

Restriction on Contracting with a Business Entity

Definitions

“Business Entity”

“Business entity” includes an entity through which business is conducted with a governmental entity or state agency, regardless of whether the entity is a for-profit or nonprofit entity. The term does not include a governmental entity or state agency. *Gov’t Code 2252.908(a)(1); 1 TAC 46.3(b)*

“Controlling Interest”

“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 ten 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 ten 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. This paragraph does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.

1 TAC 46.3(c)

“Interested Party”

“Interested party” means a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts or an intermediary. *Gov’t Code 2252.908(a)(3), 1 TAC 46.3(d)*

“Intermediary”

“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 or of an entity with a controlling interest in the business entity.

1 TAC 46.3(e)

Qualifying Contract

This section applies only to a contract of a governmental entity or state agency, including a college district, that requires an action or vote by the governing body of the entity or agency before the con-

tract may be signed or has a value of at least \$1 million. This section does not apply to:

1. A sponsored research contract of an institution of higher education;
2. An interagency contract of a state agency or an institution of higher education;
3. A contract related to health and human services if:
 - a. The value of the contract cannot be determined at the time the contract is executed; and
 - b. Any qualified vendor is eligible for the contract;
4. A contract with a publicly traded business entity, including a wholly owned subsidiary of the business entity;
5. A contract with an electric utility, as that term is defined by Utilities Code 31.002; or
6. A contract with a gas utility, as that term is defined by Utilities Code 121.001.

A contract does not require an action or vote by the governing body of a governmental entity or state agency 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.

Gov't Code 2252.908(b)–(c); 1 TAC 46.1

*Contract
Changes*

Government Code 2252.908 does not apply to a change made to an existing contract, including an amendment, change order, or extension of a contract. *1 TAC 46.4(a)*

Exceptions

Section 2252.908 applies to a change made to an existing contract, including an amendment, change order, or extension of a contract, if a disclosure of interested parties form was not filed for the existing contract; and either:

1. The changed contract requires an action or vote by the governing body of the entity or agency; or
2. The value of the changed contract is at least \$1 million.

Section 2252.908 applies to a change made to an existing contract, including an amendment, change order, or extension of a contract, if the business entity submitted a disclosure of interested parties form to the governmental entity or state agency that is a party to the existing contract; and either:

1. There is a change to the disclosure of interested parties;
2. The changed contract requires an action or vote by the governing body of the entity or agency; or
3. The value of the changed contract is at least \$1 million greater than the value of the existing contract.

1 TAC 46.4(b)–(c)

Prohibition

A governmental entity or state agency may not enter into a contract described by Government Code 2252.908(b) with a business entity unless the business entity, in accordance with this section and rules adopted by the Texas Ethics Commission (TEC) under this section, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

Gov't Code 2252.908(d)

Disclosure

A disclosure of interested parties form must be filed on an electronic form prescribed by the TEC that contains the following:

1. The name of the business entity filing the form and the city, state, and country of the business entity's place of business;
2. The name of the governmental entity or state agency that is a party to the contract for which the form is being filed;
3. The name of each interested party and the city, state, and country of the place of business of each interested party;
4. The identification number used by the governmental entity or state agency to track or identify the contract for which the form is being filed and a short description of the services, goods, or other property used by the governmental entity or state agency provided under the contract; and
5. An indication of whether each interested party has a controlling interest in the business entity, is an intermediary in the contract for which the disclosure is being filed, or both.

The certification of filing and the completed disclosure of interested parties form generated by the TEC's electronic filing application must be printed, signed by an authorized agent of the contracting business entity, and submitted to the governmental entity or state

agency that is the party to the contract for which the form is being filed.

A governmental entity or state agency that receives a completed disclosure of interested parties form and certification of filing shall notify the TEC, in an electronic format prescribed by the TEC, of the receipt of those documents not later than the 30th day after the date the governmental entity or state agency receives the disclosure.

The TEC shall make each disclosure of interested parties form filed with the TEC available to the public on the commission's Internet website not later than the seventh business day after the date the TEC receives the required notice.

Gov't Code 2252.908(e)-(f); 1 TAC 46.5

**Contractual
Agreements for
Instruction**

Generally

General enrollment or contract training courses that are noncredit and do not result in the award of continuing education units (CEUs) are not eligible for any state apportionment funding, but a two-year college is free to market such noncredit or non-CEU training to business, industry, and government at whatever rate can be negotiated with the contracting organization. Exceptions regarding programs serving incarcerated students must be submitted to the Coordinating Board staff for review and approval.

