

The Texas Natural Resource Conservation Commission (commission) proposes a new §14.1, Definitions; §14.2, Commission Authority; §14.3, Applicability; §14.4, Funding; §14.5, Recipient Eligibility; §14.6, Recipient Selection Criteria; §14.7, Solicitations; §14.8, Direct Award; §14.9, Notices; §14.10, Payment Procedures; §14.11, Other Requirements; §14.12, Eligible Activities; §14.13, Uniform Grant Management Standards; §14.14, Grant Awards Affecting Mexico; §14.15, Delegation of Authority; and §14.16, Affect on Prior Grants. The purpose of the new sections is to implement Senate Bill (SB) 1421 and House Bill (HB) 3561, 76th Legislature, 1999. Senate Bill 1421, 76th Legislature, 1999, adds Texas Water Code, §5.124 and House Bill 3561 adds Texas Water Code, §5.125 (Session Laws, 76th Legislature, 1999, Chapter 187 (HB 3561) pages 660-662), Authority to Award Grants. Both sections contain identical language and require the commission to establish, by rule, procedures for awarding a grant, for making any determination related to awarding a grant, and for making grant payments. The proposed rules, in a new Chapter 14, respond to this requirement.

SECTION BY SECTION DISCUSSION

Section 14.1 provides definitions of various terms used in the chapter.

Section 14.2 cites agency's authority to award grants.

Section 14.3 establishes the types of grants that may be awarded and requires the executive director to determine and document that a proposed grant satisfies an authorized purpose.

Section 14.4 lists funding sources the agency is authorized to use for grants.

Section 14.5 requires that, prior to proposing any grant or series of grants, the executive director establish recipient eligibility requirements appropriate to the purposes and activities under such grant or grants.

Section 14.6 requires that, prior to proposing any grant or series of grants for which there will be competitive selection of the recipient or recipients, the executive director establish appropriate recipient selection criteria and, then, award grants only to persons or entities that have been selected in accordance with those criteria.

Section 14.7 lists specific kinds of information that must be include in any formal request for proposals (RFP) issued by the agency for the purpose of soliciting competitive proposals for grants other than those that are to be directly awarded.

Section 14.8 describes the circumstances under which a grant may be directly awarded without using a formal competitive selection process. The section requires the executive director to determine and document, prior to the award, that such procedure is appropriate.

Section 14.9 contains requirements relating to the placing of formal notices in the state's electronic business daily, the Texas Marketplace, concerning both the solicitation of proposals from potential recipients and, then, to announce any grant awards made. The section also describes the notices required to be placed in the Texas Marketplace when a direct award grant is anticipated by the executive director.

Section 14.10 establishes payment procedures for grant recipients and identifies the various regulations and standards, including various federal standards, that affect different types of grant recipients.

Section 14.11 alerts potential grant recipients and others to certain contract-related requirements under the Texas Government Code.

Section 14.12 stipulates that all activities paid for under a grant must directly relate to a purpose specified in the grant.

Section 14.13 confirms that all applicable provisions of the Texas Government Code, Chapter 783, Uniform Grant and Contract Management, and the *Uniform Grant Management Standards* manual apply to grants awarded by the agency.

Section 14.14 stipulates that the requirements of Texas Government Code, Chapter 792, International Cooperation Agreements, apply to any grant awarded by the agency that involves either the United Mexican States, a political subdivision of the United Mexican States, or an agency or entity created under a treaty or executive agreement between the United States and the United Mexican States.

Section 14.15 simply allows the executive director to delegate authority under the chapter, but, specifies that delegation must be done in writing.

Section 14.16 defines the extent to which the requirements of the proposed chapter apply to grants either awarded or under consideration by the agency prior to September 1, 1999.

FISCAL NOTE

Jeff Grymkoski, Director, Strategic Planning and Appropriations, has determined that there will be no fiscal implications for units of state and local government as a result of administration and enforcement of the proposed new rules for the first five years that the proposed rules are in effect. The rules would implement certain provisions of SB 1421 and HB 3561. The rules would establish requirements for grant applications, selection of grantees, funding, and program activities eligible for grants.

