

1-1 By: West S.B. No. 857
1-2 (In the Senate - Filed February 16, 2009; March 9, 2009,
1-3 read first time and referred to Committee on Higher Education;
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1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 857 By: West

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1-53 (1) procuring goods or services;

1-54 (2) awarding a contract; or

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

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

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

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

2-1 other relationship status with respect to an organization.
2-2 Sec. 130.0106. CONTRACT WITH PERSON INDEBTED TO DISTRICT.
2-3 (a) The board of trustees of a junior college district by
2-4 resolution may establish rules permitting the district to refuse to
2-5 enter into a contract or other transaction with a person indebted to
2-6 the district.
2-7 (b) It is not a violation of this subchapter for a junior
2-8 college district, under rules adopted under Subsection (a), to
2-9 refuse to award a contract to, or refuse to enter into a transaction
2-10 with, an apparent low bidder or successful proposer that is
2-11 indebted to the district.
2-12 Sec. 130.0107. EFFICIENCY AND SAVINGS. In order to
2-13 increase efficiency of operations and to achieve savings through
2-14 volume purchases, on an annual basis a junior college district
2-15 shall identify common types of goods and services to be purchased
2-16 from the district's budget and, to the extent the district
2-17 determines practicable, consolidate the purchase of those goods or
2-18 services under contracts entered into under this subchapter.
2-19 SECTION 4. Chapter 130, Education Code, is amended by
2-20 adding Subchapters K, L, M, and N to read as follows:
2-21 SUBCHAPTER K. PURCHASING CONTRACTS FOR GOODS AND SERVICES OTHER
2-22 THAN CONSTRUCTION OR PROFESSIONAL SERVICES
2-23 Sec. 130.251. DEFINITIONS. In this subchapter:
2-24 (1) "Board of trustees" means the governing board of a
2-25 district.
2-26 (2) "District" means a junior college district.
2-27 (3) "Purchase of goods":
2-28 (A) includes:
2-29 (i) contracting for the rights to use
2-30 rather than own goods; and
2-31 (ii) purchase of the materials and labor
2-32 incidental to the delivery and installation of personal property;
2-33 and
2-34 (B) does not include the purchase or lease of
2-35 real property.
2-36 (4) "Services" does not include:
2-37 (A) construction services; or
2-38 (B) professional services, including services of
2-39 a consultant, to which Subchapter N applies.
2-40 Sec. 130.2511. USE OF TERMS "BIDDER," "VENDOR," AND "BID."
2-41 (a) In this subchapter, the terms "bidder" and "vendor" are used
2-42 interchangeably to identify an entity that responds to a request
2-43 for competitive bids, proposals, or qualifications.
2-44 (b) In this subchapter, the term "bid" is used to refer to a
2-45 competitive bid, proposal, or statement of qualifications.
2-46 Sec. 130.252. CONFLICT WITH OTHER LAW. To the extent of any
2-47 conflict, this subchapter prevails over any other law relating to
2-48 the purchase of goods and services by a district other than a law
2-49 relating to:
2-50 (1) contracting with historically underutilized
2-51 businesses; or
2-52 (2) the procurement of goods and services from persons
2-53 with disabilities.
2-54 Sec. 130.253. PURCHASE METHODS. (a) Except as otherwise
2-55 provided by this subchapter and subject to Section 130.264, each
2-56 contract by a district with a value of \$50,000 or more that covers
2-57 one or more fiscal years shall be made by the method, of the
2-58 following methods, that provides the best value for the district:
2-59 (1) competitive sealed bids;
2-60 (2) competitive sealed proposals;
2-61 (3) the reverse auction procedure defined by Section
2-62 2155.062(d), Government Code; or
2-63 (4) the formation of a political subdivision
2-64 corporation under Section 304.001, Local Government Code.
2-65 (b) Only one of the methods listed in Subsection (a) may be
2-66 used for any individual contract. The district must determine
2-67 which method provides the best value for the district before
2-68 publishing the notice required by Section 130.258.
2-69 (c) If the district uses the competitive sealed proposal

3-1 method, the district shall:

3-2 (1) reveal when the proposals are opened the names of

3-3 the companies submitting proposals; and

3-4 (2) keep the contents of the proposals confidential

3-5 until the district concludes negotiations and awards a contract.

3-6 (d) Without complying with Subsection (a), a district may

3-7 purchase a good or service that is available from only one source,

3-8 including:

3-9 (1) an item for which competition is precluded because

3-10 of the existence of a patent, copyright, secret process, or

3-11 monopoly;

3-12 (2) a film, recording, periodical, manuscript, book,

3-13 or computer software;

3-14 (3) a utility service, including gas or water;

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

3-16 equipment;

3-17 (5) a product needed to match or work with like

3-18 products; and

3-19 (6) technical or specialized services, including

3-20 advertising, audio/video production, and the repair and

3-21 maintenance of specialized equipment.

3-22 (e) Without complying with Subsection (a), a district may

3-23 purchase perishable goods, advertising services, meeting and

3-24 catering services, and travel services, including airfare, ground

3-25 transportation, and all lodging. The district shall exercise

3-26 reasonable and prudent care to determine whether a contract with a

3-27 provider will provide the best value to the district. The district

3-28 shall document the process for selecting the provider of the goods

3-29 or services and shall maintain a list of prospective providers

3-30 contacted and the basis for selecting the provider. To the extent

3-31 practicable, the district shall state its requirements in writing

3-32 and require written proposals or quotations from prospective

3-33 providers. After rating and ranking all offers received, the

3-34 district shall attempt to negotiate a contract with the highest

3-35 ranked vendor. If a contract cannot be negotiated with the highest

3-36 ranked vendor, the next-highest-ranked vendor shall be contacted.

3-37 If the value of a purchase to be made under this section is

3-38 estimated to be \$50,000 or greater, the district shall publish

3-39 notice of the intent to purchase as provided under Section 130.258.

3-40 If the value of a purchase to be made under this section is

3-41 estimated to be \$10,000 or more but less than \$50,000 during a

3-42 fiscal year, the award of a contract must be made in accordance with

3-43 a policy established by the board of trustees.

3-44 (f) Without complying with Subsection (a), a district may

3-45 purchase a good or service under:

3-46 (1) an interlocal contract under Chapter 791,

3-47 Government Code;

3-48 (2) a contract established by the comptroller or

3-49 Department of Information Resources, including a contract for the

3-50 purchase of travel services, telephone service, computers, and

3-51 computer-related equipment, service, and software; or

3-52 (3) a purchase made under Subchapter D, F, or G,

3-53 Chapter 271, Local Government Code.

3-54 (g) Contracts for services that result in no cost to the

3-55 district or that provide income to a district must be based on bids,

3-56 proposals, or qualifications that are solicited and awarded in the

3-57 same manner as a contract for the purchase of goods or services.

3-58 Such contracts include contracts for bookstore services, food

3-59 services, and vending services.

3-60 (h) If district property is destroyed, stolen, severely

3-61 damaged, or unusable, or a contractor is unable to fulfill its

3-62 obligations in providing goods or services, and the board of

3-63 trustees, or its designee, determines that the delay posed by using

3-64 the methods required by Subsection (a) would pose a material threat

3-65 to personal safety or potential damage to other property or would

3-66 prevent or substantially impair the conduct of classes or other

3-67 essential district activities, then contracts for the replacement

3-68 or repair of the property may be made by methods other than those

3-69 required by Subsection (a).

4-1 Sec. 130.254. PURCHASE OF INSURANCE. (a) A district may
 4-2 acquire insurance using a two-step process to obtain competitive
 4-3 sealed proposals. In the first step, the district shall determine
 4-4 which insurance providers are represented by agents interested in
 4-5 providing insurance for the district. If more than one agent
 4-6 indicates a desire to represent the same provider, the agent with
 4-7 the longest and most substantial relationship with the insurance
 4-8 provider shall be authorized to submit a proposal for the
 4-9 designated insurance provider. In the second step, the district
 4-10 shall notify the interested agents in writing as to which insurance
 4-11 providers the agents represent and request the agents to submit
 4-12 proposals for providing insurance.

4-13 (b) In notifying the interested agents to begin the second
 4-14 step, the district is not required to comply with Section 130.258.
 4-15 However, the district in the request for proposals shall give the
 4-16 interested agents notice of the date, time, and place where
 4-17 proposals are to be submitted. Proposals received after the date
 4-18 and time stated in the request for proposals may not be considered.

4-19 Sec. 130.255. MULTIYEAR CONTRACT. A contract that extends
 4-20 past the end of a district's fiscal year must include a provision
 4-21 that permits termination at the end of each fiscal year. Contracts
 4-22 solely for the purchase of goods may not exceed five years in
 4-23 duration.

4-24 Sec. 130.256. EVALUATION AND AWARD OF CONTRACT.
 4-25 (a) Except as otherwise provided by this subchapter, a district
 4-26 shall award a contract to the lowest responsible bidder offering
 4-27 the best value to the district according to the selection criteria
 4-28 established by the district. The district shall publish in the
 4-29 request for bids, proposals, or qualifications the criteria the
 4-30 district will use to evaluate the offers and the relative weights
 4-31 given to the criteria that are known at the time of the publication.

