

By: West

S.B. No. 857

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (b) Notwithstanding any other provision of this chapter, a
26 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 Sec. 130.254. PURCHASE OF INSURANCE. (a) A district may
9 acquire insurance using a two-step process to obtain competitive
10 sealed proposals. In the first step, the district shall determine
11 which insurance providers are represented by agents interested in
12 providing insurance for the district. If more than one agent
13 indicates a desire to represent the same provider, the agent with
14 the longest and most substantial relationship with the insurance
15 provider shall be authorized to submit a proposal for the
16 designated insurance provider. In the second step, the district
17 shall notify the interested agents in writing as to which insurance
18 providers the agents represent and request the agents to submit
19 proposals for providing insurance.

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

26 Sec. 130.255. MULTIYEAR CONTRACT. A contract that extends
27 past the end of a district's fiscal year must include a provision

1 that permits termination at the end of each fiscal year. Contracts
2 solely for the purchase of goods may not exceed five years in
3 duration.

4 Sec. 130.256. EVALUATION AND AWARD OF CONTRACT. (a) Except
5 as otherwise provided by this subchapter, a district shall award a
6 contract to the lowest responsible bidder offering the best value
7 to the district according to the selection criteria established by
8 the district. The district shall publish in the request for bids,
9 proposals, or qualifications the criteria the district will use to
10 evaluate the offers and the relative weights given to the criteria
11 that are known at the time of the publication.

12 (b) In determining the lowest responsible bidder, the
13 district shall consider:

14 (1) the purchase price, including delivery and
15 installation charges;

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

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

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

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

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

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

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

1 (9) the impact on the ability of the district to comply
2 with laws and rules relating to historically underutilized
3 businesses.

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

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

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

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

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

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

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

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

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

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

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

24 Sec. 130.258. NOTICE. (a) Except as otherwise provided by
25 this subchapter, for any method of contracting selected under
26 Section 130.253(a), the district shall, within a seven-day period,
27 publish the notice required by this section in at least two issues

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

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

27 (1) 10 business days before the deadline for receiving

1 the bids or proposals; or

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

4 (c) Except as otherwise provided by Subsection (b) for the
5 newspaper notice required by that subsection, the notice required
6 by this section must include:

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

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

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

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

14 (5) the amount of any required bid bond, payment bond,
15 or performance bond.

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

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

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

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

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

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

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

25 (b) On the award of a contract or the rejection of all bids,
26 the district shall return the bid deposit of an unsuccessful
27 bidder. The bid deposit of the successful bidder may be retained

1 until the contract is signed by the district. A bid deposit may not
2 be held longer than 90 days.

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

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

15 Sec. 130.264. ENFORCEMENT OF PURCHASING PROCEDURES:
16 CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY; INJUNCTION. (a) In
17 this section:

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

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

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

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

1 offense if the person with criminal negligence makes or authorizes
2 separate, sequential, or component purchases for the purpose of
3 avoiding the requirements of Section 130.253, 130.256, or 130.266.
4 An offense under this subsection is a Class B misdemeanor and is an
5 offense involving moral turpitude that results in a forfeiture of
6 an officer's public office.

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

13 (d) An officer or employee of a district commits an offense
14 if the officer or employee knowingly violates Section 130.253,
15 130.256, or 130.266 other than by conduct described by Subsection
16 (b) or (c). An offense under this subsection is a Class C
17 misdemeanor.

18 (e) The final conviction of a person other than a member of
19 the board of trustees of a district for an offense under Subsection
20 (b) or (c) results in the immediate removal from office or
21 employment of that person. A trustee who is convicted of an offense
22 under this section is subject to removal as provided by Chapter 66,
23 Civil Practice and Remedies Code. For four years after the date of
24 the final conviction, the removed person is ineligible to be a
25 candidate for or to be appointed or elected to a public office in
26 this state, is ineligible to be employed by or act as an agent for
27 this state or a political subdivision of this state, and is

1 ineligible to receive any compensation through a contract with this
2 state or a political subdivision of this state. This subsection
3 does not prohibit the payment of retirement benefits to the removed
4 person or the payment of workers' compensation benefits to the
5 removed person for an injury that occurred before the commission of
6 the offense for which the person was removed. This subsection does
7 not make a person ineligible for an office for which the federal or
8 state constitution prescribes exclusive eligibility requirements.

