

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Junior and community colleges (colleges) presently use the purchasing statutes established for public school systems. However, there are significant differences in the needs of the colleges and public schools and the present statutes do not address many of the college procurement requirements. The public school procurement statutes also include many aspects that are not applicable to the colleges.

As proposed, S.B. 1064 establishes clear, concise, and accountable procurement regulations that address the specific needs of junior and community colleges. This bill is intended to significantly increase the operating efficiency of the colleges by permitting the colleges to make purchases under contracts established by other governmental entities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of trustees of a junior college district in SECTION 3 (Section 130.0106, Education Code) and SECTION 4 (Sections 130.257, 130.305, and 130.403, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 44.0311(a), Education Code, to provide that this subchapter does not apply, rather than does apply, to junior college districts (district).

SECTION 2. Amends Section 51.776(2), Education Code, to redefine "board."

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

Sec. 130.0104. **POLICY AND REPORT REGARDING HISTORICALLY UNDERUTILIZED BUSINESSES.** (a) Defines "historically underutilized business."

(b) Provides that this section only applies to certain districts.

(c) Requires each district to adopt a policy stating its commitment to developing, maintaining, and enhancing participation by historically underutilized businesses in all phases of the district's procurement processes in order to support, to the greatest extent feasible, the efforts of historically underutilized businesses to compete for certain purchases and construction contracts.

(d) Requires each district to publish annually a report of the total number and total value of contracts awarded by the district in the preceding fiscal year and the number and total value of those contracts awarded to historically underutilized businesses. Requires the report to be published in a newspaper of general circulation in the county in which the majority of the territory or population of the district is located not later than the 60th day following the last day of the district's fiscal year.

Sec. 130.0105. **RIGHT TO WORK.** (a) Provides that this section applies to a district while engaged in procuring goods or services, awarding a contract, or overseeing procurement or construction for a public work or public improvement.

(b) Prohibits a district from considering whether a vendor is a member of or has another relationship with an organization, and requires a district to ensure that its bid specifications and any subsequent contract or other agreement does not deny or diminish the right of a person to work because of the person's membership in or other relationship status with respect to an organization, notwithstanding any other provision of this chapter.

Sec. 130.0106. **CONTRACT WITH PERSON INDEBTED TO DISTRICT.** (a) Authorizes the board of trustees of a district by resolution to establish rules permitting the district to refuse to enter into a contract or other transaction with a person indebted to the district.

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

Sec. 130.0107. **EFFICIENCY AND SAVINGS.** Requires a district to annually identify common types of goods and services to be purchased from the district's budget and, to the extent the district determines practicable, consolidate the purchase of those goods or services under contracts entered into under this subchapter in order to increase efficiency of operations and to achieve savings through volume purchases.

SECTION 4. Amends Chapter 130, Education Code, by adding Subchapters K, L, M, and N, as follows:

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

Sec. 130.251. **DEFINITIONS.** Defines "board of trustees," "district," "purchase of goods," and "services."

Sec. 130.2511. **USE OF TERMS "BIDDER," "VENDOR," AND "BID."** Defines "bidder," "vendor," and "bid."

Sec. 130.252. **CONFLICT WITH OTHER LAW.** Provides that, to the extent of any conflict, this subchapter prevails over any other law relating to the purchase of goods and services by a district other than a law relating to contracting with historically underutilized businesses.

Sec. 130.253. **PURCHASE METHODS.** (a) Requires each contract by a district with a value of \$50,000 or more that covers one or more fiscal years, except as otherwise provided by this subchapter and subject to Section 130.264, to be made by certain methods that provide the best value for the district.

(b) Authorizes only one of the methods listed in Subsection (a) to be used for any individual contract. Requires the district to determine which method provides the best value for the district before publishing the notice required by Section 130.258.

(c) Requires the district to take certain actions if the competitive sealed proposal method is used.

(d) Authorizes a district, without complying with Subsection (a), to purchase certain goods or services that are available from only one source.

(e) Authorizes a district to purchase certain goods and services without complying with Subsection (a). Requires the district to exercise reasonable and prudent care to determine whether a contract with a provider will provide the best value to the district. Requires the district to document the process for selecting the provider of

the goods or services and requires the district to maintain a list of prospective providers contacted and the basis for selecting the provider. Requires the district, to the extent practicable, to state its requirements in writing and require written proposals or quotations from prospective providers. Requires any prospective provider that has provided written notice to the district that it is interested in being considered as a supplier of goods or services covered by this subsection to be given the opportunity to make an offer to provide the goods or services. Requires the district, after rating and ranking the offers, to attempt to negotiate a contract with the highest ranked vendor. Requires the next highest ranked vendor to be contacted if a contract cannot be negotiated with the highest ranked vendor. Requires the district to publish notice of the intent to purchase as provided under Section 130.258 if the value of the purchase is estimated to be \$50,000 or greater. Requires the award of a contract to be made in accordance with a policy established by the board of trustees if the value of a purchase is estimated to be \$10,000 or more but less than \$50,000 during a fiscal year.