4-32 (b) In determining the lowest responsible bidder, the
 4-33 district shall consider:

4-34 (1) the purchase price, including delivery and
 4-35 installation charges;

4-36 (2) the reputation of the bidder and of the bidder's
 4-37 goods or services;

4-38 (3) the quality of the bidder's goods or services;

4-39 (4) the extent to which the offered goods or services
 4-40 meet the district's needs;

4-41 (5) the bidder's past relationship with the district;

4-42 (6) the total long-term cost to the district to
 4-43 acquire the bidder's goods or services;

4-44 (7) the extent to which the offers comply with the
 4-45 requirements of the request for bids, proposals, or qualifications;

4-46 (8) any other relevant factor specifically listed in
 4-47 the request for bids or proposals; and

4-48 (9) the impact on the ability of the district to comply
 4-49 with laws and rules relating to historically underutilized
 4-50 businesses.

4-51 (c) A district may reject any or all bids, proposals, or
 4-52 qualifications, or parts of bids, proposals, or qualifications if
 4-53 the rejection serves the district's interest.

4-54 (d) The district shall provide all bidders with the
 4-55 opportunity to bid to provide the same goods or services on equal
 4-56 terms and to have bids judged according to the same standards as
 4-57 those set forth in the request for bids.

4-58 (e) Bids may be opened only by the district in a
 4-59 district-owned or district-controlled facility. The meeting or
 4-60 other occasion at which bids are opened shall be open to the public.
 4-61 At the time the district opens a bid, if one or more members of the
 4-62 public are present, the appropriate employee or officer of the
 4-63 district shall read aloud the name of the bidder and the total bid
 4-64 amount, if the bid is of a type that should contain a single bid
 4-65 amount. When opening proposals or qualifications, the appropriate
 4-66 employee or officer shall read aloud only the name of the
 4-67 respondents and may not disclose the contents of a proposal or
 4-68 qualification on opening or during negotiations with competing
 4-69 bidders. At least two district employees or members of the

5-1 district's board of trustees must be present at the bid, proposal,
 5-2 or qualification opening.

5-3 (f) A bid that has been opened may not be changed for the
 5-4 purpose of correcting an error in the bid price. If there is a
 5-5 discrepancy between the total price and the unit price of a bid, the
 5-6 unit price prevails. If there is a discrepancy between the written
 5-7 price and the numerical price of a bid, the written price prevails.

5-8 (g) This subchapter does not change the common law right of
 5-9 a bidder to withdraw a bid due to a material mistake in the bid.

5-10 (h) The district shall document the basis of its selection
 5-11 and shall make its evaluations public not later than the seventh day
 5-12 after the date the contract is awarded. The district shall state in
 5-13 writing in the contract file the reasons for making an award.

5-14 (i) A contract awarded in violation of this subchapter is
 5-15 void.

5-16 (j) In awarding a contract by competitive sealed bid under
 5-17 this section, a district that has its central administrative office
 5-18 located in a municipality with a population of less than 250,000 may
 5-19 consider a bidder's principal place of business in the manner
 5-20 provided by Section 271.9051, Local Government Code. This
 5-21 subsection does not apply to the purchase of telecommunications
 5-22 services or information services, as those terms are defined by 47
 5-23 U.S.C. Section 153.

5-24 Sec. 130.257. RULES AND PROCEDURES; AUDITS BY STATE
 5-25 AUDITOR. (a) The board of trustees may adopt rules and procedures
 5-26 for the acquisition of goods or services by the district.

5-27 (b) District purchases of goods or services are subject to
 5-28 audit by the state auditor in accordance with Chapter 321,
 5-29 Government Code.

5-30 Sec. 130.258. NOTICE. (a) Except as otherwise provided by
 5-31 this subchapter, for any method of contracting selected under
 5-32 Section 130.253(a), the district shall, within a seven-day period,
 5-33 publish the notice required by this section in at least two issues
 5-34 of any newspaper of general circulation in the county in which the
 5-35 district's central administrative office is located. The deadline
 5-36 for receiving bids or proposals may not be less than 10 business
 5-37 days after the date of the publication of the first newspaper
 5-38 notice. The deadline for receiving responses to a request for
 5-39 qualifications may not be less than five business days after the
 5-40 date of the publication of the last newspaper notice. If there is
 5-41 not a newspaper of general circulation in the county in which the
 5-42 district's central administrative office is located, the notice
 5-43 shall be published in a newspaper of general circulation in a
 5-44 location nearest the district's central administrative office. In
 5-45 a two-step procurement process, the time and place where the
 5-46 second-step bids, proposals, or responses will be received are not
 5-47 required to be included in the notice.

5-48 (b) The district may, as an alternative to publishing notice
 5-49 in a newspaper exclusively under Subsection (a), publish on a
 5-50 publicly accessible Internet site the notice required by this
 5-51 section. Before or at the same time the district first publishes
 5-52 the Internet notice, the district shall publish a notice in a
 5-53 newspaper of general circulation, as described by Subsection (a),
 5-54 that includes the name of the goods or services to be purchased, the
 5-55 date, time, and place for receiving and opening bids, proposals, or
 5-56 statements of qualifications, and the Internet address of the
 5-57 Internet site where detailed requirements may be found. The notice
 5-58 posted on the Internet under this subsection must be posted every
 5-59 day for at least:

5-60 (1) 10 business days before the deadline for receiving
 5-61 the bids or proposals; or

5-62 (2) five business days before the deadline for
 5-63 receiving responses to a request for qualifications.

5-64 (c) Except as otherwise provided by Subsection (b) for the
 5-65 newspaper notice required by that subsection, the notice required
 5-66 by this section must include:

5-67 (1) the location where the request for bid, proposal,
 5-68 or qualification documents may be obtained or examined;

5-69 (2) the date, time, and place for receiving and

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

6-7 Sec. 130.259. DISCUSSION AND REVISION OF PROPOSALS.

6-8 (a) As provided in a request for proposals and under rules adopted
 6-9 by the district, the district may discuss acceptable or potentially
 6-10 acceptable proposals with bidders to assess a bidder's ability to
 6-11 meet the solicitation requirements.

6-12 (b) After receiving a proposal but before making an award,
 6-13 the district may permit the three highest-ranking bidders to revise
 6-14 their proposals, within the scope of the published specifications,
 6-15 to obtain the best final offer.

6-16 (c) Before an award, the district may not disclose
 6-17 information derived from proposals submitted from competing
 6-18 bidders in conducting discussions under this section.

6-19 Sec. 130.260. PRE-BID CONFERENCE OR SITE VISIT. (a) The
 6-20 district may require a principal, officer, or employee of each
 6-21 prospective bidder to attend a mandatory pre-bid conference or site
 6-22 visit, or both, as a condition of a request for bid or proposal.
 6-23 Notice of a requirement under this subsection must be included in
 6-24 the notice published under Section 130.258.

6-25 (b) After the district conducts a mandatory pre-bid
 6-26 conference or site visit, the district may send any additional
 6-27 required notice for the proposed contract only to prospective
 6-28 bidders who attended or were represented at the conference or who
 6-29 are documented as having visited the site.

6-30 Sec. 130.261. IDENTICAL BIDS. If, after considering the
 6-31 factors described by Section 130.256, the district determines that
 6-32 the district has received identical bids, the district shall cast
 6-33 lots to determine which bidder will be awarded the contract. The
 6-34 district shall invite the bidders to witness the selection process
 6-35 under this section. The selection process must be conducted by at
 6-36 least two district employees or members of the district's board of
 6-37 trustees.

6-38 Sec. 130.262. BID DEPOSIT. (a) The district may, as the
 6-39 district determines necessary, require a bid deposit in an amount
 6-40 determined by the district. The amount of the deposit, if any, must
 6-41 be stated in the notice required by Section 130.258 of the
 6-42 invitation to bid.

6-43 (b) On the award of a contract or the rejection of all bids,
 6-44 the district shall return the bid deposit of an unsuccessful
 6-45 bidder. The bid deposit of the successful bidder may be retained
 6-46 until the contract is signed by the district. A bid deposit may not
 6-47 be held longer than 90 days.

6-48 (c) The bid deposit required by the district, if any, must
 6-49 be in the form of a cashier's check, certified check, or bid bond
 6-50 written by a surety authorized to conduct business in this state. A
 6-51 district may elect to require a bid deposit to be in the form of a
 6-52 bid bond.

6-53 Sec. 130.263. PERFORMANCE BOND. A district may require a
 6-54 contractor to provide a performance bond in the amount of the
 6-55 contract before executing a contract for the purchase of goods or
 6-56 services with a value of \$100,000 or more. The bond must be written
 6-57 by a surety authorized to conduct business in this state and
 6-58 generally comply with the performance bond requirements of Chapter
 6-59 2253, Government Code.

6-60 Sec. 130.264. ENFORCEMENT OF PURCHASING PROCEDURES:
 6-61 CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY; INJUNCTION. (a) In
 6-62 this section:

6-63 (1) "Component purchases" means purchases of the
 6-64 component parts of an item that in normal purchasing practices
 6-65 would be purchased in one purchase.

6-66 (2) "Separate purchases" means purchases, made
 6-67 separately, of goods or services that in normal purchasing
 6-68 practices would be purchased in one purchase.

