

Legal Q&A

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December 2015

Q: What is Section 2252.908 of the Government Code?

A: Section 2252.908 is a new ethics law that was enacted by H.B. 1295 in 2015. It prohibits a governmental entity or state agency from entering into certain contracts with a business entity unless the business entity submits a disclosure of interested parties. Although the bill became effective on September 1, 2015, Section 2252.908 applies only to a contract entered into on or after January 1, 2016.

Q: What role does the Texas Ethics Commission have in the implementation of Section 2252.908?

A: The Texas Ethics Commission (Commission) is charged with adopting rules to implement the new statute, developing the disclosure of interested parties form, and posting the form on its website. TEX. GOV'T CODE § 2252.908(g). The Commission adopted the Certificate of Interested Parties form ([Form 1295](#)) on October 5, 2015 and adopted [rules](#) (1 TAC ch. 46) on November 30, 2015.

Q: What local governmental entities are subject to this law?

A: The term “governmental entity” is defined in Section 2252.908(a)(2) to include a city, county, public school district, or special-purpose district or authority.

Q: To what types of city contracts does Section 2252.908 apply?

A: This new disclosure law applies only to contracts that: (1) require an action or vote by the city council before the contract may be signed; or (2) have a value of at least \$1 million. TEX. GOV'T CODE § 2252.908(b). Pursuant to the Commission's rules, a contract does not require an action or vote by the city council if:

- (1) The governing body has legal authority to delegate to its staff the authority to execute the contract;
- (2) The governing body has delegated to its staff the authority to execute the contract; and
- (3) The governing body does not participate in the selection of the business entity with which the contract is entered into.

1 T.A.C. § 46.1(c).

It is important to note that the Commission defines the term “contract” to include an amended, extended, or renewed contract. *Id.* § 46.3(a). The League understands that to mean that if, for instance, a city entered into a contract in 2015, but seeks to amend,

extend, or renew that contract on or after January 1, 2016, the disclosure requirements of Section 2252.908 may be triggered.

Q: To what types of business entities does Section 2252.908 apply?

A: The term “business entity” is defined to mean “any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.” TEX. GOV’T CODE § 2252.908(a)(1). The Commission’s rules clarify that the term “business entity” includes nonprofits, but does not include a governmental entity. 1 T.A.C. § 46.3(b). That means, for instance, that if a city executes an interlocal agreement with another city or county, the disclosure requirements of Section 2252.908 are not triggered.

Q: What types of interested parties does a business entity have to disclose when it enters into a contract with a city?

A: A business entity must disclose those who have a controlling interest in the business, as well as certain individuals who participate in facilitating or negotiating the contract. More specifically, Section 2252.908(a)(3) defines the term “interested party” to mean “a person who has a controlling interest in a business entity with whom a government entity or state agency contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity.”

The Commission defines the terms controlling interest and intermediary as follows:

“Controlling interest” means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. . . .

“Intermediary,” . . . means, a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who: (1) receives compensation from the business entity for the person’s participation; (2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and (3) is not an employee of the business entity.

1 T.A.C. § 46.3(c),(e).

It is quite possible that, although a business entity is subject to Section 2252.908, no interested parties will exist. Thus, a business entity may end up filing a form that has very little information on it.

Q: How is the Certificate of Interested Parties Form (Form 1295) completed and submitted to the city?

A: By January 1, 2016, the Commission will make available on its website a new filing application (a software application) that must be used to file [Form 1295](#). The process as implemented by the Commission is as follows:

1. A business entity must use the application to enter the required information on Form 1295 and print a copy of the form and a separate certification of filing that will contain a unique certification number. 1 T.A.C. § 46.5.
2. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. *Id.* The completed Form 1295 and certification of filing must be filed with the city “at the time the business entity submits the signed contract” to the city. TEX. GOV’T CODE § 2252.908(d).
3. The city must notify the Commission, using the Commission’s filing application, of the receipt of the filed Form 1295 and certification of filing not later than the 30th day after the date the contract binds all parties to the contract. TEX. GOV’T CODE § 2252.908(f), 1 T.A.C. § 46.5(c).

Instructional videos and a FAQ about how to register and file a report is available here: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

Q: Will the city have to provide any of the information that the business entity needs to include on Form 1295?

A: Yes. Although not required by Section 2252.908, the Commission’s rules provide that the business entity must include on the form an “identification number used by the [city] . . . to track or identify the contract for which the form is being filed.” 1 T.A.C. § 46.5(a)(4). Even though the rules provide for such a number, nothing in the rule requires a city to create a numbering system of any type.

Q: How will the public access the Certified of Interested Parties Form that is completed by a business entity?

A: The Commission is required to post the completed Form 1295 to its website within seven business days after receiving notice from the city that it has received the filed Form 1295 and certification of filing. TEX. GOV’T CODE § 2252.908(g), 1 T.A.C. 46.5(d). In addition, cities must provide the completed forms in accordance with the Public Information Act.

Q: What happens if a city or business entity fails to comply with Section 2252.908?

A: All the ramifications for a city are unclear at this time. According to the Commission's [website](#), the Commission does not have any authority (beyond rulemaking and adoption of the form) to enforce or interpret House Bill 1295. *Cf., e.g.,* TEX. GOV'T CODE §§ 571.061 (listing the laws that the Commission administers and enforces), 571.091 (listing the statutes about which the Commission may issue advisory opinions).

As for a business entity, the statute does provide that a Form 1295 “disclosure is made under oath and under penalty of perjury.” *See* TEX. PENAL CODE ch. 37 (providing for offense of perjury).