(f) Authorizes a district to purchase a good or service under certain contracts or purchases without complying with Subsection (a).

(g) Requires contracts for services that result in no cost to the district or that provide income to a district to be based on bids, proposals, or qualifications that are solicited and awarded in the same manner as a contract for the purchase of good or services, including contracts for bookstore services, good services, and vending services.

Sec. 130.254. PURCHASE OF INSURANCE. (a) Authorizes a district to acquire insurance using a two-step process to obtain competitive sealed proposals. Requires the district, in the first step, to determine which insurance providers are represented by agents interested in providing insurance for the district. Requires the agent with the longest and most substantial relationship with the insurance provider to be authorized to submit a proposal for the designated insurance provider if more than one agent indicates a desire to represent the same provider. Requires the district, in the second step, to notify the interested agents in writing as to which insurance providers the agents represent and request the agents to submit proposals for providing insurance.

(b) Provides that, in notifying the interested agents to begin the second step, the district is not required to comply with Section 130.258. Requires the district in the request for proposals to give the interested agents notice of the date, time, and place where proposals are to be submitted. Prohibits the consideration of proposals received after the date and time stated in the request for proposals.

Sec. 130.255. MULTIYEAR CONTRACT. Requires a contract that extends past the end of a district's fiscal year to include a provision that permits termination at the end of each fiscal year. Prohibits contracts solely for the purchase of goods from exceeding five years in duration.

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

(b) Authorizes the district to take certain considerations in determining the lowest responsible bidder.

(c) Authorizes the district to reject any or all bids, proposals, qualifications, or parts of bids, proposals, or qualifications if the rejection serves the district's interest.

(d) Requires the district to provide all bidders with the opportunity to bid to provide the same goods or services on equal terms and to have bids judged according to the same standards as these set forth in the request for bids.

(e) Authorizes bids to be opened only by the district in a district-owned or district-controlled facility. Requires the meeting or other occasion at which bids are opened to be open to the public. Requires the appropriate employee or officer of the district to read aloud the name of a bidder and the total bid amount at the time the district opens a bid, if the bid is of a type that should contain a single bid amount and if one or more members of the public are present. Requires the appropriate employee or officer to read aloud only the name of the respondents when opening proposals or qualifications, and prohibits the disclosure of proposal or qualification contents on opening or during negotiations with competing bidders. Requires at least two district employees or members of the district's board of trustees to be present at the bid, proposal, or qualification opening.

(f) Prohibits a bid that has been opened from being changed for the purpose of correcting an error in the bid price. Provides that if there is a discrepancy between the total price and the unit price of a bid, the unit price prevails. Provides that if there is a discrepancy between the written price and the numerical price of a bid, the written price prevails.

(g) Provides that this subchapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

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

(i) Provides that a contract awarded in violation of this subchapter is void.

(j) Authorizes contracts for the replacement or repair of certain damaged district property to be made by methods other than those required by Section 130.253(a).

(k) Authorizes a district that has its central administrative office located in a municipality with a population of less than 250,000 to consider a bidder's principal place of business in the manner provided by Section 271.9051 (Consideration of Location of Bidder's Principal Place of Business in Certain Municipalities), Local Government Code, in awarding a contract by competitive sealed bid under this section. Provides that this subsection does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153.

Sec. 130.257. RULES AND PROCEDURES; AUDITS BY STATE AUDITOR. Authorizes the board of trustees to adopt rules and procedures for the acquisition of goods and services by the district. Authorizes the state auditor to audit purchases of goods or services by the district.

Sec. 130.258. NOTICE. (a) Requires the district, except as otherwise provided by this subchapter, to publish the notice required by this section, within a seven-day period, in at least two issues of any newspaper of general circulation in the county in which the district's central administrative office is located for any method of contracting selected under Section 130.253(a). Prohibits the deadline for receiving bids or proposals from being less than 10 business days after the date of the publication of the first newspaper notice. Prohibits the deadline for receiving responses to a request for qualifications from being less than five business days after the date of the publication of the last newspaper notice. Requires the notice to be published in a newspaper of general circulation in a location nearest to the district's central administrative office if there is not a newspaper of general circulation in the county in which the district's office is located. Provides that, in

a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be included in the notice.

(b) Authorizes the district to publish on a publicly accessible Internet site, as an alternative to publishing individual notices in a newspaper, the notices required by this section, provided the district publishes in a newspaper or general circulation at least one time per week the Internet address where district notices may be found.

(c) Sets forth the required elements to be included in the notice required by this section.

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

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

(c) Prohibits the district from disclosing information derived from proposals submitted from competing bidders before an award in conducting discussions under this section.

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

(b) Authorizes the district, after conducting a mandatory pre-bid conference, to send any additional required notice for the proposed contract only to prospective bidders who attended or were represented at the conference.

