

# Common Issues with "Small" Projects

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# First...the Super Small Projects

Projects under the \$50,000 threshold





# So, you don't have to bid it...

- The \$50,000 threshold is not the only relevant \$ threshold
- You may still be required to hire an Engineer
  - \$8,000 mechanical/electrical
  - \$20,000 other engineering
- You may still need to require a Payment Bond
  - \$25,000

# And Don't Forget

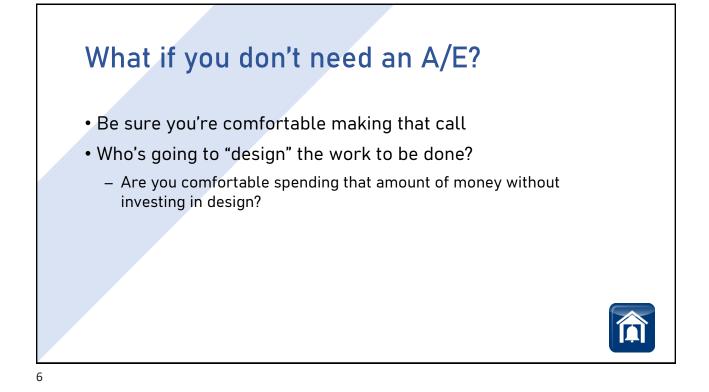
Prevailing Wage Workers Compensation

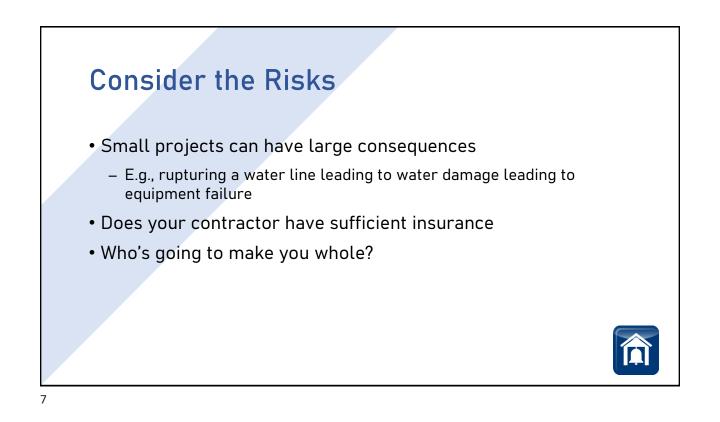


# How do you find a Contractor? (These are all optional)

- Call 'em up
- Advertise
- Look on Co-Ops
- Can you negotiate with more than one at a time?









# One more threshold

- \$100,000 for performance bond
- After that, whether it's \$50,000 or \$500,000 it's the same
- All the Day One stuff applies
  - Procurement, etc. etc.





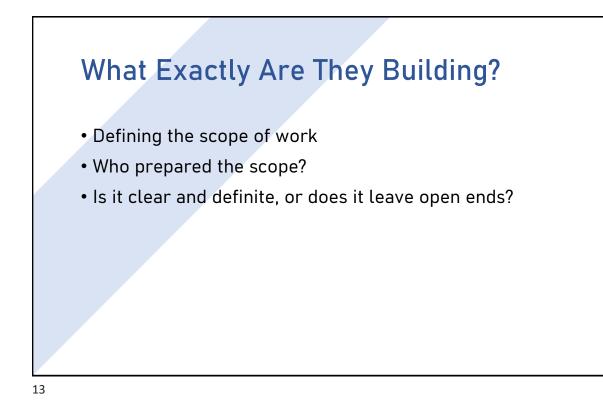


# **Do you** *really* **need a contract?** Yes!

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# How Much Are You Paying?

- Fixed sum
- Cost plus
- This justifies your expenditures (hopefully)





- Money upfront?
- Timed draws/payments?
- All at completion?
- Retainage



# What Happens if You Want to Terminate?

- Give yourself the right to walk away for convenience
- Specify what yours/their obligations are upon termination







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# Don't Forget the Legally Required Stuff Anti-BDS (\$100k) Firearms (\$100k) Energy Companies (\$100k) Workers Comp Bonds Prevailing Wage

# Getting What You're Paying For



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# **Getting What You're Paying For**

- If no A/E, who's observing the contractor's work?
- Consider tasking a staff member with being familiar enough with the project to provide at least general oversight



