

1 **CHAPTER 800. GENERAL ADMINISTRATION**

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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 **ON OCTOBER 6, 2020,** THE TEXAS WORKFORCE COMMISSION ADOPTED THE
8 BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

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10 Estimated date of publication in the *Texas Register*: **October 23, 2020**
11 The rules will take effect: **October 26, 2020**

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13 The Texas Workforce Commission (TWC) adopts the following new section to Chapter 800,
14 relating to General Administration, *without* changes, as published in the July 24, 2020, issue of
15 the *Texas Register* (45 TexReg 5139):

16
17 Subchapter A. General Provisions, §800.10

18
19 TWC adopts amendments to the following section of Chapter 800, relating to General
20 Administration, *without* changes, as published in the July 24, 2020, issue of the *Texas Register*
21 (45 TexReg 5139):

22
23 Subchapter A. General Provisions, §800.3

24
25 TWC adopts the following new subchapters to Chapter 800, relating to General Administration,
26 *without* changes, as published in the July 24, 2020, issue of the *Texas Register* (45 TexReg
27 5139):

28
29 Subchapter H. Vendor Protests, §800.300 and §800.301

30 Subchapter I. Enhanced Contract Monitoring, §§800.350 - 800.352

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

33 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**
34 **RESPONSES**

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

37 The purpose of the adopted Chapter 800 rule amendments is to align TWC rules with the
38 following sections of the Texas Government Code requiring state agencies to adopt rules
39 regarding contracting and purchasing:

40 --Section 2252.202 requires agencies to adopt rules to promote compliance with the requirement
41 that any iron or steel product produced through a manufacturing process and used in the project
42 be produced in the United States;

43 --Section 2155.076 requires agencies to establish, by rule, procedures for resolving vendor
44 protests relating to purchasing issues; and

45 --Section 2261.253 requires agencies to establish, by rule, a procedure to identify each contract
46 that requires enhanced contract performance monitoring.

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2 Additionally, minor nonsubstantive revisions are required to correct the Texas Comptroller of
3 Public Accounts (Comptroller) rule citation and to remove the obsolete Comptroller division
4 reference related to the Historically Underutilized Business (HUB) program.

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6 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**
7 **RESPONSES**

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

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12 **SUBCHAPTER A. GENERAL PROVISIONS**

13 **TWC adopts the following amendments to Subchapter A:**

14
15 **§800.3. Historically Underutilized Businesses**

16 Section 800.3 is amended to correct the Comptroller rule citation related to the HUB program
17 and to remove the obsolete Comptroller division reference.

18
19 **§800.10. Purchase of Certain Products**

20 New §800.10 is added to comply with Texas Government Code, Chapter 2252, Subchapter G,
21 §2252.202, requiring that governmental entities adopt rules to promote compliance with the
22 uniform general conditions for a project in which iron or steel products will be used must require
23 that the bid documents provided to all bidders and the contract include a requirement that any
24 iron or steel product produced through a manufacturing process and used in the project be
25 produced in the United States.

26
27 The rule language states that TWC complies with the statutory requirements of Texas
28 Government Code, Chapter 2252, Subchapter G.

29
30 **SUBCHAPTER H. VENDOR PROTESTS**

31 **TWC adopts new Subchapter H:**

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33 According to Texas Government Code, §2155.076, each state agency, by rule, "shall develop and
34 adopt protest procedures for resolving vendor protests relating to purchasing issues. An agency's
35 rules must be consistent with the [Comptroller's] rules." TWC has procedures in place, and staff
36 has ensured that its procedures are consistent with the Comptroller's rules in 34 Texas
37 Administrative Code §1.72. However, pursuant to Texas Government Code, §2155.076, these
38 procedures must be in rule.

39
40 New Subchapter H language reflects TWC's current procedures regarding bid protest procedures.

41
42 New §800.300 provides the following definitions related to vendor protests:

43 --Interested Parties--Respondents in connection with the solicitation, evaluation, or award that is
44 being protested.

45 --Protestant--A respondent vendor that submits a protest under TWC vendor protest procedures.

46 --Respondent--A vendor that submits an offer or proposal in response to a TWC solicitation.

1 --Solicitation--A document, such as an Invitation for Bids, Request for Offers, Request for
2 Proposals, or Request for Qualifications that contains a request for responses from vendors to
3 provide specified goods and services. The term also refers to the process of obtaining responses
4 from vendors to provide specified goods and services.

5 --Vendor--A potential provider of goods or services to TWC.
6

7 New §800.301 describes the vendor protest procedures. The procedures state that any bid
8 respondent who is allegedly aggrieved in connection with the solicitation, evaluation, or award
9 of a contract by TWC may formally protest, in writing, to the TWC's director of business
10 operations.

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12 The protest must be received by the TWC's director of business operations within 10 working
13 days after the protestant knows, or should have known, of the occurrence of the action that is
14 protested.

