PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [Square brackets and strikethrough] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

DIVISION 3. SECURITY OF ASSESSMENTS, REQUIRED TEST ADMINISTRATION PROCEDURES AND TRAINING ACTIVITIES

19 TAC §101.3031

The Texas Education Agency (TEA) proposes an amendment to §101.3031, concerning required test administration procedures and training activities to ensure validity, reliability, and security of assessments. The proposed amendment would modify the rule to implement Senate Bill (SB) 1267, 87th Texas Legislature, Regular Session, 2021, which removed the requirement for annual security and test administration training for all test administration personnel.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 101.3031 specifies that individuals with access to secure test materials must be school district or charter school employees who have received annual training in security and test administration procedures. With changes to Texas Education Code, §39.0304, introduced by SB 1267, 87th Texas Legislature, Regular Session, 2021, TEA may now only require the employee at each district campus who oversees the administration of assessment instruments to be trained annually. TEA will still require test administration personnel to receive initial training in security and test administration procedures, but the proposed amendment to §101.3031(a)(2)(D)(ii) would remove the requirement of annual training for personnel other than an employee overseeing assessment instrument administration at a campus.

FISCAL IMPACT: Lily Laux, deputy commissioner for school programs, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation by limiting the individuals who are required to receive annual assessment training, thereby decreasing the number of individuals subject to the training.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or repeal an existing regulation; would not increase the number of individuals subject to its applicability; and would not positively or adversely affect the state’s economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Laux has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be potentially saving time for individuals who are no longer required to attend annual assessment security training. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins October 15, 2021, and ends November 15, 2021. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on October 15, 2021. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Com-
STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code, §39.0304, as amended by Senate Bill 1267, 87th Texas Legislature, Regular Session, 2021, which allows only the employee at each district campus who oversees the administration of assessment instruments to be trained annually in security and test administration procedures and allows that employee to require other personnel to be trained at their discretion.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.0304.


(a) Security and confidentiality.

(1) All assessment instruments included in the student assessment program are considered secure and the contents of these tests, including student information used or obtained in their administration, are confidential.

(2) School districts and campuses, the superintendent and campus principals in each school district, open-enrollment charter schools and campuses, and the chief administrative officer and campus principals of each charter school shall:

(A) implement and ensure compliance with state test administration procedures and training activities;

(B) notify the Texas Education Agency (TEA) as soon as the school district or charter school becomes aware of any alleged or suspected violation of the security or confidentiality of a test as listed in paragraph (3) of this subsection;

(C) report all confirmed testing violations to TEA within 10 working days of the school district or charter school becoming aware of the violation in accordance with the reporting process stipulated in the test administration materials;

(D) ensure that the only individuals with access to secure test materials are school district or charter school employees who have:

(i) met the requirements to participate in the student assessment program;

(ii) received [amended] training in test security and test administration procedures; and

(iii) signed an oath affirming they understand their obligation to maintain and preserve the security and confidentiality of all state assessments and student information, acknowledge their responsibility to report any suspected testing violation, and are aware of the range of penalties that may result from a violation of test security and confidentiality or a departure from test administration procedures; and

(E) ensure the security of the test materials by:

(i) verifying that all boxes of testing materials have been accounted for and match the school district or charter school shipping notices upon receipt from the state's testing contractor(s);

(ii) requiring campuses to immediately inventory all testing materials received and to notify the school district or charter school testing coordinator of any shortages or discrepancies;

(iii) immediately notifying the state's testing contractor(s) of any discrepancies between the materials received and the school district, charter school, and campus shipping notices;

(iv) placing test booklets and answer documents in secure, limited-access, locked storage when not in use;

(v) collecting and destroying any scratch paper, graph paper, or reference materials that students have written on, as well as any record receipts, after the completion of a test administration;

(vi) requiring that all secure materials assigned to individual campuses have been accounted for and packaged in accordance with the procedures for returning materials as detailed in the test administration materials;

(vii) requiring that all test item image cards and photocopied or reproductions of secure test materials have been collected and returned to the school district or charter school testing coordinator for return to the testing contractor(s); and

(viii) maintaining inventory and shipping records for five years.

(3) Violations of the security and confidentiality integrity of a test include:

(A) directly or indirectly assisting students with responses to test questions;

(B) tampering with student responses;

(C) falsifying holistic ratings or student responses;

(D) viewing secure test content before, during, or after an administration unless specifically authorized by TEA or by the procedures outlined in the test administration materials;

(E) discussing or disclosing secure test content or student responses;

(F) scoring students' tests, either formally or informally;

(G) duplicating, recording, or electronically capturing confidential test content unless specifically authorized by TEA or by the procedures outlined in the test administration materials;

(H) responding to test questions;

(I) fraudulently exempting or preventing a student from participating in the administration of a required state assessment;

(J) receiving or providing unallowable assistance during calibration activities (e.g., taking notes, providing answer sheets, or sharing answers);

(K) encouraging or assisting an individual to engage in the conduct described in subparagraphs (A)-(J) of this paragraph or in any other serious violation of security and confidentiality;

(L) failing to report to an appropriate authority that an individual has engaged in or is suspected of engaging in conduct described in subparagraphs (A)-(K) of this paragraph or in any other serious violation of security and confidentiality under this section;

(M) failing to implement sufficient procedures to prevent student cheating; and

(N) failing to implement sufficient procedures to prevent alteration of test documents by anyone other than the student.

(4) If a school district or charter school determines that a student has cheated or attempted to cheat on a state assessment either
by providing or receiving direct assistance, the school district or charter school shall invalidate the student's test results.

(5) Any violation of test security or confidential integrity may result in the TEA:

(A) invalidating student test results;

(B) referring certified educators to the State Board for Educator Certification for sanctions in accordance with Chapter 247 of this title (relating to Educators’ Code of Ethics) and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases); and

(C) lowering the school district's or charter school's accreditation status or a school district's, charter school's, or campus's accountability rating in accordance with Texas Education Code (TEC), §39.057(d), or appointment of a monitor, conservator, or management team to the school district or charter school in accordance with TEC, Chapter 39A.

(b) Test administration procedures. Test administration procedures shall be delineated in the test administration materials provided to school districts and charter schools annually. Districts and charter schools must comply with all of the applicable requirements specified in the test administration materials. Test administration materials shall include, but are not limited to, the following:

(1) general testing program information;

(2) procedures for maintaining the security and confidentiality of state assessments;

(3) procedures for test administration;

(4) responsibilities of personnel involved in test administration; and

(5) procedures for materials control.

