

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

AGENDA REQUESTED: August 16, 2023

DATE OF REQUEST: July 28, 2023

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Angela Burnett, (512) 239-6005

CAPTION: Docket No. 2023-0804-RES. Consideration of a Resolution reauthorizing the Executive Director to enter all contracts, including grant agreements, on behalf of the agency, to manage such contracts and other agreements, and perform all contractual actions on behalf of the agency, to delegate such authority to the staff, and to designate individuals to approve the Commission's payment documents. The Commission's current resolution regarding contracts and delegation was issued on August 19, 2021, and expires on August 31, 2023. The proposed resolution would renew the Commission's current resolution regarding contracts and delegation for an additional two years through August 31, 2025. (Angela Burnett)

Chief Clerk must send Notice of Application/Hearing: N/A

Type of Matter: Miscellaneous

County: All

Uncontested: N/A

Contested: N/A



**David Timberger, Deputy Director
General Law Division**

TCEQ Interoffice Memorandum

To: Jon Niermann, Chairman
Emily Lindley, Commissioner
Bobby Janecka, Commissioner

Thru: Kelly Keel *KK*
Interim Executive Director

From: Erin E. Chancellor, Director *EC*
Office of Legal Services

David Timberger, Deputy Director *DT*
General Law Division

Yen Tran, Senior Attorney *YVT*
Contracts, Employment Law and Ethics Section
General Law Division

Angela Burnett, Staff Attorney *AMB*
Contracts, Employment Law and Ethics Section
General Law Division

Date: 7/26/2023

Subject: **Docket No. 2023-0804-RES.** Consideration of a Resolution reauthorizing the Executive Director to enter all contracts, including grant agreements, on behalf of the agency, to manage such contracts and other agreements, and perform all contractual actions on behalf of the agency, to delegate such authority to the staff, and to designate individuals to approve the Commission's payment documents.

Proposed Resolution

On August 31, 2023, the Commission's current consent and delegation of authority to the Executive Director (ED) to enter and manage contracts and grants, and process invoices for payment, expires. Attached for your consideration is the proposed resolution that renews the Commission's consent and delegation for an additional two years through August 31, 2025, including specific authority to the Executive Director and the Deputy Executive Director to approve and sign contracts for goods and services valued over \$1 million.

Authority

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

Texas Government Code Section 2261.254 requires that contracts for the purchase of goods or services exceeding \$1 million must be approved by an agency's governing body and signed by

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Emily Lindley, Commissioner
Bobby Janecka, Commissioner
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the presiding officer of the governing body. Section 2261.254 authorizes the governing body to delegate this approval and signature authority to the executive director or the deputy executive director of the state agency.

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

Commission Oversight

The Commission's oversight of the agency's contracts and grants will continue through the following existing practices. Individual Commissioners and the Office of General Counsel will have an opportunity to provide timely input, direction, or even direct control, as needed.

Selected Contracts Briefings. The Executive Director prepares regularly-scheduled written reports on the agency's contracts and grants using the following criteria: contract amount anticipated to exceed \$3 million; significant risk for injuries, property damage, or failure of performance; significant impacts on agency resources, especially those with legislative limits; or significant financial, legal, or public policy concerns. Additionally, in accordance with Section 2261.255 of the Texas Government Code, the Financial Administration Division will promptly report any potential issues that arise in the solicitation, purchasing, or contractor selection processes for contracts valued over \$5 million.

Quarterly Material Changes Agenda Item. Pursuant to Section 2155.088 of the Texas Government Code, the Financial Administration Division reports to the Commission, for consideration at an open meeting, the material changes to contracts for goods and services awarded under Chapter 2155 of the Texas Government Code.

Attachment

cc: Donna White, Acting Director, Office of Administrative Services
Yolanda Davis, Deputy Director, Financial Administration Division

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



A RESOLUTION Reauthorizing the Executive Director to enter and manage all contracts (including grant agreements) and to delegate authority to the staff. 2023-0804-RES

WHEREAS, on August 19, 2021, the Texas Commission on Environmental Quality (Commission) considered the Executive Director's request to authorize the Executive Director to enter contracts and other agency agreements on behalf of the agency, to manage such contracts and other agreements and perform all contractual actions on behalf of the agency, to delegate such authority to staff, designate individuals to approve the agency's payment documents; and

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

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

WHEREAS, the Texas Water Code Section 5.124 authorizes the Executive Director, with the consent of the Commission, to award grants for any resource conservation or environmental protection purpose; and

WHEREAS, the Government Code Section 2261.254 authorizes the Commission to delegate authority to the Executive Director or the Deputy Executive Director to approve and sign contracts for the purchases of goods and services that are valued in excess of \$1 million; and

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

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

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

WHEREAS, the Commission will meet on a quarterly basis to consider material changes to contracts for goods and services awarded under Chapter 2155 of the Texas Government Code; and

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

NOW, THEREFORE, BE IT RESOLVED, that the Texas Commission on Environmental Quality authorizes and gives consent from the present date until August 31, 2025, for the Executive Director to enter into all contracts and other agency agreements (including grant agreements) on behalf of the Commission; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Texas Commission on Environmental Quality authorizes and gives consent from the present to August 31, 2025, for the Executive Director to manage, administer, amend, renew, terminate, and perform all other contractual actions related to contracts or other agreements (including grant agreements) entered into on behalf of the Commission; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that from the present date until August 31, 2025, the Executive Director may delegate all such contract authority to the Deputy Executive Director and other agency staff; and

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

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

This Resolution, upon becoming effective, supersedes and replaces Resolution No. 2021-0940-RES, issued by the Commission on August 19, 2021.

Issued this the ____ day of _____, 2023.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Jon Niermann, Chairman