

GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE F. STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT

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.

Text of section as amended by Acts 2013, 83rd Leg., R.S., Ch. 1404

(H.B. 3648), Sec. 2

For text of section as amended by Acts 2013, 83rd Leg., R.S., Ch.

1127 (H.B. 1050), Sec. 2, see other Sec. 2252.002.

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 greater of the following:

(1) 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; or

(2) 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 a majority of the manufacturing relating to the contract will be performed.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1404 (H.B. 3648), Sec. 2, eff. June 14, 2013.

Text of section as amended by Acts 2013, 83rd Leg., R.S., Ch. 1127
(H.B. 1050), Sec. 2

For text of section as amended by Acts 2013, 83rd Leg., R.S., Ch.
1404 (H.B. 3648), Sec. 2, see other Sec. 2252.002.

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:

(1) the state in which the nonresident's principal place of business is located; or

(2) a state in which the nonresident is a resident manufacturer.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. 1050), Sec. 2, eff. September 1, 2013.

Sec. 2252.003. PUBLICATION OF OTHER STATES' LAWS ON CONTRACTS. (a) The comptroller 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.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. [3560](#)), Sec. 1.74, eff. September 1, 2007.

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. 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 percentage of a public works contract payment withheld by a governmental entity to secure performance of the contract.

(6) "Warranty period" means the period of time specified in a contract during which certain terms applicable to the warranting of work performed under the contract are in effect. Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 635 (H.B. 692), Sec. 2, eff. June 15, 2021.

Sec. 2252.032. RETAINAGE. (a) A governmental entity shall:

(1) include in each public works contract a provision that establishes the circumstances under which:

(A) the public works project that is the subject of the contract is considered substantially complete; and

(B) the governmental entity may release all or a portion of the retainage for:

(i) substantially completed portions of the project; or

(ii) fully completed and accepted portions of the project;

(2) maintain an accurate record of accounting for:

(A) the retainage withheld on periodic contract

payments; and

(B) the retainage released to the prime contractor for a public works contract; and

(3) for a public works contract described by Subsection (c), pay any remaining retainage described by Subdivision (2)(A) and the interest earned on the retainage to the prime contractor on completion of the work required to be performed under the contract.

(b) Except as provided by Subsection (i):

(1) if the total value of a public works contract is less than \$5 million, a governmental entity may not withhold retainage in an amount that exceeds 10 percent of the contract price and the rate of retainage may not exceed 10 percent for any item in a bid schedule or schedule of values for the project, including materials and equipment delivered on site to be installed;

(2) if the total value of a public works contract is \$5 million or more, a governmental entity may not withhold retainage in an amount that exceeds five percent of the contract price and the rate of retainage may not exceed five percent for any item in a bid schedule or schedule of values for the project, including materials and equipment delivered on site to be installed; and

(3) if a public works contract relates to the construction or maintenance of a dam, as that term is defined by Section [423.0045](#), regardless of the total value of the contract, a governmental entity may not withhold retainage in an amount that exceeds 10 percent of the contract price and the rate of retainage may not exceed 10 percent for any item in a bid schedule or schedule of values for the project, including materials and equipment delivered on site to be installed.

(c) For a competitively awarded contract with a value of \$10 million or more, and for a contract that was awarded using a method other than competitive bidding, a governmental entity and prime contractor may agree to deposit in an interest-bearing account the retainage withheld on periodic contract payments.

(d) If, for the purpose of fulfilling an obligation of a prime contractor under a public works contract, the prime contractor enters into a subcontract:

(1) the prime contractor may not withhold from a subcontractor a greater percentage of retainage than the percentage that may be withheld from the prime contractor by the governmental entity under the contract; and

(2) a subcontractor who enters into a contract with another subcontractor to provide labor or materials under the contract may not withhold from that subcontractor a greater percentage of retainage than the percentage that may be withheld from the subcontractor as determined under Subdivision (1).