(c) Training activities. School districts and charter schools shall ensure that test coordinators and administrators receive training to ensure that testing personnel have the necessary skills and knowledge required to administer assessment instruments in a valid, standardized, and secure manner.

(d) Records retention. As part of test administration procedures, the commissioner shall require school districts and charter schools to maintain records related to the security of assessment instruments for five years.

(e) Applicability. The required test administration procedures and training activities established annually in the test administration manuals and test security supplements for prior years remain in effect for all purposes with respect to the prior year to which they apply.

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 October 4, 2021.

TRD-202103907
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency

Earliest possible date of adoption: November 14, 2021
For further information, please call: (512) 475-1497

CHAPTER 153. SCHOOL DISTRICT PERSONNEL

SUBCHAPTER EE. COMMISSIONER’S RULES CONCERNING REGISTRY OF PERSONS NOT ELIGIBLE FOR EMPLOYMENT IN PUBLIC SCHOOLS

19 TAC §§153.1201, 153.1203, 153.1207, 153.1209, 153.1251

The Texas Education Agency (TEA) proposes amendments to §§153.1201, 153.1203, 153.1207, 153.1209, and 153.1251, concerning the registry of persons not eligible for employment in public schools. The proposed amendments would parallel the terms used in rule with the terms used in statute for clarity and ease of reference and implement Senate Bill (SB) 1356, 87th Texas Legislature, Regular Session, 2021.

BACKGROUND INFORMATION AND JUSTIFICATION: Under Texas Education Code, §§22.092(c)(5), 22.093(c)(1)(B), and 22.094(e)(2), the commissioner will add a person's name to the registry of persons who are not eligible to be employed by a Texas public school if the commissioner finds that the person " engaged in sexual contact with a student or minor." To match this wording in statute and thereby avoid confusion or misinterpretation, the proposed amendments would replace the term " sexual conduct" in §§153.1201, 153.1203, 153.1207, and 153.1251 with the term " sexual contact." The meaning and usage would remain the same.

The proposed amendments to §§153.1201 and 153.1251 would add nonprofit teacher organizations to the definitions and to the list of entities that can request access to the registry of persons not eligible for employment in public schools. These proposed changes are necessary to implement SB 1356, 87th Texas Legislature, Regular Session, 2021, which requires that commissioner-approved nonprofit teacher organizations have the same access to the registry of persons not eligible for employment in public schools as public schools and private schools.

The proposed amendments to §§153.1203, 153.1207, and 153.1209 would include technical edits such as updating a cross reference title and removing unnecessary acronyms.

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.
TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state’s economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Garcia has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that rule language is less confusing by aligning more closely with language in statute and allowing nonprofit teacher organizations to ensure that tutors they place in assignments with students are safe and eligible to work in Texas public schools. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins October 15, 2021, and ends November 15, 2021. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on October 15, 2021. A form for submitting public comments on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §22.091, which sets out the definition of "other charter entity" for the rest of the subchapter; TEC, §22.092, as amended by Senate Bill 1356, 87th Texas Legislature, Regular Session, 2021, which requires the Texas Education Agency to maintain and make available a registry of persons who are not eligible to work in Texas public schools; sets out who will be included in the registry; requires that the agency provide equivalent access to the registry to public schools, private schools, and nonprofit teacher organizations; and grants the agency rulemaking authority as necessary to implement; TEC, §22.093, which requires superintendents or directors of Texas public schools to report certain misconduct by uncertified individuals to the commissioner of education; TEC, §22.094, which sets out the notice and hearing requirements for a person reported to the commissioner under TEC, §22.093, requires that the agency put information on the internet showing that a reported person is under investigation, and gives the commissioner rulemaking authority as necessary to implement; and TEC, §22.095, which requires that the agency develop and maintain an internet portal where the agency makes available the registry of persons ineligible to be employed in public schools and information about people who are under investigation by the commissioner.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§22.091, 22.092, and 22.093-22.095.

(a) Solicitation of sexual contact [conduct] --Deliberate or repeated acts that can be reasonably interpreted as the solicitation by an employee of a relationship with a student that is sexual in nature. Solicitation of sexual contact [conduct] is often characterized by a strong emotional or sexual attachment and/or by patterns of exclusivity but does not include appropriate relationships that arise out of legitimate contexts such as familial connections or longtime acquaintance. The following acts, considered in context, may constitute prima facie evidence of the solicitation by an employee of sexual contact [conduct] with a student:

(1) behavior, gestures, expressions, or communications with a student that are unrelated to the employee's job duties and evidence a sexual intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the intent of such communications or behavior, include, without limitation:

(A) the nature of the communications;
(B) the timing of the communications;
(C) the extent of the communications;
(D) whether the communications were made openly or secretly;
(E) the extent that the employee attempts to conceal the communications;
(F) if the employee claims to be counseling a student, the commissioner of education may consider whether the employee's job duties included counseling, whether the employee reported the subject of the counseling to the student's guardians or to the appropriate personnel, or, in the case of alleged abuse or neglect, whether the employee reported the abuse or neglect to the appropriate authorities; and
(G) any other evidence tending to show the context of the communications between employee and student;

(2) making inappropriate comments about a student's body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images;

(3) making sexually demeaning comments to a student;

(4) making comments about a student's potential sexual performance;

(5) requesting details of a student's sexual history;

(6) requesting a date, sexual acts [contact], or any activity intended for the sexual gratification of the employee;

(7) engaging in conversations regarding the sexual problems, preferences, or fantasies of either party;

(8) inappropriate hugging, kissing, or excessive touching;

(9) providing the student with drugs or alcohol;
(10) violating written directives from school administrators regarding the employee’s behavior toward a student;

(11) suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage; and

(12) any other acts tending to show that the employee solicited sexual contact [conduct] with a student.

(b) Abuse—This term has the meaning assigned by Texas Family Code, §261.001(1).

(c) Private school—A non-public school that offers a course of instruction for students in Texas in one or more grades from Prekindergarten-Grade 12 and is:

(1) accredited by an organization that is monitored and approved by the Texas Private School Accreditation Commission;

(2) listed in the National Center for Education Statistics database; or

(3) a child care provider that is licensed by the Texas Health and Human Services Commission.

(d) Employee—A person who is employed by a school district, district of innovation, charter school, service center, or shared services arrangement and does not hold a certification issued by the State Board for Educator Certification under Texas Education Code, Chapter 21, Subchapter B.