# Local Contractors & Conflicts of Interest

Smaller projects are an opportunity for local vendors

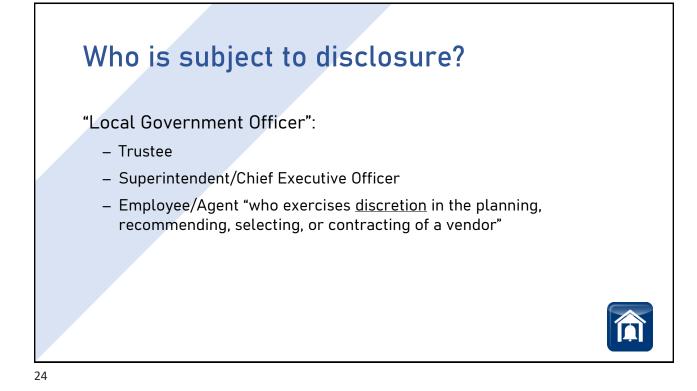


- Chapter 176 Disclosures
- Chapter 171 Affidavit & Abstention

## Chapter 176, Texas Local Government Code

- This law requires a person to file a Conflicts Disclosure Form promulgated by the Texas Ethics Commission
- Who is subject to disclosure?
- When does the law require disclosure?
- What else does the law require?



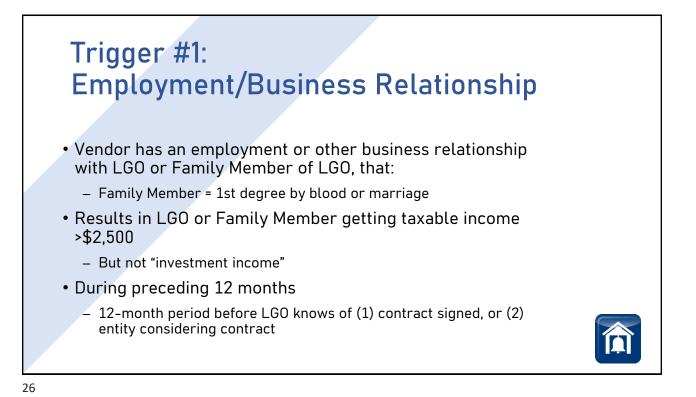


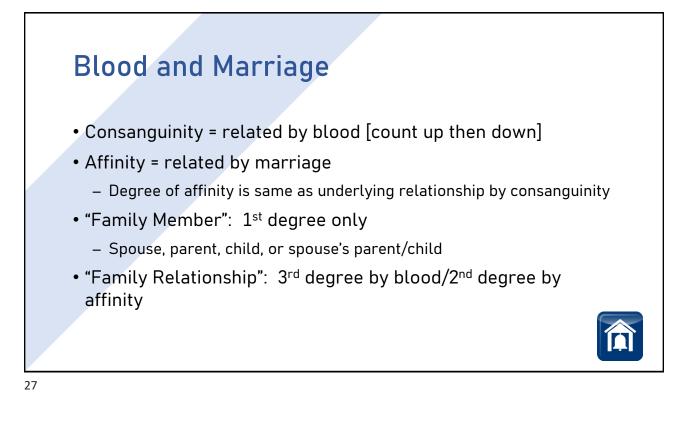
# When is disclosure required?

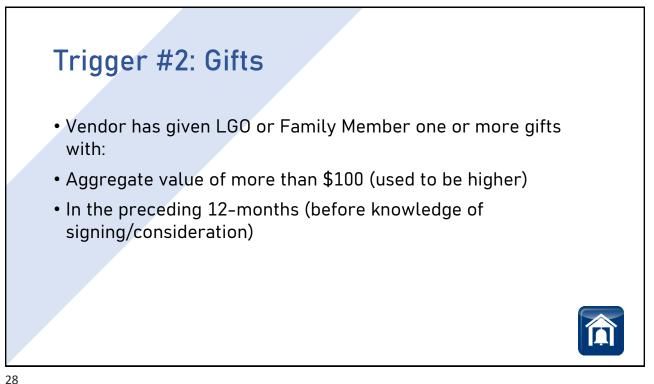
- When a Vendor enters into a contract with the entity, or when the entity is considering entering a contract with a Vendor...and
- One of three possible triggers:
  - Employment/Business Relationship
  - Gifts
  - Family Relationship











### **Definition of "Gift"**

"Gift" means a <u>benefit</u> offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.

