

BILL ANALYSIS

Senate Research Center
81R4783 KSD-F

S.B. 857
By: West
Higher Education
4/14/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As junior colleges have grown, the need to establish procurement regulations to meet their unique requirements has also grown. Junior and community colleges presently use the purchasing statutes established for public school systems. There are significant differences in the needs of 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 colleges.

As proposed, S.B. 857 establishes a comprehensive procurement system for junior and community colleges.

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 applies, to junior college districts.

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 applies only to a junior college district (district) that is located wholly or partially in a county with a population of one million or more and had an annual enrollment of 20,000 or more full-time or part-time students in one or more of the most recent five academic years.

(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 process in order to support, to the greatest extent feasible, the efforts of historically underutilized businesses to compete for purchases of equipment, supplies, services, including professional services, and construction contracts.

(d) Requires each district, annually, to publish 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 that the report 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 the district is 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, notwithstanding any other provision of this chapter, from considering whether a vendor is a member of or has another relationship with an organization and requires the district to ensure that its bid specifications and any subsequent contract or other agreement do 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.

Sec. 130.0106. **CONTRACT WITH PERSON INDEBTED TO DISTRICT.** (a) Authorizes the board of trustees (board) 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, on an annual basis in order to increase efficiency of operations and to achieve savings through volume purchases, 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.

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

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

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 underutilized businesses or the procurement of goods and services from persons with disabilities.

Sec. 130.253. **PURCHASE METHODS.** (a) Requires that 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, be made by the method, of the following methods, that provides the best value for the district: competitive sealed bids, competitive sealed proposals, reverse auction procedure defined by Section 2155.062(d) (relating to a real-time bidding process), Government Code, or the formation of a political subdivision corporation under Section 304.001 (Aggregation by Political Subdivisions), Local Government Code.

(b) Provides that only one of the methods listed in Subsection (a) is authorized to be used for any additional 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, if the district uses the competitive sealed proposal method, to reveal when the proposals are opened the names of the companies submitting proposals and keep the contents of the proposals confidential until the district concludes negotiations and awards a contract.

(d) Authorizes a district, without complying with Subsection (a), to purchase a good or service that is available from only one source, including an item for which competition is precluded because of the existence of a patent, copyright, secret process or monopoly; a film, recording, periodical, manuscript, book or computer software; a utility service, including gas or water; a captive replacement part or component for equipment; a product needed to match or work with like products; and technical and specialized services, including advertising, audio/video production, and the repair and maintenance of specialized equipment.

(e) Authorizes a district, without complying with Subsection (a), to purchase perishable goods, advertising services, meeting and catering services, travel services, including airfare, ground transportation, and all lodging. 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 the district, after rating and ranking all offers received, to attempt to negotiate a contract with the highest ranked vendor. Requires that if a contract cannot be negotiated with the highest ranked vendor, the next highest ranked vendor be contacted. Requires the district, if the value of a purchase to be made under this section is estimated to be \$50,000 or greater, to publish notice of the intent to purchase as provided by Section 130.258. Requires that the award of a contract, if the value of a purchase to be made under this section is estimated to be \$10,000 or more but less than \$50,000 during a fiscal year, be made in accordance with a policy established by the board of trustees.

(f) Authorizes a district, without complying with Subsection (a), to purchase a good or service under an interlocal contract under Chapter 791 (Interlocal Cooperation Contracts), Government Code; a contract established by the comptroller of public accounts (comptroller) or Department of Information Resources, including a contract for the purchase of travel services, telephone services, computers, computer-related equipment, service, and software; or a purchase made under Subchapter D (State Cooperation in Local Purchasing Programs), F (Cooperative Purchasing Program) or G (Purchases from Federal Schedule Sources of Supply), Chapter 271 (Purchasing and Contracting Authority of Municipalities, Counties, and Certain Other Local Governments), Local Government Code.

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

(h) Provides that if district property is destroyed, stolen, severely damaged, or unusable, or a contractor is unable to fulfill its obligations in providing goods or services, and the board of trustees, or its designee, determines that the delay posed by using the methods required by Subsection (a) would pose a material threat to personal safety or potential damage to other property or would prevent or substantially impair the conduct of classes or other essential district activities,

then the contracts for the replacement or repair of the property are authorized to be made by methods other than those required by Subsection (a).

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 that if more than one agent indicates a desire to represent the same provider, the agent with the longest and most substantial relationship with the insurance provider be authorized to submit a proposal for the designated insurance 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 proposals received after the date and time stated in the request for proposals from being considered.