6-69 (3) "Sequential purchases" means purchases, made over

7-1 a period, of goods or services that in normal purchasing practices
 7-2 would be purchased in one purchase.

7-3 (b) An officer, employee, or agent of a district commits an
 7-4 offense if the person with criminal negligence makes or authorizes
 7-5 separate, sequential, or component purchases for the purpose of
 7-6 avoiding the requirements of Section 130.253, 130.256, or 130.266.
 7-7 An offense under this subsection is a Class B misdemeanor and is an
 7-8 offense involving moral turpitude that results in a forfeiture of
 7-9 an officer's public office.

7-10 (c) An officer, employee, or agent of a district commits an
 7-11 offense if the person with criminal negligence violates Section
 7-12 130.253, 130.256, or 130.266 other than by conduct described by
 7-13 Subsection (b). An offense under this subsection is a Class B
 7-14 misdemeanor and is an offense involving moral turpitude that
 7-15 results in a forfeiture of an officer's public office.

7-16 (d) An officer or employee of a district commits an offense
 7-17 if the officer or employee knowingly violates Section 130.253,
 7-18 130.256, or 130.266 other than by conduct described by Subsection
 7-19 (b) or (c). An offense under this subsection is a Class C
 7-20 misdemeanor.

7-21 (e) The final conviction of a person other than a member of
 7-22 the board of trustees for an offense under Subsection (b) or (c)
 7-23 results in the immediate removal from office or employment of that
 7-24 person. A trustee who is convicted of an offense under this section
 7-25 is subject to removal as provided by Chapter 66, Civil Practice and
 7-26 Remedies Code. For four years after the date of the final
 7-27 conviction, the removed person is ineligible to be a candidate for
 7-28 or to be appointed or elected to a public office in this state, is
 7-29 ineligible to be employed by or act as an agent for this state or a
 7-30 political subdivision of this state, and is ineligible to receive
 7-31 any compensation through a contract with this state or a political
 7-32 subdivision of this state. This subsection does not prohibit the
 7-33 payment of retirement benefits to the removed person or the payment
 7-34 of workers' compensation benefits to the removed person for an
 7-35 injury that occurred before the commission of the offense for which
 7-36 the person was removed. This subsection does not make a person
 7-37 ineligible for an office for which the federal or state
 7-38 constitution prescribes exclusive eligibility requirements.

7-39 (f) A court may enjoin performance of a contract made in
 7-40 violation of this subchapter. A county attorney, district
 7-41 attorney, criminal district attorney, citizen of the county in
 7-42 which the district is located, or an interested party may bring an
 7-43 action for an injunction. A party who prevails in an action brought
 7-44 under this subsection is entitled to reasonable attorney's fees as
 7-45 approved by the court.

7-46 Sec. 130.265. PURCHASE AGREEMENTS AND VENDOR LISTS FOR
 7-47 MISCELLANEOUS PURCHASES. (a) This section applies only to the
 7-48 selection and engagement of vendors from which a district may
 7-49 purchase goods or services, including produce, gasoline, and fuel
 7-50 oil, where the total cost of the goods and services is expected to
 7-51 be \$50,000 or more during a fiscal year but the selling price must
 7-52 be determined at the time the need for the goods and services
 7-53 arises.

7-54 (b) The notice requirements of Section 130.258 apply to
 7-55 purchases made under this section, except that the notice must
 7-56 specify the categories of goods or services to be purchased under
 7-57 this section and solicit the names, addresses, and telephone
 7-58 numbers of bidders who are interested in supplying the goods or
 7-59 services to the district. The district shall create and provide a
 7-60 proposal form to be used by interested bidders. The form must
 7-61 describe the goods or services that may be required and the terms
 7-62 and conditions of, and method for, determining the price of the
 7-63 bidders' products and services. Bidders desiring to be included on
 7-64 the list must complete and sign the district's form. The district
 7-65 shall determine which bidders are qualified to be included on a list
 7-66 of bidders from which goods and services may be purchased during the
 7-67 applicable fiscal year.

7-68 (c) Before the district makes a purchase covered by this
 7-69 section, the district must obtain written price quotations from at

8-1 least three bidders from the list created by the district for that
 8-2 category. If fewer than three bidders are on the list, the district
 8-3 shall contact each bidder on the list. If more than three bidders
 8-4 are on the list, the district may invite all bidders to provide a
 8-5 quotation or may select three bidders on a rotational basis each
 8-6 time a purchase is to be made. The bidding records must be retained
 8-7 with the district's competitive bidding records and are subject to
 8-8 audit. In determining from whom to purchase the goods or services,
 8-9 the district may consider the provisions of Section 130.256.

8-10 Sec. 130.266. PURCHASES MADE WITHOUT ADVERTISING.

8-11 (a) Except as provided under Sections 130.253(d), (f), (g), and
 8-12 (h), a purchase of goods or services with a cost of \$10,000 or more
 8-13 but less than \$50,000 must be made by written competitive bids or
 8-14 proposals. A minimum of three bids or proposals must be considered
 8-15 before the award of a contract or order for the specified goods or
 8-16 services. A district is not required to advertise the purchase.

8-17 (b) In determining from whom to purchase the goods or
 8-18 services under this section, the district shall consider the
 8-19 provisions of Section 130.256.

8-20 (c) A person may not use the process described by this
 8-21 section to knowingly violate Section 130.264.

8-22 Sec. 130.267. NOTIFICATION OF CRIMINAL HISTORY OF

8-23 CONTRACTOR. (a) A person or business entity that enters into a
 8-24 contract with a district must give advance notice to the district if
 8-25 the person or an owner or operator of the business entity has been
 8-26 convicted of a felony. The notice must include a general
 8-27 description of the conduct resulting in the conviction of a felony.

8-28 (b) A district may refuse to enter into a contract or other
 8-29 transaction with a person who has been convicted of a felony or with
 8-30 a business entity if an owner or operator of the entity has been
 8-31 convicted of a felony.

8-32 (c) A district may terminate a contract with a person or
 8-33 business entity if the district determines that the person or
 8-34 business entity failed to give notice as required by Subsection (a)
 8-35 or misrepresented the conduct resulting in the conviction. The
 8-36 district must compensate the person or business entity for goods
 8-37 delivered or services performed before the termination of the
 8-38 contract.

8-39 (d) This section does not apply to a publicly held
 8-40 corporation.

8-41 Sec. 130.268. PREFERENCE TO TEXAS AND UNITED STATES

8-42 PRODUCTS. (a) A district that purchases agricultural products
 8-43 shall give preference to those products produced, processed, or
 8-44 grown in this state if the cost to the district for those products
 8-45 is equal to or less than the cost of other products and the quality
 8-46 of those products is equal to or exceeds the quality of other
 8-47 products.

8-48 (b) If a district determines that agricultural products
 8-49 produced, processed, or grown in this state are not entitled to a
 8-50 preference under Subsection (a), the district shall give preference
 8-51 to agricultural products produced, processed, or grown in other
 8-52 states of the United States over foreign products if the cost to the
 8-53 district for those products is equal to or less than the cost of
 8-54 foreign products and the quality of those products is equal to or
 8-55 exceeds the quality of the foreign products.

8-56 (c) A district that purchases vegetation for landscaping
 8-57 purposes, including plants, shall give preference to Texas
 8-58 vegetation if the cost to the district for that vegetation is equal
 8-59 to or less than the cost of other vegetation and the quality of that
 8-60 vegetation is not inferior to the quality of other vegetation.

8-61 (d) In implementing this section, a district may receive
 8-62 assistance from and use the resources of the Department of
 8-63 Agriculture, including information on the availability of
 8-64 agricultural products.

8-65 (e) A district may not adopt product purchasing
 8-66 specifications that unnecessarily exclude agricultural products
 8-67 produced, processed, or grown in this state.

8-68 Sec. 130.269. EFFICIENCY AND SAVINGS. In order to increase
 8-69 efficiency of operations and to achieve savings through volume

9-1 purchases, on an annual basis a district shall identify common
 9-2 types of goods and services to be purchased from the district's
 9-3 budget and, to the extent the district determines practicable,
 9-4 consolidate the purchase of those goods or services under contracts
 9-5 entered into under this subchapter.

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

9-17 (b) The board may not delegate the authority to act
 9-18 regarding an action specifically authorized or required by this
 9-19 subchapter to be taken by the board of trustees.

9-20 [Sections 130.271-130.300 reserved for expansion]

9-21 SUBCHAPTER L. CONSTRUCTION CONTRACTS

9-22 Sec. 130.301. DEFINITIONS. In this subchapter:

9-23 (1) "Architect" means an individual registered as an
 9-24 architect under Chapter 1051, Occupations Code.

9-25 (2) "Board of trustees" means the governing board of a
 9-26 district.

9-27 (3) "Construction" means the construction,
 9-28 rehabilitation, alteration, or repair of a facility, including all
 9-29 goods and labor incidental to the construction.

9-30 (4) "Contractor" in the context of a contract for the
 9-31 construction, rehabilitation, alteration, or repair of a facility
 9-32 means a sole proprietorship, partnership, corporation, or other
 9-33 legal entity that assumes the risk for constructing,
 9-34 rehabilitating, altering, or repairing all or part of the facility
 9-35 at the contracted price.