15
16 The rules state that a protest that is not filed timely shall not be considered unless the director of
17 business operations determines that a protest raises issues that are significant to the TWC's
18 procurement practices or procedures.
19

20 The protest must be signed by an authorized representative for the protestant, and the signature
21 notarized and contain the following details:

22 --the identifying name and number of the solicitation being protested

23 --identification of the specific statute or regulation that the protestant alleges has been violated

24 --a specific description of each act or omission alleged to have violated the statutory or
25 regulatory provision identified in §800.301(c)(2)

26 --a precise statement of the relevant facts, including:

27 --sufficient documentation to establish that the protest has been timely filed; and

28 --a description of the resulting adverse impact to the protestant

29 --a statement of the argument and authorities that the protestant offers in support of the protest

30 --an explanation of the action the protestant is requesting from TWC

31 --a statement confirming that copies of the protest have been mailed or delivered to any other
32 interested party known to the protestant.
33

34 The protestant may appeal determination of a protest to TWC's deputy executive director. The
35 appeal must be in writing, addressed to TWC's deputy executive director, and the protest must be
36 received by the deputy executive director no later than 10 business days after the date of receipt
37 of the written determination issued by the director of business operations.
38

39 Finally, in order to protect the best interests of TWC or the state, the rules provide that TWC
40 may move forward with a solicitation or contract award without delay, in spite of a timely filed
41 protest.
42

43 **SUBCHAPTER I. ENHANCED CONTRACT MONITORING**

44 **TWC adopts new Subchapter I:**

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1 Texas Government Code, §2261.253(c) requires state agencies to establish, by rule, a procedure
2 to identify contracts, prior to award, that require enhanced contract or performance monitoring
3 and submit the information to the agency's governing body. In its Procurement and Contract
4 Management Guide, the Comptroller has indicated that this requirement applies to "high-dollar
5 and high-risk contracts." TWC has a procedure implementing the requirement; however,
6 pursuant to Texas Government Code, §2261.253(c), these procedures must be in rule. New
7 Subchapter I language reflects the current TWC procedures regarding enhanced contract
8 monitoring.
9

10 New §800.350 describes the purpose and scope of the subchapter. The purpose of Subchapter I is
11 to implement the requirements of Texas Government Code, §2261.253(c) requiring state
12 agencies to establish, by rule, a procedure to identify each contract that requires enhanced
13 contract or performance monitoring.
14

15 Pursuant to Texas Government Code, §2261.253(d), Subchapter I does not apply to:

- 16 --memoranda of understanding;
 - 17 --interagency contracts;
 - 18 --interlocal agreements; or
 - 19 --contracts for which there is not a cost.
- 20

21 New §800.351 describes the enhanced contract monitoring policy and procedures. The rules state
22 that:

23
24 TWC shall identify contracts requiring enhanced monitoring by evaluating the risk factors,
25 which include:

- 26 --the complexity of the goods and services to be provided;
 - 27 --the contract amount;
 - 28 --the length and scope of the project supported by the contract;
 - 29 --whether the services are new or have changed significantly since the last procurement of the
30 same services;
 - 31 --whether TWC has experience with the contractor;
 - 32 --whether the project affects external stakeholders or is of particular interest to third parties;
 - 33 --whether TWC data is accessed by the contractor; and
 - 34 --any other factors TWC determines in a particular circumstance will create a level of risk to the
35 state or TWC such that enhanced monitoring is required.
- 36

37 The rule states that for contracts requiring enhanced monitoring, the contractor shall report to the
38 assigned TWC contract manager on progress toward goals or performance measure

1 achievements, and the status of deliverables, if any, and on issues of which the contractor is
2 aware that may create an impediment to meeting the project timeline or goals.

3
4 Enhanced monitoring may also include site visits, additional meetings with contractor staff, and
5 inspection of documentation required by TWC to assess progress toward achieving performance
6 requirements.

7
8 Projects deemed medium or high risk shall be monitored by the assigned contract manager and
9 may involve additional team members such as an assigned project manager and staff from the
10 Office of General Counsel or the Finance, Information Technology, or Regulatory Integrity
11 Divisions, if warranted.

12
13 Texas Government Code, §2261.253 requires TWC to submit information on each contract
14 identified for enhanced contract monitoring to TWC's three-member Commission (Commission).
15 New §800.352 describes the reporting requirements for enhanced contractor monitoring as
16 follows:

17 --The director of Procurement and Contract Services (PCS Director) shall immediately notify the
18 Commission of any serious issue or risk that is identified with respect to a contract identified for
19 enhanced contract monitoring.

20 --The contract manager shall report on the status of all contracts subject to enhanced monitoring
21 to the PCS director quarterly.

22 --If any serious issues or risks are identified about a contract subject to enhanced monitoring, the
23 PCS director will immediately notify the director of business operations and the executive
24 director.

25
26 **No comments were received.**

27
28 TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within
29 TWC's legal authority to adopt.