Sec. 130.261. IDENTICAL BIDS. Requires the district to cast lots to determine which bidder will be awarded the contract if, after considering factors described by Section 130.256, identical bids are received. Requires the district to invite the bidders to witness the selection process under this section. Requires the selection process to be conducted by at least two district employees or members of the district's board of trustees.

Sec. 130.262. BID DEPOSIT. (a) Authorizes the district, as determined necessary, to require a bid deposit in an amount determined by the district. Requires the amount of the deposit, if any, to be stated in the notice required by Section 130.258 of the invitation to bid.

(b) Requires the district to return the bid deposit of an unsuccessful bidder on the award of a contract or the rejection of all bids. Authorizes the bid deposit of the successful bidder to be retained until the contract is signed by the district. Prohibits a bid deposit from being held longer than 90 days.

(c) Requires the bid deposit required by the district, if any, to be in a certain form. Authorizes a district to elect to require a bid deposit to be in the form of a bid bond.

Sec. 130.263. PERFORMANCE BOND. Authorizes a district to require a contractor to provide a performance bond in the amount of the contract before executing a contract for the purchase of goods or services with a value of \$100,000 or more. Requires the bond to be written by a surety authorized to conduct business in Texas and generally comply with the performance bond requirements of Chapter 2253 (Public Work Performance and Payment Bonds), Government Code.

Sec. 130.264. ENFORCEMENT OF PURCHASING PROCEDURES: CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY; INJUNCTION. (a) Defines "component purchases," "separate purchases," and "sequential purchases."

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

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

(d) Provides that an officer or employee of a district commits an offense if the person knowingly violates Section 130.253, 130.256, or 130.266 other than by conduct described by Subsection (b) or (c). Provides that an offense under this subsection is a Class B misdemeanor.

(e) Provides that the final conviction of a person other than a member of the board of trustees of a district for an offense under Subsection (b) or (c) results in the immediate removal from office or employment of that person. Provides that a trustee who is convicted of an offense under this section is subject to removal as provided by Chapter 66 (Quo Warranto), Civil Practice and Remedies Code. Provides that for four years after the date of the final conviction, the removed person is ineligible to be a candidate for or to be appointed or elected to a public office in this state, is ineligible to be employed by or act as an agent for this state or a political subdivision of this state, and is ineligible to receive any compensation through a contract with this state or a political subdivision of this state. Provides that this subsection does not prohibit the payment of retirement or workers' compensation benefits to the removed person for an injury that occurred before the commission of an offense for which the person was removed. Provides that this subsection does not make a person ineligible for an office for which the federal or state constitution prescribes exclusive eligibility requirements.

(f) Authorizes a court to enjoin performance of a contract made in violation of this subchapter. Authorizes a county attorney, district attorney, criminal district attorney, citizen of the county in which the district is located, or an interested party to bring an action for an injunction. Entitles a party who prevails in an action brought under this subsection to reasonable attorney's fees approved by the court.

Sec. 130.265. PURCHASE AGREEMENTS AND VENDOR LISTS FOR MISCELLANEOUS PURCHASES. (a) Provides that this section applies only to the selection and engagement of vendors from which a district is authorized to purchase certain goods or services, where the total cost is expected to be \$50,000 or more during a fiscal year but the selling price is required to be determined at the time the need for the goods and services arises.

(b) Provides that the notice requirements of Section 130.258 apply to purchases made under this section, except that the notice is required to specify the categories of goods or services to be purchased under this section and solicit the names, addresses, and telephone numbers of bidders that are interested in supplying the goods or services to the district. Requires the district to create and provide a proposal form to be used by interested bidders. Requires the form to describe the goods or services that may be required, and the terms and conditions of, and method for, determining the price of the bidders' products and services. Requires

bidders desiring to be included on the list to complete and sign the district's form. Requires the district to determine which bidders are qualified to be included on a list of bidders from which goods and services may be purchased during the applicable fiscal year.

(c) Requires the district to obtain written price quotations from at least three bidders from the list created by the district for that category before making a purchase covered by this section. Requires the district to contact each bidder on the list if fewer than three bidders are on the list. Authorizes the district to invite all bidders, if more than three are on the list, to provide a quotation or is authorized to select three bidders on a rotational basis each time a purchase is to be made. Requires the bidding records to be retained with the district's competitive bidding records and are subject to audit. Authorizes the district to consider the provisions of Section 130.256 in determining from whom to purchase the goods or services.

Sec. 130.266. PURCHASES MADE WITHOUT ADVERTISING. (a) Requires a purchase of goods and services with a cost of \$10,000 or more but less than \$50,000 to be made by written competitive bids or proposals, except as provided under Sections 130.253(d), (f), and (g), and Section 130.256(j). Requires a minimum of three bids or proposals to be considered before the award of a contract or order for the specified goods or services. Provides that a district is not required to advertise the purchase.

(b) Requires the district to consider the provisions of Section 130.256 in determining from whom to purchase the goods or services under this section.

(c) Prohibits a person from using the process described by this section to knowingly violate Section 130.264.