Sec. 130.255. MULTIYEAR CONTRACT. Requires that a contract that extends past the end of a district's fiscal year include a provision that permits termination at the end of each fiscal year. Prohibits contracts solely for the purchase of goods or services to exceed 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 the publication.

(b) Requires the district, in determining the lowest responsible bidder, to consider the purchase price, including delivery and installation charges; the reputation of the bidder and of the bidder's goods or services; the quality of the bidder's goods or services; the extent to which the offered goods or services meet the district's needs; the bidder's past relationship with the district; the total long-term cost to the district to acquire the bidder's goods or services; the extent to which the offers comply with the requirements of the request for bids, proposals, or qualifications; any other relevant factor specifically listed in the request for bids or proposals; and the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses.

(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 bid to provide the same goods or services on equal terms and to 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 that the meeting or other occasion at which bids are opened be open to the public. Requires the appropriate employee or officer of the district, at the time the district opens a bid, if one or more members of the public are present, to read aloud the name of the bidder and the total bid amount. Requires the appropriate employee or officer, when opening proposals or qualifications, to read aloud only the name of the respondents and prohibits disclosure of the contents of a proposal or qualification on opening or during negotiations with competing bidders. Requires that at least two district employees or members of the district's board 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 for 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 a district that has its central administrative office located in a municipality with a population of less than 250,000, in awarding a contract by competitive sealed bid under this section, to consider the 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. Provides that this section 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. (a) Authorizes the board to adopt rules and procedures for the acquisition of goods or services by the district.

(b) 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, for any method of contracting selected under Section 130.253(a), 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. 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 that the notice, if there is not a newspaper of general circulation in the county in which the district's central administrative office is located, to be published in a newspaper of general circulation in a location nearest the district's central administrative office. Provides that in the 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 notice in a newspaper exclusively under Subsection (a), to publish on a publicly accessible Internet site the notice required by this section. Requires the district, before or at the same time the district first publishes the Internet notice, to publish a notice in a newspaper of general circulation, as described by Subsection (a), that includes the name of the goods or services to be purchased, the date, time, and place for receiving and opening bids, proposals, or statements of qualifications and the Internet address of the Internet site where the detailed requirements can be found. Requires that the notice posted on the Internet under this subsection be posted every day for at least 10 business days before the deadline for receiving the bids or proposals or five business days before the deadline for receiving responses to a request for qualifications.

(c) Requires that the notice required by this section, except as otherwise provided by Subsection (b) for the newspaper notice required by that subsection, include the location where the request for bid, proposal or qualification documents can be obtained or examined; the date, time, and place for receiving and opening bids, proposals, or statements of qualification; a general description of the goods or services; the location and time of any mandatory site inspection or pre-bid meetings; and the amount of any required bid bond, payment bond, or performance bond.

Sec. 130.259. DISCUSSION AND REVISION OF PROPOSALS. (a) Authorizes the district, as provided in a request for proposals and 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, after receiving a proposal but before making an award, to permit the three highest-ranking bidders to revise their proposals, within the scope of the published specifications, to obtain the best final offer.

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

Sec. 130.260. PRE-BID CONFERENCE OR SITE VISIT. (a) Authorizes the district to require a principal, officer or employee of each prospective bidder to attend a mandatory pre-bid conference or site visit, or both, as a condition of a request for bid or proposal. Requires that notice of a requirement under this subsection be included in the notice published under Section 130.258.

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

Sec. 130.261. IDENTICAL BIDS. Requires the district, if after considering the factors described by Section 130.256, the district determines that the district has received identical bids to cast lots to determine which bidder will be awarded the contract. 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 board.

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

(b) Requires the district, on the award of the contract or the rejection of all bids, to refund the bid deposit of an unsuccessful bidder. 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 that the bid deposit, if any, be in the form of a cashier's check, certified check, or bid bond written by a surety authorized to conduct business in this state. 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 this state 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 Sections 130.253, 130.256, or 130.266. Provides that an offense under this section is a Class C 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 Sections 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 officer or employee knowingly violates Sections 130.253, 130.256, or 130.266 other than by conduct described by Subsection (b) and (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 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 benefits to the removed person or the payment of workers compensation benefits to the removed person for an injury that occurred before the commission of the 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 as 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 goods or services, including produce, gasoline, and fuel oil, where the cost of the goods and services is expected to be \$50,000 or more during a fiscal year but requires the selling price 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 who 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 the

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 are authorized to be purchased during the applicable fiscal year.