(e) Nonprofit teacher organization—An organization approved by the commissioner of education to participate in a tutoring program under Texas Education Code, §33.913.

§153.1203. Required Reporting by Administrators.

(a) A person who serves as the superintendent of a school district or district of innovation or the director of a charter school, regional education service center, or shared services arrangement shall notify the commissioner of education in writing by filing a report within seven business days of the date the person either receives a report from a principal under subsection (b) of this section or knew that an employee was terminated or resigned from employment and there is evidence that he or she committed any of the following acts:

(1) abused or otherwise committed an unlawful act with a student or minor; or

(2) was involved in a romantic relationship with or solicited or engaged in sexual contact [conduct] with a student or minor.

(b) A person who serves as principal in a school district, district of innovation, or charter school must notify the superintendent or director of the school district, district of innovation, or charter school no later than seven business days after an employee resigns or is terminated following an alleged incident of misconduct involving the conduct described in subsection (a)(1) and (2) of this section.

(c) A superintendent or director of a school district shall complete an investigation of an employee if there is reasonable cause to believe the employee may have engaged in misconduct described in subsection (a)(1) and (2) of this section despite the employee’s resignation from district employment before completion of the investigation.

(d) A report filed under subsection (a) of this section must include:

(1) the name or names of any student or minor who is the victim of abuse or unlawful conduct by an employee; and

(2) the factual circumstances requiring the report and the subject of the report by providing the following available information:

(A) name and any aliases and certificate number, if any, or social security number;

(B) last known mailing address and home and daytime phone numbers;

(C) all available contact information for any alleged victim or victims;

(D) name or names and any available contact information of any relevant witnesses to the circumstances requiring the report;

(E) current employment status of the subject, including any information about proposed termination, notice of resignation, or pending employment actions; and

(F) involvement by a law enforcement or other agency, including the name of the agency.

(e) A report filed with the State Board for Educator Certification in compliance with Texas Education Code (TEC), §21.006, regarding a certified educator will be considered to have been filed with the commissioner as a report under this section on the date that the certification of the educator expires before the case is closed.

§153.1207. Request for Hearing.

(a) A person must submit a written request for a hearing before State Office of Administrative Hearings (SOAH) to Texas Education Agency (TEA) staff in accordance with §153.1221 of this title (relating to Filing or Serving Documents on the Texas Education Agency Staff or the Administrative Law Judge) within ten days after the person receives notice as described in §153.1205 of this title (relating to Persons Under Investigation).

(b) If a person does not timely request a hearing, the commissioner of education will issue a final order with a determination as to whether a preponderance of the evidence supports a conclusion that the person:

(1) abused or otherwise committed an unlawful act with a student or minor; or

(2) was involved in a romantic relationship with or solicited or engaged in sexual contact [conduct] with a student or minor.

§153.1209. Jurisdiction.

(a) A contested case commences under this subchapter when a notice of hearing in accordance with §153.1229 of this title (relating to Notice of Hearing) is properly served by the Texas Education Agency (TEA) staff on the person at the address included in the report under §153.1203 of this title (relating to Required Reporting by Administrators).

(b) The TEA staff shall refer the case to the State Office of Administrative Hearings (SOAH) if the TEA staff determines a person has timely requested a hearing pursuant to §153.1205 of this title (relating to Persons Under Investigation) and Texas Education Code (TEC), §22.094(c).

(c) Jurisdiction of the SOAH is determined by the administrative law judge under Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure), and this subchapter after the TEA staff have referred the case to the SOAH.

§153.1251. Notice of Placement on Registry.

(a) The person’s name will be added to the registry of persons not eligible for employment in Texas public schools, in accordance with Texas Education Code, §22.092(c)(5), if the commissioner of education determines in a final order that the person:

(1) abused or otherwise committed an unlawful act with a student or minor; or
(2) was involved in a romantic relationship with or solicited or engaged in sexual contact [conduct] with a student or minor.

(b) If known, the Texas Education Agency staff shall notify the employing school district of the commissioner's final order placing the person's name to the registry of persons not eligible for employment in public schools.

(c) Public [Both public] and private schools in Texas and non-profit teacher organizations may request access to search the registry of persons not eligible for employment in public schools.

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 October 4, 2021.

TRD-202103908
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: November 14, 2021
For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS
PART 5. STATE BOARD OF DENTAL EXAMINERS
CHAPTER 101. DENTAL LICENSURE

22 TAC §101.14

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §101.14, concerning exemption from licensure for certain military spouses. The proposed amendment lists what a military spouse must submit to establish residency in Texas, and the rule is proposed in accordance with House Bill 139 of the 87th Texas Legislature, Regular Session (2021), and Chapter 55, Texas Occupations Code.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state’s economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov’t. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the Texas Register. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

This proposed rule implements Chapter 55, Texas Occupations Code.


(a) The executive director of the Texas State Board of Dental Examiners must authorize a qualified military spouse to practice dentistry in Texas without obtaining a license in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but is not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active license to practice dentistry in another state, territory, Canadian province, or country that:

(A) has licensing requirements that are determined by the board to be substantially equivalent to the requirements for certification in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the board of the military spouse's intent to practice in Texas on a form prescribed by the board; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions). To establish residency, the military spouse must submit:

(A) a copy of the permanent change of station order for the military service member to whom the spouse is married;

(B) a Texas address; and

(C) the name and address of the Texas military installation.
(c) While authorized to practice dentistry in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of dentistry in Texas.

(d) Once the board receives the form containing notice of a military spouse's intent to practice in Texas, the board will verify whether the military spouse's dental license in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board will determine whether the licensing requirements in that jurisdiction are substantially equivalent to the requirements for licensure in Texas.

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 September 27, 2021.

TRD-202103836
Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: November 14, 2021
For further information, please call: (512) 305-8910

CHAPTER 103. DENTAL HYGIENE LICENSURE
22 TAC §103.10

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §103.10, concerning exemption from licensure for certain military spouses. The proposed amendment lists what a military spouse must submit to establish residency in Texas, and the rule is proposed in accordance with House Bill 139 of the 87th Texas Legislature, Regular Session (2021), and Chapter 55, Texas Occupations Code.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@lsbde.texas.gov for 30 days following the date that the proposed rule is published in the Texas Register. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

This proposed rule implements Chapter 55, Texas Occupations Code.

