

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adopted Rulemaking

AGENDA REQUESTED: November 16, 2016

DATE OF REQUEST: October 28, 2016

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Derek Baxter, (512) 239-2613

CAPTION: Docket No. 2015-0935-RUL. Consideration of adoption of new Section 11.202 of 30 TAC Chapter 11, Contracts, Subchapter E, Contract Monitoring Roles and Responsibilities.

The adopted rulemaking would implement Senate Bill 20, 84th Texas Legislature, 2015, Regular Session, that added Texas Government Code, Section 2261.253(c), which requires state agencies to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring, and submit information to the agencies' governing bodies. Accordingly, the commission is adopting this rulemaking to add a new section regarding contracts. The proposed rule was published in the August 19, 2016, issue of the Texas Register (41 TexReg 6158). (LaTresa Stroud, Elizabeth West) (Rule Project No. 2015-030-011-AD)

John Racanelli
Deputy Director

Greg Yturralde
Division Director

Derek Baxter
Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 28, 2016

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: John Racanelli, Deputy Director
Office of Administrative Services

Docket No.: 2015-0935-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 11, Contracts
SB 20: Enhanced Contract Monitoring
Rule Project No. 2015-030-011-AD

Background and reason(s) for the rulemaking:

Senate Bill (SB) 20 (84th Texas Legislature, 2015) added Texas Government Code, §2261.253(c), which requires state agencies to establish by rule procedures to identify each contract that requires enhanced contract or performance monitoring, and submit information to the agencies' governing bodies. Accordingly, the Texas Commission on Environmental Quality (TCEQ, agency, or commission) is adopting this rulemaking to add a new rule section to an existing subchapter regarding contracts.

Scope of the rulemaking:

Pursuant to Texas Government Code, §2261.253, the executive director or his designee shall establish a written procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on contracts subject to enhanced contract or performance monitoring to the commission.

A.) Summary of what the rulemaking will do:

This rulemaking establishes by rule a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the commission.

B.) Scope required by federal regulations or state statutes:

This rulemaking establishes by rule a procedure to identify each contract that requires enhanced contract or performance monitoring, and submit information to the commission.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

Texas Water Code, §5.103

Texas Government Code, §2261.253(c), as added by SB 20.

Re: Docket No. 2015-0935-RUL

Effect on the:

A.) Regulated community:

None.

B.) Public:

None.

C.) Agency programs:

TCEQ has a Contract Management Handbook that outlines standard contract monitoring and identifies when enhanced monitoring may be required. Agency program areas may supplement with additional Standard Operating Procedures.

Stakeholder meetings:

There were no stakeholder meetings held related to this rulemaking. However, a rule public hearing was scheduled during the comment period.

Public comment:

The commission offered a public hearing on September 13, 2016; however, no members of the public were present to offer comments. Therefore, the hearing was not officially opened. Additionally, there were no written comments submitted for this rulemaking project.

Significant changes from proposal:

No significant changes were made to the proposed text.

Potential controversial concerns and legislative interest:

None.

Does this rulemaking affect any current policies or require development of new policies?

TCEQ has a Contract Management Handbook that outlines standard contract monitoring and identifies when enhanced monitoring may be required.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

Texas Government Code, §2261.253(c) requires all state agencies to create a rule regarding enhanced contract monitoring.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: August 19, 2016

Anticipated Texas Register adoption publication date: December 2, 2016

Anticipated effective date: December 8, 2016

Six-month Texas Register filing deadline: February 19, 2017

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Re: Docket No. 2015-0935-RUL

Agency contacts:

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Beth West, Senior Attorney, General Law Division, (512) 239-0748
Derek Baxter, Texas Register Rule/Agenda Coordinator, (512) 239-2613

Attachments

SB 20

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel
LaTresa Stroud
Beth West
Derek Baxter

AN ACT

relating to state agency contracting.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 321.013, Government Code, is amended by adding Subsections (k) and (l) to read as follows:

(k) In devising the audit plan under Subsection (c), the State Auditor shall consider the performance of audits on contracts entered into by the Health and Human Services Commission that exceed \$100 million in annual value, including a contract between the commission and a managed care organization. The State Auditor shall collaborate with the financial managers in the Medicaid/CHIP Division of the commission in performing an audit described by this subsection. An audit described by this subsection:

(1) may be limited in scope to target an area of the contract that the State Auditor determines poses the highest financial risk to this state; and

(2) must determine whether the entity contracting with the commission has spent state money in accordance with the purposes authorized in the contract.

(l) The State Auditor may contract with a private auditor to audit a contract under Subsection (k).

SECTION 2. Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.03057 to read as follows:

Sec. 403.03057. CENTRALIZED STATE PURCHASING STUDY.

1 (a) The comptroller, in cooperation with the governor's budget and
2 policy staff, shall conduct a study examining the feasibility and
3 practicality of consolidating state purchasing functions into
4 fewer state agencies or one state agency. The study must examine
5 the cost savings to this state that may be achieved through:

6 (1) abolishing offices or departments of state
7 agencies that have a dedicated office or department for purchasing;
8 and

9 (2) consolidating or reducing the number of vendors
10 authorized to contract with this state to allow this state to better
11 leverage its purchasing power.

12 (b) The comptroller shall prepare and deliver to the
13 governor, the lieutenant governor, and each member of the
14 legislature a report on the findings of the study conducted under
15 Subsection (a), including:

16 (1) a detailed projection of expected savings or costs
17 to this state in consolidating state purchasing;

18 (2) a report on the process for the legislature or the
19 executive branch to implement the consolidation of state
20 purchasing;

21 (3) a list of state agencies, including dedicated
22 offices or departments in those agencies, with purchasing
23 responsibilities; and

24 (4) the total cost to this state of the purchasing
25 responsibilities for each state agency, including the dedicated
26 office or department in the agency with purchasing responsibility.

27 (c) The comptroller shall prepare, deliver, and post on the

1 comptroller's Internet website the report required by this section
2 not later than December 31, 2016.

3 (d) The comptroller may contract with a public or private
4 entity to conduct the study required by this section.

5 (e) This section expires January 1, 2018.

6 SECTION 3. Subchapter L, Chapter 441, Government Code, is
7 amended by adding Section 441.1855 to read as follows:

8 Sec. 441.1855. RETENTION OF CONTRACT AND RELATED DOCUMENTS
9 BY STATE AGENCIES. Notwithstanding Section 441.185 or 441.187, a
10 state agency:

11 (1) shall retain in its records each contract entered
12 into by the state agency and all contract solicitation documents
13 related to the contract; and

14 (2) may destroy the contract and documents only after
15 the seventh anniversary of the date:

16 (A) the contract is completed or expires; or

17 (B) all issues that arise from any litigation,
18 claim, negotiation, audit, open records request, administrative
19 review, or other action involving the contract or documents are
20 resolved.