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

Sec. 130.266. PURCHASES MADE WITHOUT ADVERTISING. (a) Requires that, except as provided under Sections 130.253(d), (f), (g), and (h), a purchase of goods or services with a cost of \$10,000 or more but less than \$50,000 be made by written competitive bids or proposals. Requires that a minimum of three bids or proposals 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, in determining from whom to purchase the goods or services under this section, to consider the provisions of Section 130.256.

(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 that the notice 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 those products produced, processed or grown in this state if the cost to the district for those products is equal to or less than the cost of other products and the quality of those products is equal to or exceeds the quality of other products.

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

(c) Requires a district that purchases vegetation for landscaping purposes, including plants, to give preference to Texas vegetation if the cost to the district 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, in order to increase efficiency of operations and to achieve savings through volume purchases, 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.

Sec. 130.270. DELEGATION. (a) Authorizes the board of a district, except as provided by Subsection (b), as appropriate, to delegate its authority under this subchapter to a designated person, representative, or committee. Requires the district, in procuring goods or services other than construction services, to provide notice of the delegation and the limits of the delegation in the request for bids, proposals, qualifications or in an addendum to the request. Provides that if the district fails to provide that notice, a ranking, selection, evaluation of bids, proposals, or qualifications other than by the board in an open public meeting is advisory only.

(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.

[Reserves Sections 130.271-130.300 for expansion.]

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

(b) Provides that in this chapter the term "bid" is used to refer to a competitive bid or proposal or to a statement of qualifications.

Sec. 130.303. METHODS OF CONTRACTING. (a) Requires that, except as otherwise provided by this subchapter and subject to Section 130.313, all contracts for construction, rehabilitation, alteration, or repair of facilities valued at \$50,000 or more be made by the method, of the following methods, that provides the best value for the district: competitive sealed bids, competitive sealed proposals, a design-build contract, a construction manager-at-risk, or a job order contract for the minor construction, repair, rehabilitation, or alteration of a facility.

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

(c) Requires the district, if the district uses the competitive sealed proposal method, to reveal when the proposals are opened the names of the companies submitting proposals and keep the contents of the proposals confidential until the district concludes negotiations and awards a contract.

(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).

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

Sec. 130.304. 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 the publication.

(b) Authorizes the district, in determining the lowest responsible bidder, to consider certain aspects of the proposed bid.

(c) Authorizes the district to reject any or all bids, proposals or 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 that the meeting or other occasion at which bids are opened be open to the public. Requires the appropriate employee or officer, if at the time the district opens a bid one or more members of the public are present, 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. Requires that at least two district employees or members of the board 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 prohibits disclosure of the contents of a 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 evaluation 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 the award.

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

(j) Authorizes a district, in awarding a contract by competitive sealed bid under this section, 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, Local Government Code. 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. (a) Authorizes the board to adopt rules and procedures for the acquisition of construction services by the district.

(b) Authorizes the state auditor to audit construction contracts.

Sec. 130.306. NOTICE. (a) Requires the district, for any method of contracting selected under Section 130.303, 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. 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 that the notice, if there is not a newspaper of general circulation in the county in which the district's central administrative office is located, to be published in a newspaper of general circulation in a location nearest the district's central administrative office. Provides that in the 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) Requires that the notice required by this section include the location where the request for bid, proposal, or qualification documents can be obtained or examined, the date, time, and place for receiving and opening bids, proposals, or statements of qualification, a general description of the work to be performed, the location and time of any mandatory site inspection or pre-bid meetings, and the amount of any required bid bond, payment bond, or performance bond.

Sec. 130.307. DISCUSSION AND REVISION OF PROPOSALS. (a) Authorizes the district, as provided in a request for proposals and 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, after receiving a proposal but before making an award, to permit the three highest-ranking bidders to revise their proposals, within the scope of the published specifications, to obtain the best final offer.

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

Sec. 130.308. PRE-BID CONFERENCE OR SITE VISIT. (a) Authorizes the district to require a principal, officer or employee of each prospective bidder to attend a mandatory pre-bid conference or site visit, or both, as a condition of a request for bid or proposal. Requires that notice of a requirement under this subsection be included in the notice published under Section 130.306.

(b) Authorizes the district, after the district conducts a mandatory pre-bid conference or site visit, to send any additional required notice for the proposed contract only to prospective bidders who attend or were represented at the conference or who are documented as having visited the site.

Sec. 130.309. IDENTICAL BIDS. Requires the district, if after considering the factors described by Section 130.304, the district determines that the district has received

identical bids, to cast lots to determine which bidder will be awarded the contract. 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 board.

