitive
27 sealed proposals. In the first step, the district shall determine

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

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

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

21 Sec. 130.256. EVALUATION AND AWARD OF CONTRACT.

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

1 given to the criteria that are known at the time of the publication.

2 (b) In determining the lowest responsible bidder, the
3 district shall consider:

4 (1) the purchase price, including delivery and
5 installation charges;

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

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

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

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

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

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

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

18 (9) the impact on the ability of the district to comply
19 with laws and rules relating to historically underutilized
20 businesses.

21 (c) A district may reject any or all bids, proposals, or
22 qualifications, or parts of bids, proposals, or qualifications if
23 the rejection serves the district's interest.

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

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

15 (f) A bid that has been opened may not be changed for the
16 purpose of correcting an error in the bid price. If there is a
17 discrepancy between the total price and the unit price of a bid, the
18 unit price prevails. If there is a discrepancy between the written
19 price and the numerical price of a bid, the written price prevails.

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

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

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

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

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

12 (b) District purchases of goods or services are subject to
13 audit by the state auditor in accordance with Chapter 321,
14 Government Code.

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

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

6 (b) The district may, as an alternative to publishing notice
7 in a newspaper exclusively under Subsection (a), publish on a
8 publicly accessible Internet site the notice required by this
9 section. Before or at the same time the district first publishes
10 the Internet notice, the district shall publish a notice in a
11 newspaper of general circulation, as described by Subsection (a),
12 that includes the name of the goods or services to be purchased, the
13 date, time, and place for receiving and opening bids, proposals, or
14 statements of qualifications, and the Internet address of the
15 Internet site where detailed requirements may be found. The notice
16 posted on the Internet under this subsection must be posted every
17 day for at least:

18 (1) 10 business days before the deadline for receiving
19 the bids or proposals; or

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

22 (c) Except as otherwise provided by Subsection (b) for the
23 newspaper notice required by that subsection, the notice required
24 by this section must include:

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

27 (2) the date, time, and place for receiving and

- 1 opening bids, proposals, or statements of qualifications;
2 (3) a general description of the goods or services;
3 (4) the location and time of any mandatory site
4 inspections or pre-bid meetings; and
5 (5) the amount of any required bid bond, payment bond,
6 or performance bond.

7 Sec. 130.259. DISCUSSION AND REVISION OF PROPOSALS.

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

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

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

19 Sec. 130.260. PRE-BID CONFERENCE OR SITE VISIT. (a) The
20 district may require a principal, officer, or employee of each
21 prospective bidder to attend a mandatory pre-bid conference or site
22 visit, or both, as a condition of a request for bid or proposal.
23 Notice of a requirement under this subsection must be included in
24 the notice published under Section 130.258.

25 (b) After the district conducts a mandatory pre-bid
26 conference or site visit, the district may send any additional
27 required notice for the proposed contract only to prospective

1 bidders who attended or were represented at the conference or who
2 are documented as having visited the site.

3 Sec. 130.261. IDENTICAL BIDS. If, after considering the
4 factors described by Section 130.256, the district determines that
5 the district has received identical bids, the district shall cast
6 lots to determine which bidder will be awarded the contract. The
7 district shall invite the bidders to witness the selection process
8 under this section. The selection process must be conducted by at
9 least two district employees or members of the district's board of
10 trustees.

11 Sec. 130.262. BID DEPOSIT. (a) The district may, as the
12 district determines necessary, require a bid deposit in an amount
13 determined by the district. The amount of the deposit, if any, must
14 be stated in the notice required by Section 130.258 of the
15 invitation to bid.

16 (b) On the award of a contract or the rejection of all bids,
17 the district shall return the bid deposit of an unsuccessful
18 bidder. The bid deposit of the successful bidder may be retained
19 until the contract is signed by the district. A bid deposit may not
20 be held longer than 90 days.

21 (c) The bid deposit required by the district, if any, must
22 be in the form of a cashier's check, certified check, or bid bond
23 written by a surety authorized to conduct business in this state. A
24 district may elect to require a bid deposit to be in the form of a
25 bid bond.

