

CHAPTER 881

H.B. No. 2310

AN ACT

relating to contracts between governmental entities and certain disadvantaged businesses; providing a civil penalty.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. DEFINITIONS. In this Act:

(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 business" has the meaning assigned by Section 1.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). In addition, for the purpose of this Act, the owners of a disadvantaged business must participate in the control, operation, and management in a manner proportionate to their ownership so that the business is clearly controlled by the socially 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.

**SECTION 2. APPLICATION.** This Act applies to each public contract entered into by a governmental entity and a contractor in which the contractor claims to be a disadvantaged business.

**SECTION 3. PROHIBITED ACT.** A contractor may not claim disadvantaged business status in bidding on a public contract unless the contractor meets the definition of a disadvantaged business and that contractor will personally execute the terms of the contract.

**SECTION 4. SPECIFIC REQUIREMENTS.** To qualify as a contractor claiming disadvantaged business status under this Act:

(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 the dollar value of the subcontracts does not exceed 75 percent of the original value of the contract, and 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 purposes 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.

**SECTION 5. CIVIL PENALTY.** (a) The attorney general or a district, county, or city attorney may institute an action in district court to recover a civil penalty against a person who claims disadvantaged business status and the general contractor who knowingly contracts with a person claiming the disadvantaged business status in violation of Section 3 of this Act.

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

(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 under this section is in addition to any other criminal, civil, or administrative penalty assessed by this state or a political subdivision to which a person in violation of Section 3 of this Act may be liable.

**SECTION 6. EFFECTIVE DATE; SAVING PROVISION.** This Act takes effect September 1, 1993, and applies only to a public contract that is entered into on or after that date. A public contract entered into before September 1, 1993, is governed by the law in effect on the date that the contract was entered into, and the former law is continued in effect for that purpose.

**SECTION 7. EMERGENCY.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 14, 1993, by a non-record vote; passed by the Senate on May 30, 1993, by a viva-voce vote.

Approved June 18, 1993.

Effective Sept. 1, 1993.