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

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

(c) Provides that the bid deposit, for public works contracts, if any, required by the district only be in the form of a cashier's check, certified check, or bid bond written by a surety authorized to conduct business in this state.

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, Government Code.

Sec. 130.312. **DELEGATION.** (a) Authorizes the board of a district to, except as provided by Subsection (b), as appropriate, 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 if the district fails to provide that notice, a ranking, selection, or evaluation of bids, proposals, or qualifications for construction services other than by the board in an open public meeting is advisory only.

(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 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 Sections 130.303, or 130.304. Provides that an offense under this section 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 Sections 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 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 officer or employee knowingly violates Sections 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 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 member of the board who is convicted of an offense under this section is subject to removal as provided by Chapter 66, 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 benefits to the removed person or the payment of workers compensation benefits to the removed person for an injury that occurred before the commission of the 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 as approved by the court.

Sec. 130.314. 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 that the notice 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 the district, after performance of a construction contract begins, to approve change orders if necessary to make changes in plans or specifications or decrease or increase the quantity of work to be performed or materials, equipment, or supplies to be furnished.

(b) Prohibits the total price of the contract from being increased by the 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 determines the change is due to causes beyond the reasonable control of the district or contractor.

(c) Provides that, except as provided by Subsection (b) or Section 130.303(e), a person, including a member of the board, 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.

Sec. 130.316. ERRORS AND OMISSIONS INSURANCE. Requires the architect or engineer that prepared the plans and specifications for the public work to, for any public work contract awarded under this subchapter, to protect the interest of the district, at the

architect's or engineer's expense, carry an errors or 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 the 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)-(j).

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

(d) Requires the district to prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. Requires the district to prepare a design criteria package that includes more detailed information on the project. Requires that services, if the preparation of the design criteria package 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 Architecture Examiners; General Provisions Affecting Architects, Landscape Architects, and Interior Designers; Provisions Affecting Only Architects), Occupations Code, be provided in accordance with the applicable law.

(e) Requires the district to evaluate statements of qualifications and select a design-build firm in two phases. Requires the district in phase one to prepare a request for qualifications and evaluate each offeror's experience, technical competence, and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Requires each offeror to certify to the district that each engineer or architect that is a member of its team was selected based on demonstrated competence and qualifications. Requires the district to qualify a maximum of five offerors to submit additional information and, if the district chooses, to interview for final selection. Requires the district, in phase two, to evaluate the information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview. Authorizes the district to request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, costing methodology, or other factors as appropriate. Prohibits the district from requiring offerors to submit detailed engineering or architectural designs as part of the proposal. Requires the district to rank each proposal submitted on the basis of the criteria set forth in the request for qualifications. Requires the district to select the design-build firm that submits the proposal offering the best value for the district on the basis of the published selection criteria and on its ranking evaluations. Requires the district to first attempt to negotiate a contract with the selected offeror. Requires the district, if the district is unable to negotiate a satisfactory contract with the selected offeror, to, formally and in writing, end negotiations with that offeror 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.

(f) Requires, following selection of a design-build firm under Subsection (e), the firm's engineers or architects 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, Occupations Code. Requires an architect to have responsibility for compliance with the requirements of Chapter 1051, Occupations Code.

(h) Requires the district to provide or contract for, independently of the design-build firm, the inspection services, testing of construction materials engineering, and verification testing 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.

(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 that, if a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, 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. Requires that the design-build firm furnish the required performance and payment bonds when the 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, alteration, or repair of a facility. Requires a district, in entering into a contract for the services of a construction manager-agent, to follow the procedures prescribed by this section.

(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, under the contract between the district and the construction manager-agent, to require the construction manager-agent to provide administrative personnel, equipment necessary to perform duties under this section, and on-site management and other services specified in the contract. Provides that a construction manager-agent represents the district in a fiduciary capacity.

(c) Requires the district, before or concurrently with selecting a construction manager-agent, 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 or 1051, Occupations Code, as applicable. Requires the district, if the engineer or architect is not a full-time employee of the district, to select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. 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 engineer's or

architect's 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 architects under Section 2254.004, 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, a general contractor, trade contractors, or subcontractors 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 2254.004, Government Code, all of the testing of construction materials engineering, the inspection services, and the verification testing 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 the construction, rehabilitation, alteration, or repair of a facility. Requires a district, in using that method and in entering into a contract for the services of a construction manager-at-risk, to follow the procedures prescribed by this section.

(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, before or concurrently with selecting a construction manager-at-risk, 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 or 1051, Occupations Code, as applicable. Requires the district, if the engineer or architect is not a full-time employee of the district, to select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. Prohibits the district's engineer, architect, or construction manager-agent from serving, alone or in combination with another person, as the construction manager-at-risk.