26 Sec. 130.263. PERFORMANCE BOND. A district may require a
27 contractor to provide a performance bond in the amount of the

1 contract before executing a contract for the purchase of goods or
2 services with a value of \$100,000 or more. The bond must be written
3 by a surety authorized to conduct business in this state and
4 generally comply with the performance bond requirements of Chapter
5 2253, Government Code.

6 Sec. 130.264. ENFORCEMENT OF PURCHASING PROCEDURES:
7 CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY; INJUNCTION. (a) In
8 this section:

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

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

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

18 (b) An officer, employee, or agent of a district commits an
19 offense if the person with criminal negligence makes or authorizes
20 separate, sequential, or component purchases for the purpose of
21 avoiding the requirements of Section 130.253, 130.256, or 130.266.
22 An offense under this subsection is a Class B misdemeanor and is an
23 offense involving moral turpitude that results in a forfeiture of
24 an officer's public office.

25 (c) An officer, employee, or agent of a district commits an
26 offense if the person with criminal negligence violates Section
27 130.253, 130.256, or 130.266 other than by conduct described by

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

4 (d) An officer or employee of a district commits an offense
5 if the officer or employee knowingly violates Section 130.253,
6 130.256, or 130.266 other than by conduct described by Subsection
7 (b) or (c). An offense under this subsection is a Class C
8 misdemeanor.

9 (e) The final conviction of a person other than a member of
10 the board of trustees for an offense under Subsection (b) or (c)
11 results in the immediate removal from office or employment of that
12 person. A trustee who is convicted of an offense under this section
13 is subject to removal as provided by Chapter 66, Civil Practice and
14 Remedies Code. For four years after the date of the final
15 conviction, the removed person is ineligible to be a candidate for
16 or to be appointed or elected to a public office in this state, is
17 ineligible to be employed by or act as an agent for this state or a
18 political subdivision of this state, and is ineligible to receive
19 any compensation through a contract with this state or a political
20 subdivision of this state. This subsection does not prohibit the
21 payment of retirement benefits to the removed person or the payment
22 of workers' compensation benefits to the removed person for an
23 injury that occurred before the commission of the offense for which
24 the person was removed. This subsection does not make a person
25 ineligible for an office for which the federal or state
26 constitution prescribes exclusive eligibility 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. 130.265. PURCHASE AGREEMENTS AND VENDOR LISTS FOR
8 MISCELLANEOUS PURCHASES. (a) This section applies only to the
9 selection and engagement of vendors from which a district may
10 purchase goods or services, including produce, gasoline, and fuel
11 oil, where the total cost of the goods and services is expected to
12 be \$50,000 or more during a fiscal year but the selling price must
13 be determined at the time the need for the goods and services
14 arises.

15 (b) The notice requirements of Section 130.258 apply to
16 purchases made under this section, except that the notice must
17 specify the categories of goods or services to be purchased under
18 this section and solicit the names, addresses, and telephone
19 numbers of bidders who are interested in supplying the goods or
20 services to the district. The district shall create and provide a
21 proposal form to be used by interested bidders. The form must
22 describe the goods or services that may be required and the terms
23 and conditions of, and method for, determining the price of the
24 bidders' products and services. Bidders desiring to be included on
25 the list must complete and sign the district's form. The district
26 shall determine which bidders are qualified to be included on a list
27 of bidders from which goods and services may be purchased during the

1 applicable fiscal year.

2 (c) Before the district makes a purchase covered by this
3 section, the district must obtain written price quotations from at
4 least three bidders from the list created by the district for that
5 category. If fewer than three bidders are on the list, the district
6 shall contact each bidder on the list. If more than three bidders
7 are on the list, the district may invite all bidders to provide a
8 quotation or may select three bidders on a rotational basis each
9 time a purchase is to be made. The bidding records must be retained
10 with the district's competitive bidding records and are subject to
11 audit. In determining from whom to purchase the goods or services,
12 the district may consider the provisions of Section 130.256.

13 Sec. 130.266. PURCHASES MADE WITHOUT ADVERTISING.

14 (a) Except as provided under Sections 130.253(d), (f), (g), (h),
15 and (i), a purchase of goods or services with a cost of \$10,000 or
16 more but less than \$50,000 must be made by written competitive bids
17 or proposals. A minimum of three bids or proposals must be
18 considered before the award of a contract or order for the specified
19 goods or services. A district is not required to advertise the
20 purchase.

