

GOVERNMENT CODE
CHAPTER 2252. CONTRACTS WITH GOVERNMENTAL ENTITY
SUBCHAPTER A. NONRESIDENT BIDDERS

Sec. 2252.001. DEFINITIONS. In this subchapter:

(1) "Governmental contract" means a contract awarded by a governmental entity for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment.

(2) "Governmental entity" means:

(A) the state;
(B) a municipality, county, public school district, or special-purpose district or authority;
(C) a district, county, or justice of the peace court;

(D) a board, commission, department, office, or other agency in the executive branch of state government, including an institution of higher education as defined by Section 61.003, Education Code;

(E) the legislature or a legislative agency; or

(F) the Supreme Court of Texas, the Texas Court of Criminal Appeals, a court of appeals, or the State Bar of Texas or another judicial agency having statewide jurisdiction.

(3) "Nonresident bidder" refers to a person who is not a resident.

(4) "Resident bidder" refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2252.002. AWARD OF CONTRACT TO NONRESIDENT BIDDER. A governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2252.003. PUBLICATION OF OTHER STATES' LAWS ON CONTRACTS. (a) The General Services Commission annually shall publish in the Texas Register:

(1) a list showing each state that regulates the award of a governmental contract to a bidder whose principal place of business is not located in that state; and

(2) the citation to and a summary of each state's most recent law or regulation relating to the evaluation of a bid from and award of a contract to a bidder whose principal place of business is not located in that state.

(b) A governmental entity shall use the information published under this section to evaluate the bid of a nonresident bidder. A governmental entity may rely on information published under this section to meet the requirements of Section 2252.002.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2252.004. CONTRACT INVOLVING FEDERAL FUNDS. This subchapter does not apply to a contract involving federal funds.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 9.011, eff. Sept. 1, 2001.

SUBCHAPTER B. INTEREST ON RETAINED PUBLIC WORKS CONTRACT PAYMENTS

Sec. 2252.031. DEFINITIONS. In this subchapter:

(1) "Governmental entity" means:

(A) the state, a county, or a municipality;
(B) a department, board, or agency of the state, a county, or a municipality;

(C) a school district or a subdivision of a school district; or

(D) any other governmental or quasi-governmental authority authorized by statute to make a public works contract.

(2) "Prime contractor" means a person or persons, firm, or corporation contracting with a governmental entity for a public work.

(3) "Public works" includes the construction, alteration, or repair of a public building or the construction or completion of a public work.

(4) "Public works contract payment" means a payment by

a governmental entity for the value of labor, material, machinery, fixtures, tools, power, water, fuel, or lubricants used or consumed, ordered and delivered for use or consumption, or specially fabricated for use or consumption but not yet delivered, in the direct performance of a public works contract.

(5) "Retainage" means the part of a public works contract payment withheld by a governmental entity to secure performance of the contract.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2252.032. RETAINAGE. A governmental entity shall:

(1) deposit in an interest-bearing account the retainage of a public works contract that provides for retainage of more than five percent of the periodic contract payment; and

(2) pay the interest earned on the retainage to the prime contractor on completion of the contract.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2252.033. EXEMPTIONS. This subchapter does not apply to:

(1) a public works contract executed before August 31, 1981;

(2) a public works contract in which the total contract price estimate at the time of execution of the contract is less than \$400,000; or

(3) a public works contract made by the Texas Department of Transportation under Subchapter A, Chapter 223, Transportation Code.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.201, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 9.012, eff. Sept. 1, 2001.

SUBCHAPTER C. PRIVATE AUXILIARY ENTERPRISE PROVIDING SERVICES TO STATE AGENCIES OR INSTITUTIONS OF HIGHER EDUCATION

Sec. 2252.061. DEFINITIONS. In this subchapter:

(1) "Auxiliary enterprise" means a business activity that is conducted at a state agency, provides a service to the agency, and is not paid for with appropriated money.

(2) "Contractor" means an individual, association, corporation, or other business entity that operates an auxiliary enterprise or performs a service of the auxiliary enterprise.