21 SECTION 4. Subchapter C, Chapter 572, Government Code, is
22 amended by adding Section 572.069 to read as follows:

23 Sec. 572.069. CERTAIN EMPLOYMENT FOR FORMER STATE OFFICER
24 OR EMPLOYEE RESTRICTED. A former state officer or employee of a
25 state agency who during the period of state service or employment
26 participated on behalf of a state agency in a procurement or
27 contract negotiation involving a person may not accept employment

1 from that person before the second anniversary of the date the
2 officer's or employee's service or employment with the state agency
3 ceased.

4 SECTION 5. Subchapter C, Chapter 2054, Government Code, is
5 amended by adding Section 2054.067 to read as follows:

6 Sec. 2054.067. POSTING OF CERTAIN DOCUMENTS RELATING TO
7 CONTRACT SOLICITATIONS. (a) The department shall post all
8 solicitation documents related to a contract of the department,
9 including contracts under Chapter 2157, to the centralized
10 accounting and payroll system authorized under Sections 2101.035
11 and 2101.036, or any successor system used to implement the
12 enterprise resource planning component of the uniform statewide
13 accounting project.

14 (b) The documents posted under Subsection (a) must include
15 documents showing the criteria by which the department evaluated
16 each vendor responding to the contract solicitation and, if
17 applicable, an explanation of why the vendor was selected by the
18 department under Section 2157.068(b).

19 SECTION 6. Section 2101.001(1), Government Code, is amended
20 to read as follows:

21 (1) "Enterprise resource planning" includes the
22 administration of a state agency's:

- 23 (A) general ledger;
- 24 (B) accounts payable;
- 25 (C) accounts receivable;
- 26 (D) budgeting;
- 27 (E) inventory;

- 1 (F) asset management;
- 2 (G) billing;
- 3 (H) payroll;
- 4 (I) projects;
- 5 (J) grants;
- 6 (K) human resources, including administration of
- 7 performance measures, time spent on tasks, and other personnel and
- 8 labor issues; and
- 9 (L) purchasing, including solicitations and
- 10 contracting.

11 SECTION 7. Section 2101.035, Government Code, is amended by
12 adding Subsection (i) to read as follows:

13 (i) State agencies shall report contract and purchasing
14 information in the uniform manner required by the comptroller.

15 SECTION 8. Section 2101.036, Government Code, is amended by
16 adding Subsection (e) to read as follows:

17 (e) Notwithstanding Subsection (d), a state agency in the
18 legislative branch may elect to participate in the enterprise
19 resource planning system developed under this section.

20 SECTION 9. Subchapter C, Chapter 2101, Government Code, is
21 amended by adding Section 2101.041 to read as follows:

22 Sec. 2101.041. STATE AGENCY REPORTING OF CONTRACTING
23 INFORMATION. (a) The comptroller by rule shall determine the
24 contracting information that state agencies must report or provide
25 using the centralized accounting and payroll system, or any
26 successor system used to implement the enterprise resource planning
27 component of the uniform statewide accounting project, developed

1 under Sections 2101.035 and 2101.036.

2 (b) In making the determination required by this section,
3 the comptroller shall consider requiring a state agency to report
4 or provide:

5 (1) a brief summary of each contract that is quickly
6 and easily searchable, including the contract's purpose, timeline,
7 and deliverables;

8 (2) contract planning and solicitation documents;

9 (3) the criteria used to determine the vendor awarded
10 the contract;

11 (4) if the contract was awarded based on best value to
12 the state:

13 (A) a list of the factors considered in
14 determining best value with the weight given each factor; and

15 (B) a statement regarding how the vendor awarded
16 the contract provides the best value to the state in relation to
17 other vendors who bid or otherwise responded to the contract
18 solicitation;

19 (5) any statements of work and work orders prepared
20 for or under the contract;

21 (6) the proposed budget for the contract;

22 (7) any conflict of interest documents signed by state
23 agency purchasing personnel participating in the planning,
24 soliciting, or monitoring of the contract;

25 (8) criteria used or to be used by the state agency in
26 monitoring the contract and vendor performance under the contract;

27 (9) a justification for each change order, contract

1 amendment, contract renewal or extension, or other proposed action
2 that would result in an increase in the monetary value of a contract
3 with an initial value exceeding \$10 million; and

4 (10) additional supporting documentation and
5 justification for a change order, contract amendment, contract
6 renewal or extension, or other proposed action of a contract
7 described by Subdivision (9) that would result in an increase in the
8 contract's monetary value by more than 20 percent.

9 SECTION 10. Subchapter B, Chapter 2155, Government Code, is
10 amended by adding Section 2155.0755 to read as follows:

11 Sec. 2155.0755. VERIFICATION OF USE OF BEST VALUE STANDARD.

12 (a) The contract manager or procurement director of each state
13 agency shall:

14 (1) approve each state agency contract for which the
15 agency is required to purchase goods or services using the best
16 value standard;

17 (2) ensure that, for each contract, the agency
18 documents the best value standard used for the contract; and

19 (3) acknowledge in writing that the agency complied
20 with the agency's and comptroller's contract management guide in
21 the purchase.

22 (b) For each purchase of goods or services for which a state
23 agency is required to use the best value standard, the comptroller
24 shall ensure that the agency includes in the vendor performance
25 tracking system established under Section 2262.055 information on
26 whether the vendor satisfied that standard.

27 SECTION 11. Section 2155.077, Government Code, is amended

1 by amending Subsections (a) and (b) and adding Subsection (a-2) to
2 read as follows:

3 (a) The commission may bar a vendor from participating in
4 state contracts that are subject to this subtitle, including
5 contracts for which purchasing authority is delegated to a state
6 agency, for:

7 (1) substandard performance under a contract with the
8 state or a state agency;

9 (2) material misrepresentations in a bid or proposal
10 to the state or a state agency or during the course of performing a
11 contract with the state or a state agency;

12 (3) fraud; ~~or~~

13 (4) breaching a contract with the state or a state
14 agency; or

15 (5) repeated unfavorable performance reviews under
16 Section 2155.089 or repeated unfavorable classifications received
17 by the vendor under Section 2262.055 after considering the
18 following factors:

19 (A) the severity of the substandard performance
20 by the vendor;

21 (B) the impact to the state of the substandard
22 performance;

23 (C) any recommendations by a contracting state
24 agency that provides an unfavorable performance review;

25 (D) whether debarment of the vendor is in the
26 best interest of the state; and

27 (E) any other factor that the comptroller

1 considers relevant, as specified by comptroller rule.

