

# Engineering Firm/Landfill Acquisition Contract: Texas Appellate Court Addresses Governmental Immunity Issue



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The Court of Appeals of Texas (“Court”) addressed in a December 16th Opinion an issue arising out of litigation between an engineering firm and a Texas city related to a contract associated with services to obtain a landfill permit.

The Court was asked to determine whether the Texas city was immune from suit.

The City of Mason, Texas (“City”) and Blue Oak Engineering, LLC (“Blue Oak”) entered into a contract in 2015. The contract apparently involved Blue Oak assisting the City in obtaining a landfill permit. The contract is stated to have provided for estimated compensation to Blue Oak of \$142,130.

Blue Oak advised the City in 2017 that it would be unable to obtain the specific landfill permit referenced in the contract. However, it is stated to have informed the City it would pursue another landfill permit. Such work is stated to have continued and the City submitted payment for \$300,000.

Blue Oak is stated to have billed the City an additional \$62,000. However, the City rejected payment. Blue Oak subsequently filed a breach of contract and quantum meruit suit to recover the unpaid amount.

The City argued in the District Court (Mason County) it had immunity. It, therefore, claimed that the trial court lacked subject matter jurisdiction.

Blue Oak is stated to have agreed with respect to the quantum meruit claim. It agreed to amend its petition to remove such claim. However, it asserted that the City had waived immunity pursuant to Section 271.152 of the Texas Local Governmental Code (“Code”) in reference to the breach of contract action.

The Court notes on appeal that Texas governmental units are immune from suit unless the State consents. Such governmental units include cities. Such an assertion of governmental immunity is stated to implicate the trial court’s subject matter jurisdiction if properly asserted.

Section 271.152 of the Code provides that:

... a “contract subject to this chapter” means: “a written contract stating the essential terms of the agreement for providing goods or services to the local governmental entity that is properly executed on behalf of the local governmental entity[.]”

*Id.* § 271.151(2)(A).

The Code also outlines that a contract subject to the chapter means:

. . . “a written contract stating the essential terms of the agreement for providing goods or services to the local governmental entity that is properly executed on behalf of the local governmental entity[.]”

Five elements are required, which include:

1. the contract must be in writing,
2. state the essential terms of the agreement,
3. provide for goods or services,
4. to the local governmental entity, and
5. be executed on behalf of the local governmental entity.

The City disputed whether Blue Oak’s breach of contract action involves the 2015 contract. This argument is based on its assertion that the essential terms of the 2015 contract were limited to the particular landfill permit related to the estimated payment stated in the contract. This limited scope is argued to not include the different permit for which Blue Oak now seeks repayment.

Blue Oak disagreed, arguing that its work was within the scope of the 2015 contract.

The Court concurs with Blue Oak. It finds that the dispute does not implicate jurisdiction.

The Blue Oak petition is noted to assert a claim for breach of the 2015 contract. Further, it states that the City does not contest that the contract is subject to the Code. As a result, it concludes the requirements of Section 271.152 are satisfied. The section provides that a local governmental entity that entered into a contract subject to subchapter 271 waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract.

A copy of the Opinion can be downloaded [here](#).