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.
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.


SUBCHAPTER B. INTEREST ON 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 part of a public works contract payment withheld by a governmental entity to secure performance of the contract.

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

Sec. 2252.032. RETAINAGE. A governmental entity shall:

(1) deposit in an interest-bearing account the retainage of a public works contract that provides for retainage of more than five percent of the periodic contract payment; and

(2) pay the interest earned on the retainage to the prime contractor on completion of the contract.

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

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 Subchapter A, 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,
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.
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.

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.

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.

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.
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.


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.


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.


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.
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.


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.


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.
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,
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
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.