2 (a-2) The comptroller may bar a vendor from participating in
3 state contracts that are subject to this subtitle, including
4 contracts for which purchasing authority is delegated to a state
5 agency, if more than two contracts between the vendor and the state
6 have been terminated by the state for unsatisfactory vendor
7 performance during the preceding three years.

8 (b) Except as provided by Subsection (d), the commission
9 shall bar a vendor from participating in state contracts under
10 Subsection (a) or (a-2) for a period that is commensurate with the
11 seriousness of the vendor's action and the damage to the state's
12 interests.

13 SECTION 12. Section 2155.078, Government Code, is amended
14 by amending Subsections (a) and (b) and adding Subsection (a-1) to
15 read as follows:

16 (a) The commission shall establish and administer a system
17 of training, continuing education, and certification for state
18 agency purchasing personnel. The training and continuing education
19 for state agency purchasing personnel must include ethics training.
20 The commission may establish and offer appropriate training to
21 vendors on a cost recovery basis. The commission may adopt rules to
22 administer this section, including rules relating to monitoring a
23 certified purchaser's compliance with the continuing education
24 requirements of this section.

25 (a-1) The training, continuing education, and certification
26 required under Subsection (a) must include:

27 (1) training on the selection of an appropriate

1 procurement method by project type; and

2 (2) training conducted by the Department of
3 Information Resources on purchasing technologies.

4 (b) Notwithstanding [~~Except as provided by~~] Subsection (n),
5 all state agency purchasing personnel, including agencies exempted
6 from the purchasing authority of the commission, must receive the
7 training and continuing education to the extent required by rule of
8 the commission. The training and continuing education must include
9 ethics training. A state agency employee who is required to receive
10 the training may not participate in purchases by the employing
11 agency unless the employee has received the required training or
12 received equivalent training from a national association
13 recognized by the commission. The equivalent training may count,
14 as provided by Subsection (k), toward the continuing education
15 requirements.

16 SECTION 13. Subchapter B, Chapter 2155, Government Code, is
17 amended by adding Section 2155.089 to read as follows:

18 Sec. 2155.089. REPORTING VENDOR PERFORMANCE. (a) After a
19 contract is completed or otherwise terminated, each state agency
20 shall review the vendor's performance under the contract.

21 (b) The state agency shall report to the comptroller, using
22 the tracking system established by Section 2262.055, on the results
23 of the review regarding a vendor's performance under a contract.

24 (c) This section does not apply to:

25 (1) an enrollment contract described by 1 T.A.C.
26 Section 391.183 as that section existed on September 1, 2015; or

27 (2) a contract of the Employees Retirement System of

1 Texas or the Teacher Retirement System of Texas except for a
2 contract with a nongovernmental entity for claims administration of
3 a group health benefit plan under Subtitle H, Title 8, Insurance
4 Code.

5 SECTION 14. Section 2156.181(a), Government Code, is
6 amended to read as follows:

7 (a) The commission may enter into one or more compacts,
8 interagency agreements, or cooperative purchasing agreements
9 directly with one or more state governments, agencies of other
10 states, or other governmental entities or may participate in,
11 sponsor, or administer a cooperative purchasing agreement through
12 an entity that facilitates those agreements for the purchase of
13 goods or services if the commission determines that the [entering
14 into an] agreement would be in the best interest of the state.

15 SECTION 15. Section 2157.068, Government Code, is amended
16 by adding Subsections (e-1) and (e-2) to read as follows:

17 (e-1) A state agency contracting to purchase a commodity
18 item shall use the list maintained as required by Subsection (e) as
19 follows:

20 (1) for a contract with a value of \$50,000 or less, the
21 agency may directly award the contract to a vendor included on the
22 list without submission of a request for pricing to other vendors on
23 the list;

24 (2) for a contract with a value of more than \$50,000
25 but not more than \$150,000, the agency must submit a request for
26 pricing to at least three vendors included on the list in the
27 category to which the contract relates; and

1 (3) for a contract with a value of more than \$150,000
2 but not more than \$1 million, the agency must submit a request for
3 pricing to at least six vendors included on the list in the category
4 to which the contract relates or all vendors on the schedule if the
5 category has fewer than six vendors.

6 (e-2) A state agency may not enter into a contract to
7 purchase a commodity item if the value of the contract exceeds \$1
8 million.

9 SECTION 16. Subchapter B, Chapter 2157, Government Code, is
10 amended by adding Section 2157.0685 to read as follows:

11 Sec. 2157.0685. CONTRACT REQUIREMENTS FOR CERTAIN
12 SERVICES. (a) In this section, "statement of work" means a
13 document that states the requirements for a contract, including
14 deliverables, performance specifications, and other requirements,
15 specific to the vendor under that contract that are not specified in
16 a contract awarded by the department under Section 2157.068 for
17 contracts more than \$50,000.

18 (b) For a contract awarded by the department under Section
19 2157.068 that requires a state agency to develop and execute a
20 statement of work to initiate services under the contract, the
21 state agency must:

22 (1) consult with the department before submission of
23 the statement of work to a vendor; and

24 (2) post each statement of work entered into by the
25 agency on the agency's Internet website in the manner required by
26 department rule.

27 (c) A statement of work executed by a state agency under a

1 contract awarded by the department under Section 2157.068 is not
2 valid and money may not be paid to the vendor under the terms of the
3 statement of work unless the department first signs the statement
4 of work.

5 SECTION 17. Section 2261.001(a), Government Code, is
6 amended to read as follows:

7 (a) This chapter, other than Subchapter F, applies only to
8 each procurement of goods or services made by a state agency that is
9 neither made by the comptroller nor made under purchasing authority
10 delegated to the agency by or under Section 51.9335 or 73.115,
11 Education Code, or Section 2155.131 or 2155.132.

12 SECTION 18. Chapter 2261, Government Code, is amended by
13 adding Subchapter F to read as follows:

14 SUBCHAPTER F. ETHICS, REPORTING, AND APPROVAL REQUIREMENTS FOR
15 CERTAIN CONTRACTS

16 Sec. 2261.251. APPLICABILITY OF SUBCHAPTER.

17 (a) Notwithstanding Section 2261.001, this subchapter applies to
18 the Texas Department of Transportation and to an institution of
19 higher education acquiring goods or services under Section 51.9335
20 or 73.115, Education Code.