9-36 (5) "District" means a junior college district.

9-37 (6) "Engineer" means an individual licensed as a
 9-38 professional engineer under Chapter 1001, Occupations Code.

9-39 (7) "Facility" means real property or a public work,
 9-40 including buildings and associated systems, structures, and
 9-41 components, and improved or unimproved land.

9-42 (8) "Fee" in the context of a contract for the
 9-43 construction, rehabilitation, alteration, or repair of a facility
 9-44 means the payment a construction manager receives for its overhead
 9-45 and profit in performing its services.

9-46 (9) "General conditions" in the context of a contract
 9-47 for the construction, rehabilitation, alteration, or repair of a
 9-48 facility means on-site management, administrative personnel,
 9-49 insurance, bonds, equipment, utilities, and incidental work,
 9-50 including minor field labor and materials.

9-51 Sec. 130.302. USE OF TERMS "BIDDER," "OFFEROR," "VENDOR,"
 9-52 AND "BID." (a) In this subchapter, the terms "bidder," "offeror,"
 9-53 and "vendor" are used interchangeably to identify an entity that
 9-54 responds to a request for competitive bids or proposals, or for
 9-55 offers or qualifications.

9-56 (b) In this subchapter, the term "bid" is used to refer to a
 9-57 competitive bid or proposal or to a statement of qualifications.

9-58 Sec. 130.303. METHODS OF CONTRACTING. (a) Except as
 9-59 otherwise provided by this subchapter and subject to Section
 9-60 130.313, all contracts for construction, rehabilitation,
 9-61 alteration, or repair of facilities valued at \$50,000 or more shall
 9-62 be made by the method, of the following methods, that provides the
 9-63 best value for the district:

9-64 (1) competitive sealed bids;

9-65 (2) competitive sealed proposals;

9-66 (3) a design-build contract;

9-67 (4) a construction manager-at-risk; or

9-68 (5) a job order contract for the minor construction,
 9-69 repair, rehabilitation, or alteration of a facility.

10-1 (b) Only one of the methods listed in Subsection (a) may be
 10-2 used for any individual contract. A district must determine which
 10-3 method provides the best value for the district before providing
 10-4 the notice required by Section 130.306.

10-5 (c) If the district uses the competitive sealed proposal
 10-6 method, the district shall:

10-7 (1) reveal when the proposals are opened the names of
 10-8 the companies submitting proposals; and

10-9 (2) keep the contents of the proposals confidential
 10-10 until the district concludes negotiations and awards a contract.

10-11 (d) A district may contract for the services of a
 10-12 construction manager-agent as provided by Section 130.318 in
 10-13 conjunction with the method of contracting selected under
 10-14 Subsection (a).

10-15 (e) If district property is destroyed, stolen, severely
 10-16 damaged, unusable, or undergoes major operational or structural
 10-17 failure, or a contractor is unable to fulfill its obligations in
 10-18 providing goods or services, and the board of trustees, or its
 10-19 designee, determines that the delay posed by using the methods
 10-20 required by Subsection (a) would pose a material threat to personal
 10-21 safety or potential damage to other property or would prevent or
 10-22 substantially impair the conduct of classes or other essential
 10-23 district activities, then contracts for the replacement or repair
 10-24 of the property may be made by methods other than those required by
 10-25 Subsection (a).

10-26 Sec. 130.304. EVALUATION AND AWARD OF CONTRACT.

10-27 (a) Except as otherwise provided by this subchapter, a district
 10-28 shall award a contract to the lowest responsible bidder offering
 10-29 the best value to the district according to the selection criteria
 10-30 established by the district. The district shall publish in the
 10-31 request for bids, proposals, or qualifications the criteria the
 10-32 district will use to evaluate the offers and the relative weights
 10-33 given to the criteria that are known at the time of the publication.

10-34 (b) In determining the lowest responsible bidder, the
 10-35 district may consider:

10-36 (1) the immediate and long-term cost of the service;
 10-37 (2) the reputation of the bidder;
 10-38 (3) the quality of the bidder's services;
 10-39 (4) the extent to which the offered services meet the
 10-40 district's needs;

10-41 (5) the bidder's past relationship with the district;
 10-42 (6) the extent to which the offers comply with the
 10-43 requirements of the request for bids, proposals, or qualifications;

10-44 (7) any other relevant factor specifically listed in
 10-45 the request for bids or proposals;

10-46 (8) the impact on the ability of the district to comply
 10-47 with laws and rules relating to historically underutilized
 10-48 businesses; and

10-49 (9) the bidder's safety record, if:
 10-50 (A) the district has adopted a written definition
 10-51 and criteria for accurately determining the safety record of a
 10-52 bidder;

10-53 (B) the district has given notice to prospective
 10-54 bidders in the request for bids that the safety record of a bidder
 10-55 may be considered in determining the responsibility of the bidder;
 10-56 and

10-57 (C) the district's determinations are not
 10-58 arbitrary and capricious.

10-59 (c) A district may reject any or all bids, proposals,
 10-60 qualifications, or parts of bids, proposals, or qualifications if
 10-61 the rejection serves the district's interest.

10-62 (d) The district shall provide all bidders with the
 10-63 opportunity to submit a bid or proposal to provide the same items or
 10-64 services on equal terms and have bids judged according to the same
 10-65 standards as those set forth in the request for bids.

10-66 (e) Bids may be opened only by the district in a
 10-67 district-owned or district-controlled facility. The meeting or
 10-68 other occasion at which bids are opened must be open to the public.
 10-69 At the time the district opens a bid, if one or more members of the

11-1 public are present, the appropriate employee or officer of the
 11-2 district shall read aloud the name of the bidder and the total bid
 11-3 amount if the bid is of a type that should contain a single bid
 11-4 amount. At least two district employees or members of the board of
 11-5 trustees must be present at the bid opening. When opening proposals
 11-6 or qualifications, the appropriate employee or officer shall read
 11-7 aloud only the names of the respondents and may not disclose the
 11-8 contents of a proposal or qualification on opening the proposal or
 11-9 qualification or during negotiations with competing bidders.

11-10 (f) A bid that has been opened may not be changed for the
 11-11 purpose of correcting an error in the bid price.

11-12 (g) This subchapter does not change the common law right of
 11-13 a bidder to withdraw a bid due to a material mistake in the bid.

11-14 (h) The district shall document the basis of its selection
 11-15 and shall make its evaluations public not later than the seventh day
 11-16 after the date the contract is awarded. The district shall state in
 11-17 writing in the contract file the reasons for making an award.

11-18 (i) A contract awarded in violation of this subchapter is
 11-19 void.

11-20 (j) In awarding a contract by competitive sealed bid under
 11-21 this section, a district that has its central administrative office
 11-22 located in a municipality with a population of less than 250,000 may
 11-23 consider a bidder's principal place of business in the manner
 11-24 provided by Section 271.9051, Local Government Code. This
 11-25 subsection does not apply to the purchase of telecommunications
 11-26 services or information services, as those terms are defined by 47
 11-27 U.S.C. Section 153.

11-28 Sec. 130.305. RULES AND PROCEDURES; AUDITS BY STATE
 11-29 AUDITOR. (a) The board of trustees may adopt rules and procedures
 11-30 for the acquisition of construction services by the district.

11-31 (b) District construction contracts are subject to audit by
 11-32 the state auditor in accordance with Chapter 321, Government Code.

11-33 Sec. 130.306. NOTICE. (a) For any method of contracting
 11-34 selected under Section 130.303(a), the district shall, within a
 11-35 seven-day period, publish the notice required by this section in at
 11-36 least two issues of any newspaper of general circulation in the
 11-37 county in which the district's central administrative office is
 11-38 located. The deadline for receiving bids, proposals, or responses
 11-39 to a request for qualifications may not be less than 10 business
 11-40 days after the date of the publication of the first newspaper
 11-41 notice. If there is not a newspaper of general circulation in the
 11-42 county in which the district's central administrative office is
 11-43 located, the notice shall be published in a newspaper of general
 11-44 circulation in a location nearest the district's central
 11-45 administrative office. In a two-step procurement process, the time
 11-46 and place where the second-step bids, proposals, or responses will
 11-47 be received are not required to be included in the notice.

11-48 (b) The notice required by this section must include:

11-49 (1) the location where the request for bid, proposal,
 11-50 or qualification documents may be obtained or examined;

11-51 (2) the date, time, and place for receiving and
 11-52 opening bids, proposals, or statements of qualifications;

11-53 (3) a general description of the work to be performed;

11-54 (4) the location and time of any mandatory site
 11-55 inspections or pre-bid meetings; and

11-56 (5) the amount of any required bid bond, payment bond,
 11-57 or performance bond.

11-58 Sec. 130.307. DISCUSSION AND REVISION OF PROPOSALS.
 11-59 (a) After receipt of proposals, under rules adopted by the
 11-60 district, the district may discuss acceptable or potentially
 11-61 acceptable proposals with bidders to assess a bidder's ability to
 11-62 meet the solicitation requirements.

11-63 (b) After receiving a proposal but before making an award,
 11-64 the district may permit the three highest-ranking bidders to revise
 11-65 their proposals, within the scope of the published specifications,
 11-66 to obtain the best final offer.