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

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

26 Sec. 130.267. NOTIFICATION OF CRIMINAL HISTORY OF

27 CONTRACTOR. (a) A person or business entity that enters into a

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

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

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

16 (d) This section does not apply to a publicly held
17 corporation.

18 Sec. 130.268. PREFERENCE TO TEXAS AND UNITED STATES
19 PRODUCTS. (a) A district that purchases agricultural products
20 shall give preference to those products produced, processed, or
21 grown in this state if the cost to the district for those products
22 is equal to or less than the cost of other products and the quality
23 of those products is equal to or exceeds the quality of other
24 products.

25 (b) If a district determines that agricultural products
26 produced, processed, or grown in this state are not entitled to a
27 preference under Subsection (a), the district shall give preference

1 to agricultural products produced, processed, or grown in other
2 states of the United States over foreign products if the cost to the
3 district for those products is equal to or less than the cost of
4 foreign products and the quality of those products is equal to or
5 exceeds the quality of the foreign products.

6 (c) A district that purchases vegetation for landscaping
7 purposes, including plants, shall give preference to Texas
8 vegetation if the cost to the district for that vegetation is equal
9 to or less than the cost of other vegetation and the quality of that
10 vegetation is not inferior to the quality of other vegetation.

11 (d) In implementing this section, a district may receive
12 assistance from and use the resources of the Department of
13 Agriculture, including information on the availability of
14 agricultural products.

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

18 Sec. 130.269. EFFICIENCY AND SAVINGS. In order to increase
19 efficiency of operations and to achieve savings through volume
20 purchases, on an annual basis a district shall identify common
21 types of goods and services to be purchased from the district's
22 budget and, to the extent the district determines practicable,
23 consolidate the purchase of those goods or services under contracts
24 entered into under this subchapter.

25 Sec. 130.270. DELEGATION. (a) Except as provided by
26 Subsection (b), the board of trustees may, as appropriate, delegate
27 its authority under this subchapter to a designated person,

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

9 (b) The board may not delegate the authority to act
10 regarding an action specifically authorized or required by this
11 subchapter to be taken by the board of trustees.

12 [Sections 130.271-130.300 reserved for expansion]

13 SUBCHAPTER L. CONSTRUCTION CONTRACTS

14 Sec. 130.301. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

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

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

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

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

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

1 best value for the district:

2 (1) competitive sealed bids;

3 (2) competitive sealed proposals;

4 (3) a design-build contract;

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

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

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

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

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

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

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

22 (e) If district property is destroyed, stolen, severely
23 damaged, unusable, or undergoes major operational or structural
24 failure, or a contractor is unable to fulfill its obligations in
25 providing goods or services, and the board of trustees, or its
26 designee, determines that the delay posed by using the methods
27 required by Subsection (a) would pose a material threat to personal

1 safety or potential damage to other property or would prevent or
2 substantially impair the conduct of classes or other essential
3 district activities, then contracts for the replacement or repair
4 of the property may be made by methods other than those required by
5 Subsection (a).

6 Sec. 130.304. EVALUATION AND AWARD OF CONTRACT.

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

14 (b) In determining the lowest responsible bidder, the
15 district may consider:

16 (1) the immediate and long-term cost of the service;
17 (2) the reputation of the bidder;
18 (3) the quality of the bidder's services;
19 (4) the extent to which the offered services meet the
20 district's needs;

21 (5) the bidder's past relationship with the district;
22 (6) the extent to which the offers comply with the
23 requirements of the request for bids, proposals, or qualifications;

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

26 (8) the impact on the ability of the district to comply
27 with laws and rules relating to historically underutilized

1 businesses; and

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

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

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

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

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

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

19 (e) Bids may be opened only by the district in a
20 district-owned or district-controlled facility. The meeting or
21 other occasion at which bids are opened must be open to the public.
22 At the time the district opens a bid, if one or more members of the
23 public are present, the appropriate employee or officer of the
24 district shall read aloud the name of the bidder and the total bid
25 amount if the bid is of a type that should contain a single bid
26 amount. At least two district employees or members of the board of
27 trustees must be present at the bid opening. When opening proposals

1 or qualifications, the appropriate employee or officer shall read
2 aloud only the names of the respondents and may not disclose the
3 contents of a proposal or qualification on opening the proposal or
4 qualification or during negotiations with competing bidders.