(3) "State agency" includes a state-supported institution of higher education.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2252.062. FINANCIAL STATEMENT. A contractor must present at the time of contracting with a state agency a financial statement prepared by a certified public accountant.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2252.063. PAYMENT STATEMENT. (a) A contractor must provide to the contracting state agency payment statements derived from sales tax reports.

(b) The contractor annually must provide the payment statements in accordance with the requirements of the state agency.

(c) A payment statement must be certified by a certified public accountant licensed in this state.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2252.064. PERFORMANCE BOND. (a) A contractor shall execute a bond issued by a surety company authorized to do business in this state in an amount determined by the contracting state agency, but not to exceed the contract price.

(b) The bond must be payable to the state and conditioned on the faithful performance of the terms of the contract.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. REAL PROPERTY HELD IN TRUST

Sec. 2252.091. DEFINITION. In this subchapter, "governmental entity" means a state agency or a political subdivision of the state.

Added by Acts 1997, 75th Leg., ch. 1271, Sec. 1, eff. Sept. 1, 1997.

Sec. 2252.092. IDENTIFICATION OF TRUST PROPERTY REQUIRED. (a) A governmental entity may not purchase real property held in trust until the trustee submits to the governing body of the governmental entity a copy of the trust agreement identifying the true owner of the property. The trustee shall identify the true owner of the property to a governmental entity.

(b) A governmental entity may not sell real property to a trustee until the governmental entity receives from the trustee a copy of the trust agreement identifying the person who will be the

true owner of the property. The trustee shall identify the person who will be the true owner of the property to the governmental entity.

Added by Acts 1995, 74th Leg., ch. 913, Sec. 1, eff. Aug. 28, 1995. Redesignated from V.T.C.A., Local Government Code Sec. 280.002(a), (b) and amended by Acts 1997, 75th Leg., ch. 1271, Sec. 1, eff. Sept. 1, 1997

Sec. 2252.093. NONCOMPLIANCE CREATES VOID CONVEYANCE. A conveyance of property subject to this subchapter is void if a governmental entity fails to comply with Section 2252.092.

Added by Acts 1995, 74th Leg., ch. 913, Sec. 1, eff. Aug. 28, 1995. Redesignated from V.T.C.A., Local Government Code Sec. 280.002(c) and amended by Acts 1997, 75th Leg., ch. 1271, Sec. 1, eff. Sept. 1, 1997.

Sec. 2252.094. TRUST AGREEMENT CONFIDENTIAL. A trust agreement submitted to the governing body of the governmental entity under this subchapter is confidential information excepted from the requirements of Section 552.021, Government Code.

Added by Acts 1995, 74th Leg., ch. 913, Sec. 1, eff. Aug. 28, 1995. Redesignated from V.T.C.A., Local Government Code Sec. 280.002(d) and amended by Acts 1997, 75th Leg., ch. 1271, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER E. PUBLIC CONTRACTS WITH DISADVANTAGED OR HISTORICALLY UNDERUTILIZED BUSINESSES

Sec. 2252.121. DEFINITIONS. In this subchapter:

(1) "Contractor" means a person who submits a bid for a public contract. The term includes a general contractor, a prime contractor, and a subcontractor.

(2) "Disadvantaged or historically underutilized business" means an entity that meets the definition of a historically underutilized business under Section 2161.001 and in which the owners of the business participate in the control, operation, and management of the business in a manner proportionate to their ownership so that the business is clearly controlled by the economically disadvantaged owners.

(3) "Governmental entity" means a state agency or political subdivision of this state.

(4) "Person" means an individual, partnership, association, corporation, or other private legal entity.

(5) "Political subdivision" means a county, municipality, school district, or other special district or authority of this state.

(6) "Public contract" means a purchasing contract or public works contract awarded by a governmental entity.

(7) "State agency" means a board, commission, office, department, or other agency in the executive, judicial, or legislative branch of state government. The term includes an institution of higher education as defined by Section 61.003, Education Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 9.013(a), eff. Sept. 1, 2001.

