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HB 1295 – New Ethics Disclosure Requirement for Vendors Contracting With Local Governments and State Agencies

Sydney W. Falk, Jr.

Author Contact Information:
Sydney W. Falk, Jr.
Bickerstaff Heath Delgado Acosta LLP
Austin, TX

sfalk@bickerstaff.com

512.472.8021

HB 1295 – New Ethics Disclosure Requirement for Vendors Contracting With Local Governments and State Agencies¹

Sydney W. Falk, Jr.
Bickerstaff Heath Delgado Acosta LLP
Austin, Texas

In the last legislative session the Texas Legislature passed HB1295 (2015), which created Texas Government Code section 2252.908. Section 2252.908 requires a new ethics disclosure filing by “business entities” entering into contracts with local government entities or state agencies. The Texas Ethics Commission (TEC) has adopted rules implementing the statute (TEC Rule 46). This is a summary of the main elements of HB 1295 and TEC Rule 46.

NOTE: This is distinct from the officer and vendor reporting requirements of Texas Local Government Code chapter 176; and different in timing, too: HB1295 filings are due from the vendor only when there has been actual award of a contract (or renewals, extensions or amendments), while vendor filings under chapter 176 must be made when merely *seeking* a contract (e.g., along with any RFP response, or when contact with the governmental entity about a contract has been initiated).

(For brevity, I mean references in my narrative text to “governmental entity” to include state agencies, even though the statute and the TEC Rule define and use “governmental entity” and “state agency” as distinct.)

THE STATUTE

HB1295 has been codified as section 2252.908 of the Texas Government Code. HB1295 requires a vendor who is entering into a contract – i.e., has already been awarded the contract – with a local government or a state agency to file a disclosure with the contracting governmental entity or agency that identifies certain “interested parties.” A copy of Government Code section 2252.908 is attached.

Certain kinds of contracts are not within the coverage of the act, including sponsored research contracts of institutions of higher education; interagency contracts of a state agency or an institution of higher education; and certain contracts related to health and human services. Gov’t Code § 22521.908(c).

Notably, the act appears in effect to provide that covered contracts for which a required vendor disclosure has not been made may be void:

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

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business entity submits the signed contract to the governmental entity or state agency.

Tex. Gov't Code §2252.908(d).

HB1295 requires the Texas Ethics Commission (TEC) to adopt implementing rules, which TEC has done. Tex. Gov't Code §2252.908(g). TEC Rule 46 initially was adopted and made effective as of December 22, 2015, and to date has been amended twice to clarify certain aspects of the statute and the initially-adopted Rule. A copy of the current version of Rule 46 (technically, TEC Rules 46.1, 46.3 and 46.5) is attached. It recapitulates much of the statute, including statutory definitions; but also fills in some gaps, including providing some additional definitions, and clarification of the substantive requirements of the act, and also establishes a disclosure process.

What follows is a summary of the main elements of the vendor disclosure filing requirements.

WHO MUST FILE

HB1295 requires a “business entity” which is entering into a contract with a local government or a state agency – meaning the business entity has to have been awarded and be executing the contract – or which is renewing, extending, or amending a contract to file the HB1295 disclosure if either

The governing body of the local government entity or of the state agency takes an action or vote to award or approve the contract (or renewal, extension, or amendment), *or participates in the selection of the vendor.* (This last standard comes from the TEC rule.)

OR

The contract is for \$1 million or more.

TEC Rule 46.1(b). The TEC Rule defines the circumstances where the first factor is NOT triggered: No action or vote by governing body of the governmental entity or state agency is required if:

the governing body has authority to delegate authority to staff to execute the contract,

the governing body has delegated the authority, AND

the governing body does not participate in selection of the contracting business entity.

TEC Rule 46.1(c). Note that, under the Rule, even if the governing body does not vote or take formal action to authorize the contract, if it participates in selecting the vendor, it has “acted.”

A “**business entity**” is defined by the Rule to include:

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