(e) A governmental entity may not withhold retainage:

(1) after completion of the work required to be performed under the contract by the prime contractor, including during the warranty period; or

(2) for the purpose of requiring the prime contractor, after completion of the work required to be performed under the contract, to perform work on manufactured goods or systems that were:

(A) specified by the designer of record; and

(B) properly installed by the contractor.

(f) On application to a governmental entity for final payment and release of retainage, the governmental entity may withhold retainage if there is a bona fide dispute between the governmental entity and the prime contractor and the reason for the dispute is that labor, services, or materials provided by the prime contractor, or by a person under the direction or control of the prime contractor, failed to comply with the express terms of the contract or if the surety on any outstanding surety bond executed for the contract does not agree to the release of retainage. The governmental entity must provide to the prime contractor written notice of the basis on which the governmental entity is withholding retainage under this subsection. If there is no bona fide dispute between the governmental entity and the prime contractor and neither party is in default under the contract, the prime contractor is entitled to:

(1) cure any noncompliant labor, services, or materials; or

(2) offer the governmental entity a reasonable amount

of money as compensation for any noncompliant labor, services, or materials that cannot be promptly cured.

(g) A governmental entity is not required to accept a prime contractor's offer of compensation under Subsection (f)(2).

(h) Subsection (f) may not be construed to limit either the governmental entity's or prime contractor's right to pursue any remedy available under the express terms of the public works contract or other applicable law.

(i) For purposes of this subsection, a project is considered formally approved if the project is the subject of a resolution approving an application for financial assistance adopted by the Texas Water Development Board before September 1, 2019, for any part of the project's financing. Subsection (b) of this section does not apply to a governmental entity that receives financial assistance under Section [15.432](#) or [15.472](#), Water Code, for a project that is formally approved by the Texas Water Development Board or to a governmental entity that is a wholesale water supplier that supplies water to customers in 10 or more counties and is governed by Chapter [49](#), Water Code. A governmental entity described by this subsection shall deposit in an interest-bearing account the retainage withheld under a public works contract that provides for retainage that exceeds five percent of the periodic contract payments.

(j) This section may not be construed as affecting a governmental entity's ability to retain certain amounts due under a contract as required by Chapter [2258](#).

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

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 635 (H.B. [692](#)), Sec. 3, eff. June 15, 2021.

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 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.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 635 (H.B. 692), Sec. 4, eff. June 15, 2021.

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 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 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 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 F. PROHIBITION ON CONTRACTS WITH CERTAIN COMPANIES

Sec. 2252.151. DEFINITIONS. In this subchapter:

(1) "Company" has the meaning assigned by Section 806.001.

(2) "Foreign terrorist organization" means an organization designated as a foreign terrorist organization by the United States secretary of state as authorized by 8 U.S.C. Section 1189.

(3) "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. The term includes a contract to obtain a professional or consulting service subject to Chapter 2254.

(4) "Governmental entity" has the meaning assigned by Section 2252.001.

Added by Acts 2017, 85th Leg., R.S., Ch. 192 (S.B. 252), Sec. 1, eff. September 1, 2017.

Sec. 2252.152. CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED. A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153.

Added by Acts 2017, 85th Leg., R.S., Ch. 192 (S.B. 252), Sec. 1, eff. September 1, 2017.

Sec. 2252.153. LISTED COMPANIES. The comptroller shall prepare and maintain, and make available to each governmental entity, a list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.

Added by Acts 2017, 85th Leg., R.S., Ch. 192 (S.B. 252), Sec. 1, eff. September 1, 2017.

Sec. 2252.154. EXCEPTION. Notwithstanding any other law, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a foreign terrorist organization is

not subject to contract prohibition under this subchapter.
Added by Acts 2017, 85th Leg., R.S., Ch. 192 (S.B. [252](#)), Sec. 1,
eff. September 1, 2017.

SUBCHAPTER G. CERTAIN CONSTRUCTION AND INSTALLATION PROJECTS

Sec. 2252.201. DEFINITIONS. In this subchapter:

(1) "Governmental entity" means this state or 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. The term does not include a political subdivision.