§103.10. Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas State Board of Dental Examiners must authorize a qualified military spouse to practice dentistry in Texas without obtaining a license in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but is not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

1. hold an active dental hygienist license in another state, territory, Canadian province, or country that:
   (A) has licensing requirements that are determined by the board to be substantially equivalent to the requirements for certification in Texas; and
   (B) is not subject to any restriction, disciplinary order, probation, or investigation;

2. notify the board of the military spouse’s intent to practice in Texas on a form prescribed by the board; and

3. submit proof of the military spouse’s residency in this state, a copy of the spouse’s military identification card, and proof of the military member’s status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions). To establish residency, the military spouse must submit:

(A) a copy of the permanent change of station order for the military service member to whom the spouse is married;

(B) a Texas address; and

(C) the name and address of the Texas military installation,
(c) While authorized to practice as a dental hygienist in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of dentistry in Texas.

(d) Once the board receives the form containing notice of a military spouse's intent to practice in Texas, the board will verify whether the military spouse's dental license in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board will determine whether the licensing requirements in that jurisdiction are substantially equivalent to the requirements for licensure in Texas.

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 September 27, 2021.

TRD-202103837
Lauren Studdard
General Counsel
State Board of Dental Examiners

Early possible date of adoption: November 14, 2021
For further information, please call: (512) 305-8910

CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER F. CONTRACTUAL AGREEMENTS

22 TAC §108.74

The State Board of Dental Examiners (Board) proposes a new rule, 22 TAC §108.74, concerning call coverage agreements. The proposed rule sets forth minimum requirements relating to a dentist's provision of call coverage services for another dentist's established patients, and is implemented pursuant to House Bill 2056 of the 87th Texas Legislature, Regular Session (2021), and Chapter 254, Texas Occupations Code.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbe.texas.gov for 30 days following the date that the proposed rule is published in the Texas Register. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

This proposed rule implements Chapter 254, Texas Occupations Code.

§108.74. Call Coverage Agreements.

(a) Purpose. The purpose of this rule is to set forth minimum requirements relating to a dentist's provision of call coverage services for another dentist's established patients.

(b) Scope. This rule applies to all dentists providing call coverage in Texas, regardless of the nature and scope of technology being used to provide care to patients through the call coverage relationship.

(c) Dentists may provide dental services through a call coverage agreement (CCA) to established patients of another dentist. The CCA may be oral or written.

(d) The covering dentist must provide to the patient's dentist of record who is a party to the CCA a report about the dental intervention or advice provided. The parties to the CCA can determine the timing and method in which the report is provided and who should receive the report.

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 September 27, 2021.

TRD-202103838
Lauren Studdard
General Counsel
State Board of Dental Examiners

Early possible date of adoption: November 14, 2021
For further information, please call: (512) 305-8910
PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §§365.2, 365.4, 365.6, 365.10, 365.13, 365.16 - 365.18

The Texas State Board of Plumbing Examiners ("Board") proposes the repeal of: 22 Texas Administrative Code §§365.2, relating to Exemptions; 365.4, relating to Issuance of License, Registration or Endorsement; 365.6, relating to Expiration of License, Registration or Endorsement; 365.10, relating to Application for License, Registration or Endorsement after Revocation; 365.13, relating to Licensing or Registration of Individuals in Default on a Guaranteed Student Loan or in Arrears on Child Support Payments; 365.16, relating to Board Approval of Course Providers for Continuing Professional Education Programs; 365.17, relating to Board Approval of Course Instructors for Continuing Professional Education Programs; and 365.18, relating to Publishers of Course Materials for Continuing Professional Education Programs.

The Board published notice in the August 6, 2021, edition of the Texas Register (46 TexReg 4861) of its intent to review its rules in Chapter 365. Pursuant to the agency’s review of its rules under Texas Government Code §2001.039, the Board has determined that the reasons for initially adopting these rules no longer exist as these rules largely restate what is already in statute rather than implementing, interpreting or prescribing law or policy.

Additionally, the reasons for initially adopting these rules no longer exist due to statutory amendments and repeals. Specifically, §365.2 is nearly identical to the Exemptions found in Subchapter B of the Plumbing license law §§1301.051-1301.058. Similarly, §365.4 restates §§1301.352, 1301.359 and 1301.401 of the Texas Occupations Code. Likewise, §365.6 essentially repeats §§1301.403, 1301.404 and 1301.405 of the Texas Occupations Code. Additionally, §365.10(a) - (c) is already covered in §1301.451, and §365.10(d) refers to the Enforcement Committee, which no longer exists as a result of House Bill (HB) 636 passed by the 87th Legislature, Regular Session (2021). Similarly, Senate Bill (SB) 37 passed by the 86th Legislature, Regular Session (2019) amended Texas Occupations Code §56.003 so that a licensing authority may not take disciplinary action against a person based on the person’s default on a student loan or breach of a student loan repayment contract of scholarship contract. Accordingly the reasons for adopting §365.13(a) - (e) no longer exist. Additionally, §365.13(f) - (g) essentially restates the process described in §232.0135 of the Texas Family Code which makes its inclusion in rule redundant.

Finally, as a result of HB 636, the Board was granted explicit rule making authority to set the minimum curriculum standards and instructor standards for continuing education and training programs. Accordingly, amendments to §§365.19 and 365.20 have been proposed to carry out that legislative directive. Notably, the Board was not granted explicit rule making authority by the legislature to regulate business entities or individuals that publish course materials or employ or contract with instructors. Accordingly, the Board has determined that §§365.16 - 365.18 are no longer necessary because amended rules §365.19 and §365.20 will ensure that continuing education and training programs meet minimum standards via the least restrictive means necessary.

Fiscal impact on State and Local Government

Lisa G. Hill, Executive Director, has determined that for the first five years the repeals are in effect, there are no foreseeable economic implications relating to costs or revenues of the state or local governments as a result of enforcing or administering the repeals.

Public Benefit

Lisa Hill, Executive Director, has determined that for each of the first five years the proposed repeals are in effect the public benefit anticipated as a result of the repeals will be streamlining the Board’s processes and procedures.

Probable Economic Costs to Persons Required to Comply with the Rule

The Executive Director has further determined that for the first five years the repealed rules are in effect, there are no substantial costs anticipated as a result of the repealed rules.

One-for-One Rule Analysis

Given the rules do not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, the Board asserts proposal and adoption of the repealed rules are not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the repealed rules are in effect, the agency has determined the following: (1) the repealed rules do not create or eliminate a government program; (2) implementation of the repealed rules do not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the repealed rules do not require an increase or decrease in future legislative appropriations to the agency; (4) the repealed rules do not require an increase or decrease in fees paid to the agency, (5) the repealed rules do not create a new regulation; (6) the repealed rules do not expand existing regulations; (7) the repealed rules do not increase the number of individuals subject to it and (8) the repealed rules do not adversely affect this state’s economy.