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

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

(c) Authorizes a district to terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. Requires the district to compensate the person or business entity for goods delivered or services performed before the termination of the contract.

(d) Provides that this section does not apply to a publicly held corporation.

Sec. 130.268. PREFERENCE TO TEXAS AND UNITED STATES PRODUCTS. (a) Requires a district that purchases agricultural products to give preference to products produced, processed, or grown in Texas if the cost to the district for those products is equal to or less than the cost, and the quality is equal to or exceeds the quality, of other products.

(b) Requires the district to give preference to agricultural products produced, processed, or grown in other states of the United States over foreign products, if products from Texas are not entitled to a preference under Subsection (a), if the cost to the district for those products is equal to or less than the cost, and the quality is equal to or exceeds the quality, of other products.

(c) Requires a district that purchases certain vegetation for landscaping purposes to give preference to Texas vegetation if the cost for that vegetation is equal to or

less than the cost of other vegetation and the quality of that vegetation is not inferior to the quality of other vegetation.

(d) Authorizes a district, in implementing this section, to receive assistance from and use the resources of the Department of Agriculture, including information on the availability of agricultural products.

(e) Prohibits a district from adopting product purchasing specifications that unnecessarily exclude agricultural products produced, processed, or grown in this state.

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

SUBCHAPTER L. CONSTRUCTION CONTRACTS

Sec. 130.301. DEFINITIONS. Defines "architect," "board of trustees," "construction," "contractor," "district," "engineer," "facility," "fee," and "general conditions."

Sec. 130.302. USER OF TERMS "BIDDER," "OFFEROR," "VENDOR," AND "BID." Defines "bidder," "offeror," "vendor," and "bid."

Sec. 130.303. METHODS OF CONTRACTING. (a) Requires all contracts for construction, rehabilitation, alteration, or repair of facilities valued at \$50,000 or more to be made by certain methods that provides the best value for the district, except as otherwise provided by this subchapter and subject to Section 130.313.

(b) Authorizes only one of the methods listed in Subsection (a) to be used for any individual contract. Requires a district to determine which methods provides the best value for the district before providing the notice required by Section 130.306.

(c) Requires the district to take certain actions if the competitive sealed proposal method is used.

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

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

(b) Authorizes the district to take certain considerations in determining the lowest responsible bidder.

(c) Authorizes a district to reject any or all bids, proposals, qualifications, or parts of bids, proposals, or qualifications if the rejection serves the district's interest.

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

(e) Authorizes bids to be opened only by the district in a district-owned or district-controlled facility. Requires the meeting or other occasion at which bids are opened to be open to the public. Requires the appropriate employee or officer of

the district, at the time the district opens a bid, to read aloud the name of the bidder and the total bid amount if the bid is of a type that should contain a single bid amount and if one or more members of the public are present. Requires at least two district employees or members of the board of trustees to be present at the bid opening. Requires the appropriate employee or officer, when opening proposals or qualifications, to read aloud only the names of the respondents and is prohibited from disclosing the contents of the proposal or qualification on opening the proposal or qualification or during negotiations with competing bidders.

(f) Prohibits a bid that has been opened from being changed for the purpose of correcting an error in the bid price.

(g) Provides that this subchapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

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

(i) Provides that a contract awarded in violation of this subchapter is void.

(j) Authorizes contract for the replacement or repair of certain damaged property to be made by methods other than those required by Section 130.303(a).

(k) Authorizes a district that has its central administrative office located in a municipality with a population of less than 250,000 to consider a bidder's principal place of business in the manner provided by Section 271.9051 (Consideration of Location of Bidder's Principal Place of Business in Certain Municipalities), Local Government Code, in awarding a contract by competitive sealed bid under this section. Provides that this subsection does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153.

Sec. 130.305. RULES AND PROCEDURES; AUDITS BY STATE AUDITOR. Authorizes the board of trustees to adopt rules and procedures for the acquisition of construction services by the district. Authorizes the state auditor to audit district construction contracts.

Sec. 130.306. NOTICE. (a) Requires the district, within a seven-day period, to publish the notice required by this section in at least two issues of any newspaper of general circulation in the county in which the district's central administrative office is located, except as otherwise provided by this subchapter, for any method of contracting selected under Section 130.303(a). Prohibits the deadline for receiving bids, proposals, or responses to a request for qualifications from being less than 10 business days after the date of the publication of the first newspaper notice. Requires the notice to be published in a newspaper of general circulation in a location nearest to the district's central administrative office if there is not a newspaper of general circulation in the county in which the district's office is located. Provides that, in a two-step procurement process, the time and place where the second step bids, proposals, or responses will be received are not required to be included in the notice.

(b) Authorizes the district, as an alternative to publishing individual notices in a newspaper, to publish on a publicly accessible Internet site the notices required by this section, provided the district publishes in a newspaper of general circulation where district notices may be found. Requires a notice posted on the Internet under this subsection to be posted every day for at least 10 business days before the deadline for receiving bids, proposals, or responses to a request for qualifications.