(2) "Manufacturing process" means the application of a process to alter the form or function of materials or elements of a product in a manner that adds value and transforms the materials or elements into a new finished product that is functionally different from a finished product produced merely from assembling the materials or elements into a product.

(3) "Political subdivision" includes a county, municipality, municipal utility district, water control and improvement district, special utility district, and other types of water district.

(4) "Produced in the United States" means, with respect to iron and steel products, a product for which all manufacturing processes, from initial melting through application of coatings, occur in the United States, other than metallurgical processes to refine steel additives.

(5) "Project" means a contract between a governmental entity and another person, including a political subdivision, to:

(A) construct, remodel, or alter a building, a structure, or infrastructure;

(B) supply a material for a project described by Paragraph (A); or

(C) finance, refinance, or provide money from funds administered by a governmental entity for a project described by Paragraph (A).

Added by Acts 2017, 85th Leg., R.S., Ch. 597 (S.B. [1289](#)), Sec. 1,

eff. September 1, 2017.

Redesignated from Government Code, Subchapter F, Chapter 2252 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(33), eff. September 1, 2019.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 1009 (S.B. 783), Sec. 1, eff. September 1, 2021.

Sec. 2252.202. UNIFORM PURCHASING CONDITION; RULES.

(a) Except as provided by Section 2252.203, the uniform general conditions for a project in which iron or steel products will be used must require that the bid documents provided to all bidders and the contract include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States.

(b) A governmental entity subject to the requirements for a project described by Subsection (a) shall adopt rules to promote compliance with this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 597 (S.B. 1289), Sec. 1, eff. September 1, 2017.

Redesignated from Government Code, Subchapter F, Chapter 2252 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(33), eff. September 1, 2019.

Sec. 2252.203. EXEMPTIONS. (a) Section 2252.202 does not apply to a project for which the governing body of the governmental entity responsible for the project determines that:

(1) iron or steel products produced in the United States are not:

- (A) produced in sufficient quantities;
- (B) reasonably available; or
- (C) of a satisfactory quality;

(2) use of iron or steel products produced in the United States will increase the total cost of the project by more than 20 percent; or

(3) complying with that section is inconsistent with the public interest.

(b) Electrical components, equipment, systems, and appurtenances, including supports, covers, shielding, and other appurtenances related to an electrical system, necessary for operation or concealment are not considered to be iron or steel products and are exempt from the requirements of Section 2252.202. An electrical system includes all equipment, facilities, and assets owned by an electric utility, as that term is defined in Section 31.002, Utilities Code.

(c) Section 2252.202 does not apply to a contract subject to Section 223.045, Transportation Code, or 23 C.F.R. Section 635.410. Added by Acts 2017, 85th Leg., R.S., Ch. 597 (S.B. 1289), Sec. 1, eff. September 1, 2017.

Redesignated from Government Code, Subchapter F, Chapter 2252 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(33), eff. September 1, 2019.

Sec. 2252.204. INTERNATIONAL AGREEMENTS. This subchapter shall be applied in a manner consistent with this state's obligations under any international agreement.

Added by Acts 2017, 85th Leg., R.S., Ch. 597 (S.B. 1289), Sec. 1, eff. September 1, 2017.

Redesignated from Government Code, Subchapter F, Chapter 2252 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(33), eff. September 1, 2019.

Sec. 2252.205. CONFLICT OF LAW. To the extent of any conflict or inconsistency, this subchapter prevails over any other state law relating to the use of iron and steel products in projects directly funded by a governmental entity or financed by funds administered by a governmental entity.

Added by Acts 2017, 85th Leg., R.S., Ch. 597 (S.B. 1289), Sec. 1, eff. September 1, 2017.

Redesignated from Government Code, Subchapter F, Chapter 2252 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(33), eff. September 1, 2019.

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. 2252.903. 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.

Sec. 2252.904. ATTORNEY'S FEES. (a) In this section:

(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.

(b) A governmental contract may not provide for the award of attorney's fees to the governmental entity in a dispute in which the entity prevails unless the contract provides for the award of attorney's fees to each other party to the contract if that party

prevails in the dispute.