#### Old exceptions:

(1) given by a family member of the person accepting the gift;
(2) a political contribution as defined by Title

15, Election Code, or

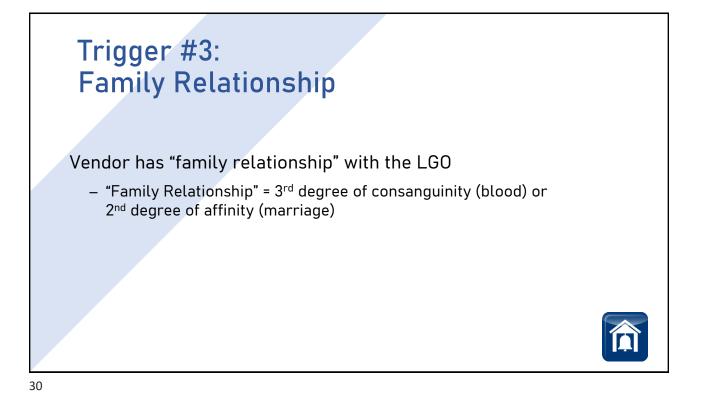
(3) food, lodging, transportation, or

entertainment-accepted as a guest.

#### **Current exceptions:**

(1) a political contribution as defined by Title
15, Election Code, or
(2) food accepted as a guest.

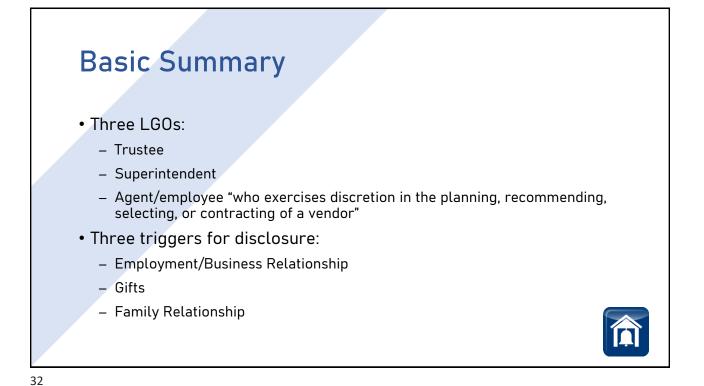


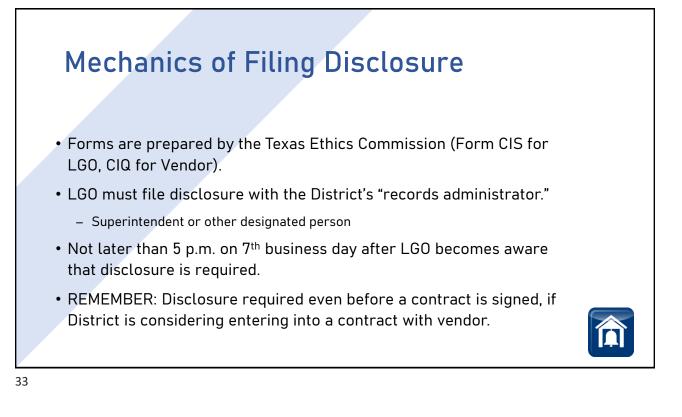


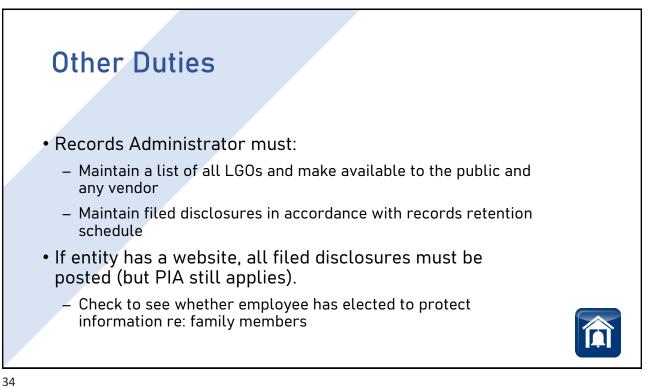


- Consanguinity
  - 1<sup>st</sup> Degree: Parent, Child
  - 2<sup>nd</sup> Degree: Grandparent, Grandchild, Sibling
  - 3<sup>rd</sup> Degree: Great-Grandparent, Great-Grandchild, Aunt/Uncle, Niece/Nephew
- Affinity
  - LGO's spouse is vendor
  - LGO's spouse is the Vendor's/Vendor's spouse is LGO's:
    - 1<sup>st</sup> Degree: Parent, Child
    - 2<sup>nd</sup> Degree: Grandparent, Grandchild, Sibling







