



FAQ on Form 1295: Certificate of Interested Parties Disclosure and School District Acknowledgment

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Q: What is the law on Form 1295 disclosures by business entities?

A: In 2015, the Texas Legislature adopted House Bill 1295 (HB 1295), an ethics law that requires a written disclosure of interested parties by business entities that enter into certain contracts with governmental entities, including school districts. Tex. Gov't Code § 2252.908. This law is codified at Texas Government Code section 2252.908. The Texas Ethics Commission (Commission) adopted the Certificate of Interested Parties (Form 1295) for vendors to complete and file with school districts to satisfy the disclosure requirement. School districts must timely acknowledge receipt of the Form 1295 with the Commission.

Q: Which contracts does Form 1295 apply to?

A: Form 1295 must be filed for a contract that (1) requires an action or vote by the board of trustees; (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 of the Texas Government Code. Tex. Gov't Code § 2252.908(b).

A contract does not require “an action or vote” by the governing body and is exempt from disclosure if:

- 1) the governing body has legal authority to delegate to its staff the authority to execute the contract;
- 2) the governing body has delegated to its staff the authority to execute the contract; *and*
- 3) the governing body does not participate in the selection of the business entity with which the contract is entered into.

1 Tex. Admin. Code § 46.1(c).

The “value” of a contract is based on the amount of consideration received or to be received by the business entity from the district under the contract. 1 Tex. Admin. Code § 46.3(g).

Q: When is the law effective for school district contracts?

A: The disclosure requirement in the law applies to contracts entered into on or after January 1, 2016. According to the Commission’s rules, the term “contract” includes an amended, extended, or renewed contract. 1 Tex. Admin. Code § 46.3(a). Therefore, a contract subject

to the law originally entered into before 2016 that is amended, extended, or renewed after January 1, 2016, is subject to Form 1295 disclosures.

Q: *What contract changes apply to this disclosure law?*

A: A change made to an existing contract, including an amendment, change order, or extension of a contract, apply to Form 1295 disclosures only under certain circumstances. 1 Tex. Admin. Code § 46.4(a). If a disclosure of interested parties form was *not* filed for an existing contract, the law applies if (1) the changed contract requires an action or vote by the governing body of the entity or agency; or (2) the value of the changed contract is at least \$1 million. 1 Tex. Admin. Code § 46.4(b). If a business entity submitted a disclosure of interested parties form to the district for an existing contract, the law applies if (1) there is a change to the disclosure of interested parties; (2) the changed contract requires an action or vote by the governing body of the entity or agency; or (3) the value of the changed contract is at least \$1 million greater than the value of the existing contract. 1 Tex. Admin. Code § 46.4(c).

Q: *What business entities are covered by this disclosure law?*

A: The term “business entity” means any entity recognized by law through which business is conducted with a governmental entity or state agency, including a sole proprietorship, partnership, or corporation, regardless of whether the entity is a for-profit or nonprofit entity. Tex. Gov’t Code § 2252.908(a)(1); 1 Tex. Admin. Code § 46.3(b). The term does not include a governmental entity or state agency. 1 Tex. Admin. Code § 46.3(b).

Q: *Are some contracts excluded from the disclosure requirement?*

A: Yes, certain contracts are excluded from the disclosure requirement. For contracts entered into on or after January 1, 2018, the exclusions that are likely to apply to school districts include a contract with (1) a publicly traded business entity, including a wholly owned subsidiary of the business entity; (2) an electric utility, as defined by Section 31.002, Utilities Code; and (3) a contract with a gas utility, as defined by Section 121.001, Utilities Code. Tex. Gov’t Code § 2252.908(c)(4)-(6).

Q: *What is the required form for the 1295 vendor disclosure?*

A. The disclosure of interested parties by vendors must be submitted on a form prescribed by the Commission that includes a list of each interested party for the contract of which the contracting business entity is aware. In 2017, SB 255 amended the law that required a notarized form. Instead, for contracts entered into on or after January 1, 2018, the disclosure form will include 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 form set out in Texas Government Code section 2252.908(e)(2). Tex. Gov’t Code § 2252.908(e); 1 Tex. Admin. Code § 46.5(a).