21 (b) This subchapter does not apply to a contract of the
22 Employees Retirement System of Texas or the Teacher Retirement
23 System of Texas except for a contract with a nongovernmental entity
24 for claims administration of a group health benefit plan under
25 Subtitle H, Title 8, Insurance Code.

26 Sec. 2261.252. DISCLOSURE OF POTENTIAL CONFLICTS OF
27 INTEREST; CERTAIN CONTRACTS PROHIBITED. (a) Each state agency

1 employee or official who is involved in procurement or in contract
2 management for a state agency shall disclose to the agency any
3 potential conflict of interest specified by state law or agency
4 policy that is known by the employee or official with respect to any
5 contract with a private vendor or bid for the purchase of goods or
6 services from a private vendor by the agency.

7 (b) A state agency may not enter into a contract for the
8 purchase of goods or services with a private vendor with whom any of
9 the following agency employees or officials have a financial
10 interest:

11 (1) a member of the agency's governing body;

12 (2) the governing official, executive director,
13 general counsel, chief procurement officer, or procurement
14 director of the agency; or

15 (3) a family member related to an employee or official
16 described by Subdivision (1) or (2) within the second degree by
17 affinity or consanguinity.

18 (c) A state agency employee or official has a financial
19 interest in a person if the employee or official:

20 (1) owns or controls, directly or indirectly, an
21 ownership interest of at least one percent in the person, including
22 the right to share in profits, proceeds, or capital gains; or

23 (2) could reasonably foresee that a contract with the
24 person could result in a financial benefit to the employee or
25 official.

26 (d) A financial interest prohibited by this section does not
27 include a retirement plan, a blind trust, insurance coverage, or an

1 ownership interest of less than one percent in a corporation.

2 Sec. 2261.253. REQUIRED POSTING OF CERTAIN CONTRACTS;
3 ENHANCED CONTRACT AND PERFORMANCE MONITORING. (a) For each
4 contract for the purchase of goods or services from a private
5 vendor, each state agency shall post on its Internet website:

6 (1) each contract the agency enters into, including
7 contracts entered into without inviting, advertising for, or
8 otherwise requiring competitive bidding before selection of the
9 contractor, until the contract expires or is completed;

10 (2) the statutory or other authority under which a
11 contract that is not competitively bid under Subdivision (1) is
12 entered into without compliance with competitive bidding
13 procedures; and

14 (3) the request for proposals related to a
15 competitively bid contract included under Subdivision (1) until the
16 contract expires or is completed.

17 (b) A state agency monthly may post contracts described by
18 Subsection (a) that are valued at less than \$15,000.

19 (c) Each state agency by rule shall establish a procedure to
20 identify each contract that requires enhanced contract or
21 performance monitoring and submit information on the contract to
22 the agency's governing body or, if the agency is not governed by a
23 multimember governing body, the officer who governs the agency.
24 The agency's contract management office or procurement director
25 shall immediately notify the agency's governing body or governing
26 official, as appropriate, of any serious issue or risk that is
27 identified with respect to a contract monitored under this

1 subsection.

2 (d) This section does not apply to a memorandum of
3 understanding, interagency contract, interlocal agreement, or
4 contract for which there is not a cost.

5 Sec. 2261.254. CONTRACTS WITH VALUE EXCEEDING \$1 MILLION.

6 (a) For each contract for the purchase of goods or services that
7 has a value exceeding \$1 million, a state agency shall develop and
8 implement contract reporting requirements that provide information
9 on:

10 (1) compliance with financial provisions and delivery
11 schedules under the contract;

12 (2) corrective action plans required under the
13 contract and the status of any active corrective action plan; and

14 (3) any liquidated damages assessed or collected under
15 the contract.

16 (b) Each state agency shall verify:

17 (1) the accuracy of any information reported under
18 Subsection (a) that is based on information provided by a
19 contractor; and

20 (2) the delivery time of goods or services scheduled
21 for delivery under the contract.

22 (c) Except as provided by Subsection (d), a state agency may
23 enter into a contract for the purchase of goods or services that has
24 a value exceeding \$1 million only if:

25 (1) the governing body of the state agency approves
26 the contract and the approved contract is signed by the presiding
27 officer of the governing body; or

1 (2) for a state agency that is not governed by a
2 multimember governing body, the officer who governs the agency
3 approves and signs the contract.

4 (d) The governing body or governing official of a state
5 agency, as appropriate, may delegate to the executive director of
6 the agency the approval and signature authority under Subsection
7 (c).

8 (e) A highway construction, engineering services, or
9 maintenance contract that is in compliance with all applicable laws
10 related to procuring engineering services or construction bidding
11 and that is awarded by the Texas Department of Transportation under
12 Subchapter A, Chapter 223, Transportation Code, is not required to
13 be signed by a member of the Texas Transportation Commission or the
14 executive director of the department. This exception does not
15 apply to expedited highway improvement contracts under Subchapter
16 C, Chapter 223, Transportation Code, a comprehensive development
17 agreement entered into under Subchapter E, Chapter 223,
18 Transportation Code, a design-build contract entered into under
19 Subchapter F, Chapter 223, Transportation Code, or any other
20 contract entered into by the Texas Department of Transportation.

21 Sec. 2261.255. CONTRACTS WITH VALUE EXCEEDING \$5 MILLION.
22 For each state agency contract for the purchase of goods or services
23 that has a value exceeding \$5 million, the contract management
24 office or procurement director of the agency must:

25 (1) verify in writing that the solicitation and
26 purchasing methods and contractor selection process comply with
27 state law and agency policy; and

1 (2) submit to the governing body of the agency, or
2 governing official of the agency if the agency is not governed by a
3 multimember governing body, information on any potential issue that
4 may arise in the solicitation, purchasing, or contractor selection
5 process.

6 Sec. 2261.256. ACCOUNTABILITY AND RISK ANALYSIS PROCEDURE;
7 CONTRACT MANAGEMENT HANDBOOK. (a) Each state agency shall develop
8 and comply with a purchasing accountability and risk analysis
9 procedure. The procedure must provide for:

10 (1) assessing the risk of fraud, abuse, or waste in the
11 contractor selection process, contract provisions, and payment and
12 reimbursement rates and methods for the different types of goods
13 and services for which the agency contracts;

14 (2) identifying contracts that require enhanced
15 contract monitoring or the immediate attention of contract
16 management staff; and

17 (3) establishing clear levels of purchasing
18 accountability and staff responsibilities related to purchasing.

19 (b) Each state agency shall publish a contract management
20 handbook that establishes consistent contracting policies and
21 practices to be followed by the agency and that is consistent with
22 the comptroller's contract management guide. The agency's handbook
23 may include standard contract provisions and formats for the agency
24 to incorporate in contracts.