(c) A contract provision that violates this section is void and unenforceable.

Added by Acts 2007, 80th Leg., R.S., Ch. 466 (H.B. [1268](#)), Sec. 1, eff. September 1, 2007.

Sec. 2252.905. CERTAIN RULES OR POLICIES OF STATE AGENCIES.

(a) In this section:

(1) "Contract" means a contract awarded by a state agency for general construction, an improvement, a service, or a public works project, including a contract subject to Section [201.112](#), Transportation Code.

(2) "Private design professional" means an individual registered as an architect under Chapter [1051](#), Occupations Code, or an individual licensed as an engineer under Chapter [1001](#), Occupations Code, who provides professional architectural or engineering services.

(3) "State agency" means a board, commission, office, department, or other agency in the judicial or executive branch of state government.

(b) A rule or policy adopted by a state agency relating to the recovery of costs arising from an engineering or architectural error or omission by a private design professional on a project must:

(1) provide that the private design professional be notified at the time a problem with project plans or specifications is identified by the agency;

(2) provide an opportunity for the private design professional to be involved in the resolution of a problem identified under Subdivision (1);

(3) provide guidelines for distinguishing an error or omission from other reasons for the submission of a change order;

(4) provide a process for determining the cost of errors or omissions by private design professionals;

(5) provide for an evaluation of the totality of project services provided by private design professionals, including the level of quality, performance, and value provided

over the term of the entire project;

(6) provide that an internal management review of the agency's claim for costs may be used, if available, without requiring that the claim be paid before the internal management review may be used;

(7) provide a process for tracking the cost of errors or omissions by agency employees; and

(8) recognize that some errors, omissions, or changes are likely to occur during a design and construction project.

Added by Acts 2007, 80th Leg., R.S., Ch. 979 (S.B. [924](#)), Sec. 1, eff. September 1, 2007.

Renumbered from Government Code, Section [2252.904](#) by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 27.001(47), eff. September 1, 2009.

Sec. 2252.906. DISCLOSURE PROTECTIONS FOR CERTAIN CHARITABLE ORGANIZATIONS, CHARITABLE TRUSTS, AND PRIVATE FOUNDATIONS. (a) In this section:

(1) "Charitable organization" means an organization that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization in Section 501(c) of that code. The term does not include a property owners' or homeowners' association.

(2) "Grant-making organization" means an organization that makes grants to charitable organizations but is not a private foundation, private foundation trust, or split interest trust.

(3) "Private foundation" has the meaning assigned by Section 509(a), Internal Revenue Code of 1986.

(4) "Split interest trust" means an irrevocable trust in which the income is first dispersed to the beneficiaries of the trust for a specified period and the remainder of the trust is donated to a designated charity.

(b) Unless the individual has given written consent to the disclosure, a governmental entity may not require a charitable organization, private foundation trust, split interest trust, or private foundation to disclose the race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital

status, sexual orientation, or political party registration of an employee, officer, director, trustee, or member of the organization, trust, or foundation.

(c) Unless the individual has given written consent to the disclosure, a governmental entity may not require a private foundation, private foundation trust, split interest trust, or grant-making organization to disclose the race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital status, sexual orientation, or political party registration of:

(1) a person who receives money or in-kind contributions from or contracts with the foundation, trust, or organization; or

(2) an employee, officer, director, trustee, member, or owner of an entity that receives money or in-kind contributions from or contracts with the foundation, trust, or organization.

(d) A governmental entity may not:

(1) require that the governing board or officers of a charitable organization, private foundation trust, split interest trust, or private foundation include an individual of any particular race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital status, sexual orientation, or political party registration;

(2) prohibit an individual from serving as a board member or officer of the organization, trust, or foundation based on the individual's familial relationship to:

(A) another board member or officer of the organization, trust, or foundation; or

(B) a donor to the organization, trust, or foundation; or

(3) require the governing board or officers of the organization, trust, or foundation to include one or more individuals who do not share a familial relationship with the board members or officers or with a donor.

