

1 **CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM**

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3 **ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**
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7 The Texas Workforce Commission (Commission) adopts the following new section to Chapter
8 802, relating to Integrity of the Texas Workforce System, without changes, as published in the
9 August 8, 2014, issue of the *Texas Register* (39 TexReg 6033):

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11 Subchapter B. Contracting, §802.22

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13 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

14 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

15
16 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

17 The purpose of the adopted Chapter 802 rule change is to set forth a formal process for Local
18 Workforce Development Boards (Boards) to procure workforce service providers and specify an
19 initial contract period of at least one year, not to exceed two years, and with subsequent renewals
20 not to exceed a maximum of five years, prior to a new procurement. In determining whether to
21 extend a contract for the option period, Boards shall consider the provider's performance,
22 oversight of services, reasonableness of cost, and any other locally developed criteria.

23
24 Currently, Chapter 802 does not specify or define a contract period for Board-executed contracts
25 regarding workforce service provider procurement. As a result, some contracts are awarded for
26 extended periods without the benefit of new procurement.

27
28 The Agency's Financial Manual for Grants and Contracts § 14.3 states that the procurement of all
29 goods and services must be conducted, to the maximum extent practical, in a manner providing
30 full and open competition that:

- 31 --promotes competition between suppliers, resulting in the best value for the money; and
32 --offers transparency that helps mitigate favoritism.

33
34 The Federal Acquisition Regulation (FAR) governs federal agency procurements. Boards are
35 not required to comply with FAR, however, its guidance is the basis for FMGC policies. FAR
36 defines multiyear contracting in 48 CFR Part 17 as a contract for the purchase of supplies or
37 services for more than one--but not more than five--program years. Although a multiyear
38 contract requires diligence in ongoing oversight, its benefits include reducing paperwork,
39 stabilizing services, and a more balanced contract management workload.

40
41 The intent of this amendment is to:

- 42 --allow the Commission to promote full and open competition while providing Boards with
43 contract flexibility at the local level; and
44 --define the maximum length of time for a service provider contract without a new procurement.

1 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

2 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
3 therefore, are not discussed in the Explanation of Individual Provisions.)

4
5 **SUBCHAPTER B. CONTRACTING**

6 **The Commission adopts the following amendments to Subchapter B:**

7
8 **New §802.22. Board Contract Limits**

9 New §802.22(1) adds that Boards shall procure a workforce service provider for an initial period
10 of at least one year, not to exceed two years, allowing for subsequent renewals during an option
11 period following the conclusion of the initial procurement period.

12
13 New §802.22(2) adds that when procuring a new workforce service provider, Boards shall ensure
14 that the initial procurement and subsequent renewals do not exceed a maximum of five years
15 total.

16
17 Boards are expected to timely conduct procurements, as appropriate, to ensure full and fair
18 competition. Boards must review their current contracts and, consistent with existing
19 obligations, align their practices with these requirements moving forward. Where a Board's
20 existing contract exceeds the five-year limit under this new rule, the Board will be expected to
21 re-procure at the next renewal point. Boards must timely prepare for re-procurement in order to
22 minimize any holdover period beyond five years. The Board's procurement efforts, negotiation
23 issues, and individual circumstances will be taken into consideration in determining the
24 reasonableness of any holdover period.

25
26 New §802.22(3) adds that when determining whether to renew a contract during the option
27 period following the completion of the initial procurement period, Boards shall consider a
28 workforce service provider's performance, oversight of services, reasonableness of cost, and any
29 other locally developed criteria.

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31 No comments were received.

32
33 The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to
34 be within the Agency's legal authority to adopt.

35
36 The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the
37 Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it
38 deems necessary for the effective administration of Agency services and activities.

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40 The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

1 **CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM**

2
3 **SUBCHAPTER B. CONTRACTING**

4
5 **§802.22. Board Contract Limits.**

6
7 In procuring a new workforce service provider, Boards shall:

- 8
9 (1) procure the workforce service provider for an initial period of at least one year,
10 not to exceed two years, allowing for subsequent renewals during an option
11 period following the conclusion of the initial procurement period;
12
13 (2) ensure that the initial procurement and subsequent renewals do not exceed a
14 maximum of five years total; and
15
16 (3) in determining whether to renew a contract during the option period following
17 the completion of the initial procurement period, consider the workforce
18 service provider's performance, oversight of services, reasonableness of cost,
19 and any other locally developed criteria.
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