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

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

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

13 (i) A contract awarded in violation of this subchapter is
14 void.

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

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

26 (b) District construction contracts are subject to audit by
27 the state auditor in accordance with Chapter 321, Government Code.

1 Sec. 130.306. NOTICE. (a) For any method of contracting
2 selected under Section 130.303(a), the district shall, within a
3 seven-day period, publish the notice required by this section in at
4 least two issues of any newspaper of general circulation in the
5 county in which the district's central administrative office is
6 located. The deadline for receiving bids, proposals, or responses
7 to a request for qualifications may not be less than 10 business
8 days after the date of the publication of the first newspaper
9 notice. If there is not a newspaper of general circulation in the
10 county in which the district's central administrative office is
11 located, the notice shall be published in a newspaper of general
12 circulation in a location nearest the district's central
13 administrative office. In a two-step procurement process, the time
14 and place where the second-step bids, proposals, or responses will
15 be received are not required to be included in the notice.

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

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

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

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

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

24 (5) the amount of any required bid bond, payment bond,
25 or performance bond.

26 Sec. 130.307. DISCUSSION AND REVISION OF PROPOSALS.

27 (a) After receipt of proposals, under rules adopted by the

1 district, the district may discuss acceptable or potentially
2 acceptable proposals with bidders to assess a bidder's ability to
3 meet the solicitation requirements.

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

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

11 Sec. 130.308. PRE-BID CONFERENCE OR SITE VISIT. (a) The
12 district may require a principal, officer, or employee of each
13 prospective bidder to attend a mandatory pre-bid conference or site
14 visit, or both, as a condition of a request for bid or proposal.
15 Notice of a requirement under this subsection must be included in
16 the notice published under Section 130.306.

17 (b) After the district conducts a mandatory pre-bid
18 conference or site visit, the district may send any additional
19 required notice for the proposed contract only to prospective
20 bidders who attended or were represented at the conference or who
21 are documented as having visited the site.

22 Sec. 130.309. IDENTICAL BIDS. If, after considering the
23 factors described by Section 130.304, the district determines that
24 the district has received identical bids, the district shall cast
25 lots to determine which bidder will be awarded the contract. The
26 district shall invite the bidders to witness the selection process
27 under this section. The selection process must be conducted by at

1 least two district employees or members of the district's board of
2 trustees.

3 Sec. 130.310. BID DEPOSIT. (a) The district may, as the
4 district determines necessary, require a bid deposit in an amount
5 determined by the district. The amount of the deposit, if any, must
6 be stated in the notice required by Section 130.306 of the
7 invitation to bid.

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

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

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

21 Sec. 130.312. DELEGATION. (a) Except as provided by
22 Subsection (b), the board of trustees may, as appropriate, delegate
23 its authority under this subchapter to a designated person,
24 representative, or committee. In procuring construction services,
25 the district shall provide notice of the delegation and the limits
26 of the delegation in the request for bids, proposals, or
27 qualifications or in an addendum to the request. If the district

1 fails to provide that notice, a ranking, selection, or evaluation
2 of bids, proposals, or qualifications for construction services
3 other than by the board of trustees in an open public meeting is
4 advisory only.

5 (b) The board may not delegate the authority to act
6 regarding an action specifically authorized or required by this
7 subchapter to be taken by the board of trustees.

8 Sec. 130.313. ENFORCEMENT OF CONTRACT SOLICITATION
9 PROCEDURES: CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY;
10 INJUNCTION. (a) In this section:

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

14 (2) "Separate procurements" means procurements, made
15 separately, of goods or services that in normal practice would be
16 made in one procurement.

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

20 (b) An officer, employee, or agent of a district commits an
21 offense if the person with criminal negligence makes or authorizes
22 separate, sequential, or component procurements for the purpose of
23 avoiding the requirements of Section 130.303 or 130.304. An
24 offense under this subsection is a Class B misdemeanor and is an
25 offense involving moral turpitude that results in a forfeiture of
26 an officer's public office.