Local Employment Impact Statement

The Executive Director has determined that no local economies are substantially affected by the repealed rules, and, as such, the Board is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The Executive Director has determined that the rule will not have an adverse effect on small or micro-businesses, or rural communities, because there are no substantial anticipated costs to persons who are required to comply with the repealed rules. As a result, the Board asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

Takings Impact Assessment

The Board has determined that there are no private real property interests affected by the repealed rules; thus, the Board asserts preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Environmental Rule Analysis
The Board has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by said §2001.0225, is not required.

**Public Comments**

Written comments regarding the repeal may be submitted by mail to Helen Kelley at P.O. Box 4200, Austin, Texas 78765-4200, or by email to rule.comment@tsbpe.texas.gov with the subject line "Rule Repeal." All comments must be received within 30 days of publication of this proposal.

**Statutory Authority**

The repeal of §§365.2, 365.4, 365.6, 365.10, 365.13, 365.16, 365.17 and 365.18 are proposed under the authority of Texas Occupations Code §1301.251, which provides for the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Additionally, the repeal of §365.13 is proposed under the authority of Texas Occupations Code §56.003, which did away with a licensing authority's ability to take disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract of scholarship contract.

These proposed repeals affect the Plumbing License Law. No other statute is affected by these proposed repeals.

§365.2. Exemptions.
§365.4. Issuance of License, Registration or Endorsement.
§365.6. Expiration of License, Registration or Endorsement.
§365.10. Application for License, Registration or Endorsement after Revocation.
§365.13. Licensing or Registration of Individuals in Default on a Guaranteed Student Loan or in Arrears on Child Support Payments.
§365.16. Board Approval of Course Providers for Continuing Professional Education Programs.
§365.17. Board Approval of Course Instructors for Continuing Professional Education Programs.
§365.18. Publishers of Course Materials for Continuing Professional Education Programs.

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 October 1, 2021.

TRD-202103888

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: November 14, 2021

For further information, please call: (512) 936-5216

**TITLE 34. PUBLIC FINANCE**

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

**SUBCHAPTER B. PUBLIC PROCUREMENT AUTHORITY AND ORGANIZATION**

DIVISION 1. PRIMARY AND DELEGATED PROCUREMENT AUTHORITY

34 TAC §20.82

The Comptroller of Public Accounts proposes amendments to §20.82, concerning delegated purchases.

The comptroller proposes to delegate certain purchases of professional memberships to state agencies by rule in subsection (a)(8). Requirements for these purchases will be contained in new subsection (d)(4). This delegation will apply only to purchases that are already authorized by law, and which also cannot be procured competitively.

The amendment aligns subsection (b)(4) with Government Code, §2155.264, as amended by Senate Bill 799, 87th Legislature, 2021.

The amendment adds subsection (b)(5) as a clear instruction for state agencies to retain justifications for their proprietary purchases. This requirement has appeared in the comptroller's Procurement and Contract Management Guide since 2017.

The amendment adds subsection (b)(6) to allow state agencies to rely on a reasonable good faith estimate of cost in conducting delegated procurements. This concept has been expressed in the Comptroller's Procurement and Contract Management Guide for a number of years, and is necessary to avoid wasteful repetition of effort by procurement staff if bids come in that unexpectedly exceed a procurement threshold. This new subsection recognizes that circumstances such as market conditions, resource limitations, or miscellaneous exigencies may affect an agency's ability to accurately estimate cost. Agencies are expected to reasonably select the most accurate method of estimating cost that is practicable under the circumstances, and to carry out that method in good faith.

Subsection (d)(1), regarding delegated purchases of goods, is revised and combined with former subsection (d)(4), regarding delegated purchases of services, to eliminate inconsistent wording of requirements. Deleted subsection (d)(4) referred incorrectly to "prepayment approval" by the comptroller, which is not a current practice, and contradicted the definition of contract value in this chapter, among other things. Subsection (d)(1)(B) re-states the requirement of Government Code, §2155.083 to post solicitations on the Electronic State Business Daily and the requirement of Government Code, §2155.264 to solicit responses from vendors on the Centralized Master Bidders List. The requirement to attempt to provide a copy of a bid document to a vendor that previously held a contract has been deleted from subsection (d)(1)(B). That requirement is a recommended practice in the Comptroller's Procurement and Contract Management Guide, but may not be appropriate in every procurement.

Amended subsection (d)(2) will clarify that emergency purchases of goods and services by state agencies are subject to post-payment audit, and state agencies are required to retain appropriate documentation to facilitate audits.

Subsection (e) is revised to more thoroughly describe the process for delegation of solicitations which are not delegated by statute or rule.
Subsection (f), concerning debarred vendors, is proposed for deletion so that the content can be reorganized as a new rule in Chapter 20, Subchapter G.

The entire rule has been revised for clarity and updated terminology. Use of the term "contract file" rather than "procurement file" will be consistent in the amended rule.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The new rule would benefit the public by conforming the rule to current statute and agency policy. There would be no anticipated significant economic cost to the public. The new rule would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the proposed amendment. There is no physical location for this meeting. The meeting will be held at 10:30 a.m., Central Time, on November 9, 2021. To access the online public meeting by web browser, please enter the following URL into your browser: https://txcpa.webex.com/tx-cpa/j.php?MTID=m8b957b7c9e61b42df9dcb2e5b3ed2ed5

To join the meeting by phone at (408) 418-9388, or computer or cell phone using the Webex app, use the access code 2483-537-5287. If prompted, for a password enter 34TAC20. Persons interested in providing comments at the public hearing may contact Gerard MacCrossan, Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by November 8, 2021.

In addition, comments on the proposal may be submitted to Guillermo Navarro, Comptroller of Public Accounts, at P.O. Box 13528 Austin, Texas 78711 or Guillermo.Navarro@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposals in the Texas Register.

These amendments are proposed under Government Code, §2155.0012 and §2156.0012, which authorize the comptroller by rule to efficiently and effectively administer state purchasing of goods and services.


§20.82. Delegated Purchases.

(a) General delegation. The [purchasing functions for the] purchase of the following goods and services is [are] delegated to state agencies:

1. one-time purchases of goods, including goods for resale, the estimated cost of which does [that do] not exceed $50,000;
2. emergency purchases;
3. purchases of perishable goods;
4. purchases of services, including services for resale, the estimated cost of which does not exceed $100,000;
5. purchases of publications directly from the publisher;
6. fuel, oil, and grease purchases; [and]
7. distributor purchases; and [s]
8. professional memberships.