PUBLIC BENEFIT

Mr. Grymkoski also has determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the rules will be a greater assurance that: (1) grants are awarded only for purposes consistent with the agency's jurisdiction; (2) grants will be awarded to persons that meet the eligibility requirements; (3) selection of grant recipients will be by solicitation of a proposal or application (except under certain documented circumstances); and (4) certain grants will be awarded directly to recipients when the executive director determines that selection by solicitation or application is not feasible and is in the best interest of the state. The implementation of these rules is not anticipated to prevent any qualified business, unit of state government, university, or individual from being awarded a grant from the agency.

SMALL AND MICRO-BUSINESS IMPACT ANALYSES

The implementation of these rules is not anticipated to affect adversely any qualified small business or micro-business awarded a grant from the agency and is not anticipated to impose additional costs on persons, small businesses, or micro-businesses.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule,” as defined therein. In addition, the proposed rulemaking is not a major environmental rule because it does not meet any of the four applicability requirements of a “major environmental rule” defined in §2001.0225(a). There is no federal law or federal delegation agreement specifically applicable to these proposed rules.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for the proposed rules pursuant to Texas Government Code, §2007.043. The specific purpose of the rules is to implement legislation concerning the commission’s authority to award grants for resource conservation and environmental protection purposes. The proposed rules establish the agency’s procedures for awarding grants, for making any determination relating to awarding a grant, and for making grant payments. The rules do not affect private real property. Therefore, these proposed rules under new Chapter 14 will not constitute a takings under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking and found that the rules are not identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, Actions and Rules Subject to the Texas Coastal Management Program (CMP), and will not affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rules are not subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log No. 1999-040-014-AD. Comments must be received by 5:00 p.m., June 5, 2000. For further information, please contact Doug McArthur, Office of Administrative Services, Purchasing, MC 181, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-6857, fax (512) 239-0371.

STATUTORY AUTHORITY

The new sections are proposed under SB 1421 and HB 3561, 76th Legislature, 1999, and require the commission to establish, by rule, procedures for awarding a grant, for making any determination relating to awarding a grant, and for making grant payments. Also, the new chapter is proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules needed to carry out its powers and duties. This rulemaking responds to a new requirement of state law.

The proposed rules implement SB 1421 and HB 3561, 76th Legislature, 1999, and are authorized by Texas Water Code, §5.103.

§§14.1 - 14.16

§14.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Direct award** - The award of a grant without first soliciting competitive proposals or applications.

(2) **Grant** - The award of financial assistance, including cooperative agreements, in the form of money, property in lieu of money, or other financial assistance paid or furnished by the state or federal government to carry out a program in accordance with rules, regulations, and guidance provided by the grantor agency. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, for which the grantee is not required to account.

(3) **Local government** - A county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a

nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

(4) **Pass-through grant** - An award of financial assistance made by the agency to an eligible entity using federal grant funds. The term includes financial assistance when provided by contractual legal agreement, but does not include any form of assistance which is excluded from the definition of “grant” as defined in this section.

(5) **Political subdivision** - A political subdivision as that term is used in Texas Government Code, Chapter 791, Interlocal Cooperation Contracts.

(6) **UGMS** - The publication titled *Uniform Grant Management Standards*, promulgated by the Governor’s Office of Budget and Planning in accordance with Texas Government Code, Chapter 783, Uniform Grant and Contract Management, as amended February 12, 1999.

§14.2. Authority.

The Texas Water Code, §§5.124 and 5.125 (Session Laws, 76th Legislature, 1999, Chapter 187 (HB 3561) pages 660-662) authorizes the agency to award grants for any resource conservation or environmental protection purpose.

§14.3. Applicability.

(a) Grants may be awarded only for a purpose which is consistent with the agency's jurisdiction and purposes under law, as determined by the executive director.

(b) Purposes for which the agency may award a grant include:

(1) development or implementation of comprehensive conservation and management plans under the Federal Water Pollution Control Act, §320 (33 United States Code, Chapter 1330), for designated national estuaries located in Texas;

(2) demonstration projects which involve new techniques for pollution prevention, energy or resource conservation, or waste management;

(3) environmental purposes identified in a federal grant which is intended as pass-through grant;

(4) development or improvement of monitoring or modeling techniques for water or air quality;

(5) support of local air pollution programs; or

(6) studies or program-related efforts to prevent an area which is near-nonattainment with federal air quality standards from reaching nonattainment status or, if such an area has become a nonattainment area, to assist that area's efforts to return to attainment status.