11-67 (c) Before an award, the district may not disclose
 11-68 information derived from proposals submitted from competing
 11-69 bidders in conducting discussions under this section.

12-1 Sec. 130.308. PRE-BID CONFERENCE OR SITE VISIT. (a) The
 12-2 district may require a principal, officer, or employee of each
 12-3 prospective bidder to attend a mandatory pre-bid conference or site
 12-4 visit, or both, as a condition of a request for bid or proposal.
 12-5 Notice of a requirement under this subsection must be included in
 12-6 the notice published under Section 130.306.

12-7 (b) After the district conducts a mandatory pre-bid
 12-8 conference or site visit, the district may send any additional
 12-9 required notice for the proposed contract only to prospective
 12-10 bidders who attended or were represented at the conference or who
 12-11 are documented as having visited the site.

12-12 Sec. 130.309. IDENTICAL BIDS. If, after considering the
 12-13 factors described by Section 130.304, the district determines that
 12-14 the district has received identical bids, the district shall cast
 12-15 lots to determine which bidder will be awarded the contract. The
 12-16 district shall invite the bidders to witness the selection process
 12-17 under this section. The selection process must be conducted by at
 12-18 least two district employees or members of the district's board of
 12-19 trustees.

12-20 Sec. 130.310. BID DEPOSIT. (a) The district may, as the
 12-21 district determines necessary, require a bid deposit in an amount
 12-22 determined by the district. The amount of the deposit, if any, must
 12-23 be stated in the notice required by Section 130.306 of the
 12-24 invitation to bid.

12-25 (b) Within 10 days from the date of the award of a contract
 12-26 or the rejection of all bids, the district shall refund the bid
 12-27 deposit of an unsuccessful bidder. The bid bonds may not be held
 12-28 for more than 90 days. Before the award of a contract, the district
 12-29 may return bid bonds of bidders that are not being considered for
 12-30 award of a contract.

12-31 (c) For public work contracts, the bid deposit required by
 12-32 the district, if any, may only be in the form of a bid bond written
 12-33 by a surety authorized to conduct business in this state.

12-34 Sec. 130.311. PERFORMANCE AND PAYMENT BONDS. For a
 12-35 contract for construction, the contractor must execute a good and
 12-36 sufficient payment bond and a performance bond in accordance with
 12-37 Chapter 2253, Government Code.

12-38 Sec. 130.312. DELEGATION. (a) Except as provided by
 12-39 Subsection (b), the board of trustees may, as appropriate, delegate
 12-40 its authority under this subchapter to a designated person,
 12-41 representative, or committee. In procuring construction services,
 12-42 the district shall provide notice of the delegation and the limits
 12-43 of the delegation in the request for bids, proposals, or
 12-44 qualifications or in an addendum to the request. If the district
 12-45 fails to provide that notice, a ranking, selection, or evaluation
 12-46 of bids, proposals, or qualifications for construction services
 12-47 other than by the board of trustees in an open public meeting is
 12-48 advisory only.

12-49 (b) The board may not delegate the authority to act
 12-50 regarding an action specifically authorized or required by this
 12-51 subchapter to be taken by the board of trustees.

12-52 Sec. 130.313. ENFORCEMENT OF CONTRACT SOLICITATION
 12-53 PROCEDURES: CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY;
 12-54 INJUNCTION. (a) In this section:

12-55 (1) "Component procurements" means procuring the
 12-56 component parts of an item or service that in normal practice would
 12-57 be made in one procurement.

12-58 (2) "Separate procurements" means procurements, made
 12-59 separately, of goods or services that in normal practice would be
 12-60 made in one procurement.

12-61 (3) "Sequential procurement" means procurements, made
 12-62 over a period, of goods or services that in normal practice would be
 12-63 made in one procurement.

12-64 (b) An officer, employee, or agent of a district commits an
 12-65 offense if the person with criminal negligence makes or authorizes
 12-66 separate, sequential, or component procurements for the purpose of
 12-67 avoiding the requirements of Section 130.303 or 130.304. An
 12-68 offense under this subsection is a Class B misdemeanor and is an
 12-69 offense involving moral turpitude that results in a forfeiture of

13-1 an officer's public office.

13-2 (c) An officer, employee, or agent of a district commits an
 13-3 offense if the person with criminal negligence violates Section
 13-4 130.303, 130.304, or 130.315 other than by conduct described by
 13-5 Subsection (b). An offense under this subsection is a Class B
 13-6 misdemeanor and is an offense involving moral turpitude that
 13-7 results in a forfeiture of an officer's public office.

13-8 (d) An officer or employee of a district commits an offense
 13-9 if the officer or employee knowingly violates Section 130.303,
 13-10 130.304, or 130.315 other than by conduct described by Subsection
 13-11 (b) or (c). An offense under this subsection is a Class C
 13-12 misdemeanor.

13-13 (e) The final conviction of a person other than a member of
 13-14 the board of trustees for an offense under Subsection (b) or (c)
 13-15 results in the immediate removal from office or employment of that
 13-16 person. A member of the board of trustees who is convicted of an
 13-17 offense under this section is subject to removal as provided by
 13-18 Chapter 66, Civil Practice and Remedies Code. For four years after
 13-19 the date of the final conviction, the removed person is ineligible
 13-20 to be a candidate for or to be appointed or elected to a public
 13-21 office in this state, is ineligible to be employed by or act as an
 13-22 agent for this state or a political subdivision of this state, and
 13-23 is ineligible to receive any compensation through a contract with
 13-24 this state or a political subdivision of this state. This
 13-25 subsection does not prohibit the payment of retirement benefits to
 13-26 the removed person or the payment of workers' compensation benefits
 13-27 to the removed person for an injury that occurred before the
 13-28 commission of the offense for which the person was removed. This
 13-29 subsection does not make a person ineligible for an office for which
 13-30 the federal or state constitution prescribes exclusive eligibility
 13-31 requirements.

13-32 (f) A court may enjoin performance of a contract made in
 13-33 violation of this subchapter. A county attorney, district
 13-34 attorney, criminal district attorney, citizen of the county in
 13-35 which the district is located, or an interested party may bring an
 13-36 action for an injunction. A party who prevails in an action brought
 13-37 under this subsection is entitled to reasonable attorney's fees as
 13-38 approved by the court.

13-39 Sec. 130.314. NOTIFICATION OF CRIMINAL HISTORY OF
 13-40 CONTRACTOR. (a) A person or business entity that enters into a
 13-41 contract with a district must give advance notice to the district if
 13-42 the person or an owner or operator of the business entity has been
 13-43 convicted of a felony. The notice must include a general
 13-44 description of the conduct resulting in the conviction of a felony.

13-45 (b) A district may refuse to enter into a contract or other
 13-46 transaction with a person who has been convicted of a felony or with
 13-47 a business entity if an owner or operator of the entity has been
 13-48 convicted of a felony.

13-49 (c) A district may terminate a contract with a person or
 13-50 business entity if the district determines that the person or
 13-51 business entity failed to give notice as required by Subsection (a)
 13-52 or misrepresented the conduct resulting in the conviction. The
 13-53 district must compensate the person or business entity for goods
 13-54 delivered or services performed before the termination of the
 13-55 contract.

13-56 (d) This section does not apply to a publicly held
 13-57 corporation.

13-58 Sec. 130.315. CHANGE ORDERS. (a) After performance of a
 13-59 construction contract begins, a district may approve change orders
 13-60 if necessary to:

13-61 (1) make changes in plans or specifications; or
 13-62 (2) decrease or increase the quantity of work to be
 13-63 performed or materials, equipment, or supplies to be furnished.

13-64 (b) The total price of a contract may not be increased by a
 13-65 change order unless provision has been made for the payment of the
 13-66 added cost by the appropriation of current funds or bond funds for
 13-67 that purpose, by the authorization of the issuance of certificates,
 13-68 or by a combination of those procedures. The original contract
 13-69 price may not be increased by more than 25 percent unless the board

14-1 of trustees determines the change is due to causes beyond the
 14-2 reasonable control of the district or contractor.

14-3 (c) Except as provided by Subsection (b) or Section
 14-4 130.303(e), a person, including a member of the board of trustees,
 14-5 who knowingly authorizes one or more change orders that, in the
 14-6 aggregate, exceed 25 percent of the original contract price is
 14-7 subject to Section 130.313.

14-8 Sec. 130.316. ERRORS AND OMISSIONS INSURANCE. For any
 14-9 public work contract awarded under this subchapter, to protect the
 14-10 interest of the district, the architect or engineer that prepared
 14-11 the plans and specifications for the public work shall, at the
 14-12 architect's or engineer's expense, carry an errors and omissions
 14-13 insurance policy in an amount not less than \$1 million or the value
 14-14 of the work if the work has a value of less than \$1 million.

14-15 Sec. 130.317. DESIGN-BUILD CONTRACTS FOR FACILITIES.

14-16 (a) In this section:

14-17 (1) "Design-build contract" means a single contract
 14-18 with a design-build firm for the design and construction of a
 14-19 facility.

14-20 (2) "Design-build firm" means a partnership,
 14-21 corporation, or other legal entity or team that includes an
 14-22 engineer or architect and a builder qualified to engage in building
 14-23 construction in this state.