(b) Provisions generally applicable to delegated purchases.

1. Competitive bidding is not required for purchases of $10,000 ($5,000) or less.
2. All required solicitations of informal bids must be directed to vendors [obtained from sources] which normally offer for sale the goods and services [merchandise] being purchased.
3. Items purchased under delegated authority may not include [scheduled items] items available under a term or cooperative contract (unless purchased in quantities less than minimum ordering quantities of the [shown in] contract[c]) or any item required by law to be purchased from a particular source.
4. The state agency [comptroller] must solicit formal bids from all eligible vendors on the central master bidders list (CMBL) when making purchases in excess of $25,000. [The comptroller waives the requirement for state agencies to solicit bids from all eligible vendors on the list when making purchases under subsection (d) of this section. State agencies must solicit from all eligible vendors on the CMBL when making service purchases in excess of $100,000 that the comptroller has delegated to an agency.]
5. The state agency must maintain documentation justifying a proprietary purchase in excess of $10,000. A solicitation for a proprietary purchase must indicate that it is proprietary and products or services other than those specified will not be considered.
6. An agency's cost estimate must be developed in good faith using a method that is reasonable under the circumstances.
7. Withdrawal of delegated purchase authority. The comptroller will monitor [certify] compliance with established procedures for delegated purchases and may withdraw delegated purchase authority in whole or part from a state agency for continued violations after giving adequate warning. The comptroller will report to the governor, lieutenant governor, speaker of the house of representatives, and Legislative Budget Board the findings that a state agency has not followed the comptroller's rules or the laws related to the delegated purchases.
8. Provisions applicable to particular delegated purchases.

(a) State agencies must solicit [attempt to obtain] at least three informal bids, including at least [a minimum of] two bids from historically underutilized businesses (HUBS [HUBS]), on all purchases of goods and services exceeding $10,000 (in excess of $5,000) and not exceeding [over] $25,000. State agencies must, to the extent possible, solicit bids from vendors on [meet competitive bidding requirements and may supplement the list of bidders obtained from] the CMBL and vendors [with potential bidders contained in] the HUB [HUBS] Directory [which is maintained and accessible electronically on the comptroller's website]. If a state agency is unable to locate two HUBS [from the comptroller's CMBL and HUB Directory or other available sources], it [the state agency] must make a note [written notation] in the contract [purchase] file [of all reference sources used].
(B) For delegated purchases of goods and services estimated to cost more than $25,000, state agencies shall post a solicitation or notice of solicitation on the ESBD and, at a minimum, solicit formal bids from all eligible vendors within the NIGP classes and items designated for the procurement that are active on the CMBL. See §20.207 of this title (relating to Competitive Sealed Bidding), and §20.208 of this title (relating to Competitive Sealed Proposals). [State agencies must attempt to provide a copy of the bid to the last vendor who held the contract in addition to the informal bid requirement.]

(2) Emergency purchases. State agencies shall make [The comptroller will approve payment for] emergency purchases in accordance with the following provisions.

(A) At least three informal bids should be obtained whenever possible.

(B) For an emergency purchase of goods or services exceeding $25,000, a state agency must retain [send] a full written explanation of the emergency along with other documentation required by the comptroller in the contract file.

(C) A state [The] agency may contact the comptroller for advice and assistance in the handling of emergency purchases. [The comptroller may not approve an invoice for an emergency purchase unless the agency has complied with the foregoing requirements. This section does not apply to purchases made in accordance with Government Code, Chapter 418 (Texas Disaster Act of 1975).]

(3) Perishable goods. Purchases made under this authority must be obtained through competitive bids, and appropriate documentation must be retained in the contract file [forwarded to the comptroller].

(4) Services. Purchases of services estimated to cost no more than $100,000 per year per contract are delegated and must be obtained through a competitive selection process, and appropriate documentation must be forwarded to the comptroller for prepayment approval.

(A) A state agency is required to maintain documentation justifying proprietary purchases of services over $25,000 and for purchases expected to cost more than $25,000 per year.

(B) State agencies must attempt to obtain at least three informal bids, including a minimum of two bids from HUBs, on all service purchases in excess of $5,000 and not over $25,000. As a supplement to the CMBL, agencies may refer to the comptroller’s HUB Directory, which is maintained and accessible electronically, to locate HUBs in the agency’s geographic region. If an agency is unable to locate two HUBs from the comptroller’s HUB Directory or other available sources, the state agency must make a written notation in the purchase file of all reference sources used.

(C) For purchases of services estimated to cost more than $25,000 and less than $100,000, state agencies shall, as a minimum, solicit formal bids from all CMBL and HUB Directory vendors located in the state agencies’ geographic region.

(D) For purchases of services estimated to cost more than $100,000 per year, the comptroller must review any proposed specifications or statements of work and determine whether the comptroller or the state agency should make the advertisement and award. The comptroller may determine that the service should be advertised to the entire CMBL rather than to only those vendors in the state agency’s geographical area. If no comparative advantage would be obtained by having the comptroller make the advertisement and award, the comptroller may permit the state agency to do so as a delegated purchase.

(4) [45] Publications. A state agency may purchase publications directly from the publisher when such publications are not available through statewide contract or through competitive bidding. Direct publication orders shall be made by following guidelines established by the comptroller. Examples of direct publications include, but are not limited to:

(A) foreign publications;

(B) out-of-print or rare publications;

(C) back issues of magazines, journals, and newspapers;

(D) publications of professional societies;

(E) prepared films, tapes, and discs (audio, visual, or both);

(F) computer software;

(G) collections of any of the foregoing items, and microfilm or microfiche copies of any of the foregoing items; and

(H) Library of Congress cards.

(5) [46] Fuel, oil, and grease. A state agency may make fuel, oil, and grease purchases at service stations or in bulk. Fuel, oil, and grease purchases shall be made by following guidelines suggested by the comptroller. Non-competitive and emergency purchase procedures apply to purchases at service stations.

(6) [47] Distributor purchases. A state agency may make distributor purchases by following guidelines established by the comptroller. A state agency may not purchase any of the following on a distributor purchase basis: consumable items; labor of any kind (see "service"); "will fit" parts (non-OEM); parts for stock; contract items; electrical parts for electric motors; electrical switch panel boards; electrical accessories.