(c) If the agency awards a grant for a purpose other than those specifically listed in subsection (b) of this section, the executive director must identify the purpose, determine and document that it is consistent with the agency jurisdiction and purposes under law, and document how the funding requirements are met under §14.4 of this title (relating to Funding).

(d) This chapter does not restrict or limit the ability of the agency to procure goods or services needed by the agency for the purpose of carrying out its own responsibilities in accordance with the Texas Government Code, Title 7, Intergovernmental Relations, or Title 10, General Government.

§14.4. Funding.

Grants awarded by the agency under this chapter may use:

(1) money appropriated for specific grant-making purposes;

(2) federal money granted to the agency for making pass-through grants; or

(3) state or federal grant money appropriated for a purpose which the executive director determines is, and documents as being, consistent with a purpose of the grant.

§14.5. Recipient Eligibility.

The executive director shall, for each proposed grant or series of grants, establish recipient eligibility requirements appropriate to the purposes of and activities under the proposed grant or grants.

§14.6. Recipient Selection Criteria.

(a) Except as provided under §14.8 of this title (relating to Direct Award), the executive director shall establish, for each proposed grant or series of grants, recipient selection criteria appropriate to the purposes of and activities under the proposed grant or grants.

(b) The executive director may specify any selection criterion he considers relevant to the grant.

(c) All selection criteria must address the evaluation and scoring of:

(1) available fiscal controls;

(2) project effectiveness;

(3) project cost; and

(4) the potential grant recipient's previous experience with grants and contracts.

(d) The agency may award a grant only to an entity or person who meets the established eligibility requirements of the proposed grant and who has been selected in accordance with the established recipient selection requirements.

§14.7. Solicitations.

(a) Except as otherwise provided under §14.8 of this title (relating to Direct Award), the executive director shall prepare and issue a formal request for proposal (RFP) for each proposed grant or series of grants. The RFP must specify the following:

(1) the purpose and objective of the proposed grant or grants;

(2) the agency's authority to offer and award the proposed grant or grants;

(3) the applicable recipient eligibility requirements;

(4) the grant recipient activities allowable or required to be performed;

(5) the anticipated start date and end date of the proposed grant or grants;

(6) the recipient selection criteria to be used;

(7) an indication as to whether the agency expects to award more than one grant, and if so how the recipient selection criteria provide for selection of multiple recipients;

(8) instructions concerning materials and information required to be submitted by potential grant recipients, including layout and format, required signatures, and number of copies;

(9) the submission deadline and the required address or delivery location for proposals;

(10) information as to whether grant recipients will be required to contribute matching funds, or other labor or material resources, as a condition of receiving a grant;

(11) information as to whether, and if so how, the executive director proposes to adjust or waive any RFP-contained matching funds requirement as authorized under Texas Government Code, §783.009, Matching Fund Waiver for Economically Disadvantaged County or Census Tract;

(12) information as to how grant payments will be made;

(13) information concerning requests for additional, pre-submittal information;

(14) the time and location of any pre-submittal meetings, together with an indication as to whether attendance is mandatory; and

(15) a requirement that successful recipients must enter into a signed grant agreement or contract with the agency following award announcement.

(b) RFPs may indicate the amount of grant funding available to be awarded, but are not required to do so.

§14.8. Direct Award.

(a) A grant may be made by direct award only if:

(1) the executive director determines and documents:

(A) selection of recipients by the solicitation of proposals or applications is not feasible; and

(B) awarding the grant directly is in the best interest of the state;

(2) eligibility for the grant is limited to:

(A) an agency or political subdivision of this state or of another state;

(B) a state institution of higher learning of this state or of another state,

including any part or service of the institution; or

(C) an agency of the United States; or

(3) the grant is awarded to an entity or person established or authorized to develop or implement a comprehensive conservation and management plan under the Federal Water Pollution Control Act, §320 (33 United States Code, Chapter 1330), for a national estuary located in Texas.

(b) If a solicitation for proposals is made for the purpose of identifying a partner for a joint application for a federal grant which is subsequently awarded to the agency, the executive director is not required to make an additional solicitation for entering into a pass-through grant with an identified partner.

