

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Buddy Garcia, Chairman
Larry R. Soward, Commissioner
Bryan W. Shaw, Commissioner

Date June 5, 2009

Thru: Mark Vickery, Executive Director
Carlos Rubinstein, Deputy Executive Director
Zak Covar, Assistant Deputy Executive Director
Stephanie Bergeron Perdue, Deputy Director, Office of Legal Services
Kevin McCalla, Division Director, General Law

From: Katharine Marvin, Senior Attorney, Contracts

*AMB for KAM
June 09*

Subject: Executive Summary re: Consideration of Authorization for the Executive Director to Enter and Manage All Contracts (including Grant Agreements) and to Delegate Authority to the Staff.

CHIEF CLERKS OFFICE

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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Issue. Consideration of Authorization for the Executive Director to Enter and Manage All Contracts (including Grant Agreements) and to Delegate Authority to the Staff.

Background and Current Practice. The Commission's delegation of authority consenting for the Executive Director (ED) to enter and manage contracts, and process invoices for payment, expires on August 31, 2009. The current resolution has been in effect since May 18, 2007. The proposed resolution would renew the Commission's delegation and consent for an additional two years until August 31, 2011, and it is identical (except in dates) to the one currently in effect. The proposed resolution provides a mechanism for Commission oversight of contracting activity and a set of criteria for selecting contracts for written reports and verbal briefings to the Commissioners and the Office of the General Counsel (OGC). The proposed resolution has a two-year period to coincide with the biennium.

Mechanism for Commission Oversight. The proposed resolution provides that the Commission delegate all contract authority to the ED whose staff would keep individual Commissioners informed with written and verbal briefings. The ED staff would submit to individual Commissioners and the OGC regularly scheduled written reports which would brief activities on contracts of special interest, and would submit further special-purpose reports as appropriate. Upon request, the ED staff will also provide verbal briefings to individual Commissioners and the OGC. Naturally, Commissioners can request further briefings or updates at any time. This mechanism permits the Office of

Legal Services (OLS) to provide confidential information and advice on sensitive legal issues. The ED's Financial Administration Division (FAD) informs Commissioners OGC of any important financial or procurement issues while the program staff provides technical and program specific information to each Commissioner or OGC. Individual Commissioners and OGC attorneys have an opportunity to provide timely input, direction, or even direct control if necessary.

Criteria for Selecting Contracts for Briefings. The criteria used for identifying contracts of special interest are: contract amount anticipated to exceed One Million Dollars; significant risk for injuries, property damage, or failure of performance; significant impacts on agency resources, especially those with legislative limits; or significant financial, legal or public policy issues. The briefings occur at the critical stages for each such contract, and for any contract at any time significant risk is apparent or financial, legal or public policy issues arise. The term "contracts" includes all agreements which obligate the TCEQ to act, defer or refrain from acting or to pay or receive funds, goods or in-kind services. This includes, without limitation, agreements for procurements, receivable or in-coming grants (prior to submittal of TCEQ's application), payable or out-going grants, gifts, exchanges, memoranda of agreement, and memoranda of understanding (other than those required to be adopted by rule).

cc: Linda Flores, Chief Financial Officer
Eddie Molina, Division Director, Financial Administration

A RESOLUTION

Authorizing the Executive Director to enter and manage all contracts (including grant agreements) and to delegate authority to the staff. Docket No. 2009-0645-RES

WHEREAS, ON June 26, 2009, the Texas Commission on Environmental Quality (Commission) considered the Executive Director's request to authorize the Executive Director to enter contracts and other agency agreements on behalf of the agency, to manage such contracts and other agreements and perform all contractual actions on behalf of the agency, to delegate such authority to staff, designate individuals to approve the agency's payment documents; and

WHEREAS, SECTION 5.221 OF THE Texas Water Code provides that the Executive Director shall manage the administrative affairs of the Commission under the general supervision and direction of the Commission; and

WHEREAS, Section 5.229 of the Texas Water Code provides that the Executive Director, on behalf of the Commission, may negotiate with, and with the consent of the Commission enter into contracts or other agreements with, the United States or any of its agencies, with sates and political subdivisions of the state, or with other entity for the purpose of carrying out the powers, duties, and responsibilities of the Commission; and

WHEREAS, the Texas Water Code Section 5.124 authorizes the agency to award grants for any resource conservation or environmental protection purpose; and

WHEREAS, the Executive Director can manage the administrative affairs of the Commission with greater efficiency and effectiveness if authorized to enter into contracts or other agency agreements without formal Commission consent on each such contract; and

WHEREAS, the Executive Director can manage the administrative affairs of the Commission with greater efficiency and effectiveness if authorized to designate agency personnel to approve the agency's expenditures; and

WHEREAS, 34 Texas Administrative Code Section 5.61 provides that the governing body of a state agency may authorize the agency's executive director to designate one or more individuals to approve the agency's payment documents, as long as the authorization is effective according to 34 Texas Administrative Code, Subchapter F, Section 5.61(h)(1); and

WHEREAS, the Executive Director will provide each Commissioner and Office of the General Counsel with regular briefings and offer to provide verbal briefings regarding contract activities of particular interest, which will include: contracts anticipated to exceed One Million dollars; contracts with significant risk of injuries, property damage, or failure of performance; and contracts anticipated to have significant impacts on agency resources, especially those with legislative limits, or significant financial, legal or public policy issues;

NOW, THEREFORE, BE IT RESOLVED, that the Texas Commission on Environmental Quality authorizes and gives consent from the present date until August 31, 2011, for the Executive Director to enter into all contracts and other agency agreements (including grant agreements) on behalf of the Commission; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Texas Commission on Environmental Quality authorizes and gives consent from the present to August 31, 2011, for the Executive Director to manage, administer, amend, renew, terminate, and perform all other contractual actions related to contracts or other agreements (including grant agreements) entered into on behalf of the Commission; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that from the present date until August 31, 2011, the Executive Director may delegate all such contract authority to agency staff; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Executive Director in his discretion, may refer particular contracts or other agreements to the Commission for formal action; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Texas Commission on Environmental Quality authorized the Executive Director to designate individuals to approve payment documents as defined by 34 TAC 5.61(a) requesting the comptroller to make payments to vendors and other appropriate parties, pursuant to authorized contracts and other expenditures lawfully made.

This Resolution, upon becoming effective, supersedes and replaces Resolution No. 2007-0526-RES, issued by the Commission on May 18, 2007.

Issue date:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Buddy Garcia, Chairman