27 (c) An officer, employee, or agent of a district commits an

1 offense if the person with criminal negligence violates Section
2 130.303, 130.304, or 130.315 other than by conduct described by
3 Subsection (b). An offense under this subsection is a Class B
4 misdemeanor and is an offense involving moral turpitude that
5 results in a forfeiture of an officer's public office.

6 (d) An officer or employee of a district commits an offense
7 if the officer or employee knowingly violates Section 130.303,
8 130.304, or 130.315 other than by conduct described by Subsection
9 (b) or (c). An offense under this subsection is a Class C
10 misdemeanor.

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

1 the federal or state constitution prescribes exclusive eligibility
2 requirements.

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

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

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

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

27 (d) This section does not apply to a publicly held

1 corporation.

2 Sec. 130.315. CHANGE ORDERS. (a) After performance of a
3 construction contract begins, a district may approve change orders
4 if necessary to:

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

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

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

16 (c) Except as provided by Subsection (b) or Section
17 130.303(e), a person, including a member of the board of trustees,
18 who knowingly authorizes one or more change orders that, in the
19 aggregate, exceed 25 percent of the original contract price is
20 subject to Section 130.313.

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

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

2 (a) In this section:

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

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

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

25 (b) A district may use the design-build method for the
26 construction, rehabilitation, alteration, or repair of a facility.
27 In using that method and in entering into a contract for the

1 services of a design-build firm, the contracting district and the
2 design-build firm shall follow the procedures provided by
3 Subsections (c)-(j).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 construction manager-agent for a project may not serve, alone or in
2 combination with another, as the construction manager-at-risk.

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

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

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

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

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

24 (h) A construction manager-at-risk shall publicize notice,
25 in accordance with Section 130.306, and receive bids or proposals
26 from trade contractors or subcontractors for the performance of all
27 major elements of the work other than the minor work that may be

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

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

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

25 (k) If a selected trade contractor or subcontractor
26 defaults in the performance of its work or fails to execute a
27 subcontract after being selected in accordance with this section,

1 the construction manager-at-risk may, without advertising, fulfill
2 the contract requirements or select a replacement trade contractor
3 or subcontractor to fulfill the contract requirements.

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

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

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

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

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

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

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

25 Sec. 130.321. SELECTING CONTRACTOR FOR CONSTRUCTION
26 SERVICES THROUGH COMPETITIVE BIDDING. Except to the extent
27 prohibited by other law and to the extent consistent with this

1 subchapter, a district may use competitive bidding to select a
2 contractor to perform construction, rehabilitation, alteration, or
3 repair services for a facility.

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

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

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

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

18 (c) The district shall advertise for, receive, and publicly
19 open sealed proposals for job order contracts. For the purposes of
20 this section, notice must be published as required under Section
21 130.306.

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

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

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

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

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

15 (i) If a job order contract or an order issued under the
16 contract requires engineering or architectural services that
17 constitute the practice of engineering within the meaning of
18 Chapter 1001, Occupations Code, or the practice of architecture
19 within the meaning of Chapter 1051, Occupations Code, the district
20 shall select or designate an architect or engineer to prepare the
21 construction documents for the facility. If the architect or
22 engineer is not a full-time employee of the district, the district
23 shall select the architect or engineer on the basis of demonstrated
24 competence and qualifications as provided by Section 2254.004,
25 Government Code. The request for qualifications for the architect
26 or engineer shall be advertised in the manner provided for giving
27 notice under Section 130.306.

1 Sec. 130.323. CONTRACTS MADE WITHOUT ADVERTISING.

2 (a) Except as provided by Subsection (d) and Section 130.303(e), a
3 contract for construction with a cost of \$10,000 or more but less
4 than \$50,000, including contingency or reserve amounts, must be
5 made through written competitive bids or proposals. A minimum of
6 three bids or proposals must be considered before awarding a
7 contract. A district is not required to advertise the contract.

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

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

13 (d) A contract is not required to be made through
14 competitive bids or proposals under this section if the contract is
15 for the repair or replacement of a captive replacement part or
16 component for equipment or a specialized service that is available
17 from only one source.