(c) Sets forth certain information required by this section to be included in the notice.

Sec. 130.307. DISCUSSION AND REVISION OF PROPOSALS. (a) Authorizes the district, after receipt of proposals, under rules adopted by the district, to discuss acceptable or potentially acceptable proposals with bidders to assess a bidder's ability to meet the solicitation requirements.

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

(c) Prohibits the district from disclosing information, before an award is given, derived from proposals submitted from competing bidders in conducting discussions under this section.

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

(b) Authorizes the district to send any additional required notice for the proposed contract only to prospective bidders who attended the conference after the district conducts a mandatory pre-bid conference.

Sec. 130.309. IDENTICAL BIDS. Requires the district to cast lots to determine which bidder will be awarded the contract if, after considering the factors described by Section 130.304, it is determined that identical bids have been received. Requires the district to invite the bidders to witness the selection process under this section. Requires the selection process to be conducted by at least two district employees or members of the district's board of trustees.

Sec. 130.310. BID DEPOSIT. (a) Authorizes the district, as determined necessary by the district, to require a bid deposit in an amount determined by the district. Requires the amount of the deposit, if any, to be stated in the notice required by Section 130.306 of the invitation to bid.

(b) Requires the district to refund the bid deposit of an unsuccessful bidder within 10 days from the date of the award of a contract or the rejection of all bids. Prohibits the bid bonds from being held for more than 90 days. Authorizes the district to return bid bonds of bidders, before the award of a contract, that are not being considered for award of a contract.

(c) Authorizes the bid deposit required by the district, if any, for public contracts to only be in the form of a bid bond written by a surety authorized to conduct business in Texas.

Sec. 130.311. PERFORMANCE AND PAYMENT BONDS. Requires the contractor for a contract for construction to execute a good and sufficient payment bond and a performance bond in accordance with Chapter 2253 (Public Work Performance and Payment Bonds), Government Code.

Sec. 130.312. DELEGATION. (a) Authorizes the board of trustees of a district, as appropriate, to delegate its authority under this subchapter to a designated person, representative, or committee. Requires the district, in procuring construction services, to provide notice of the delegation and the limits of the delegation in the request for bids, proposals, or qualifications or in an addendum to the request. Provides that a ranking, selection, or evaluation of bids, proposals or qualifications for construction services other than by the board of trustees in an open public meeting is advisory only, if the district fails to provide that notice.

(b) Prohibits the board from delegating the authority to act regarding an action specifically authorized or required by this subchapter to be taken by the board of trustees of a district.

Sec. 130.313. ENFORCEMENT OF CONTRACT SOLICITATION PROCEDURES: CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY; INJUNCTION. (a) Defines "component procurements," "separate procurements," and "sequential procurement."

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

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

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

(e) Provides that the final conviction of a person other than a member of the board of trustees of a district for an offense under Subsection (b) or (c) results in the immediate removal from office or employment of that person. Provides that a trustee who is convicted of an offense under this section is subject to removal as provided by Chapter 66 (Quo Warranto), Civil Practice and Remedies Code. Provides that for four years after the date of the final conviction, the removed person is ineligible to be a candidate for or to be appointed or elected to a public office in this state, is ineligible to be employed by or act as an agent for this state or a political subdivision of this state, and is ineligible to receive any compensation through a contract with this state or a political subdivision of this state. Provides that this subsection does not prohibit the payment of retirement or workers' compensation benefits to the removed person for an injury that occurred before the commission of an offense for which the person was removed. Provides that this subsection does not make a person ineligible for an office for which the federal or state constitution prescribes exclusive eligibility requirements.

(f) Authorizes a court to enjoin performance of a contract made in violation of this subchapter. Authorizes a county attorney, district attorney, criminal district attorney, citizen of the county in which the district is located, or an interested party to bring an action for an injunction. Entitles a party who prevails in an action brought under this subsection to reasonable attorney's fees approved by the court.

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

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

(c) Authorizes a district to terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. Requires the district to compensate the person or business entity for goods delivered or services performed before the termination of the contract.

(d) Provides that this section does not apply to a publicly held corporation.

Sec. 130.315. **CHANGE ORDERS.** (a) Authorizes a district, after performance of a construction contract begins, to approve change orders if necessary to make changes in plans or specifications or to decrease or increase the quantity of work to be performed or materials, equipments, or supplies to be furnished.

(b) Prohibits the total price of a contract from being increased by a change order unless provision has been made for the payment of the added cost by the appropriation of current funds or bond funds for that purpose, by the authorization of the issuance of certificates, or by a combination of those procedures. Prohibits the original contract price from being increased by more than 25 percent unless the board of trustees determines the change is due to causes beyond the reasonable control of the district or contractor.