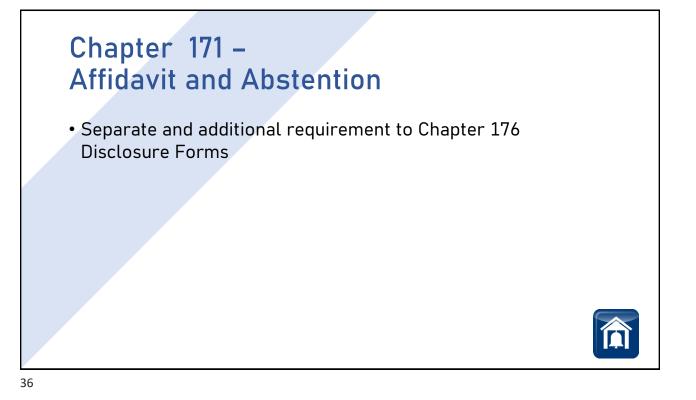


## **Penalties**

- LGO commits an offense if knowingly fails to file disclosure (7-day grace period).
- Vendor commits an offense if knowingly fails to file questionnaire or updated questionnaire (7-day grace period). An additional 7 days?
- Entity may reprimand, suspend, or terminate employee who fails to comply.
- Entity may declare a contract void if vendor fails to file.
- An offense under this chapter is:
  - (1) a Class C misdemeanor if the contract amount is less than \$1 million or if there is no contract amount for the contract;
    - (2) a Class B misdemeanor if the contract amount is at least \$1 million but less than \$5 million; or
  - (3) a Class A misdemeanor if the contract amount is at least \$5 million.







# **Affidavit and Abstention**

- "Local Public Official" must (1) file an affidavit, and (2) abstain from participating in a matter if:
- Special economic effect on entity/property, and:
  - Substantial interest in a business entity, or
  - Substantial interest in real property

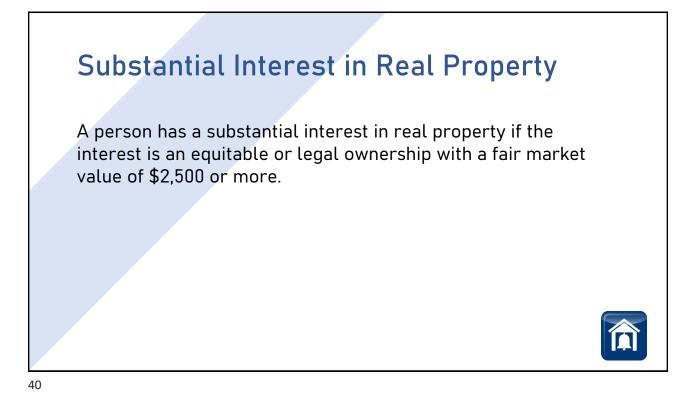


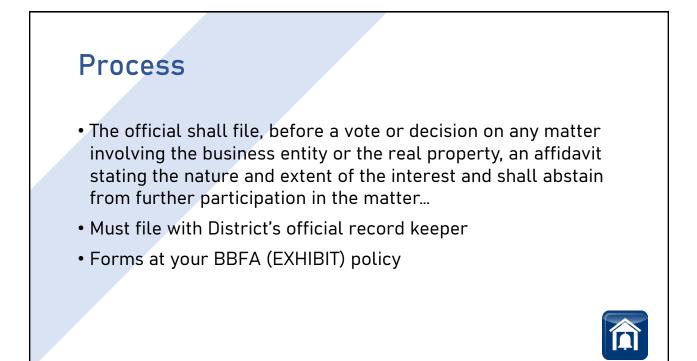
# Karal public official" shall mean a member of the governing body or another <u>officer</u>, whether elected, appointed, paid, or unpaid, of any district (including a school district)...who exercises The local public official is considered to have a substantial interest if a person related in the <u>first degree by either affinity or consanguinity to the local public official...has a substantial interest as defined above. </u>

