

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

**PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.**

**ON JULY 22, 2014**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **August 8, 2014**

Estimated End of Comment Period: **September 8, 2014**

The Texas Workforce Commission (Commission) proposes the following new section to Chapter 802, relating to Integrity of the Texas Workforce System:

Subchapter B. Contracting, §802.22

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- PART III. IMPACT STATEMENTS
- PART IV. COORDINATION ACTIVITIES

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

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

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

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

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

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

The intent of this amendment is to:

--allow the Commission to promote full and open competition while providing Boards with contract flexibility at the local level; and

--define the maximum length of time for a service provider contract without a new procurement.

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

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

### **SUBCHAPTER B. CONTRACTING**

**The Commission proposes the following amendments to Subchapter B:**

#### **New §802.22. Board Contract Limits**

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

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

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

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

## **PART III. IMPACT STATEMENTS**

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

#### Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

Richard C. Froeschle, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to clarify the process for Boards when procuring workforce service providers.

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

#### **PART IV. COORDINATION ACTIVITIES**

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on May 13, 2014. The Commission also conducted a conference call with Board executive directors and Board staff on May 16, 2014, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

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

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

## CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

### SUBCHAPTER B. CONTRACTING

#### §802.22. Board Contract Limits.

In procuring a new workforce service provider, Boards shall:

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