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

Sec. 130.316. **ERRORS AND OMISSIONS INSURANCE.** Requires the architect or engineer that prepared the plans and specifications for any public work contract awarded under this subchapter to, at the architect's or engineer's expense, carry an errors and omissions insurance policy in an amount not less than \$1 million or the value of the work if the work has a value of less than \$1 million.

Sec. 130.317. **DESIGN-BUILD CONTRACTS FOR FACILITIES.** (a) Defines "design-build contract," "design-build firm," and "design criteria package."

(b) Authorizes a district to use the design-build method for construction, rehabilitation, alteration, or repair of a facility. Requires the contracting district and the design-build firm, in using that method and in entering into a contract for the services of a design-build firm, to follow the procedures provided by Subsections (c) through (j).

(c) Authorizes the district to designate an engineer or architect to act as its representative. Requires any engineer or architect designated to be selected on the basis of demonstrated competence and qualifications in accordance with Subchapter A, Chapter 2254 (Professional and Consulting Services), Government Code, if the district's engineer or architect is not a full-time employee of the district.

(d) Requires the district to prepare a request for qualifications that includes certain general information. Requires the district to also prepare a design criteria packages that includes more detailed information on the project. Requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001 (Engineers), Occupations Code, or the practice of architecture within the meaning of Chapter 1051 (Texas Board Of Architectural Examiners; General Provisions Affecting Architects, Landscape Architects, and Interior Designers; Provisions Affecting Only Architects), Occupations Code, to be provided in accordance with the applicable law if the preparation of the design criteria package requires those services.

(e) Requires the district to evaluate statements of qualifications and select a design-build firm in two specific phases.

(f) Requires engineers or architects from a design-build firm selected under Subsection (e) to complete the design, submitting all design elements for review and determination of scope compliance to the district or to the district's engineer or architect before or concurrently with construction.

(g) Requires an engineer to have responsibility for compliance with the engineering design requirements and all other applicable requirements of Chapter 1001 (Engineers), Occupations Code. Requires an architect to have responsibility for compliance with the requirements of Chapter 1051 (Texas Board of Architectural Examiners; General Provisions Affecting Architects, Landscape Architects, and Interior Designers; Provisions Affecting Only Architects), Occupations Code.

(h) Requires the district to provide or contract for certain testing and services necessary for acceptance of the facility by the district. Requires the district to select those services for which it contracts in accordance with Section 2251.004 (Contract for Professional Services of Architect, Engineer, or Surveyor), Government Code.

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

(j) Provides that a payment or performance bond is not required for, and is prohibited from providing coverage for, the portion of a design-build contract under this section that includes design services only. Requires the penal sums of the performance and payment bonds delivered to the district to each be in an amount equal to the project budget, as specified in the design criteria package, if a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded. Requires the design-build firm to deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the district to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Sec. 130.318. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AGENT. (a) Authorizes a district to contract with a construction manager-agent in conjunction with a contract for the construction, rehabilitation, alteration, or repair of a facility. Requires a district to follow the procedures prescribed by this section in entering into a contract for the services of a construction manager-agent.

(b) Provides that a construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that provides consultation to the district regarding construction, rehabilitation, alteration, or repair of a facility. Authorizes a district using the services of a construction manager-agent to require the construction manager-agent to, under the contract, require certain personnel, equipment, and services to be provided by the construction manager-agent. Provides that a construction manager-agent represents the district in a fiduciary capacity.

(c) Requires the district to select or designate an engineer or architect who is required to prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 (Engineers) or 1051 (Texas Board of Architectural Examiners; General Provisions Affecting Architects, Landscape Architects, and Interior Designers; Provisions Affecting Only Architects), Occupations Code, as applicable, before or concurrently with selecting a construction manager-agent. Requires the district to select an engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004 (Contract for Professional Services of Architect, Engineer,

or Surveyor), Government Code, if the engineer or architect is not a full-time employee of the district. Prohibits the district's engineer or architect from serving, alone or in combination with another person, as the construction manager-agent unless the engineer or architect is hired to serve as the construction manager-agent under a separate or concurrent procurement conducted in accordance with this subchapter. Provides that this subsection does not prohibit the district's engineer or architect from providing customary construction phase services under the original professional service agreement with the district and in accordance with applicable licensing laws.

(d) Requires a district to select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner as provided for the selection of engineers or architect under Section 2254.004 (Contract for Professional Services of Architect, Engineer, or Surveyor), Government Code.

(e) Requires a district using the services of a construction manager-agent to procure, in accordance with applicable law and in any manner authorized by this chapter, certain contractors who will serve as the prime contractor for their specific portion of the work.

(f) Requires the district or the construction manager-agent to procure, in accordance with Section 2254.04 (Contract for Professional Services of Architect, Engineer, or Surveyor), Government Code, certain services necessary for acceptance of the facility by the district.

Sec. 130.319. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AT-RISK. (a) Authorizes a district to use the construction manager-at-risk method for construction, rehabilitation, alteration, or repair of a facility. Requires a district to follow the procedures prescribed by this section in using that method and in entering into a contract for the services of a construction manager-at-risk.