14-24 (3) "Design criteria package" means a set of documents
 14-25 that provides sufficient information, including criteria for
 14-26 selection, to permit a design-build firm to prepare a response to a
 14-27 district's request for qualifications and to the district's request
 14-28 for any additional information. The design criteria package must
 14-29 specify criteria the district considers necessary to describe the
 14-30 project and may include, as appropriate, the legal description of
 14-31 the site, survey information concerning the site, interior space
 14-32 requirements, special material requirements, material quality
 14-33 standards, conceptual criteria for the project, special equipment
 14-34 requirements, cost or budget estimates, time schedules, quality
 14-35 assurance and quality control requirements, site development
 14-36 requirements, applicable codes and ordinances, provisions for
 14-37 utilities, parking requirements, or any other requirement, as
 14-38 applicable.

14-39 (b) A district may use the design-build method for the
 14-40 construction, rehabilitation, alteration, or repair of a facility.
 14-41 In using that method and in entering into a contract for the
 14-42 services of a design-build firm, the contracting district and the
 14-43 design-build firm shall follow the procedures provided by
 14-44 Subsections (c)-(j).

14-45 (c) The district may designate an engineer or architect to
 14-46 act as its representative. If the district's engineer or architect
 14-47 is not a full-time employee of the district, any engineer or
 14-48 architect designated shall be selected on the basis of demonstrated
 14-49 competence and qualifications in accordance with Subchapter A,
 14-50 Chapter 2254, Government Code.

14-51 (d) The district shall prepare a request for qualifications
 14-52 that includes general information on the project site, project
 14-53 scope, budget, special systems, selection criteria, and other
 14-54 information that may assist potential design-build firms in
 14-55 submitting proposals for the project. The district shall also
 14-56 prepare a design criteria package that includes more detailed
 14-57 information on the project. If the preparation of the design
 14-58 criteria package requires engineering or architectural services
 14-59 that constitute the practice of engineering within the meaning of
 14-60 Chapter 1001, Occupations Code, or the practice of architecture
 14-61 within the meaning of Chapter 1051, Occupations Code, those
 14-62 services shall be provided in accordance with the applicable law.

14-63 (e) The district shall evaluate statements of
 14-64 qualifications and select a design-build firm in two phases:

14-65 (1) In phase one, the district shall prepare a request
 14-66 for qualifications and evaluate each offeror's experience,
 14-67 technical competence, and capability to perform, the past
 14-68 performance of the offeror's team and members of the team, and other
 14-69 appropriate factors submitted by the team or firm in response to the

15-1 request for qualifications, except that cost-related or
 15-2 price-related evaluation factors are not permitted. Each offeror
 15-3 must certify to the district that each engineer or architect who is
 15-4 a member of its team was selected based on demonstrated competence
 15-5 and qualifications. The district shall qualify a maximum of five
 15-6 offerors to submit additional information and, if the district
 15-7 chooses, to interview for final selection.

15-8 (2) In phase two, the district shall evaluate the
 15-9 information submitted by the offerors on the basis of the selection
 15-10 criteria stated in the request for qualifications and the results
 15-11 of any interview. The district may request additional information
 15-12 regarding demonstrated competence and qualifications,
 15-13 considerations of the safety and long-term durability of the
 15-14 project, the feasibility of implementing the project as proposed,
 15-15 the ability of the offeror to meet schedules, costing methodology,
 15-16 or other factors as appropriate. The district may not require
 15-17 offerors to submit detailed engineering or architectural designs as
 15-18 part of the proposal. The district shall rank each proposal
 15-19 submitted on the basis of the criteria set forth in the request for
 15-20 qualifications. The district shall select the design-build firm
 15-21 that submits the proposal offering the best value for the district
 15-22 on the basis of the published selection criteria and on its ranking
 15-23 evaluations. The district shall first attempt to negotiate a
 15-24 contract with the selected offeror. If the district is unable to
 15-25 negotiate a satisfactory contract with the selected offeror, the
 15-26 district shall, formally and in writing, end negotiations with that
 15-27 offeror and proceed to negotiate with the next offeror in the order
 15-28 of the selection ranking until a contract is reached or
 15-29 negotiations with all ranked offerors end.

15-30 (f) Following selection of a design-build firm under
 15-31 Subsection (e), that firm's engineers or architects shall complete
 15-32 the design, submitting all design elements for review and
 15-33 determination of scope compliance to the district or to the
 15-34 district's engineer or architect before or concurrently with
 15-35 construction.

15-36 (g) An engineer shall have responsibility for compliance
 15-37 with the engineering design requirements and all other applicable
 15-38 requirements of Chapter 1001, Occupations Code. An architect shall
 15-39 have responsibility for compliance with the requirements of Chapter
 15-40 1051, Occupations Code.

15-41 (h) The district shall provide or contract for,
 15-42 independently of the design-build firm, the inspection services,
 15-43 testing of construction materials engineering, and verification
 15-44 testing services necessary for acceptance of the facility by the
 15-45 district. The district shall select those services for which it
 15-46 contracts in accordance with Section 2254.004, Government Code.

15-47 (i) The design-build firm shall supply a signed and sealed
 15-48 set of construction documents for the project to the district at the
 15-49 conclusion of construction.

15-50 (j) A payment or performance bond is not required for, and
 15-51 may not provide coverage for, the portion of a design-build
 15-52 contract under this section that includes design services only. If
 15-53 a fixed contract amount or guaranteed maximum price has not been
 15-54 determined at the time a design-build contract is awarded, the
 15-55 penal sums of the performance and payment bonds delivered to the
 15-56 district must each be in an amount equal to the project budget, as
 15-57 specified in the design criteria package. The design-build firm
 15-58 shall deliver the bonds not later than the 10th day after the date
 15-59 the design-build firm executes the contract unless the design-build
 15-60 firm furnishes a bid bond or other financial security acceptable to
 15-61 the district to ensure that the design-build firm will furnish the
 15-62 required performance and payment bonds when a guaranteed maximum
 15-63 price is established.

15-64 Sec. 130.318. CONTRACTS FOR FACILITIES: CONSTRUCTION
 15-65 MANAGER-AGENT. (a) A district may contract with a construction
 15-66 manager-agent in conjunction with a contract for the construction,
 15-67 rehabilitation, alteration, or repair of a facility. In entering
 15-68 into a contract for the services of a construction manager-agent, a
 15-69 district shall follow the procedures prescribed by this section.

16-1 (b) A construction manager-agent is a sole proprietorship,
 16-2 partnership, corporation, or other legal entity that provides
 16-3 consultation to the district regarding construction,
 16-4 rehabilitation, alteration, or repair of a facility. A district
 16-5 using the services of a construction manager-agent may, under the
 16-6 contract between the district and the construction manager-agent,
 16-7 require the construction manager-agent to provide administrative
 16-8 personnel, equipment necessary to perform duties under this
 16-9 section, and on-site management and other services specified in the
 16-10 contract. A construction manager-agent represents the district in
 16-11 a fiduciary capacity.

16-12 (c) Before or concurrently with selecting a construction
 16-13 manager-agent, the district shall select or designate an engineer
 16-14 or architect who shall prepare the construction documents for the
 16-15 project and who has full responsibility for complying with Chapter
 16-16 1001 or 1051, Occupations Code, as applicable. If the engineer or
 16-17 architect is not a full-time employee of the district, the district
 16-18 shall select the engineer or architect on the basis of demonstrated
 16-19 competence and qualifications as provided by Section 2254.004,
 16-20 Government Code. The district's engineer or architect may not
 16-21 serve, alone or in combination with another person, as the
 16-22 construction manager-agent unless the engineer or architect is
 16-23 hired to serve as the construction manager-agent under a separate
 16-24 or concurrent procurement conducted in accordance with this
 16-25 subchapter. This subsection does not prohibit the district's
 16-26 engineer or architect from providing customary construction phase
 16-27 services under the engineer's or architect's original professional
 16-28 service agreement with the district and in accordance with
 16-29 applicable licensing laws.

16-30 (d) A district shall select a construction manager-agent on
 16-31 the basis of demonstrated competence and qualifications in the same
 16-32 manner as provided for the selection of engineers or architects
 16-33 under Section 2254.004, Government Code.

16-34 (e) A district using the services of a construction
 16-35 manager-agent shall procure, in accordance with applicable law and
 16-36 in any manner authorized by this chapter, a general contractor,
 16-37 trade contractors, or subcontractors who will serve as the prime
 16-38 contractor for their specific portion of the work.

16-39 (f) The district or the construction manager-agent shall
 16-40 procure in accordance with Section 2254.004, Government Code, all
 16-41 of the testing of construction materials engineering, the
 16-42 inspection services, and the verification testing services
 16-43 necessary for acceptance of the facility by the district.

16-44 Sec. 130.319. CONTRACTS FOR FACILITIES: CONSTRUCTION
 16-45 MANAGER-AT-RISK. (a) A district may use the construction
 16-46 manager-at-risk method for the construction, rehabilitation,
 16-47 alteration, or repair of a facility. In using that method and in
 16-48 entering into a contract for the services of a construction
 16-49 manager-at-risk, a district shall follow the procedures prescribed
 16-50 by this section.

