

TCEQ Interoffice Memorandum

To: Bryan W. Shaw, Ph.D., P.E., Chairman
Toby Baker, Commissioner

Thru: Richard A. Hyde, P.E., Executive Director 

From: Caroline A. Sweeney 
Deputy Director, Office of Legal Services

David Timberger 
Director, General Law Division

Elizabeth West 
Senior Attorney, Contracts, Employment Law and Ethics, General Law Division

Date: June 12, 2015

Subject: **Docket No. 2015-0425-RES. Consideration of Authorization for the Executive Director to Enter and Manage All Contracts (including Grant Agreements) and to Delegate Authority to the Staff.**

Authority

Chapter 5 of the Texas Water Code authorizes the Executive Director to manage the administrative affairs of the Commission under the general supervision and direction of the Commission. Specifically, Section 5.229 authorizes the Executive Director to negotiate and enter contracts and other agreements with the United States or any of its agencies, with state and political subdivisions of the state, or with any other entity for the purpose of carrying out the power, duties and responsibilities of the Commission. Additionally, Section 5.124 authorizes the Executive Director, with the consent of the Commission, to award grants for any resource conservation or environmental protection purpose.

The Texas Comptroller of Public Accounts requires that the governing body of a state agency authorize the agency's executive director to designate one or more individuals to approve the agency's payment documents. 34 Texas Administrative Code § 5.61(h)(1).

Finally, in accordance with Section 2155.088 of the Texas Government Code, the Commission will meet to consider material changes to contracts for goods and services awarded under Chapter 2155 of the Texas Government Code.

Requirements from the 84th Legislature

New Government Code Section 2161.254, added by SB 20, allows a state agency to enter into a contract for the purchase of goods or services that has a value exceeding \$1 million only if the governing body approves the contract and the presiding officer signs it. This section permits the governing body to delegate this approval and signature authority to the Executive Director of the state agency.

New Government Code Section 2161.255, also added by SB 20, requires that, for contracts for the purchase of goods and services that exceed \$5 million in value, the state agency's contract management office or procurement director submit to the governing body information on any potential issue that may arise in the solicitation, purchasing or contractor selection processes.

SB 20 becomes effective on September 1, 2015, and these provisions apply only to contracts entered after that date.

Proposed Resolution

On August 31, 2015, the Commission's current delegation of authority consenting for the Executive Director (ED) to enter and manage contracts, and process invoices for payment expires. The proposed resolution renews the Commission's delegation and consent for an additional two years until August 31, 2017. *See Attachment A.*

The proposed resolution provides that the Commission will continue to delegate all contract authority to the Executive Director. This delegation includes the new legislation's requirement to delegate authority to the Executive Director to approve and sign contracts for goods and services valued over \$1 million.

The Commission will continue to maintain oversight of contracts and grants through two existing practices. First, on a quarterly basis, the Commission will consider at an open meeting material changes to contracts for goods and services awarded under Chapter 2155 of the Texas Government Code. Second, the Commission will continue to receive the regularly-scheduled written reports and verbal briefings as requested, from the Executive Director's staff, including but not limited to program and technical staff, the Financial Administration Division, and the General Law Division. Individual Commissioners and the Office of General Counsel will have an opportunity to provide timely input, direction, or even direct control, if necessary.

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Criteria for Contracts to be Considered at an Open Meeting

Pursuant to Section 2155.088 of the Texas Government Code, on a quarterly basis, the Executive Director will present a summary of all material changes to contracts awarded under Chapter 2155.

Criteria for Selecting Contracts for Briefings

The criteria used for identifying contracts of special interest are: contract amount anticipated to exceed \$3 million; 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. In compliance with the new legislation, the Financial Administration Division will promptly report any potential issues related to contracts valued over \$5 million. 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).

Attachment

cc: Liz Day, Chief Financial Officer
John Racanelli, Director, Financial Administration Division

ATTACHMENT "A"

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



A RESOLUTION

Reauthorizing the Executive Director to enter and manage all contracts (including grant agreements) and to delegate authority to the staff.
2015-0425-RES

WHEREAS, on July 1, 2015, 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 states and political subdivisions of the state, or with any 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 Executive Director, with the consent of the Commission, to award grants for any resource conservation or environmental protection purpose; and

WHEREAS, the Government Code Section 2261.254 authorizes the Commission to delegate authority to the Executive Director to approve and sign contracts for the purchases of goods and services that are valued in excess of \$1 million; 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 Commission will meet on a quarterly basis to consider material changes to contracts for goods and services awarded under Chapter 2155 of the Texas Government Code; and

WHEREAS, the Executive Director will provide each Commissioner and Office of the General Counsel with quarterly briefings and offer to provide verbal briefings regarding contract activities of particular interest;

NOW, THEREFORE, BE IT RESOLVED, that the Texas Commission on Environmental Quality authorizes and gives consent from the present date until August 31, 2017, 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, 2017, 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, 2017, 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 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. 2013-0712-RES, issued by the Commission on August 28, 2013.

Issued this the _____ day of _____, 2015.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., P.E., Chairman