25 (c) Each state agency shall post on the agency's Internet
26 website the procedures described by Subsections (a)(2) and (3) and
27 submit to the comptroller a link to the web page that includes the

1 procedures. The comptroller shall post on the comptroller's
2 Internet website the web page link submitted by each state agency.

3 Sec. 2261.257. CONTRACT DATABASE. (a) Each state agency
4 that becomes a participant in the centralized accounting and
5 payroll systems as authorized by Sections 2101.035 and 2101.036
6 shall use the system to identify and record each contract entered
7 into by the agency as specified by the rules, policies, or
8 procedures developed by the comptroller.

9 (b) The comptroller shall provide as necessary information
10 and state agency contract data contained in the centralized
11 accounting and payroll systems to other state agencies with
12 oversight duties, including the Legislative Budget Board, the state
13 auditor's office, and the Department of Information Resources.

14 SECTION 19. Section 2262.053(d), Government Code, is
15 amended to read as follows:

16 (d) The comptroller shall administer training under this
17 section and may assess a fee for the training in an amount
18 sufficient to recover the comptroller's costs under this section.

19 SECTION 20. Section 2262.0535, Government Code, is amended
20 by adding Subsection (c) to read as follows:

21 (c) The comptroller may assess a fee for the training
22 provided under this section in an amount sufficient to recover the
23 comptroller's costs under this section.

24 SECTION 21. Section 2262.055, Government Code, is amended
25 by amending Subsections (a) and (b) and adding Subsections (d) and
26 (e) to read as follows:

27 (a) The comptroller shall evaluate the vendor's performance

1 based on information reported by state agencies under Section
2 2155.089 and criteria established by the comptroller.

3 (b) The comptroller by rule shall establish an evaluation
4 process that:

5 (1) rates vendors on an A through F scale, with A being
6 the highest grade; and

7 (2) allows vendors who receive a grade lower than a C
8 [an unfavorable performance review] to protest any classification
9 given by the comptroller.

10 (d) A state agency shall use the vendor performance tracking
11 system to determine whether to award a contract to a vendor reviewed
12 in the tracking system. The comptroller by rule shall establish the
13 manner in which the rating scale established under Subsection (b)
14 affects a vendor's eligibility for state contracts and the grades
15 on the scale that disqualify a vendor from state contracting.

16 (e) The comptroller shall make the vendor performance
17 tracking system accessible to the public on the comptroller's
18 Internet website.

19 SECTION 22. Section 51.9335(d), Education Code, is amended
20 to read as follows:

21 (d) Subject to Section 51.9337, Subtitle D, Title 10,
22 Government Code, and Subchapter B, Chapter 2254, Government Code,
23 do not apply to the acquisition of goods and services under this
24 section, except that an institution of higher education must comply
25 with any provision of those laws, or a rule adopted under a
26 provision of those laws, relating to contracting with historically
27 underutilized businesses or relating to the procurement of goods

1 and services from persons with disabilities. An institution of
2 higher education may, but is not required to, acquire goods or
3 services as provided by Subtitle D, Title 10, Government Code.

4 SECTION 23. Subchapter Z, Chapter 51, Education Code, is
5 amended by adding Section 51.9337 to read as follows:

6 Sec. 51.9337. PURCHASING AUTHORITY CONDITIONAL; REQUIRED
7 STANDARDS. (a) An institution of higher education may not
8 exercise the acquisition authority granted by Section 51.9335 or
9 73.115 unless the institution complies with this section. An
10 institution that is determined under Subsection (j) to not be in
11 compliance with this section is subject to the laws governing
12 acquisition of goods and services by state agencies, including
13 Subtitle D, Title 10, Government Code, and Chapter 2254, Government
14 Code.

15 (b) The board of regents of an institution of higher
16 education by rule shall establish for each institution under the
17 management and control of the board:

18 (1) a code of ethics for the institution's officers and
19 employees, including provisions governing officers and employees
20 authorized to execute contracts for the institution or to exercise
21 discretion in awarding contracts, subject to Subsection (c);

22 (2) policies for the internal investigation of
23 suspected defalcation, misappropriation, and other fiscal
24 irregularities and an institutional or systemwide compliance
25 program designed to promote ethical behavior and ensure compliance
26 with all applicable policies, laws, and rules governing higher
27 education, including research and health care to the extent

1 applicable;

2 (3) a contract management handbook that provides
3 consistent contracting policies and practices and contract review
4 procedures, including a risk analysis procedure, subject to
5 Subsection (d);

6 (4) contracting delegation guidelines, subject to
7 Subsections (e) and (f);

8 (5) training for officers and employees authorized to
9 execute contracts for the institution or to exercise discretion in
10 awarding contracts, including training in ethics, selection of
11 appropriate procurement methods, and information resources
12 purchasing technologies; and

13 (6) internal audit protocols, subject to Subsection
14 (g).

15 (c) The code of ethics governing an institution of higher
16 education must include:

17 (1) general standards of conduct and a statement that
18 each officer or employee is expected to obey all federal, state, and
19 local laws and is subject to disciplinary action for a violation of
20 those laws;

21 (2) policies governing conflicts of interest,
22 conflicts of commitment, and outside activities, ensuring that the
23 primary responsibility of officers and employees is to accomplish
24 the duties and responsibilities assigned to that position;

25 (3) a conflict of interest policy that prohibits
26 employees from having a direct or indirect financial or other
27 interest, engaging in a business transaction or professional

1 activity, or incurring any obligation that is in substantial
2 conflict with the proper discharge of the employee's duties related
3 to the public interest;

4 (4) a conflict of commitment policy that prohibits an
5 employee's activities outside the institution from interfering
6 with the employee's duties and responsibilities to the institution;

7 (5) a policy governing an officer's or employee's
8 outside activities, including compensated employment and board
9 service, that clearly delineates the nature and amount of
10 permissible outside activities and that includes processes for
11 disclosing the outside activities and for obtaining and documenting
12 institutional approval to perform the activities;

13 (6) a policy that prohibits an officer or employee
14 from acting as an agent for another person in the negotiation of the
15 terms of an agreement relating to the provision of money, services,
16 or property to the institution;

17 (7) a policy governing the use of institutional
18 resources; and

19 (8) a policy providing for the regular training of
20 officers and employees on the policies described by this
21 subsection.

22 (d) An institution of higher education shall establish
23 contract review procedures and a contract review checklist that
24 must be reviewed and approved by the institution's legal counsel
25 before implementation. The review procedures and checklist must
26 include:

27 (1) a description of each step of the procedure that an

1 institution must use to evaluate and process contracts;

2 (2) a checklist that describes each process that must
3 be completed before contract execution; and

4 (3) a value threshold that initiates the required
5 review by the institution's legal counsel unless the contract is a
6 standard contract previously approved by the counsel.