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

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

24 (b) The notice requirements of Section 130.258 apply to
25 purchases made under this section, except that the notice must
26 specify the categories of goods or services to be purchased under
27 this section and solicit the names, addresses, and telephone

1 numbers of bidders who are interested in supplying the goods or
2 services to the district. The district shall create and provide a
3 proposal form to be used by interested bidders. The form must
4 describe the goods or services that may be required, and the terms
5 and conditions of, and method for, determining the price of the
6 bidders' products and services. Bidders desiring to be included on
7 the list must complete and sign the district's form. The district
8 shall determine which bidders are qualified to be included on a list
9 of bidders from which goods and services may be purchased during the
10 applicable fiscal year.

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

22 Sec. 130.266. PURCHASES MADE WITHOUT ADVERTISING. (a)
23 Except as provided under Sections 130.253(d), (f), (g), and (h), a
24 purchase of goods or services with a cost of \$10,000 or more but
25 less than \$50,000 must be made by written competitive bids or
26 proposals. A minimum of three bids or proposals must be considered
27 before the award of a contract or order for the specified goods or

1 services. A district is not required to advertise the purchase.

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

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

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

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

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

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

26 Sec. 130.268. PREFERENCE TO TEXAS AND UNITED STATES
27 PRODUCTS. (a) A district that purchases agricultural products

1 shall give preference to those products produced, processed, or
2 grown in this state if the cost to the district for those products
3 is equal to or less than the cost of other products and the quality
4 of those products is equal to or exceeds the quality of other
5 products.

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

14 (c) A district that purchases vegetation for landscaping
15 purposes, including plants, shall give preference to Texas
16 vegetation if the cost to the district for that vegetation is equal
17 to or less than the cost of other vegetation and the quality of that
18 vegetation is not inferior to the quality of other vegetation.

19 (d) In implementing this section, a district may receive
20 assistance from and use the resources of the Department of
21 Agriculture, including information on the availability of
22 agricultural products.

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

26 Sec. 130.269. EFFICIENCY AND SAVINGS. In order to increase
27 efficiency of operations and to achieve savings through volume

1 purchases, on an annual basis a district shall identify common
2 types of goods and services to be purchased from the district's
3 budget and, to the extent the district determines practicable,
4 consolidate the purchase of those goods or services under contracts
5 entered into under this subchapter.

6 Sec. 130.270. DELEGATION. (a) Except as provided by
7 Subsection (b), the board of trustees of a district may, as
8 appropriate, delegate its authority under this subchapter to a
9 designated person, representative, or committee. In procuring
10 goods or services other than construction services, the district
11 shall provide notice of the delegation and the limits of the
12 delegation in the request for bids, proposals, or qualifications or
13 in an addendum to the request. If the district fails to provide
14 that notice, a ranking, selection, or evaluation of bids,
15 proposals, or qualifications other than by the board of trustees in
16 an open public meeting is advisory only.

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

20 [Sections 130.271-130.300 reserved for expansion]

21 SUBCHAPTER L. CONSTRUCTION CONTRACTS

22 Sec. 130.301. DEFINITIONS. In this subchapter:

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

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

27 (3) "Construction" means the construction,

1 rehabilitation, alteration, or repair of a facility, including all
2 goods and labor incidental to the construction.

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

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

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

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

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

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

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

1 offers or qualifications.

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

4 Sec. 130.303. METHODS OF CONTRACTING. (a) Except as
5 otherwise provided by this subchapter and subject to Section
6 130.313, all contracts for construction, rehabilitation,
7 alteration, or repair of facilities valued at \$50,000 or more shall
8 be made by the method, of the following methods, that provides the
9 best value for the district:

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

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

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

- 22 (1) reveal when the proposals are opened the names of
23 the companies submitting proposals; and
24 (2) keep the contents of the proposals confidential
25 until the district concludes negotiations and awards a contract.

26 (d) A district may contract for the services of a
27 construction manager-agent as provided by Section 130.318 in

1 conjunction with the method of construction selected under
2 Subsection (a).

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

14 Sec. 130.304. EVALUATION AND AWARD OF CONTRACT. (a) Except
15 as otherwise provided by this subchapter, a district shall award a
16 contract to the lowest responsible bidder offering the best value
17 to the district according to the selection criteria established by
18 the district. The district shall publish in the request for bids,
19 proposals, or qualifications the criteria the district will use to
20 evaluate the offers and the relative weights given to the criteria
21 that are known at the time of the publication.