(e) Except as a condition on the expenditure of particular funds imposed by the donor of the funds, a governmental entity may not require a charitable organization, private foundation trust,

split interest trust, or private foundation to distribute its funds to or contract with a person or entity based on the race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital status, sexual orientation, or political party registration of:

(1) the person or of an employee, officer, director, trustee, member, or owner of the entity; or

(2) the populations, locales, or communities served by the person or entity.

(f) This section does not limit the authority of the attorney general to investigate or enforce laws of this state in accordance with the attorney general's duty to protect the public interest in charity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 355 (H.B. [3573](#)), Sec. 1, eff. September 1, 2011.

Sec. 2252.907. CONTRACTS INVOLVING EXCHANGE OR CREATION OF PUBLIC INFORMATION. (a) A contract between a state governmental entity and a nongovernmental vendor involving the exchange or creation of public information as defined by Section [552.002](#) that the state governmental entity collects, assembles, or maintains or has a right of access to must:

(1) be drafted in consideration of the requirements of Chapter [552](#); and

(2) contain a provision that requires the vendor to make the information not otherwise excepted from disclosure under Chapter [552](#) available in a specific format that is:

(A) agreed upon in the contract; and

(B) accessible by the public.

(b) This section may not be waived by contract or otherwise.

(c) A request for public information regarding a contract described by this section must be submitted to the officer or employee responsible for responding to open records requests for the state governmental entity that executed the contract.

(d) In this section, "state governmental entity" means a state agency, board, commission, office, department, or other agency in the executive or legislative branch of state government.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1204 (S.B. [1368](#)), Sec. 3, eff. September 1, 2013.

Sec. 2252.908. DISCLOSURE OF INTERESTED PARTIES. (a) In this section:

(1) "Business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.

(2) "Governmental entity" means a municipality, county, public school district, or special-purpose district or authority.

(3) "Interested party" means a person who has a controlling interest in a business entity with whom a governmental 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.

(4) "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.

(b) This section applies only to a contract of a governmental entity or state agency that:

(1) requires an action or vote by the governing body of the entity or agency before the contract may be signed;

(2) has a value of at least \$1 million; or

(3) is for services that would require a person to register as a lobbyist under Chapter [305](#).

(c) Notwithstanding Subsection (b), 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 Section 31.002, Utilities Code; or

(6) a contract with a gas utility, as that term is defined by Section 121.001, Utilities Code.

(d) A governmental entity or state agency may not enter into a contract described by Subsection (b) with a business entity unless the business entity, in accordance with this section and rules adopted 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.

(e) The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission that includes:

(1) a list of each interested party for the contract of which the contracting business entity is aware; and

(2) a written, unsworn declaration subscribed by the authorized agent of the contracting business entity as true under penalty of perjury that is in substantially the following form:

"My name is _____, my
date of birth is _____, and my address is
_____, _____, _____, _____,
(Street) (City) (State) (Zip Code)
_____. I declare under penalty of
(Country)
perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on
the _____ day of _____, _____.
(Month) (Year)

Declarant".

(f) Not later than the 30th day after the date the

governmental entity or state agency receives a disclosure of interested parties required under this section, the governmental entity or state agency shall submit a copy of the disclosure to the Texas Ethics Commission.

(f-1) A contract described by Subsection (b) entered into by a governmental entity or state agency is voidable for failure to provide the disclosure of interested parties required by this section only if:

(1) the governmental entity or state agency submits to the business entity written notice of the business entity's failure to provide the required disclosure; and

(2) the business entity fails to submit to the governmental entity or state agency the required disclosure on or before the 10th business day after the date the business entity receives the written notice under Subdivision (1).

(g) The Texas Ethics Commission shall adopt rules necessary to implement this section, prescribe the disclosure of interested parties form, and post a copy of the form on the commission's Internet website.

Added by Acts 2015, 84th Leg., R.S., Ch. 1024 (H.B. [1295](#)), Sec. 3, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 526 (S.B. [255](#)), Sec. 5, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 953 (S.B. [65](#)), Sec. 17, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1070 (H.B. [1495](#)), Sec. 2, eff. June 14, 2019.