# Substantial Interest in a Business Entity

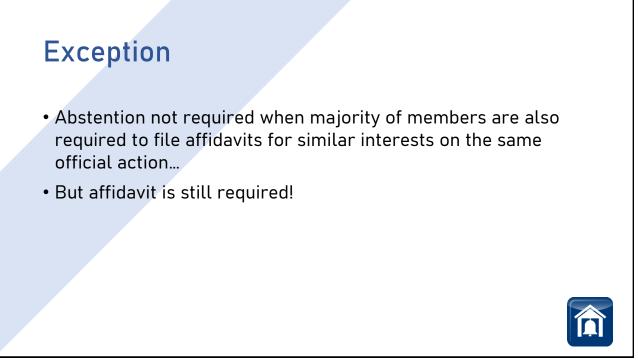
A person has a substantial interest in a business entity if any of the following is the case:

- 1. The person owns at least:
  - Ten percent of the voting stock or shares of the business entity, or
  - Either ten percent or \$15,000 of the fair market value of the business entity.
- 2. Funds received by the person from the business entity exceed ten percent of the person's gross income for the previous year.









# Voting on Budget

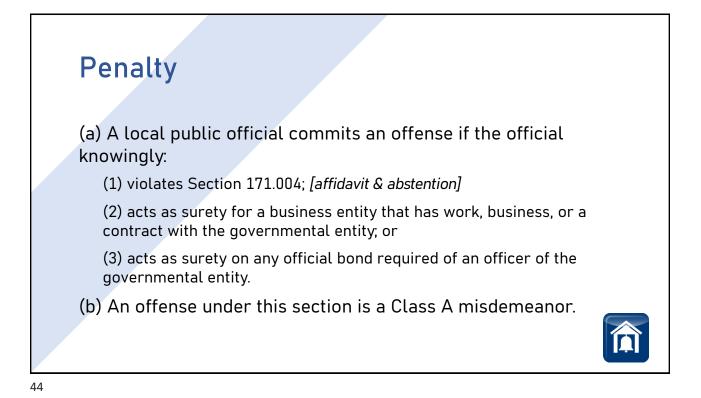
(a) The governing body of a governmental entity shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest.

(b) Except as provided by Section 171.004(c), the affected member may not participate in that separate vote. The member may vote on a final budget if:

(1) the member has complied with this chapter; and

(2) the matter in which the member is concerned has been resolved.









# Penal Code § 36.08 Gift to Public Servant "A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions... Commits an offense if he solicits, accepts, or agrees to accept... Any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, etc." Offense is a Class A misdemeanor.



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# "Public Servant"

"Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

(A) an officer, employee, or agent of government;

(B) a juror or grand juror; or

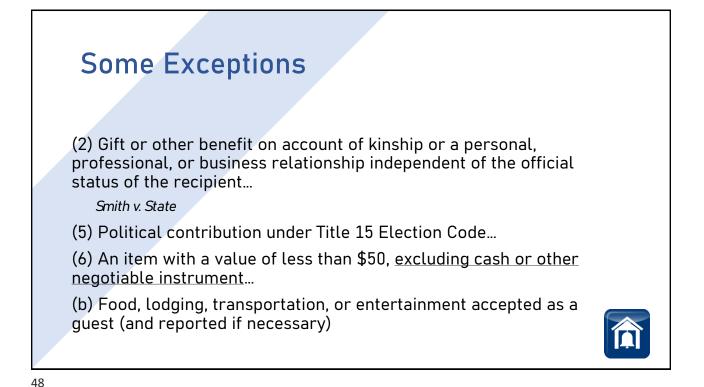
(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; or

(D) an attorney at law or notary public when participating in the performance of a governmental function; or

(E) a candidate for nomination or election to public office; or

(F) a person who is performing a governmental function under a claim of right although he is not legally qualified to do so.





# **Key Points**

- Quid Pro Quo is not required
- Cash is NEVER acceptable, regardless of amount
- Always best to err on the safe side



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# **Unsolicited Benefit**

A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

Tex. Pen. Code Ann. § 36.08

# **Common Projects**



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# Scoreboards/Marquees

- Often a Co-Op deal
- Very likely to require engineering



- Is it just like laying carpet?
- Warranty Requirements
- Soil stabilization
- Subgrade issues



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# Ag Barns/Metal Buildings

- Often a Co-Op deal
- Design almost always required
- Foundation?
- Drainage?