22 (b) In determining the lowest responsible bidder, the
23 district may consider:

- 24 (1) the immediate and long-term cost of the service;
25 (2) the reputation of the bidder;
26 (3) the quality of the bidder's services;
27 (4) the extent to which the offered services meet the

1 district's needs;

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

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

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

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

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

11 (A) the district has adopted a written definition
12 and criteria for accurately determining the safety record of a
13 bidder;

14 (B) the district has given notice to prospective
15 bidders in the request for bids that the safety record of a bidder
16 may be considered in determining the responsibility of the bidder;
17 and

18 (C) the district's determinations are not
19 arbitrary and capricious.

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

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

27 (e) Bids may be opened only by the district in a

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

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

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

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

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

23 (j) In awarding a contract by competitive sealed bid under
24 this section, a district that has its central administrative office
25 located in a municipality with a population of less than 250,000 may
26 consider a bidder's principal place of business in the manner
27 provided by Section 271.9051, Local Government Code. This

1 subsection does not apply to the purchase of telecommunications
2 services or information services, as those terms are defined by 47
3 U.S.C. Section 153.

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

7 (b) The state auditor may audit district construction
8 contracts.

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

24 (b) The notice required 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 work to be performed;
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. 130.307. DISCUSSION AND REVISION OF PROPOSALS. (a)
8 After receipt of proposals, under rules adopted by the district,
9 the district may discuss acceptable or potentially acceptable
10 proposals with bidders to assess a bidder's ability to meet the
11 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. 130.308. 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 130.306.

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. 130.309. IDENTICAL BIDS. If, after considering the
4 factors described by Section 130.304, 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. 130.310. 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 130.306 of the
15 invitation to bid.

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

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

25 Sec. 130.311. PERFORMANCE AND PAYMENT BONDS. For a
26 contract for construction, the contractor must execute a good and
27 sufficient payment bond and a performance bond in accordance with

1 Chapter 2253, Government Code.

2 Sec. 130.312. DELEGATION. (a) Except as provided by
3 Subsection (b), the board of trustees of a district may, as
4 appropriate, delegate its authority under this subchapter to a
5 designated person, representative, or committee. In procuring
6 construction services, the district shall provide notice of the
7 delegation and the limits of the delegation in the request for bids,
8 proposals, or qualifications or in an addendum to the request. If
9 the district fails to provide that notice, a ranking, selection, or
10 evaluation of bids, proposals, or qualifications for construction
11 services other than by the board of trustees in an open public
12 meeting is advisory only.

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

16 Sec. 130.313. ENFORCEMENT OF CONTRACT SOLICITATION
17 PROCEDURES: CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY;
18 INJUNCTION. (a) In this section:

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

22 (2) "Separate procurements" means procurements, made
23 separately, of goods or services that in normal practice would be
24 made in one procurement.

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

1 (b) An officer, employee, or agent of a district commits an
2 offense if the person with criminal negligence makes or authorizes
3 separate, sequential, or component procurements for the purpose of
4 avoiding the requirements of Section 130.303 or 130.304. An
5 offense under this subsection is a Class B misdemeanor and is an
6 offense involving moral turpitude that results in a forfeiture of
7 an officer's public office.

8 (c) An officer, employee, or agent of a district commits an
9 offense if the person with criminal negligence violates Section
10 130.303, 130.304, or 130.315 other than by conduct described by
11 Subsection (b). An offense under this subsection is a Class B
12 misdemeanor and is an offense involving moral turpitude that
13 results in a forfeiture of an officer's public office.

14 (d) An officer or employee of a district commits an offense
15 if the officer or employee knowingly violates Section 130.303,
16 130.304, or 130.315 other than by conduct described by Subsection
17 (b) or (c). An offense under this subsection is a Class C
18 misdemeanor.

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

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

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

18 Sec. 130.314. NOTIFICATION OF CRIMINAL HISTORY OF
19 CONTRACTOR. (a) A person or business entity that enters into a
20 contract with a district must give advance notice to the district if
21 the person or an owner or operator of the business entity has been
22 convicted of a felony. The notice must include a general
23 description of the conduct resulting in the conviction of a felony.