(7) Professional memberships. A state agency may purchase professional memberships as described in Government Code, §2113.104 directly from a professional organization when such memberships are not available through competitive bidding, the administrative head of the agency, or that person’s designee, has approved the purchase, the purchase will serve a public purpose, and the agency will receive adequate consideration in exchange for the purchase.

(e) Specific delegations.

(1) The authority to grant specific delegations resides with the director. Upon request of a state agency, the director shall determine whether to delegate a procurement to a state agency or to carry out the procurement. [The application method, review process, delegation finding, and appeal process will be set forth by policy statement of the director.]

(2) A state agency shall submit its proposed specifications for goods and services and evaluation criteria to the division using a procedure specified by the division. Alternately, a state agency may request for the division to develop specifications and evaluation criteria.

(3) At a minimum, state agencies granted specific delegations shall meet the following criteria:

(A) [44] procurement audit standards set forth in §20.510 of this title (relating to Auditing of Purchase Related Documentation);

(B) [42] minimum training and certification standards established in §20.133 of this title (relating to Training and Certification
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[(B) unless a specific duration is prescribed by statute for the advisory committee to exist.]  
[(C) If the comptroller acts to continue or re-establish the committee's existence, it shall continue to exist for an additional four year term. Comptroller action to continue or re-establish a committee may include, without limitation, issuing a letter appointing or re-appointing committee members to an additional term.]  
[(C) The Advisory Committee on Procurement shall be composed of officers or employees from the comptroller, from state agencies, including institutions of higher education, and from political subdivisions who are invited by the comptroller to serve on the committee. The officers and employees who serve on the committee shall be experienced in public purchasing, public finance, or possess other appropriate expertise to serve on the committee. The purpose of the Advisory Committee on Procurement is to represent before the comptroller the state agency purchasing community and the political subdivisions that use the comptroller's purchasing services. The tasks of the committee are to:]  
[(1) provide a method for state agencies and political subdivisions to bring issues to the attention of the comptroller;]  
[(2) review issues brought forth by the comptroller;]  
[(3) develop and make recommendations on improvements to the procurement process;]  
[(4) review and comment on findings and recommendations related to purchasing that are made by state agency internal auditors or by the state auditor;]  
[(5) develop an assessment of the committee, committee goals and measurable objectives; and]  
[(6) participate in an annual review of committee activities and make recommendations about the future direction of the committee at the end of each fiscal year.]  
[(D) The Vendor Advisory Committee shall be composed of employees from the comptroller and vendors who have done business with the state, and who are invited by the comptroller to serve on the committee. The comptroller shall invite a cross-section of the vendor community to serve on the committee, both large and small businesses and vendors who provide a variety of different goods and services to the state. The purpose of the Vendor Advisory Committee is to represent before the comptroller the vendor community, to provide information to vendors, and to obtain vendor input on state procurement practices. The tasks of the committee are to:]  
[(1) obtain vendor input and develop and make recommendations on improvements to the procurement process;]  
[(2) develop an assessment of the committee, committee goals and measurable objectives at the end of each fiscal year; and]  
[(3) participate in an annual review of the committee's activities and make recommendations about the future direction and continuance of the committee at the end of each fiscal year.]  

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

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DIVISION 2. PUBLICIZING PROCUREMENT: CMBL, ESBD, AND VPTS

34 TAC §20.114  
The Comptroller of Public Accounts proposes amendments to §20.114, concerning solicitation posting procedures. The section title is amended to include the name of the system it addresses, the "Electronic State Business Daily."  
Subsection (a) is amended to clarify that agencies must follow the comptroller’s procedures when posting documents and information. The amendments to subsection (b) will reflect that the comptroller maintains detailed posting instructions on its website, rather than in rule. Because all information required to post on the Electronic State Business Daily is included in the online instructions, subsections (c) and (d) are proposed for deletion.

Tom Currach, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules’ applicability; and will not positively or adversely affect this state’s economy.

Mr. Currach also has determined that the amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The new rule would benefit the public by conforming the rule to current statute and agency policy. There would be no anticipated significant economic cost to the public. The new rule would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the proposed amendment. There is no physical location for this meeting. The meeting will be held at 10:30 a.m., Central Time, on November 9, 2021. To access the online public meeting by web browser, please enter the following URL into your browser: https://txcpa.webex.com/txcpa/j.php?MTID=m8b957b7c9e61b42df9dcb2e5b3ed2ed5
To join the meeting by phone at (408) 418-9388, or computer or cell phone using the Webex app, use the access code 2483-537-5287. If prompted, for a password enter 34TAC20. Persons interested in providing comments at the public hearing may contact Gerard MacCrossan, Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by November 8, 2021.

In addition, comments on the proposal may be submitted to Guillermo Navarro, Comptroller of Public Accounts, at P.O. Box 13528 Austin, Texas 78711 or Guillermo.Navarro@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposals in the Texas Register.
These amendments are proposed under Government Code, §2155.0012. The amendment implements Government Code, §2155.083.


(a) Each state agency must comply with the procedures established by the comptroller [described herein] when posting solicitation notices on the ESBD. The comptroller will provide an ESBD User’s Manual with instructions for posting solicitations and awards on [on-line with written step-by-step instructions for accessing] the ESBD.

(b) Information for each solicitation must be [data] entered on [directly and electronically by the registered agent, via Internet access to the ESBD, using the prescribed electronic format in compliance with §20.214 of this title (relating to Notice and Information Posting Requirement). The registered agent must enter the minimum required information as stated in §20.214 of this title (relating to Notice and Information Posting Requirement) using the on-line format provided by the comptroller in the ESBD.]

[(c) The prescribed format will contain data fields for each of the required information items listed above. Contact information for the posting will automatically default to the information provided on the registered agent’s registration form, but can be manually changed to reflect contact information on procurement solicitations for which the registered agent is not the contact.]

[(d) The registered agent/user must select the “Add this listing” option to complete the posting process. All required information must be entered for the system to accept the posting or by electronic file transfer.]

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

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DIVISION 3. CONTRACT MANAGEMENT GUIDE AND TRAINING

34 TAC §20.131

The Comptroller of Public Accounts proposes amendments to §20.131, concerning procurement manual and contract management guide. This amendment is to clarify and simply the rule. In subsection (b), the amendment provides that the comptroller may consult with the state auditor, state agencies, or other stakeholders to receive recommendations for improving the guide. Subsection (c) is proposed for deletion to streamline the rule.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules’ applicability; and will not positively or adversely affect this state’s economy.