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

(c) Requires the district to select or designate an engineer or architect who is required to prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 (Engineers) or 1051 (Texas Board of Architectural Examiners; General Provisions Affecting Architects, Landscape Architects, and Interior Designers; Provisions Affecting Only Architects), Occupations Code, as applicable, before or concurrently with selecting a construction manager-at-risk.

(d) Requires the district to provide or contract for, independently of the construction manager-at-risk, certain services necessary for acceptance of the facility by the district. Requires the district to select those services for which it contracts in accordance with Section 2254.04 (Contract for Professional Services of Architect, Engineer, or Surveyor), Government Code.

(e) Requires the district to select the construction manager-at-risk in either a one-step or two-step process. Requires the district to prepare a request for competitive sealed proposals for a one-step process or a request for qualifications for a two-step process, that includes certain general information that may assist the district in its selection of a construction manager-at-risk. Requires the district to state the selection criteria in the request for proposals or qualifications, as applicable. Authorizes the selection criteria to include certain information about the offeror that demonstrate the capability of the construction manager-at-risk. Authorizes the district to request, if a one-step process is used, proposed fees and prices for fulfilling the general conditions as part of the offeror's proposal. Prohibits the

district from requesting fees or prices in step one if a two-step process is used. Authorizes the district, in step two, to request that five or fewer offerors, selected solely on the basis of qualifications, provide certain additional information.

(f) Requires the district to receive, publicly open, and read aloud the names of the offerors at each step. Requires the district, within 45 days after the date of opening the proposals, to evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals. Requires the district, within seven days from the date of the award of the contract, to make public all proposals, including the fees and prices stated in each proposal.

(g) Requires the district to select the offeror that submits the proposal that offers the best value for the district based on the published selection criteria and on its ranking evaluation. Requires the district to first attempt to negotiate a contract with the selected offeror. Requires the district, formally and in writing, to end negotiations with the selected offeror if a satisfactory contract is unable to be negotiated, and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(h) Requires a construction manager-at-risk to publicize notice, in accordance with Section 130.306, and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that is authorized to be included in the general conditions. Authorizes a construction manager-at-risk to seek to perform portions of the work itself if the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the district determines that the construction manager-at-risk's bid or proposal provides the best value for the district.

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

(j) Requires the district to compensate the construction manager-at-risk in a certain manner for any additional cost or expenses incurred if the construction manager-at-risk reviews, evaluates, and recommends a bid or proposal from a trade contractor or subcontractor but the district requires another bid or proposal be accepted.

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

(l) Requires the penal sums of the performance and payment bonds delivered to the district to each be in an amount equal to the project budget, as specified in the request for qualifications if a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded. Requires the construction manager-at-risk to deliver the bonds not later than the 10th day after the date the contract is executed unless the construction manager-at-risk furnishes a bid bond acceptable to the district to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Sec. 130.320. SELECTING CONTRACTOR FOR CONSTRUCTION SERVICES THROUGH COMPETITIVE SEALED PROPOSALS. (a) Requires a district to follow the procedures prescribed by this section in selecting a contractor for construction, rehabilitation, alteration, or repair services for a facility through competitive sealed proposals.

(b) Requires the district to select or designate an engineer or architect to prepare construction documents for the project. Provides that the selected or designated engineer or architect has full responsibility for complying with Chapter 1001 (Engineers) or 1051 (Texas Board of Architectural Examiners; General Provisions Affecting Architects, Landscape Architects, and Interior Designers; Provisions Affecting Only Architects), Occupations Code, as applicable. Requires the district to select an engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004 (Contract for Professional Services of Architect, Engineer, or Surveyor), Government Code, if the engineer or architect is not a full-time employee of the district.

(c) Requires the district to provide or contract for, independently of the contractor, certain services necessary for acceptance of the facility by the district. Requires the district to select those services for which it contracts in accordance with Section 2254.004 (Contract for Professional Services of Architect, Engineer, or Surveyor), Government Code, and is required to identify them in the request for proposals.

(d) Requires the district to prepare a request for competitive sealed proposals that includes certain information that contractors may require to respond to the request.

(e) Requires the district to receive, publicly open, and read aloud the names of the offerors. Requires the district to evaluate and rank each proposal submitted in relation to the published selection criteria within 45 days after the date of opening the proposals.

(f) Requires the district to first attempt to negotiate a contract with the highest-ranked offeror. Authorizes the district and its engineer or architect to discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. Requires the district, formally and in writing, to end negotiations with the offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected if the district is unable to negotiate a contract with the selected offeror.

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

Sec. 130.322. JOB ORDER CONTRACTS FOR FACILITIES CONSTRUCTION OR REPAIR. (a) Authorizes a district to award job order contracts for the minor construction, repair, rehabilitation, or alteration of a facility if the work is of a recurring nature but the delivery times are indefinite and indefinite quantities and orders are awarded substantially on the basis of presdescribed and prepriced tasks.