7 (e) An institution of higher education's policies governing
8 contracting authority must clearly specify the types and values of
9 contracts that must be approved by the board of regents and the
10 types and values of contracts for which contracting authority is
11 delegated by the board to the chief executive officer and by the
12 chief executive officer to other officers and employees of the
13 institution. An officer or employee may not execute a document for
14 the board unless the officer or employee has authority to act for
15 the board and the authority is exercised in compliance with
16 applicable conditions and restrictions.

17 (f) An institution of higher education may not enter into a
18 contract with a value of more than \$1 million, including any
19 amendment, extension, or renewal of the contract that increases the
20 value of the original contract to more than \$1 million, unless the
21 institution's board of regents approves the contract, expressly
22 delegates authority to exceed that amount, or expressly adopts an
23 exception for that contract. The board must approve any amendment,
24 extension, or renewal of a contract with a value that exceeds 25
25 percent of the value of the original contract approved by the board
26 unless the authority to exceed the approved amount is expressly
27 delegated by the board or an exception is expressly adopted by the

1 board for that contract.

2 (g) The board of regents of an institution of higher
3 education shall adopt standards for internal audits conducted by
4 the institution to provide a systematic, disciplined approach to
5 evaluate and improve the effectiveness of the institution's risk
6 management, control, and governance processes related to contracts
7 and to require risk-based testing of contract administration. The
8 internal auditor must have full and unrestricted access to all
9 institutional property, personnel, and records. An internal
10 auditor must report directly to the board of regents in accordance
11 with Chapter 2102, Government Code.

12 (h) The chief auditor of an institution of higher education
13 shall annually assess whether the institution has adopted the rules
14 and policies required by this section and shall submit a report of
15 findings to the state auditor. In auditing the purchase of goods
16 and services by the institution, the state auditor shall determine
17 whether an institution has adopted the required rules and policies.

18 (i) If the state auditor determines that an institution of
19 higher education has failed to adopt the required rules and
20 policies, the auditor shall report that failure to the legislature
21 and to the institution's board of regents and shall, in
22 consultation with the institution, adopt a remediation plan to
23 bring the institution into compliance. If the institution fails to
24 comply within the time established by the state auditor, the
25 auditor shall find the institution to be in noncompliance and
26 report that finding to the legislature and comptroller.

27 (j) In accordance with a schedule adopted by the state

1 auditor in consultation with the comptroller, the authority of an
2 institution of higher education to acquire goods and services as
3 provided by Section 51.9335 or 73.115 is suspended if the
4 institution fails to comply with the remediation plan under
5 Subsection (i) within the time established by the state auditor. As
6 a result of the suspension, the laws, including Subtitle D, Title
7 10, Government Code, and Chapter 2254, Government Code, governing
8 acquisition of goods and services by state agencies from which the
9 institution is otherwise exempt, shall apply to the institution's
10 acquisition of goods and services.

11 SECTION 24. Subchapter Z, Chapter 51, Education Code, is
12 amended by adding Section 51.954 to read as follows:

13 Sec. 51.954. DISCLOSURE OF SPONSORS OF CONTRACTED RESEARCH
14 IN PUBLIC COMMUNICATIONS. (a) In any public communication the
15 content of which is based on the results of sponsored research, a
16 faculty member or other employee or appointee of an institution of
17 higher education who conducted or participated in conducting the
18 research shall conspicuously disclose the identity of each sponsor
19 of the research.

20 (b) In this section:

21 (1) "Institution of higher education" has the meaning
22 assigned by Section 61.003.

23 (2) "Public communication" means oral or written
24 communication intended for public consumption or distribution,
25 including:

26 (A) testimony in a public administrative,
27 legislative, regulatory, or judicial proceeding;

1 (B) printed matter including a magazine,
2 journal, newsletter, newspaper, pamphlet, or report; or

3 (C) posting of information on a website or
4 similar Internet host for information.

5 (3) "Sponsor" means an entity that contracts for or
6 provides money or materials for research.

7 (4) "Sponsored research" means research:

8 (A) that is conducted under a contract with, or
9 that is conducted under a grant awarded by and pursuant to a written
10 agreement with, an individual or entity other than the institution
11 conducting the research; and

12 (B) in which payments received or the value of
13 materials received under that contract or grant, or under a
14 combination of more than one such contract or grant, constitutes at
15 least 50 percent of the cost of conducting the research.

16 SECTION 25. Sections 73.115(e) and (f), Education Code, are
17 amended to read as follows:

18 (e) To the extent of any conflict, this section prevails
19 over any other law relating to the purchasing of goods and services
20 other than Section 51.9337 and ~~[except]~~ a law relating to
21 contracting with historically underutilized businesses.

22 (f) Except as otherwise provided by this section and Section
23 51.9337, Subtitle D, Title 10, Government Code, and Chapter 2254,
24 Government Code, do not apply to purchases of goods and services
25 made under this section.

26 SECTION 26. Section 2155.502(d), Government Code, is
27 repealed.

1 SECTION 27. Section 572.069, Government Code, as added by
2 this Act, applies only to a state officer or employee whose service
3 or employment with a state agency ceases on or after the effective
4 date of this Act.

5 SECTION 28. As soon as is practicable after the effective
6 date of this Act, the comptroller of public accounts, and each
7 affected state agency as necessary, shall adopt the rules,
8 processes, and procedures and take the actions necessary to
9 implement the changes in law made by this Act.

10 SECTION 29. Section 2262.055(d), Government Code, as added
11 by this Act, applies only in relation to a contract for which the
12 request for bids or proposals or other applicable expression of
13 interest is made public on or after October 1, 2015.

14 SECTION 30. The changes in law made by this Act apply only
15 to a contract entered into on or after the effective date of this
16 Act. A contract entered into before that date is governed by the
17 law in effect immediately before the effective date of this Act, and
18 the former law is continued in effect for that purpose.

19 SECTION 31. This Act takes effect September 1, 2015.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 20 passed the Senate on March 31, 2015, by the following vote: Yeas 30, Nays 0; May 20, 2015, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 24, 2015, House granted request of the Senate; May 30, 2015, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 20 passed the House, with amendments, on May 19, 2015, by the following vote: Yeas 143, Nays 0, one present not voting; May 24, 2015, House granted request of the Senate for appointment of Conference Committee; May 31, 2015, House adopted Conference Committee Report by the following vote: Yeas 140, Nays 2, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §11.202.