30
31 The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC
32 with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective
33 administration of TWC services and activities.

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35 The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.
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- (a) Any Respondent who is allegedly aggrieved in connection with the Solicitation, evaluation, or award of a contract by the Agency may formally protest to the Agency's director of business operations.
 - (1) Such protests must be made in writing and timely received by the Agency's director of business operations.
 - (2) The protest must be received by the Agency's director of business operations within 10 working days after the Protestant knows, or should have known, of the occurrence of the action that is protested.
 - (3) The Protestant shall mail or deliver copies of the protest to: Director of Business Operations, 101 E. 15th Street, Room 316T, Austin, Texas 78778. The Protestant must also mail or deliver copies of the protest to Interested Parties known to the Protestant.
- (b) A protest that is not filed timely shall not be considered unless the director of business operations determines that the protest raises issues that are significant to the Agency's procurement practices or procedures.
- (c) The protest must be in writing and contain:
 - (1) the identifying name and number of the Solicitation being protested;
 - (2) identification of the specific statute or regulation that the Protestant alleges has been violated;
 - (3) a specific description of each act or omission alleged to have violated the statutory or regulatory provision identified above in paragraph (2) of this section;
 - (4) a precise statement of the relevant facts including:
 - (A) sufficient documentation to establish that the protest has been timely filed; and
 - (B) a description of the resulting adverse impact to the Protestant;
 - (5) a statement of the argument and authorities that the Protestant offers in support of the protest;
 - (6) an explanation of the action the Protestant is requesting from the Agency; and,
 - (7) a statement confirming that copies of the protest have been mailed or delivered to any other Interested Party known to the Protestant.

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2 (d) The protest must be signed by an authorized representative for the Protestant and
3 the signature notarized.
4
5 (e) The Protestant may appeal determination of a protest to the Agency's deputy
6 executive director.
7
8 (1) The appeal filed under these procedures must be in writing, addressed to the
9 Agency's deputy executive director; and
10
11 (2) The protest must be received by the deputy executive director no later than
12 10 business days after the date of receipt of the written determination issued
13 by the director of business operations.
14
15 (f) The Agency may move forward with a Solicitation or contract award without
16 delay, in spite of a timely filed protest, to protect the best interests of the Agency
17 or the state.
18

19 **SUBCHAPTER I. ENHANCED CONTRACT MONITORING**

20 **§800.350. Purpose and Scope.**

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22
23 (a) Purpose. The purpose of this subchapter is to implement the requirements of Texas
24 Government Code, §2261.253(c), requiring state agencies to establish, by rule, a
25 procedure to identify each contract that requires enhanced contract or performance
26 monitoring.
27
28 (b) Scope. Pursuant to Texas Government Code, §2261.253(d) and (g), this subchapter
29 does not apply to:
30
31 (1) memoranda of understanding;
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33 (2) interagency contracts;
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35 (3) interlocal agreements; or
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37 (4) contracts for which there is not a cost.
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39 **§800.351. Enhanced Contract Monitoring Policy.**

- 40
41 (a) The Agency shall identify which contracts for goods and services require enhanced
42 monitoring by evaluating the risk factors, which include:
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44 (1) the complexity of the goods and services to be provided;
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46 (2) the contract amount;

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- (3) the length and scope of the project supported by the contract;
 - (4) whether the services are new or have changed significantly since the last procurement of the same services;
 - (5) whether the Agency has experience with the contractor;
 - (6) whether the project affects external stakeholders or is of particular interest to third parties;
 - (7) whether Agency data is accessed by the contractor; and
 - (8) any other factors the Agency determines in a particular circumstance will create a level of risk to the state or Agency such that enhanced monitoring is required.
- (b) For contracts requiring enhanced monitoring, the contractor shall report to the assigned Agency contract manager on progress toward goals or performance measure achievements, and the status of deliverables, if any, and on any issues of which the contractor is aware that may create an impediment to meeting the project timeline or goals.
 - (c) Enhanced monitoring may also include site visits, additional meetings with contractor staff, and inspection of documentation required by the Agency to assess progress toward achievement of performance requirements.
 - (d) Projects deemed medium or high risk shall be monitored by the assigned contract manager and may involve additional team members such as an assigned project manager and staff from the Office of General Counsel or the Finance, Information Technology, or Regulatory Integrity Divisions, if warranted.

§800.352. Reporting of Enhanced Contract Monitoring.

- (a) Pursuant to the Texas Government Code §2261.253, the Agency shall submit information on each contract identified for enhanced contract monitoring to the Commission.
- (b) The director of Procurement and Contract Services (PCS director) shall immediately notify the Commission of any serious issue or risk that is identified with respect to a contract identified for enhanced contract monitoring.

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- (c) The contract manager shall report on the status of all contracts subject to enhanced monitoring to the PCS director quarterly.
- (d) If any serious issues or risks are identified about a contract subject to enhanced monitoring, the PCS director will immediately notify the director of business operations and the executive director.