(b) Authorizes the district to establish contractual unit prices for a job order contract by specifying one or more published construction unit price books and the applicable divisions or line items or providing a list of work items and requiring the offerors to bid or propose one or more coefficients or multipliers to be applied to the price book or work items as the price proposal.

(c) Requires the district to advertise for, receive, and publicly open sealed proposals for job order contracts.

(d) Authorizes the district to require offerors to submit additional information besides rates, including experience, past performance, and proposed personnel and methodology.

(e) Authorizes the district to award job order contracts to one or more job order contractors in connection with each solicitation of bids or proposals.

(f) Requires an order for a job or project under the job order contract to be signed by the district's representative and the contractor. Authorizes the order to be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities or is authorized to be a unit price order based on the quantities and line items delivered.

(g) Requires the contractor to provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.

(h) Provides that the base term of a job order contract is for the period and with any renewal option that the district sets forth in the request for proposals. Prohibits the base term from exceeding two years and is not renewable without further advertisement and solicitation of proposals if the district fails to advertise that term.

(i) Requires certain engineering or architectural services to be provided in accordance with applicable law if a job order contract or an order issued under the contract requires it.

Sec. 130.323. **CONTRACTS MADE WITHOUT ADVERTISING.** (a) Requires a contract for construction with a cost of \$10,000 or more but less than \$50,000, including contingency or reserve amounts, to be made through written competitive bids or proposals, except as provided by Subsection (d) and Section 130.304(j).

(b) Requires the district to consider the factors described by Section 130.304(b) in determining to whom to award a contract under this section.

(c) Prohibits a person from using this section to knowingly violate Section 130.313.

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

SUBCHAPTER M. DISPOSAL OF SURPLUS PERSONAL PROPERTY BY DISTRICT

Sec. 130.351. **SALE OF PERSONAL PROPERTY BY DISTRICT.** Requires a district to dispose of surplus personal property in an accountable manner that best services the interest of the district. Requires a sale of personal property that is not covered by Chapter 791 (Interlocal Cooperation Contracts), Government Code, to be solicited and awarded in the same manner as a contract for the purchase of goods or services under Subchapter K.

Sec. 130.352. **METHODS OF DISPOSAL.** (a) Authorizes a district to use certain methods to dispose of surplus personal property.

(b) Authorizes the surplus property to be discarded in accordance with applicable federal, state, and local laws, ordinances, and rules or removed by an interested party at no charge or for a nominal charge if the district is unable to find a buyer.

(c) Prohibits a district from giving, donating, loaning, or transferring surplus property to any person or entity, except as provided by this section.

SUBCHAPTER N. PROFESSIONAL SERVICES AND CONSULTANT SERVICES

Sec. 130.401. PROFESSIONAL SERVICES. (a) Defines "professional services provider."

(b) Requires a district to select and enter into contracts for professional services in accordance with Subchapter A (Professional Services), Chapter 2254, Government Code. Requires the district to publish notice of the request for qualifications as provided by Section 130.258 if the estimated value of a contract for professional services is \$50,000 or more during a fiscal year, or during the contract's term if the contract is a multiple year contract.

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

(d) Authorizes a professional service provider selected by the district to be selected for a specific project or for various projects that arise during the term of the provider's contract. Prohibits the term of a contract with a professional service provider from exceeding five years, except that the professional service provider is required to complete services for projects started before the end of the contract term.

Sec. 130.402. CONSULTANTS. (a) Defines "consultant."

(b) Requires a district to select and enter into contracts with consultants in accordance with Section 130.253 or Subchapter B (Consulting Services), Chapter 2254, Government Code. Requires the district to advertise the request for qualifications, bids, or proposals as provided by Section 130.258 if the estimated value of a contract for consulting services is \$50,000 or more during a fiscal year, or during the contract's term if the contract is a multiple year contract.

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

(d) Authorizes a consulting service provider selected by the district to be selected for a specific project or for various projects that arise during the term of the consultant's contract. Prohibits the term of a contract with a consulting service provider from exceeding five years, except that the consulting service provider is required to complete services for projects started before the end of the contract term.

Sec. 130.403. RULES AND PROCEDURES; AUDITS BY STATE AUDITOR. (a) Authorizes the board of trustees to adopt rules and procedures for the acquisition of professional services and consultants by the district.

(b) Authorizes the state auditor to audit a district's contracts for professional services or consultants.

SECTION 5. Amends Section 271.023, Local Government Code, as follows:

Sec. 271.023. CONFLICT OF LAWS. Provides that, to the extent of any conflict, the provisions of Subchapter B (Purchases; Contracts), Chapter 44, Education Code, relating to the purchase of goods and services under contract by a school district and the provisions of Subchapters K and L, Chapter 130, Education Code, relating to the

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

SECTION 6. Repealer: Sections 44.0311(b) (defining "board of trustees"), 130.010 (Purchasing Contracts), and 130.0101 (Acquisition of Library Materials), Education Code.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2007.