



**POWELL
& LEON**

The background features abstract, overlapping geometric shapes in various shades of blue, ranging from light sky blue to deep navy blue. These shapes are primarily located on the right side of the frame, creating a modern, layered effect.

Form 1295

Texas Vendor Disclosure

Tips, Thoughts and Traps

Today's Discussion

- ▶ Why is Form 1295 required?
- ▶ When is Form 1295 required?
- ▶ What is included on the Form 1295 disclosure?
- ▶ How do you enter the information for Form 1295?
- ▶ What are the consequences of the new disclosure?

Origin of HB 1295

- ▶ Authored by Texas State Representative Giovanni Capriglione (District 98, Tarrant County)
- ▶ Added Section 2252.908 to the Government Code
- ▶ The law requires disclosure of parties in contracts with governmental entities.
- ▶ The Texas Ethics Commission was required to adopt rules
 - ▶ Certificate of Interested Parties (Form 1295): adopted October 5, 2015
 - ▶ Rules adopted November 30, 2015
- ▶ Took effect **January 1, 2016**

Purpose of form 1295

- ▶ Transparency

Justice Louis Brandeis – “Sunlight is said to be the best disinfectant”

- ▶ Disclosure on governmental activity
- ▶ Reporting to the public



What is all the fuss about??

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

(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; or
- (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.

(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) the signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.

(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.

(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.

When is Form 1295 Required?

- ▶ Before a governmental entity or state agency can enter certain contracts with a business entity, the business entity must submit Form 1295 at the time (or before) it submits the signed contract to the governmental entity...
- ▶ Let's unpack this...



What is a “Governmental Entity”?

- ▶ According to 2252.908 Government Code “governmental entity”, includes:
 - ▶ Municipality
 - ▶ County
 - ▶ Public School District
 - ▶ Special Purpose District or Authority
- ▶ What about...
 - ▶ Purchasing Co-ops
 - ▶ Education Service Centers

What kinds of Contracts are included?



- ▶ According to TEC rule, contract includes:
 - 1) Amended, extended or renewed contract; and
 - 2) Requires action or vote by governing body; or
 - 3) Value of contract is at least \$1 million

- ▶ If a contract satisfies either (1) and (2) or (3) above, HB 1295 requires the contracting business entity to submit a disclosure of interested party form to the District at the time of submitting the signed contract.

What kinds of Contracts are included?

- ▶ Exceptions?
 - ▶ Governing Body has legal authority to delegate contracting authority to staff
 - ▶ The Governing body has delegated such authority to staff
 - ▶ The Governing body does not participate in the selection

What is a Business Entity?

- ▶ Includes
 - ▶ an entity through which business is conducted with a governmental entity or state agency;
 - ▶ A for profit entity
 - ▶ A non-profit entity
- ▶ Does not include:
 - ▶ Governmental entity or
 - ▶ State agency

What disclosures are required under Form 1295?

▶ Interested Parties –

1. A person who has a controlling interest in a business entity with whom a government entity or state agency contracts; or,
2. 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.

▶ Controlling Interest –

1. An ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 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 10 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. . . .

What disclosures are required under Form 1295?

Intermediaries – a person who actively participates

- ▶ Facilitation of the contract
- ▶ Negotiation of the contract
- ▶ Including
 - ▶ Broker
 - ▶ Advisor
 - ▶ Attorney
 - ▶ Representative
- ▶ Must receive compensation from the vendor
- ▶ Communicates with the District for the vendor
- ▶ Is not an employee of the vendor

What are the Contents of Disclosure Form?

CERTIFICATE OF INTERESTED PARTIES		FORM 1295	
Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.		OFFICE USE ONLY	
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.			
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.			
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.			
4		Nature of Interest (check applicable)	
Name of Interested Party	City, State, Country (place of business)	Controlling	Intermediary
5 Check only if there is NO Interested Party.		<input type="checkbox"/>	
6 AFFIDAVIT		I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.	
_____ Signature of authorized agent of contracting business entity			
<small>AFFIX NOTARY STAMP / SEAL ABOVE</small>			
Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20____, to certify which, witness my hand and seal of office.			
_____ Signature of officer administering oath		_____ Printed name of officer administering oath	
_____ Title of officer administering oath			
ADD ADDITIONAL PAGES AS NECESSARY			

What are the Contents of Disclosure Form

- ▶ Name of Business Entity (Vendor)
 - ▶ Including city, state and county
- ▶ Name of District
- ▶ Identification number used District
- ▶ Description of goods or services provided under the contract
- ▶ Name, location and nature of interested parties?
 - ▶ What's this? More later
- ▶ Signature of authorized Vendor representative

How is Form 1295 Completed?

- ▶ Vendor completes Form 1295 with required information in electronic format on the TEC website
- ▶ TEC issues a Certification of Filing to the Vendor
 - ▶ Vendor downloads, signs and notarizes Form 1295
- ▶ Vendor forwards the following to the District:
 - ▶ Contract
 - ▶ Certificate of Filing
- ▶ Within 30 business days, the District notifies TEC (electronically) of the receipt of:
 1. Form 1295; and,
 2. Certificate of Filing

What are the consequences and impacts of Form 1295

- ▶ For District: Unclear, currently TEC has no authority to enforce or interpret.”
- ▶ Business Entity: Disclosure is made “under oath and under penalty of perjury”
 - ▶ Requiring “intent to deceive” or knowledge of statement’s meaning”;
 - ▶ Class A misdemeanor; or
 - ▶ Aggravated perjury – 3rd degree felony
 - ▶ Seriously? Well kind of...
- ▶ In the first month already over 2000 submissions.



Tips, thoughts and traps

- ▶ Identification Number – 30 characters or less including spaces
- ▶ Only used to collect information; no punitive measures associated with form (currently)



Questions?

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