Courses earning CEUs shall be subject to the guidelines published by the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) as a condition of eligibility for state appropriations.

All student enrollments for semester hour credit are subject to the provisions of the Texas Success Initiative as applicable.

Public two-year colleges providing courses to organizations for which semester hour credits or CEUs are earned must charge out-of-state tuition to nonresident students who are brought from out-of-state for such contract courses.

19 TAC 9.123

Nonaccredited
Organizations

Contractual agreements for instruction by public two-year colleges with non-SACSCOC accredited organizations must comply with all current guidelines of SACSCOC. Courses and programs offered under contractual agreements must be consistent with the educational purpose, mission, and goals of the institution. Courses and programs offered and eligible for state appropriations must remain under the sole and direct control of the sponsoring public two-year college.

All programs and courses must be approved through the established procedures of the Coordinating Board.

Courses offered must remain under the sole and direct control of the sponsoring public two-year college, which exercises ultimate and continuing responsibility for the performance of the functions reflected in the contract. Instructors of courses must meet qualifications as stipulated by the public two-year college. The public two-year college must employ at least one full-time faculty member per degree program and specify in the contract the institutional procedures by which the contracted courses or programs meet the standards of regular programs as disclosed fully in the publications of the institution, specifically including the following:

1. Recruitment and counseling of students;
2. Admission of students to courses and/or to the sponsoring institution where certificate and associate degree programs are pursued;
3. Development and evaluation of the curriculum;
4. Evaluation of student progress;
5. Recordkeeping;
6. Tuition and/or fee charges, receipts and disbursement of funds, and refund policy;
7. Appointment, supervision, and evaluation of faculty; and
8. Instruction and learning resources.

The contractual agreement must be executed by designated officers of the public two-year college and their counterparts in the contracting organization. The contractual agreement shall establish a definite understanding between the public two-year college and the contracting agency to include each of the items required by 19 Administrative Code 9.124(b), above. The agreement shall specify the work to be performed, the period of the agreement, and the conditions under which any renewal or renegotiation must occur.

19 TAC 9.124

State Funding

Contact hours for contract instruction eligible for state appropriations must be determined and reported in compliance with state law and Coordinating Board rules and policy.

No funds appropriated to any public two-year college may be expended for any course which has not been approved by the commissioner, even if such course is taught under a contractual agreement.

19 TAC 9.127-.128

Skills Development Fund

In accordance with Labor Code 303.003 and 40 Administrative Code 803.3, the skills development fund may be used by public community and technical colleges, community-based organizations, and the Texas Engineering Extension Service as start-up or emergency funds for the following job-training purposes:

1. Developing customized training programs for businesses and trade unions; and
2. Sponsoring small and medium-sized business networks and consortiums.

Labor Code 303.003(b); 40 TAC 803

Workforce Training and Services

A public community college shall promptly provide workforce training and services that are requested:

1. By a local workforce development board if the need for the training and services is based on the labor market information system available for the area;
2. By employers located in the college's taxing district when the request is presented directly to the college by the employers or through the local workforce development board; or
3. As part of economic development incentives designed to attract or retain an employer, including incentives offered under the skills development fund program under Labor Code Chapter 303.

Gov't Code 2308.308

Child Welfare Providers

A governmental entity, including a college district, may not discriminate or take any adverse action against a child welfare services provider on the basis, wholly or partly, that the provider:

1. Has declined or will decline to provide, facilitate, or refer a person for child welfare services, as defined by Human Resources Code 45.002(3) that conflict with, or under circumstances that conflict with, the provider's sincerely held religious beliefs;
2. Provides or intends to provide children under the control, care, guardianship, or direction of the provider with a religious education, including through placing the children in a private or parochial school or otherwise providing a religious education in accordance with the laws of this state;
3. Has declined or will decline to provide, facilitate, or refer a person for abortions, contraceptives, or drugs, devices, or services that are potentially abortion-inducing; or

4. Refuses to enter into a contract that is inconsistent with or would in any way interfere with or force a provider to surrender the rights created by Human Resources Code Chapter 45.

Human Resources Code 45.004