Sec. 2252.122. APPLICABILITY. This subchapter applies to each public contract entered into by a governmental entity and a contractor in which the contractor claims to be a disadvantaged or a historically underutilized business.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 9.013(a), eff. Sept. 1, 2001.

Sec. 2252.123. PROHIBITED ACT. A contractor may not claim disadvantaged or historically underutilized business status in bidding on a public contract unless the contractor meets the definition of a disadvantaged or historically underutilized business and that contractor will personally execute the terms of the contract.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 9.013(a), eff. Sept. 1, 2001.

Sec. 2252.124. SPECIFIC REQUIREMENTS. To qualify as a contractor claiming disadvantaged or historically underutilized business status under this subchapter:

(1) the general contractor will perform all of the estimating and contract administration functions with the employees of that contractor;

(2) subcontractors will perform all of their work of their trade with their own employees or, if the subcontractor uses an employee leasing firm for the purpose of providing salary and benefit administration, with employees who in all other respects

are supervised and perform on the job as if they were employees of the subcontractor; and

(3) a prime contractor who intends to subcontract specific trades may do so if:

(A) the dollar value of the subcontracts does not exceed 75 percent of the original value of the contract; and

(B) all work in the trade of the prime contractor is accomplished by employees of that contractor or, if the prime contractor uses an employee leasing firm for the purpose of salary and benefit administration, with employees who in all other respects are supervised and perform on the job as if they were employees of the prime contractor.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 9.013(a), eff. Sept. 1, 2001.

Sec. 2252.125. CIVIL PENALTY. (a) The attorney general or a district, county, or municipal attorney may institute an action in district court to recover a civil penalty against a person who claims disadvantaged or historically underutilized business status and a general contractor who knowingly contracts with a person claiming the disadvantaged or historically underutilized business status in violation of Section 2252.123.

(b) A civil penalty imposed under this section may not exceed \$1,000 for each violation and may not exceed \$100,000, in the aggregate, for all violations arising from a single action. Each day a violation occurs constitutes a separate violation for purposes of imposing the penalty.

(c) A civil penalty recovered in an action brought by the attorney general shall be deposited in the state treasury. A civil penalty recovered in an action brought by a political subdivision shall be deposited in the general fund of that political subdivision.

(d) A civil penalty imposed under this section is in addition to any other criminal, civil, or administrative penalty that may be imposed by the state or a political subdivision and to which a person in violation of Section 2252.123 may be liable.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 9.013(a), eff. Sept. 1, 2001.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 2252.901. CONTRACTS WITH FORMER OR RETIRED AGENCY EMPLOYEES. (a) A state agency may not enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency, if appropriated money will be used to make payments under the contract. This section does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by the agency.

(b) and (c) Repealed by Acts 2001, 77th Leg., ch. 715, Sec. 3(3), eff. Sept. 1, 2001.

(d) In this section:

(1) "Employment contract" includes a personal services contract regardless of whether the performance of the contract involves the traditional relationship of employer and employee. The term does not apply to an at-will employment relationship that involves the traditional relationship of employer and employee.

(2) "Retired agency employee" means a person:

(A) whose last state service before retirement was for the state agency with which the retiree contracts to perform services; and

(B) who is a retiree of:

(i) the employee class of membership of the Employees Retirement System of Texas; or

(ii) the Teacher Retirement System of Texas, the majority of whose service was credited in that system in a position with a state agency.

(3) "State agency" includes a "public senior college or university," as that term is defined by Section 61.003, Education Code.

Added by Acts 1997, 75th Leg., ch. 1306, Sec. 2, eff. Sept. 1, 1998.

Amended by Acts 1999, 76th Leg., ch. 1499, Sec. 1.36, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 715, Sec. 3(3), eff. Sept. 1, 2001.