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

1 (c) A district may terminate a contract with a person or
2 business entity if the district determines that the person or
3 business entity failed to give notice as required by Subsection (a)
4 or misrepresented the conduct resulting in the conviction. The
5 district must compensate the person or business entity for goods
6 delivered or services performed before the termination of the
7 contract.

8 (d) This section does not apply to a publicly held
9 corporation.

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

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

16 (b) The total price of a contract may not be increased by a
17 change order unless provision has been made for the payment of the
18 added cost by the appropriation of current funds or bond funds for
19 that purpose, by the authorization of the issuance of certificates,
20 or by a combination of those procedures. The original contract
21 price may not be increased by more than 25 percent unless the board
22 of trustees determines the change is due to causes beyond the
23 reasonable control of the district or contractor.

24 (c) Except as provided by Subsection (b) or Section
25 130.303(e), a person, including a member of the board of trustees,
26 who knowingly authorizes one or more change orders that, in the
27 aggregate, exceed 25 percent of the original contract price, is

1 subject to Section 130.313.

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

9 Sec. 130.317. DESIGN-BUILD CONTRACTS FOR FACILITIES. (a)
10 In this section:

11 (1) "Design-build contract" means a single contract
12 with a design-build firm for the design and construction of a
13 facility.

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

18 (3) "Design criteria package" means a set of documents
19 that provides sufficient information, including criteria for
20 selection, to permit a design-build firm to prepare a response to a
21 district's request for qualifications and to the district's request
22 for any additional information. The design criteria package must
23 specify criteria the district considers necessary to describe the
24 project and may include, as appropriate, the legal description of
25 the site, survey information concerning the site, interior space
26 requirements, special material requirements, material quality
27 standards, conceptual criteria for the project, special equipment

1 requirements, cost or budget estimates, time schedules, quality
2 assurance and quality control requirements, site development
3 requirements, applicable codes and ordinances, provisions for
4 utilities, parking requirements, or any other requirement, as
5 applicable.

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

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

18 (d) The district shall prepare a request for qualifications
19 that includes general information on the project site, project
20 scope, budget, special systems, selection criteria, and other
21 information that may assist potential design-build firms in
22 submitting proposals for the project. The district shall also
23 prepare a design criteria package that includes more detailed
24 information on the project. If the preparation of the design
25 criteria package requires engineering or architectural services
26 that constitute the practice of engineering within the meaning of
27 Chapter 1001, Occupations Code, or the practice of architecture

1 within the meaning of Chapter 1051, Occupations Code, those
2 services shall be provided in accordance with the applicable law.

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

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

17 (2) In phase two, the district shall evaluate the
18 information submitted by the offerors on the basis of the selection
19 criteria stated in the request for qualifications and the results
20 of any interview. The district may request additional information
21 regarding demonstrated competence and qualifications,
22 considerations of the safety and long-term durability of the
23 project, the feasibility of implementing the project as proposed,
24 the ability of the offeror to meet schedules, costing methodology,
25 or other factors as appropriate. The district may not require
26 offerors to submit detailed engineering or architectural designs as
27 part of the proposal. The district shall rank each proposal

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

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

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

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

1 contracts in accordance with Section 2254.004, Government Code.

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

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

19 Sec. 130.318. CONTRACTS FOR FACILITIES: CONSTRUCTION
20 MANAGER-AGENT. (a) A district may contract with a construction
21 manager-agent in conjunction with a contract for the construction,
22 rehabilitation, alteration, or repair of a facility. In entering
23 into a contract for the services of a construction manager-agent, a
24 district shall follow the procedures prescribed by this section.

25 (b) A construction manager-agent is a sole proprietorship,
26 partnership, corporation, or other legal entity that provides
27 consultation to the district regarding construction,

1 rehabilitation, alteration, or repair of a facility. A district
2 using the services of a construction manager-agent may, under the
3 contract between the district and the construction manager-agent,
4 require the construction manager-agent to provide administrative
5 personnel, equipment necessary to perform duties under this
6 section, and on-site management and other services specified in the
7 contract. A construction manager-agent represents the district in
8 a fiduciary capacity.

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

27 (d) A district shall select a construction manager-agent on

1 the basis of demonstrated competence and qualifications in the same
2 manner as provided for the selection of engineers or architects
3 under Section 2254.004, Government Code.

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

9 (f) The district or the construction manager-agent shall
10 procure in accordance with Section 2254.004, Government Code, all
11 of the testing of construction materials engineering, the
12 inspection services, and the verification testing services
13 necessary for acceptance of the facility by the district.