Q: Who is an interested party to be disclosed?

A: The law states that a governmental entity may not enter into a contract subject to the law unless the business entity submits a disclosure of interested parties. To determine who is an interested party, one must review the Commission's rules for definitions of interested party, controlling interest, and intermediary.

Interested Party: An *interested party* means (1) a person who has a *controlling interest* in a business entity, or (2) an *intermediary*. 1 Tex. Admin. Code § 46.3(d).

Controlling Interest: A controlling interest means one or more of the following interests in a business entity related to ownership, board membership, or officer position:

- 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, but not including an officer of a publicly held business entity or its wholly owned subsidiaries.

1 Tex. Admin. Code § 46.3(c).

Intermediary: An intermediary means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

- 1) receives compensation from the business entity for the person's participation;
- 2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; *and*
- 3) is not an employee of the business entity or of an entity with a controlling interest in the business entity.

1 Tex. Admin. Code § 46.3(e).

On Form 1295, the name of any interested party must be disclosed, along with checking the box that identifies the nature of the interest, which will either be *controlling* or *intermediary* based on the above definitions.

Q: Does Form 1295 have to be filed even if there is no interested party?

A: Yes. Form 1295 must be filed even if the business entity determines that there are no interested parties. In that case, Form 1295 will indicate that there is no interested party.

Q: What are school district requirements for contracts covered by HB 1295 and Form 1295 filing?

A: Although not legally required, school districts should provide advance notice during the contract procurement process of the requirement to file Form 1295 so that business entities will timely complete and submit it to the school district.

While the business entity is responsible for filing Form 1295, school districts have their own separate obligations related to the identification, acknowledgment and retention of Form 1295. School districts must (1) provide a tracking identification number for the contract for a business entity to use in completing Form 1295, (2) electronically acknowledge receipt of Form 1295 with the Texas Ethics Commission, and (3) retain the Form 1295 in district records. 1 Tex. Admin. Code § 46.5(a)(4), (c). The regulations do not specify a particular format for a school district's "identification number," only that it be a means to "track or identify the contract." 1 Tex. Admin. Code § 46.5(a)(4).

Q: What is the required time to acknowledge receipt of Form 1295?

A: Contracting business entities are responsible for first electronically filing Form 1295 with the Commission. Tex. Gov't Code §2252.908(d); 1 Tex. Admin. Code § 46.5(a). This filing process creates a certification of filing and a completed Form 1295 that must be printed, signed by an authorized agent of the business entity, and submitted to the school district. 1 Tex. Admin. Code § 46.5(b). After the school district receives the certification of filing with the completed Form 1295, it must notify the Commission, in an electronic format prescribed by the Commission, of the receipt of those documents not later than the 30th day after the school district receives the disclosure. 1 Tex. Admin. Code § 46.5(c).

Q: How do school districts acknowledge a Form 1295?

A: The only option for acknowledging Form 1295 is electronically at the Commission's website. To comply with the acknowledgment requirements, a district must:

- 1) log in as a government user;
- 2) electronically acknowledge the Form 1295 that has been filed by the business entity with the school district; and
- 3) not send the paper Form 1295 to the Commission but rather maintain it in district records.

Under the heading *Instructional Videos for Governmental Entities and State Agencies*, the Commission's Website has videos with [step-by-step guidelines](#) for logging in the first time and acknowledging a Form 1295.

Q: *Where can school districts and business entities find out more about HB 1295?*

A: The Texas Ethics Commission's website has helpful information on [Filing Reports Form 1295 Certificate of Interested Parties](#) including the electronic filing application, laws and regulations, and forms and instructions.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/documents/faq-form-1295.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoolawesource.tasb.org.

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