Sec. 2252.902. INDEMNITY PROVISIONS IN CONSTRUCTION CONTRACTS. (a) In this section, "construction contract" means a contract or agreement made and entered into by a state governmental entity, contractor, construction manager, subcontractor, supplier, or equipment lessor, concerning the construction, alteration, or repair, of a state public building or carrying out or completing any state public work.

(b) Except as provided by Subsection (c), a covenant, promise, or agreement contained in a construction contract, or in an agreement collateral to or affecting a construction contract, is void and unenforceable to the extent that it indemnifies a person against all or any portion of loss or liability for damage that:

(1) is caused by or results from the sole, joint, or concurrent negligence of the indemnitee, its agent, employee, or another independent contractor directly responsible to the indemnitee; and

(2) arises from:

(A) personal injury or death;

(B) property damage;

(C) a fine, penalty, administrative action, or other action assessed by a governmental entity directly against the indemnitee, its agent or employee, or an independent contractor directly responsible to the indemnitee; or

(D) any other loss, damage, or expense that arises from an occurrence described by Paragraph (A), (B), or (C).

(c) A covenant, promise, or agreement, contained in a construction contract, or in an agreement collateral to or affecting a construction contract, may provide for a person to indemnify, hold harmless, or defend another person against loss or liability for damage that is caused by or results from the sole, joint, or concurrent negligence of the indemnitee or its agent or employee and arises from the bodily injury or death of an employee of:

(1) the indemnitor;

(2) the indemnitor's subcontractor, supplier, or equipment lessor;

(3) any lower-tier subcontractor, supplier, or equipment lessor of the indemnitor's subcontractor; or

(4) any independent contractor directly responsible to a person described in Subdivisions (1)-(3).

(d) This chapter does not affect the validity and enforceability of:

(1) an insurance contract;

(2) benefits and protections under the workers' compensation laws of this state; or

(3) any statutory right of contribution.

(e) This section may not be waived by contract or otherwise. Added by Acts 2001, 77th Leg., ch. 1422, Sec. 14.17, eff. Sept. 1, 2001. Amended by Acts 2005, 79th Leg., ch. 728, Sec. 8.020, eff. Sept. 1, 2005.

Sec. 2252.903. CONTRACTING WITH PERSONS WHO HAVE CERTAIN DEBTS OR DELINQUENCIES. (a) Each state agency shall determine whether a payment law prohibits the comptroller from issuing a warrant or initiating an electronic funds transfer to a person before the agency enters into a written contract with that person. The agency shall make this determination not earlier than the seventh day before and not later than the date of entering into the contract. The determination must be made in accordance with the comptroller's requirements.

(b) This subsection applies if the agency determines that a payment law prohibits the comptroller from issuing a warrant or initiating an electronic funds transfer to the person. The agency may not enter into a written contract with the person unless:

(1) the contract requires the agency's payments under the contract to be applied directly toward eliminating the person's debt or delinquency; and

(2) the requirement described in Subdivision (1) specifically applies to any debt or delinquency, regardless of when it arises.

(c) The comptroller may determine the order in which a person's multiple types of debts or delinquencies are reduced or eliminated under this section.

(d) The comptroller may adopt rules and establish

procedures to administer this section.

(e) In this section:

(1) "Debt or delinquency" means a debt, tax delinquency, student loan delinquency, or child support delinquency that results in a payment law prohibiting the comptroller from issuing a warrant or initiating an electronic funds transfer.

(2) "Payment law" means:

(A) Section 57.48, Education Code;

(B) Section 231.007, Family Code;

(C) Section 403.055; or

(D) any similar law that prohibits the comptroller from issuing a warrant or initiating an electronic funds transfer to a person.

(3) "State agency" has the meaning assigned by Section 403.055.

(4) "Written contract" does not include a contract the payments for which must be made through the comptroller's issuance of warrants or initiation of electronic funds transfers under Section 404.046, 404.069, or 2103.003.

Added by Acts 2001, 77th Leg., ch. 1158, Sec. 71, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 1310, Sec. 62, eff. Sept. 1, 2003.