(d) Requires the district to provide or contract for, independently of the construction manager-at-risk, the inspection services, testing of construction materials engineering, and verification testing 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, 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, in the case of a one-step process, or a request for qualifications, in the case of a two-step process, that include general information on the project site, project scope, schedule, selection criteria, estimated budget, the time and place for receipt of, as applicable, proposals for qualifications, a statement as to whether the selection process is a one-step or two-step process, and other 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 and qualifications, as applicable. Authorizes the selection criteria to include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk. Requires the district, if a one-step process is used, as part of the offeror's proposal, to request proposed fees and

prices for fulfilling the general conditions. Prohibits the district, if a two-step process is used, from requesting fees or prices in step one. Authorizes the district, in step two, to request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions.

(f) Requires the district, at each step, to receive, publicly open, and read aloud the names of the offerors. 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, if the district is unable to negotiate a satisfactory contract with the selected offeror, to formally and in writing, end negotiations with that offeror 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 may 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 that all bids or proposals 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, if the construction manager-at-risk reviews, evaluates, and recommends to the district a bid or proposal from a trade contractor or subcontractor but the district requires another bid or proposal to be accepted, to compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk may incur because of the district's requirement that another bid or proposal be accepted.

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

(l) Requires that the penal sums of the performance and payment bonds delivered to the district, if a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, each be in an amount equal to the project budget, as specified in the request for qualifications. Requires the construction manager-at-risk to deliver the bonds not later than the 10th day after the date the construction manager-at-risk executes the contract 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, in selecting a contractor for construction, rehabilitation, alteration, or repair services for a facility through competitive sealed proposals, to follow the procedures prescribed by this section.

(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 or 1051, Occupations Code, as applicable. Requires the district, if the engineer or architect is not a full-time employee of the district, to select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code.

(c) Requires the district to provide or contract for, independently of the contractor, the inspection services, testing of construction materials engineering, and verification testing 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, 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 construction documents, selection criteria, estimated budget, project scope, schedule, and other information that contractors may require to respond to a request.

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

(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, if the district is unable to negotiate a contract with the selected offeror, to formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

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

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 prescribed 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. Requires that, for the purposes of this section, notice be published as required under Section 130.306.

(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 that an order for a job or project under the job contract 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 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 that the base term, if the district fails to advertise that term, from exceeding two years and is not renewable without further advertisement and solicitation of proposals.

(i) Requires the district, if a job order contract or an order issued under the contract requires engineering or architectural services that constitute the practice of engineering with the meaning of Chapter 1001, Occupations Code, or the practice of architecture within the meaning of Chapter 1051, Occupations Code, to select or designate an architect or engineer to prepare the construction documents for the facility. Requires the district, if the architect or engineer is not a full-time employee of the district, to select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. Requires that the request for qualifications for the architect or engineer be advertised in the manner provided for giving notice under Section 130.306.

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

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

(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.

[Reserves Sections 130.324-130.350 for expansion.]

SUBCHAPTER M. DISPOSAL OF SURPLUS PERSONAL PROPERTY

Sec. 130.351. SALE OF PERSONAL PROPERTY. Requires a district to dispose of surplus personal property in an accountable manner that best serves the interests of the district. Requires that a sale of personal property that is not covered by Chapter 791 (Interlocal Cooperative Contracts) Government Code, 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 dispose of surplus personal property by the use of a licensed auctioneer to conduct live or Internet-based auctions; a direct sale by the district to a person submitting the highest and best bid through a competitive process, including an internet-based bidding system; the trade-in of items when purchasing new items; a sale or transfer to another governmental entity at a mutual agreed price; or a donation to a public school in this state.

(b) Authorizes the property, if the district is unable to find a buyer for 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.

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

[Reserves Sections 130.353-130.400 for expansion.]

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, Chapter 2254, Government Code. Requires the district, 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, to publish notice of the request for qualifications as provided by Section 130.258.

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

(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 the 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 the 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, 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, to publish notice of the request for qualifications as provided by Section 130.258.

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

(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 the 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 a district 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 contract for professional services or consultants.

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

Sec. 271.023. CONFLICT OF LAWS. Provides that the provisions of Subchapter B (Purchases; Contracts), Chapter 44 (Fiscal Management), Education Code, relating to the purchase of goods and services under contract by a school district and the provisions of Subchapter 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. Repealers: Sections 44.0311(b) (relating to prohibiting a delegation of authority to act), 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, 2009.