16-51 (b) A construction manager-at-risk is a sole
 16-52 proprietorship, partnership, corporation, or other legal entity
 16-53 that assumes the risk for construction, rehabilitation,
 16-54 alteration, or repair of a facility at the contracted price as a
 16-55 general contractor and provides consultation to the district
 16-56 regarding construction during and after the design of the facility.

16-57 (c) Before or concurrently with selecting a construction
 16-58 manager-at-risk, the district shall select or designate an engineer
 16-59 or architect who shall prepare the construction documents for the
 16-60 project and who has full responsibility for complying with Chapter
 16-61 1001 or 1051, Occupations Code, as applicable. If the engineer or
 16-62 architect is not a full-time employee of the district, the district
 16-63 shall select the engineer or architect on the basis of demonstrated
 16-64 competence and qualifications as provided by Section 2254.004,
 16-65 Government Code. The district's engineer, architect, or
 16-66 construction manager-agent for a project may not serve, alone or in
 16-67 combination with another, as the construction manager-at-risk.

16-68 (d) The district shall provide or contract for,
 16-69 independently of the construction manager-at-risk, the inspection

17-1 services, testing of construction materials engineering, and
17-2 verification testing services necessary for acceptance of the
17-3 facility by the district. The district shall select those services
17-4 for which it contracts in accordance with Section 2254.004,
17-5 Government Code.

17-6 (e) The district shall select the construction
17-7 manager-at-risk in either a one-step or two-step process. The
17-8 district shall prepare a request for competitive sealed proposals,
17-9 in the case of a one-step process, or a request for qualifications,
17-10 in the case of a two-step process, that includes general
17-11 information on the project site, project scope, schedule, selection
17-12 criteria, estimated budget, the time and place for receipt of, as
17-13 applicable, proposals or qualifications, a statement as to whether
17-14 the selection process is a one-step or two-step process, and other
17-15 information that may assist the district in its selection of a
17-16 construction manager-at-risk. The district shall state the
17-17 selection criteria in the request for proposals or qualifications,
17-18 as applicable. The selection criteria may include the offeror's
17-19 experience, past performance, safety record, proposed personnel
17-20 and methodology, and other appropriate factors that demonstrate the
17-21 capability of the construction manager-at-risk. If a one-step
17-22 process is used, the district may request, as part of the offeror's
17-23 proposal, proposed fees and prices for fulfilling the general
17-24 conditions. If a two-step process is used, the district may not
17-25 request fees or prices in step one. In step two, the district may
17-26 request that five or fewer offerors, selected solely on the basis of
17-27 qualifications, provide additional information, including the
17-28 construction manager-at-risk's proposed fee and its price for
17-29 fulfilling the general conditions.

17-30 (f) At each step, the district shall receive, publicly open,
17-31 and read aloud the names of the offerors. Within 45 days after the
17-32 date of opening the proposals, the district shall evaluate and rank
17-33 each proposal submitted in relation to the criteria set forth in the
17-34 request for proposals. Within seven days from the date of the award
17-35 of the contract, the district shall make public all proposals,
17-36 including the fees and prices stated in each proposal.

17-37 (g) The district shall select the offeror that submits the
17-38 proposal that offers the best value for the district based on the
17-39 published selection criteria and on its ranking evaluation. The
17-40 district shall first attempt to negotiate a contract with the
17-41 selected offeror. If the district is unable to negotiate a
17-42 satisfactory contract with the selected offeror, the district
17-43 shall, formally and in writing, end negotiations with that offeror
17-44 and proceed to negotiate with the next offeror in the order of the
17-45 selection ranking until a contract is reached or negotiations with
17-46 all ranked offerors end.

17-47 (h) A construction manager-at-risk shall publicize notice,
17-48 in accordance with Section 130.306, and receive bids or proposals
17-49 from trade contractors or subcontractors for the performance of all
17-50 major elements of the work other than the minor work that may be
17-51 included in the general conditions. A construction manager-at-risk
17-52 may seek to perform portions of the work itself if the construction
17-53 manager-at-risk submits its bid or proposal for those portions of
17-54 the work in the same manner as all other trade contractors or
17-55 subcontractors and if the district determines that the construction
17-56 manager-at-risk's bid or proposal provides the best value for the
17-57 district.

17-58 (i) The construction manager-at-risk and the district or
17-59 its representative shall review all trade contractor or
17-60 subcontractor bids or proposals in a manner that does not disclose
17-61 the contents of the bid or proposal during the selection process to
17-62 a person not employed by the construction manager-at-risk,
17-63 engineer, architect, or district. All bids or proposals shall be
17-64 made public after the award of the contract or within seven days
17-65 after the date of final selection of bids or proposals, whichever is
17-66 later.

17-67 (j) If the construction manager-at-risk reviews, evaluates,
17-68 and recommends to the district a bid or proposal from a trade
17-69 contractor or subcontractor but the district requires another bid

18-1 or proposal to be accepted, the district shall compensate the
 18-2 construction manager-at-risk by a change in price, time, or
 18-3 guaranteed maximum cost for any additional cost and risk that the
 18-4 construction manager-at-risk may incur because of the district's
 18-5 requirement that another bid or proposal be accepted.

18-6 (k) If a selected trade contractor or subcontractor
 18-7 defaults in the performance of its work or fails to execute a
 18-8 subcontract after being selected in accordance with this section,
 18-9 the construction manager-at-risk may, without advertising, fulfill
 18-10 the contract requirements or select a replacement trade contractor
 18-11 or subcontractor to fulfill the contract requirements.

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

18-23 Sec. 130.320. SELECTING CONTRACTOR FOR CONSTRUCTION
 18-24 SERVICES THROUGH COMPETITIVE SEALED PROPOSALS. (a) In selecting a
 18-25 contractor for construction, rehabilitation, alteration, or repair
 18-26 services for a facility through competitive sealed proposals, a
 18-27 district shall follow the procedures prescribed by this section.

18-28 (b) The district shall select or designate an engineer or
 18-29 architect to prepare construction documents for the project. The
 18-30 selected or designated engineer or architect has full
 18-31 responsibility for complying with Chapter 1001 or 1051, Occupations
 18-32 Code, as applicable. If the engineer or architect is not a
 18-33 full-time employee of the district, the district shall select the
 18-34 engineer or architect on the basis of demonstrated competence and
 18-35 qualifications as provided by Section 2254.004, Government Code.

18-36 (c) The district shall provide or contract for,
 18-37 independently of the contractor, the inspection services, testing
 18-38 of construction materials engineering, and verification testing
 18-39 services necessary for acceptance of the facility by the district.
 18-40 The district shall select those services for which it contracts in
 18-41 accordance with Section 2254.004, Government Code, and shall
 18-42 identify them in the request for proposals.

18-43 (d) The district shall prepare a request for competitive
 18-44 sealed proposals that includes construction documents, selection
 18-45 criteria, estimated budget, project scope, schedule, and other
 18-46 information that contractors may require to respond to the request.

18-47 (e) The district shall receive, publicly open, and read
 18-48 aloud the names of the offerors. Within 45 days after the date of
 18-49 opening the proposals, the district shall evaluate and rank each
 18-50 proposal submitted in relation to the published selection criteria.

18-51 (f) The district shall first attempt to negotiate a contract
 18-52 with the highest-ranked offeror. The district and its engineer or
 18-53 architect may discuss with the selected offeror options for a scope
 18-54 or time modification and any price change associated with the
 18-55 modification. If the district is unable to negotiate a contract
 18-56 with the selected offeror, the district shall, formally and in
 18-57 writing, end negotiations with that offeror and proceed to the next
 18-58 offeror in the order of the selection ranking until a contract is
 18-59 reached or all proposals are rejected.

18-60 Sec. 130.321. SELECTING CONTRACTOR FOR CONSTRUCTION
 18-61 SERVICES THROUGH COMPETITIVE BIDDING. Except to the extent
 18-62 prohibited by other law and to the extent consistent with this
 18-63 subchapter, a district may use competitive bidding to select a
 18-64 contractor to perform construction, rehabilitation, alteration, or
 18-65 repair services for a facility.

18-66 Sec. 130.322. JOB ORDER CONTRACTS FOR FACILITIES
 18-67 CONSTRUCTION OR REPAIR. (a) A district may award job order
 18-68 contracts for the minor construction, repair, rehabilitation, or
 18-69 alteration of a facility if the work is of a recurring nature but

19-1 the delivery times are indefinite and indefinite quantities and
 19-2 orders are awarded substantially on the basis of prescribed and
 19-3 prepriced tasks.

19-4 (b) The district may establish contractual unit prices for a
 19-5 job order contract by:

19-6 (1) specifying one or more published construction unit
 19-7 price books and the applicable divisions or line items; or

19-8 (2) providing a list of work items and requiring the
 19-9 offerors to bid or propose one or more coefficients or multipliers
 19-10 to be applied to the price book or work items as the price proposal.

19-11 (c) The district shall advertise for, receive, and publicly
 19-12 open sealed proposals for job order contracts. For the purposes of
 19-13 this section, notice must be published as required under Section
 19-14 130.306.

19-15 (d) The district may require offerors to submit additional
 19-16 information besides rates, including experience, past performance,
 19-17 and proposed personnel and methodology.