Section 11.202 is adopted *without change* to the proposed text as published in the August 19, 2016, issue of the *Texas Register* (41 TexReg 6158) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

Senate Bill (SB) 20 (84th Texas Legislature, 2015) added Texas Government Code, §2261.253(c), which requires state agencies to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring, and submit information to the agencies' governing bodies.

Section Discussion

The commission adopts new §11.202, Enhanced Contract Monitoring, to incorporate this reference now required by statute. The adopted new rule establishes a procedure to ensure that all TCEQ contracts are assessed to determine the level and type of contract monitoring required. The adopted new rule requires the executive director, or his designee, to use risk assessment criteria to identify certain contracts for enhanced contract and performance monitoring. TCEQ's Procurements and Contracts Section, Financial Administration Division, currently maintains internal agency operating procedures for the risk-based assessment of contracts as well as the agency's Contract

Management Handbook. The adopted new rule also requires regular reporting to the executive director on contracts identified for enhanced monitoring. The executive director shall notify the commission of serious issues or risks with those contracts.

Final Regulatory Impact Determination

The commission reviewed the adopted new rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted new rule is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule." The intent of the adopted rulemaking is to conform to Texas Government Code, §2261.253(c). The changes are not expressly to protect the environment and reduce risks to human health and environment.

The commission invited public comment regarding the new rule concerning Enhanced Contract Monitoring during the public comment period. No comments were received during the public comment period.

Takings Impact Assessment

The commission evaluated the adopted new rule and assessed whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of adopted new §11.202 is to conform to Texas Government Code, §2261.253(c). Promulgation and enforcement of this adopted new rule would be neither a statutory nor a

constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, there are no burdens imposed on private real property.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Public Comment

The commission offered a public hearing on September 13, 2016. The comment period closed on September 19, 2016. The commission did not receive any comments on this rulemaking.

SUBCHAPTER E: CONTRACTS MONITORING ROLES AND RESPONSIBILITIES

§11.202

Statutory Authority

The new rule is adopted under Texas Water Code (TWC), TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the TWC and any other laws of the State of Texas.

The adopted new rule implements Texas Government Code, §2261.253(c), as added by Senate Bill 20.

§11.202. Enhanced Contract Monitoring.

(a) Pursuant to Texas Government Code, §2261.253, the commission shall assess each contract to determine appropriate contract and performance monitoring requirements.

(b) The executive director or his designee shall ensure that risk assessment factors are used to determine when enhanced contract or performance monitoring is required for a contract. The criteria for evaluating risk include:

(1) the total contract amount;

(2) the funding source(s);

(3) the scope and complexity of the goods or services;

(4) the risk of fraud, waste, or abuse; and

(5) the importance of the work to the agency's mission or infrastructure.

(c) Contracts shall be monitored in accordance with the agency's policies and Contract Management Handbook.

(d) The executive director will receive regular reports on contracts identified for enhanced monitoring, and where serious issues or risks are identified, the executive director shall notify the commission.

(e) This section does not apply to a memorandum of understanding, memorandum of agreement, interagency contract, inter-local agreement, intergovernmental contract or contract for which there is not a cost.

(6) the effective date of the attorney's withdrawal of representation under paragraph (1) or (2) of subsection (b); and

(7) the attorney's signature.

(d) Except when the attorney's representation is terminated by the attorney's client, an attorney withdrawing representation must submit a motion to withdraw to the division, and receive a division order granting the motion to withdraw, after notice of a scheduled benefit review conference or contested case hearing has been received and until resolution of the disputed issues through the division's dispute resolution process provided in Labor Code Chapter 410, Subchapters A - E.

(e) The motion to withdraw must provide good cause for withdrawing from the case and a certification that states:

(1) the attorney's client has knowledge of and has approved or refused to approve the withdrawal; or

(2) the attorney made a good faith effort to notify the attorney's client and the attorney's client cannot be located.

(f) An attorney must submit the motion to withdraw to the division by personal delivery, first class mail, or facsimile. An attorney must also provide a copy of the motion to the attorney's client and the opposing party by personal delivery, first class mail, or electronic transmission on the same day the motion is submitted to the division.

(g) The hearing officer will determine whether good cause exists for the attorney's withdrawal based on Rule 1.15 of the Texas Disciplinary Rules of Professional Conduct and other factors, including:

(1) how close in time the attorney withdrawal is to a scheduled benefit review conference or contested case hearing;

(2) the amount of attorney fees that have been requested and approved by the division;

(3) whether the attorney is willing to waive payment of any portion of the approved fees;

(4) the attorney's reason for the withdrawal; and

(5) whether the attorney's client refused to approve the withdrawal, if applicable.

(h) If the hearing officer determines good cause does not exist for the attorney's withdrawal, the attorney must continue to represent the party until resolution of the disputed issues through the division's dispute resolution process provided in Labor Code Chapter 410, Subchapters A - E.

(i) This section does not prevent the attorney's client from terminating the attorney-client relationship or notifying the division of the termination of the attorney-client relationship. If the attorney's client notifies the division of a termination, the attorney is not relieved of the duty to submit to the division a notice of withdrawal under subsection (b).

(j) This section is effective January 30, 2017.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 8, 2016.

TRD-201603996

Nicholas Canaday III

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: September 18, 2016

For further information, please call: (512) 804-4703



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 11. CONTRACTS

SUBCHAPTER E. CONTRACTS MONITORING ROLES AND RESPONSIBILITIES

30 TAC §11.202

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §11.202, concerning Enhanced Contract Monitoring.

Background and Summary of the Factual Basis for the Proposed Rule

Senate Bill (SB) 20 (84th Texas Legislature, 2015) added Texas Government Code, §2261.253(c), which requires state agencies to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring, and submit information to the agencies' governing bodies.

Section Discussion

The commission proposes new §11.202, Enhanced Contract Monitoring, to incorporate this reference now required by statute. The proposed new rule establishes a procedure to ensure that all TCEQ contracts are assessed to determine the level and type of contract monitoring required. The proposed new rule requires the executive director, or his designee, to use risk assessment criteria to identify certain contracts for enhanced contract and performance monitoring. TCEQ's Procurements and Contracts Section, Financial Administration Division, currently maintains internal agency operating procedures for the risk-based assessment of contracts as well as the agency's Contract Management Handbook. The proposed new rule also requires regular reporting to the executive director on contracts identified for enhanced monitoring. The executive director shall notify the commission of serious issues or risks with those contracts.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of the administration or enforcement of the proposed rule.

The proposed rule implements SB 20, which requires state agencies to establish by rule a procedure to identify each contract that requires enhanced or performance monitoring and to submit information related to these contracts to the agencies' governing bodies.