14 Sec. 130.319. CONTRACTS FOR FACILITIES: CONSTRUCTION
15 MANAGER-AT-RISK. (a) A district may use the construction
16 manager-at-risk method for the construction, rehabilitation,
17 alteration, or repair of a facility. In using that method and in
18 entering into a contract for the services of a construction
19 manager-at-risk, a district shall follow the procedures prescribed
20 by this section.

21 (b) A construction manager-at-risk is a sole
22 proprietorship, partnership, corporation, or other legal entity
23 that assumes the risk for construction, rehabilitation,
24 alteration, or repair of a facility at the contracted price as a
25 general contractor and provides consultation to the district
26 regarding construction during and after the design of the facility.

27 (c) Before or concurrently with selecting a construction

1 manager-at-risk, the district shall select or designate an engineer
2 or architect who shall prepare the construction documents for the
3 project and who has full responsibility for complying with Chapter
4 1001 or 1051, Occupations Code, as applicable. If the engineer or
5 architect is not a full-time employee of the district, the district
6 shall select the engineer or architect on the basis of demonstrated
7 competence and qualifications as provided by Section 2254.004,
8 Government Code. The district's engineer, architect, or
9 construction manager-agent for a project may not serve, alone or in
10 combination with another, as the construction manager-at-risk.

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

18 (e) The district shall select the construction
19 manager-at-risk in either a one-step or two-step process. The
20 district shall prepare a request for competitive sealed proposals,
21 in the case of a one-step process, or a request for qualifications,
22 in the case of a two-step process, that includes general
23 information on the project site, project scope, schedule, selection
24 criteria, estimated budget, the time and place for receipt of, as
25 applicable, proposals or qualifications, a statement as to whether
26 the selection process is a one-step or two-step process, and other
27 information that may assist the district in its selection of a

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

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

22 (g) The district shall select the offeror that submits the
23 proposal that offers the best value for the district based on the
24 published selection criteria and on its ranking evaluation. The
25 district shall first attempt to negotiate a contract with the
26 selected offeror. If the district is unable to negotiate a
27 satisfactory contract with the selected offeror, the district

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

5 (h) A construction manager-at-risk shall publicize notice,
6 in accordance with Section 130.306, and receive bids or proposals
7 from trade contractors or subcontractors for the performance of all
8 major elements of the work other than the minor work that may be
9 included in the general conditions. A construction manager-at-risk
10 may seek to perform portions of the work itself if the construction
11 manager-at-risk submits its bid or proposal for those portions of
12 the work in the same manner as all other trade contractors or
13 subcontractors and if the district determines that the construction
14 manager-at-risk's bid or proposal provides the best value for the
15 district.

16 (i) The construction manager-at-risk and the district or
17 its representative shall review all trade contractor or
18 subcontractor bids or proposals in a manner that does not disclose
19 the contents of the bid or proposal during the selection process to
20 a person not employed by the construction manager-at-risk,
21 engineer, architect, or district. All bids or proposals shall be
22 made public after the award of the contract or within seven days
23 after the date of final selection of bids or proposals, whichever is
24 later.

25 (j) If the construction manager-at-risk reviews, evaluates,
26 and recommends to the district a bid or proposal from a trade
27 contractor or subcontractor but the district requires another bid

1 or proposal to be accepted, the district shall compensate the
2 construction manager-at-risk by a change in price, time, or
3 guaranteed maximum cost for any additional cost and risk that the
4 construction manager-at-risk may incur because of the district's
5 requirement that another bid or proposal be accepted.

6 (k) If a selected trade contractor or subcontractor
7 defaults in the performance of its work or fails to execute a
8 subcontract after being selected in accordance with this section,
9 the construction manager-at-risk may, without advertising, fulfill
10 the contract requirements or select a replacement trade contractor
11 or subcontractor to fulfill the contract requirements.

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

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

1 (b) The district shall select or designate an engineer or
2 architect to prepare construction documents for the project. The
3 selected or designated engineer or architect has full
4 responsibility for complying with Chapter 1001 or 1051, Occupations
5 Code, as applicable. If the engineer or architect is not a
6 full-time employee of the district, the district shall select the
7 engineer or architect on the basis of demonstrated competence and
8 qualifications as provided by Section 2254.004, Government Code.