19-18 (e) The district may award job order contracts to one or
 19-19 more job order contractors in connection with each solicitation of
 19-20 bids or proposals.

19-21 (f) An order for a job or project under the job order
 19-22 contract must be signed by the district's representative and the
 19-23 contractor. The order may be a fixed price, lump-sum contract based
 19-24 substantially on contractual unit pricing applied to estimated
 19-25 quantities or may be a unit price order based on the quantities and
 19-26 line items delivered.

19-27 (g) The contractor shall provide payment and performance
 19-28 bonds, if required by law, based on the amount or estimated amount
 19-29 of any order.

19-30 (h) The base term of a job order contract is for the period
 19-31 and with any renewal option that the district sets forth in the
 19-32 request for proposals. If the district fails to advertise that
 19-33 term, the base term may not exceed two years and is not renewable
 19-34 without further advertisement and solicitation of proposals.

19-35 (i) If a job order contract or an order issued under the
 19-36 contract requires engineering or architectural services that
 19-37 constitute the practice of engineering within the meaning of
 19-38 Chapter 1001, Occupations Code, or the practice of architecture
 19-39 within the meaning of Chapter 1051, Occupations Code, the district
 19-40 shall select or designate an architect or engineer to prepare the
 19-41 construction documents for the facility. If the architect or
 19-42 engineer is not a full-time employee of the district, the district
 19-43 shall select the architect or engineer on the basis of demonstrated
 19-44 competence and qualifications as provided by Section 2254.004,
 19-45 Government Code. The request for qualifications for the architect
 19-46 or engineer shall be advertised in the manner provided for giving
 19-47 notice under Section 130.306.

19-48 Sec. 130.323. CONTRACTS MADE WITHOUT ADVERTISING.

19-49 (a) Except as provided by Subsection (d) and Section 130.303(e), a
 19-50 contract for construction with a cost of \$10,000 or more but less
 19-51 than \$50,000, including contingency or reserve amounts, must be
 19-52 made through written competitive bids or proposals. A minimum of
 19-53 three bids or proposals must be considered before awarding a
 19-54 contract. A district is not required to advertise the contract.

19-55 (b) In determining to whom to award a contract under this
 19-56 section, the district shall consider the factors described by
 19-57 Section 130.304(b).

19-58 (c) A person may not use this section to knowingly violate
 19-59 Section 130.313.

19-60 (d) A contract is not required to be made through
 19-61 competitive bids or proposals under this section if the contract is
 19-62 for the repair or replacement of a captive replacement part or
 19-63 component for equipment or a specialized service that is available
 19-64 from only one source.

19-65 [Sections 130.324-130.350 reserved for expansion]

19-66 SUBCHAPTER M. DISPOSAL OF SURPLUS PERSONAL PROPERTY

19-67 Sec. 130.351. SALE OF PERSONAL PROPERTY. A junior college
 19-68 district shall dispose of surplus personal property in an
 19-69 accountable manner that best serves the interest of the district. A

20-1 sale of personal property that is not covered by Chapter 791,
 20-2 Government Code, must be solicited and awarded in the same manner as
 20-3 a contract for the purchase of goods or services under Subchapter K.

20-4 Sec. 130.352. METHODS OF DISPOSAL. (a) A junior college
 20-5 district may use any of the following methods to dispose of surplus
 20-6 personal property:

20-7 (1) the use of a licensed auctioneer to conduct live or
 20-8 Internet-based auctions;

20-9 (2) a direct sale by the district to a person
 20-10 submitting the highest and best bid through a competitive process,
 20-11 including an Internet-based bidding system;

20-12 (3) the trade-in of items when purchasing new items;

20-13 (4) a sale or transfer to another governmental entity
 20-14 at a mutually agreed price; or

20-15 (5) a donation to a public school in this state.

20-16 (b) If the junior college district is unable to find a buyer
 20-17 for surplus property, the property may be:

20-18 (1) discarded in accordance with applicable federal,
 20-19 state, and local laws, ordinances, and rules; or

20-20 (2) removed by an interested party at no charge or for
 20-21 a nominal charge.

20-22 (c) Except as provided by this section, a junior college
 20-23 district may not give, donate, loan, or transfer surplus property
 20-24 to any person or entity.

20-25 [Sections 130.353-130.400 reserved for expansion]

20-26 SUBCHAPTER N. PROFESSIONAL SERVICES AND CONSULTANT SERVICES

20-27 Sec. 130.401. PROFESSIONAL SERVICES. (a) For purposes of
 20-28 this section, "professional service provider" means a person who
 20-29 provides services of a predominantly mental or intellectual matter
 20-30 and who is a member of a discipline requiring special knowledge or
 20-31 the attainment of a high order of learning, skill, or intelligence.
 20-32 The term includes a person who provides professional services, as
 20-33 defined by Section 2254.002, Government Code.

20-34 (b) A junior college district shall select and enter into
 20-35 contracts for professional services in accordance with Subchapter
 20-36 A, Chapter 2254, Government Code. If the estimated value of a
 20-37 contract for professional services is \$50,000 or more during a
 20-38 fiscal year, or during the contract's term if the contract is a
 20-39 multiple year contract, the district shall publish notice of the
 20-40 request for qualifications as provided by Section 130.258.

20-41 (c) If the estimated value of a contract for professional
 20-42 services is \$10,000 or more but less than \$50,000 during a fiscal
 20-43 year or during the contract's term if the contract is a multiple
 20-44 year contract, requests for qualifications must be solicited from
 20-45 at least three professional service providers and the publication
 20-46 of notice is not required.

20-47 (d) A professional service provider selected by the junior
 20-48 college district may be selected for a specific project or for
 20-49 various projects that arise during the term of the provider's
 20-50 contract. The term of a contract with a professional service
 20-51 provider may not exceed five years, except that the professional
 20-52 service provider shall complete services for projects started
 20-53 before the end of the contract term.

20-54 Sec. 130.402. CONSULTANTS. (a) For purposes of this
 20-55 section, "consultant" includes a financial advisor, fiscal agent,
 20-56 auctioneer, personnel services provider, travel agent, technology
 20-57 or educational services provider or advisor, and a business engaged
 20-58 to teach approved courses.

20-59 (b) A junior college district shall select and enter into
 20-60 contracts with consultants in accordance with Section 130.253 or
 20-61 Subchapter B, Chapter 2254, Government Code. If the estimated
 20-62 value of a contract for consulting services is \$50,000 or more
 20-63 during a fiscal year, or during the contract's term if the contract
 20-64 is a multiple year contract, the district shall advertise the
 20-65 request for qualifications, bids, or proposals as provided by
 20-66 Section 130.258.

20-67 (c) If the estimated value of a contract for consulting
 20-68 services is \$10,000 or more but less than \$50,000 during a fiscal
 20-69 year, or during the contract's term if the contract is a multiple

21-1 year contract, requests for qualifications, bids, or proposals must
21-2 be solicited from at least three consultants and the publication of
21-3 notice is not required.

21-4 (d) A consultant selected by the junior college district may
21-5 be selected for a specific project or for various projects that
21-6 arise during the term of the consultant's contract. The term of a
21-7 contract with a consultant may not exceed five years, except that
21-8 the consultant shall complete services for projects started before
21-9 the end of the contract term.

21-10 Sec. 130.403. RULES AND PROCEDURES; AUDITS BY STATE
21-11 AUDITOR. (a) The board of trustees of a junior college district
21-12 may adopt rules and procedures for the acquisition of professional
21-13 services and consultants by the district.

21-14 (b) Junior college district contracts for professional
21-15 services or consultants are subject to audit by the state auditor in
21-16 accordance with Chapter 321, Government Code.

21-17 SECTION 5. Section 271.023, Local Government Code, is
21-18 amended to read as follows:

21-19 Sec. 271.023. CONFLICT OF LAWS. To the extent of any
21-20 conflict, the provisions of Subchapter B, Chapter 44, Education
21-21 Code, relating to the purchase of goods and services under contract
21-22 by a school district and the provisions of Subchapters K and L,
21-23 Chapter 130, Education Code, relating to the purchase of goods and
21-24 services and construction services under contract by a junior
21-25 college prevail over this subchapter.

21-26 SECTION 6. Subsection (b), Section 44.0311, and Sections
21-27 130.010 and 130.0101, Education Code, are repealed.

21-28 SECTION 7. The change in law made by this Act applies only
21-29 to a contract for which requests for bids, requests for proposals,
21-30 or requests for qualifications are published or distributed on or
21-31 after the effective date of this Act. A contract for which requests
21-32 for bids, requests for proposals, or requests for qualifications
21-33 are published or distributed before the effective date of this Act
21-34 is covered by the law in effect when the requests were published or
21-35 distributed, and the former law is continued in effect for that
21-36 purpose.

21-37 SECTION 8. This Act does not make an appropriation. A
21-38 provision in this Act that creates a new governmental program,
21-39 creates a new entitlement, or imposes a new duty on a governmental
21-40 entity is not mandatory during a fiscal period for which the
21-41 legislature has not made a specific appropriation to implement the
21-42 provision.

21-43 SECTION 9. This Act takes effect September 1, 2009.

21-44 * * * * *