Acts 2023, 88th Leg., R.S., Ch. 424 (H.B. [1817](#)), Sec. 1, eff. June 9, 2023.

Text of section as added by Acts 2023, 88th Leg., R.S., Ch. 389
(H.B. [679](#)), Sec. 1

For text of section as added by Acts 2023, 88th Leg., R.S., Ch. 1008
(H.B. [2518](#)), Sec. 1, see other Sec. 2252.909.

Sec. 2252.909. VOIDABLE CONTRACT PROVISION: EXPERIENCE MODIFIER. (a) In this section:

(1) "Contract" means a contract awarded by a governmental entity that is:

(A) a construction contract, as defined by Section 272.0001, Business & Commerce Code; or

(B) a contract for constructing, altering, or repairing a public building or carrying out or completing any public work.

(2) "Contract solicitation" means a request for bids, proposals, qualifications, offers, or other responses from potential contractors under a contract.

(3) "Experience modifier" means a factor expressed as a value that:

(A) is assigned to an employer seeking to purchase a workers' compensation insurance policy in this state;

(B) affects the premium amount for the policy; and

(C) is based on the employer's past loss experience.

(4) "Governmental entity" means:

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

(B) a political subdivision of this state, including a municipality, county, or special purpose district.

(b) With respect to a contract:

(1) an offer to contract may not contain a term requiring a person to have a specified experience modifier in order to accept the offer; and

(2) a contract solicitation may not require a person to have a specified experience modifier in order to submit a response to the contract solicitation.

(c) A contract or an agreement collateral to or affecting a contract may not require the contractor to have a specified experience modifier.

(d) A contract solicitation, an offer, a contract, or an

agreement collateral to or affecting a contract that violates Subsection (b) or (c) is voidable as against public policy.

Added by Acts 2023, 88th Leg., R.S., Ch. 389 (H.B. 679), Sec. 1, eff. September 1, 2023.

Text of section as added by Acts 2023, 88th Leg., R.S., Ch. 1008
(H.B. 2518), Sec. 1

For text of section as added by Acts 2023, 88th Leg., R.S., Ch. 389
(H.B. 679), Sec. 1, see other Sec. 2252.909.

Sec. 2252.909. REQUIRED LEASE TERMS FOR LEASE OF PUBLIC PROPERTY. (a) In this section, "governmental entity" has the meaning assigned by Section 2253.001.

(b) A lease between a governmental entity and another person regarding public property must contain lease terms requiring the person to:

(1) include in each contract for the construction, alteration, or repair of an improvement to the leased property a condition that the contractor:

(A) execute a payment bond that conforms to Subchapter I, Chapter 53, Property Code; and

(B) execute a performance bond in an amount equal to the amount of the contract for the protection of the governmental entity and conditioned on the faithful performance of the contractor's work in accordance with the plans, specifications, and contract documents; and

(2) provide to the governmental entity a notice of commencement consistent with this section at least 90 days before the date the construction, alteration, or repair of any improvement to the leased property begins.

(c) A notice of commencement under Subsection (b) must:

(1) identify the public property where the work will be performed;

(2) describe the work to be performed;

(3) state the total cost of the work to be performed;

(4) include copies of the performance and payment bonds required under Subsection (b); and

(5) include a written acknowledgment signed by the

contractor stating that copies of the required performance and payment bonds will be provided to all subcontractors not later than the fifth day after the date a subcontract is executed.

(d) On or before the 10th day after the date a governmental entity receives a notice of commencement for the construction, alteration, or repair of an improvement to leased property required under Subsection (b)(2), the governmental entity may notify the leaseholder that the construction, alteration, or repair may not proceed.

(e) A person commits an offense if the person materially misrepresents information in a notice of commencement. An offense under this subsection is a Class A misdemeanor.

Added by Acts 2023, 88th Leg., R.S., Ch. 1008 (H.B. [2518](#)), Sec. 1, eff. September 1, 2023.