TCEQ's Procurements and Contracts Section, Financial Administration Division, currently maintains internal agency operating procedures for the monitoring of contracts that complies with the

proposed rule. TCEQ has a Contract Management Handbook that outlines standard contract monitoring and identifies when enhanced monitoring is required. Agency Program Areas also maintain more detailed Standard Operating Procedures. No fiscal implications are anticipated for the agency or for any other unit of state or local government as a result of the implementation of the proposed rule.

Public Benefits and Costs

Mr. Horvath also determined that for each year of the first five years the proposed new rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be compliance with state law and to ensure that agencies have established and consistent procedures for their contracts.

No fiscal implications are anticipated for businesses or individuals as a result of the implementation or administration of the proposed rule. TCEQ's Procurements and Contracts Section within the Financial Administration Division currently maintains internal agency operating procedures for the monitoring of contracts in accordance with the new statute. No changes are anticipated from current agency policies and procedures.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect. The proposed rule is not anticipated to result in fiscal implications for any large or small business. The proposed rule is not expected to result in any changes from current agency policies and procedures.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule is required by state law and does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed new rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed new rule is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule." The intent of the proposed rulemaking is to conform to Texas Government Code, §2261.253(c). The changes are not expressly to protect the environment and reduce risks to human health and environment.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed new rule and assessed whether it constitutes a taking under Texas Government Code,

Chapter 2007. The specific purpose of proposed new §11.202 is to conform to Texas Government Code, §2261.253(c). Promulgation and enforcement of this proposed new rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rule-making does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, there are no burdens imposed on private real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on September 13, 2016, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-030-011-AD. The comment period closes on September 19, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact LaTresa Stroud, Procurements and Contracts Section, Financial Administration Division, (512) 239-5555.

Statutory Authority

The new rule is proposed under Texas Water Code (TWC), TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the TWC and any other laws of the State of Texas.

The proposed new rule implements Texas Government Code, §2261.253(c), as added by Senate Bill 20.

§11.202. Enhanced Contract Monitoring.

(a) Pursuant to Texas Government Code, §2261.253, the commission shall assess each contract to determine appropriate contract and performance monitoring requirements.

(b) The executive director or his designee shall ensure that risk assessment factors are used to determine when enhanced contract or performance monitoring is required for a contract. The criteria for evaluating risk include:

- (1) the total contract amount;
- (2) the funding source(s);
- (3) the scope and complexity of the goods or services;
- (4) the risk of fraud, waste, or abuse; and
- (5) the importance of the work to the agency's mission or infrastructure.

(c) Contracts shall be monitored in accordance with the agency's policies and Contract Management Handbook.

(d) The executive director will receive regular reports on contracts identified for enhanced monitoring, and where serious issues or risks are identified, the executive director shall notify the commission.

(e) This section does not apply to a memorandum of understanding, memorandum of agreement, interagency contract, inter-local agreement, intergovernmental contract or contract for which there is not a cost.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 5, 2016.

TRD-201603976

David Timberger

Director, General Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: September 18, 2016

For further information, please call: (512) 239-2613



CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§336.2, 336.315, 336.357, 336.1105, and 336.1113.

Background and Summary of the Factual Basis for the Proposed Rules

The commission proposes changes to Chapter 336, Subchapters A, D, and L that will revise the commission's rules concerning definitions, general requirements for surveys and monitoring, physical protection of category 1 and 2 quantities of radioactive materials, and notification requirements to ensure compatibility with federal regulations promulgated by the Nuclear Regulatory Commission (NRC) which is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations (CFR) Part 150 and under the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as

Amended." Rules which are designated by NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules, in most cases.

Section by Section Discussion

The commission proposes administrative changes throughout this rulemaking to be consistent with *Texas Register* requirements and agency rules and guidelines.

§336.2, Definitions

The commission proposes to amend §336.2 by updating the definitions of "Agreement state" and "Category 2 quantity of radioactive material." The amendment to §336.2(7) would clarify the definition of "Agreement state" by adding that a Non-agreement State means any other state. The amendment to §336.2(24) would clarify the definition of "Category 2 quantity of radioactive material" by adding that any fuel assembly, subassembly, fuel rod, or fuel pellet are not included in this definition.

§336.315, General Requirements for Surveys and Monitoring

The commission proposes to amend §336.315 to clarify the general requirements for surveys and monitoring.

The commission proposes to amend §336.315(a)(2)(C) to clarify that potential radiological hazards are radiation levels and residual radioactivity that have been detected.

The commission proposes to add §336.315(e) to require that records from surveys describing the location and amount of subsurface residual radioactivity identified at the site are to be stored at the same location and with the same retention schedule as records important to decommissioning.

§336.357, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material

The commission proposes to amend the requirements regarding physical protection of category 1 and 2 quantities of radioactive materials in §336.357.

The commission proposes to amend §336.357(c)(2)(B) to update a cross-reference.

The commission proposes to amend §336.357(e)(3)(A) and (B) to update NRC contact information.

The commission proposes to amend §336.357(g)(4) to replace "NRC" with "commission."

The commission proposes to amend §336.357(i)(1)(C) to replace "NRC" with "commission."

The commission proposes to amend §336.357(j) to replace "NRC" with "commission" and to change the point of contact from the federal to the state level for all applicable subsections within this subsection.

The commission proposes to amend §336.357(q)(1) and (2) to update relevant NRC contact information. Additionally, the commission proposes to amend subsection (q)(3) to replace "NRC" with "commission."

The commission proposes to amend §336.357(u) throughout the subsection to replace "NRC" with "commission" and update relevant NRC contact information. Additionally, the commission proposes to add §336.357(u)(6) that will require that state officials, state employees, and other individuals who receive schedule information on the transport of category 1 or 2 quantities of radioactive material must protect this information against unauthorized disclosure.

Texas Commission on Environmental Quality



ORDER ADOPTING A NEW RULE

Docket No. 2015-0935-RUL

Rule Project No. 2015-030-011-AD

On November 16, 2016, the Texas Commission on Environmental Quality (Commission) adopted new § 11.202 in 30 Texas Administrative Code Chapter 11, concerning Contracts. The proposed rule was published for comment in the August 19, 2016, issue of the *Texas Register* (41 TexReg 6158).

IT IS THEREFORE ORDERED BY THE COMMISSION that the new rule is hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rule necessary to comply with *Texas Register* requirements. The adopted rule and the preamble to the adopted rule is incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by Tex. Gov't Code Ann., Chapter 2001 (Vernon 2016).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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

Date Signed