§14.9. Notices.

(a) The executive director shall publish on the state electronic business daily, commonly known as the Texas Marketplace, information regarding any solicitation related to a grant or series of grants to be awarded under this chapter.

(b) The notice will indicate either that the executive director is seeking proposals or applications from potential grant recipients, or that one or more direct awards is anticipated, in accordance with §14.8 of this title (relating to Direct Award).

(c) If one or more direct awards is anticipated, the notice will identify the recipients selected to receive a direct award and will describe the objective and amount of each proposed award.

(d) Following recipient selection and final grant award, except in the case of a previously noted direct award, the executive director shall file a second notice in the state's electronic business daily identifying the successful recipients and indicating the amount of each awarded grant.

(e) In addition, the executive director may publish or broadcast information concerning a grant or grants in any publication, web site, or other forum.

§14.10. Payment Procedures.

(a) Payments to grant recipients shall be in accordance with the following regulations and standards:

(1) all allowable cost standards and payment-related requirements of the *Uniform Grant Management Standards* (UGMS), Subpart C, Post-Award Requirements, as defined in §14.1 of this title (relating to Definitions) if the recipient is a local government, a Texas state agency, or an Indian Tribal Government;

(2) all allowable cost standards and payment-related requirements of the United States Office of Management and Budget (OMB) Circular A-122, if the recipient is a private nonprofit organization, other than an institution of higher education, hospital, or an organization named in OMB Circular A-122 as not subject to that circular;

(3) all allowable cost standards and payment-related requirements of OMB Circular A-21, if the recipient is an educational institution; and

(4) all allowable cost standards and payment-related provisions of Title 48, Code of Federal Regulations, Part 31 (Contract Cost Principals and Procedures) if the recipient is a for-profit organization, other than a hospital or an organization named in OMB Circular A-122 as not subject to that circular.

(b) In addition, payments to grant recipients shall be in accordance with any special payment-related requirements and/or procedures contained in the signed grant contract.

§14.11. Other Requirements.

For all grants awarded on or after September 1, 1999, the following sections of the Texas Government Code, Chapter 2259, State Contracting Standards and Oversight, shall apply:

(1) §2259.101, Remedies and Sanctions Schedules, which requires that all contracts include appropriate remedies and sanctions schedules;

(2) §2259.151, Reevaluation of Payment and Reimbursement Rates, which requires the executive director to implement procedures to ensure payment and reimbursement methods and rates are appropriate, especially those which are based on historical funding levels or on any formulas established by commission rule;

(3) §2259.201, Double-Billing, which requires the executive director to establish procedures to detect and report double-billing by contractors; and

(4) §2259.203, Comparable Costs, which requires the executive director to establish procedures to verify that comparable costs are being charged for comparable goods and services.

§14.12. Eligible Activities.

All activities funded by a grant awarded by the agency must relate directly to a purpose specified in the grant.

§14.13. Uniform Grant Management Standards.

All applicable provisions of the Texas Government Code, Chapter 783, Uniform Grant and Contract Management, and the requirements in the most recently adopted *Uniform Grant Management Standards* (UGMS), as defined in §14.1 of this title (relating to Definitions), apply to grants awarded by the agency.

§14.14. Grant Awards Affecting Mexico.

The requirements of the Texas Government Code, Chapter 792, International Cooperation Agreements, apply to all grants awarded by the agency on or after September 1, 1999, which involve either the United Mexican States, a political subdivision of the United Mexican States, or an agency or entity created under a treaty or executive agreement between the United States and the United Mexican States.

§14.15. Delegation of Authority.

The executive director may delegate his authority under this chapter as authorized under Texas Water Code §§5.221 and 5.238. Delegation must be in writing.

§14.16. Effect on Prior Grants.

Except to the extent that such grants are subject to pre-existing law embodying the same or similar requirements, the requirements of this chapter do not affect the validity of or apply to any grant:

(1) awarded by the agency prior to September 1, 1999;

(2) with respect to which the executive director issued a notice or solicitation prior to September 1, 1999, requesting proposals or applications from potential recipients;

(3) for which the executive director accepted either a proposal or an application for consideration prior to September 1, 1999; or

(4) directly awarded, for which the executive director entered into negotiations or award-related discussions with the grant recipient prior to September 1, 1999.