18 [Sections 130.324-130.350 reserved for expansion]

19 SUBCHAPTER M. DISPOSAL OF SURPLUS PERSONAL PROPERTY

20 Sec. 130.351. SALE OF PERSONAL PROPERTY. A junior college
21 district shall dispose of surplus personal property in an
22 accountable manner that best serves the interest of the district. A
23 sale of personal property that is not covered by Chapter 791,
24 Government Code, must be solicited and awarded in the same manner as
25 a contract for the purchase of goods or services under Subchapter K.

26 Sec. 130.352. METHODS OF DISPOSAL. (a) A junior college
27 district may use any of the following methods to dispose of surplus

1 personal property:

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

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

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

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

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

11 (b) If the junior college district is unable to find a buyer
12 for surplus property, the property may be:

13 (1) discarded in accordance with applicable federal,
14 state, and local laws, ordinances, and rules; or

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

17 (c) Except as provided by this section, a junior college
18 district may not give, donate, loan, or transfer surplus property
19 to any person or entity.

20 [Sections 130.353-130.400 reserved for expansion]

21 SUBCHAPTER N. PROFESSIONAL SERVICES AND CONSULTANT SERVICES

22 Sec. 130.401. PROFESSIONAL SERVICES. (a) For purposes of
23 this section, "professional service provider" means a person who
24 provides services of a predominantly mental or intellectual matter
25 and who is a member of a discipline requiring special knowledge or
26 the attainment of a high order of learning, skill, or intelligence.

27 The term includes a person who provides professional services, as

1 defined by Section 2254.002, Government Code.

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

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

15 (d) A professional service provider selected by the junior
16 college district may be selected for a specific project or for
17 various projects that arise during the term of the provider's
18 contract. The term of a contract with a professional service
19 provider may not exceed five years, except that the professional
20 service provider shall complete services for projects started
21 before the end of the contract term.

22 Sec. 130.402. CONSULTANTS. (a) For purposes of this
23 section, "consultant" includes a financial advisor, fiscal agent,
24 auctioneer, personnel services provider, travel agent, technology
25 or educational services provider or advisor, and a business engaged
26 to teach approved courses.

27 (b) A junior college district shall select and enter into

1 contracts with consultants in accordance with Section 130.253 or
2 Subchapter B, Chapter 2254, Government Code. If the estimated
3 value of a contract for consulting services is \$50,000 or more
4 during a fiscal year, or during the contract's term if the contract
5 is a multiple year contract, the district shall advertise the
6 request for qualifications, bids, or proposals as provided by
7 Section 130.258.

8 (c) If the estimated value of a contract for consulting
9 services is \$10,000 or more but less than \$50,000 during a fiscal
10 year, or during the contract's term if the contract is a multiple
11 year contract, requests for qualifications, bids, or proposals must
12 be solicited from at least three consultants and the publication of
13 notice is not required.

14 (d) A consultant selected by the junior college district may
15 be selected for a specific project or for various projects that
16 arise during the term of the consultant's contract. The term of a
17 contract with a consultant may not exceed five years, except that
18 the consultant shall complete services for projects started before
19 the end of the contract term.

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

24 (b) Junior college district contracts for professional
25 services or consultants are subject to audit by the state auditor in
26 accordance with Chapter 321, Government Code.

27 SECTION 5. Section 271.023, Local Government Code, is

1 amended to read as follows:

2 Sec. 271.023. CONFLICT OF LAWS. To the extent of any
3 conflict, the provisions of Subchapter B, Chapter 44, Education
4 Code, relating to the purchase of goods and services under contract
5 by a school district and the provisions of Subchapters K and L,
6 Chapter 130, Education Code, relating to the purchase of goods and
7 services and construction services under contract by a junior
8 college prevail over this subchapter.

9 SECTION 6. Subsection (b), Section 44.0311, and Sections
10 130.010 and 130.0101, Education Code, are repealed.

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

20 SECTION 8. This Act does not make an appropriation. A
21 provision in this Act that creates a new governmental program,
22 creates a new entitlement, or imposes a new duty on a governmental
23 entity is not mandatory during a fiscal period for which the
24 legislature has not made a specific appropriation to implement the
25 provision.

26 SECTION 9. This Act takes effect September 1, 2009.