9 (c) The district shall provide or contract for,
10 independently of the contractor, the inspection services, testing
11 of construction materials engineering, and verification testing
12 services necessary for acceptance of the facility by the district.
13 The district shall select those services for which it contracts in
14 accordance with Section 2254.004, Government Code, and shall
15 identify them in the request for proposals.

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

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

24 (f) The district shall first attempt to negotiate a contract
25 with the highest-ranked offeror. The district and its engineer or
26 architect may discuss with the selected offeror options for a scope
27 or time modification and any price change associated with the

1 modification. If the district is unable to negotiate a contract
2 with the selected offeror, the district shall, formally and in
3 writing, end negotiations with that offeror and proceed to the next
4 offeror in the order of the selection ranking until a contract is
5 reached or all proposals are rejected.

6 Sec. 130.321. SELECTING CONTRACTOR FOR CONSTRUCTION
7 SERVICES THROUGH COMPETITIVE BIDDING. Except to the extent
8 prohibited by other law and to the extent consistent with this
9 subchapter, a district may use competitive bidding to select a
10 contractor to perform construction, rehabilitation, alteration, or
11 repair services for a facility.

12 Sec. 130.322. JOB ORDER CONTRACTS FOR FACILITIES
13 CONSTRUCTION OR REPAIR. (a) A district may award job order
14 contracts for the minor construction, repair, rehabilitation, or
15 alteration of a facility if the work is of a recurring nature but
16 the delivery times are indefinite and indefinite quantities and
17 orders are awarded substantially on the basis of prescribed and
18 prepriced tasks.

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

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

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

26 (c) The district shall advertise for, receive, and publicly
27 open sealed proposals for job order contracts. For the purposes of

1 this section, notice must be published as required under Section
2 130.306.

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

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

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

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

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

23 (i) If a job order contract or an order issued under the
24 contract requires engineering or architectural services that
25 constitute the practice of engineering within the meaning of
26 Chapter 1001, Occupations Code, or the practice of architecture
27 within the meaning of Chapter 1051, Occupations Code, the district

1 shall select or designate an architect or engineer to prepare the
2 construction documents for the facility. If the architect or
3 engineer is not a full-time employee of the district, the district
4 shall select the architect or engineer on the basis of demonstrated
5 competence and qualifications as provided by Section 2254.004,
6 Government Code. The request for qualifications for the architect
7 or engineer shall be advertised in the manner provided for giving
8 notice under Section 130.306.

9 Sec. 130.323. CONTRACTS MADE WITHOUT ADVERTISING. (a)
10 Except as provided by Subsection (d) and Section 130.303(e), a
11 contract for construction with a cost of \$10,000 or more but less
12 than \$50,000, including contingency or reserve amounts, must be
13 made through written competitive bids or proposals. A minimum of
14 three bids or proposals must be considered before awarding a
15 contract. A district is not required to advertise the contract.

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

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

21 (d) A contract is not required to be made through
22 competitive bids or proposals under this section if the contract is
23 for the repair or replacement of a captive replacement part or
24 component for equipment or a specialized service that is available
25 from only one source.

26 [Sections 130.324-130.350 reserved for expansion]

1 SUBCHAPTER M. DISPOSAL OF SURPLUS PERSONAL PROPERTY

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

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

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

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

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

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

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

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

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

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

26 (c) Except as provided by this section, a junior college
27 district may not give, donate, loan, or transfer surplus property

1 to any person or entity.

2 [Sections 130.353-130.400 reserved for expansion]

3 SUBCHAPTER N. PROFESSIONAL SERVICES AND CONSULTANT SERVICES

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

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

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

24 (d) A professional service provider selected by the
25 district may be selected for a specific project or for various
26 projects that arise during the term of the provider's contract. The
27 term of a contract with a professional service provider may not

1 exceed five years, except that the professional service provider
2 shall complete services for projects started before the end of the
3 contract term.

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

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

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

23 (d) A consulting service provider selected by the district
24 may be selected for a specific project or for various projects that
25 arise during the term of the consultant's contract. The term of a
26 contract with a consulting service provider may not exceed five
27 years, except that the consulting service provider shall complete

1 services for projects started before the end of the contract term.

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

6 (b) The state auditor may audit a junior college district's
7 contracts for professional services or consultants.

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

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

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

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

1 SECTION 8. This Act takes effect September 1, 2009.