Mr. Currah also has determined that the amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The new rule would benefit the public by simplifying and clarifying the rule. There would be no anticipated significant economic cost to the public. The new rule would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Guillermo Navarro, Comptroller of Public Accounts, at P.O. Box 13528 Austin, Texas 78711 or Guillermo.Navarro@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposals in the Texas Register.

These amendments are proposed under Government Code, §2262.051, which authorizes the comptroller to adopt rules to develop and periodically update a contract management guide.

The amendment implements Government Code, §2262.051.


(a) The comptroller shall develop and periodically update a procurement manual and contract management guide for use by state agencies.

(b) To prepare the guide, the comptroller shall consult with the attorney general and the Department of Information Resources. The comptroller may consult with the state auditor, state agencies, or other stakeholders. State agencies may submit, and the comptroller may consider, recommendations for improving the guide. [Subject to the approval by the legislative audit committee for inclusion in the audit plan under Government Code, §321.013(c), the comptroller may consult with the state auditor.]

[(c) The guide shall include:]

[(1) information regarding the primary duties of a contract manager, including how to:]

[(A) develop and negotiate a contract;]

[(B) select a contractor; and]

[(C) monitor contractor and subcontractor performance under a contract;]

[(2) model provisions for state agency contracts that:]

[(A) distinguish between essential provisions that a state agency must include in a contract to protect the interests of this state and recommended provisions that a state agency may include in a contract;]

[(B) recognize the unique contracting needs of an individual state agency or program and provide sufficient flexibility to accommodate those needs, consistent with protecting the interests of this state;]

[(C) include maximum contract periods under which a new competitive solicitation is not necessary; and]

[(D) include the model contract management process developed under Government Code, §2262.104 and recommendations on the appropriate use of the model;]

[(3) recommended timeframes under which a state agency may issue a competitive solicitation for a major contract in relation to the date on which the contract is to be executed;]
§20.133. Training and Certification Program.

(a) Purpose. The purpose of these rules is to provide a uniform procedure through which the division will train and certify individuals who conduct government procurement functions.

(b) Definitions. The following words and terms when used in this section shall have the following meanings.

(1) Purchasing—The receipt and processing of requisitions, development of specifications, development of scope of work, the issuance of purchase orders against existing cooperative or agency contracts, and the verification of the inspection of merchandise or receipt of services by the agency. The term does not include the development of solicitations and contract awards that must be posted to the Electronic State Business Daily or in the Texas Register.

(2) Contract development—The term applies to actions taken prior to contract execution, including the receipt and processing of requisitions, assessment of need, development and review of specifications, development and review of scopes of work, identification and selection of procurement methods, identification and preparation of evaluation criteria, preparation of and advertising solicitation documents, tabulation of respondent bids, evaluation of respondent proposals, negotiation of proposals, and the preparation and completion of contract award documents. The term does not include invoice or audit functions.

(3) Contract management—The term applies to actions taken following contract execution, including the assessment of risk, verification of contractor performance, monitoring compliance with deliverable and reporting requirements, enforcement of contract terms, monitoring and reporting of vendor performance, and ensuring that contract performance and practices are consistent with applicable rules, laws and the State of Texas Procurement Manual and Contract Management Guide.

(4) Procurement—The performance of any purchasing, contract development, or contract management functions.

(c) Training required.

(1) Purchasing requirements. A state agency employee must complete the division's Texas Purchasing Course to engage in purchasing functions on behalf of a state agency if the employee:

(A) has the job title of "purchaser";

(B) performs purchasing functions as 15% or more of their job functions; or

(C) makes a purchase in excess of $10,000 [§5,000].

(2) Certified Texas Contract Developer requirements.

(A) A state agency employee must be certified as a Certified Texas Contract Developer to engage in contract development functions on behalf of a state agency and issues a solicitation or contract award required to be posted to the Electronic State Business Daily or in the Texas Register:

(B) A Certified Texas Contract Developer may conduct purchasing functions.

(3) Certified Texas Contract Manager requirements. A state agency employee must be certified as a Certified Texas Contract Manager to engage in contract management functions on behalf of a state agency if the employee:

(A) has the job title of "contract manager" or "contract administration manager" or "contract technician";

34 TAC §20.133

The Comptroller of Public Accounts proposes an amendment to §20.133, concerning procurement training and certification. This amendment is to slightly modify the training requirements for purchasers, in accordance with recent changes in the law.

Subsection (c)(1)(C) is amended to change the threshold amount for required training by state agency employees who are purchasers from $5,000 to $10,000. This will align the training requirement with the threshold for acquisition without competitive bidding in Government Code, §2155.132(e), as revised by Senate Bill 799, 87th Legislature, 2021.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The amended rule would benefit the public by conforming the rule to current statute. There would be no anticipated significant economic cost to the public.

The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Guillermo Navarro, Comptroller of Public Accounts, at P.O. Box 13528, Austin, Texas 78711 or Guillermo.Navarro@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposals in the Texas Register.

These amendments are proposed under Government Code, §2155.0012 and §2262.051, which authorize the comptroller by rule to efficiently and effectively administer state purchasing of goods and services and develop and periodically update a contract management guide.

The amendment implements Government Code, §656.052.
(B) performs contract management functions as 50% or more of their job functions; or

(C) manages any contract in excess of $5,000,000.

(4) Certified Texas Contract Manager exemption. In accordance with Government Code, §656.052(h)(2), a contract manager whose contract management duties primarily relate to contracts described by Government Code, §2262.002(b) is exempt from the contract management certification requirements of this section.

(5) Licensed attorneys exemption. A licensed attorney employed by a state agency performing procurement or contract management functions described by this section is exempt from the certification requirements of this section.

(d) Eligible applicants. To be eligible to apply for and receive a certification, an applicant must be:

(1) a current Texas state or local government employee; or

(2) at the sole discretion of the director, a student:

(A) currently enrolled in an accredited Texas university or community college; or

(B) who has graduated within the last three years from an accredited Texas university or community college.

(e) Requirements to receive certification.

(1) To be a Certified Texas Contract Developer, an eligible applicant must:

(A) complete the Texas Contract Developer Certification training course provided by the division;

(B) complete the division approved Texas Contract Developer Certification examination with a score of 80% or higher;

(C) have completed payment for the course and the examination; and

(D) be issued a Texas Contract Developer Certification.

(2) To be a Certified Texas Contract Manager, an eligible applicant must:

(A) complete the Texas Contract Manager Certification training course provided by the division;

(B) complete the division approved Texas Contract Manager Certification examination with a score of 80% or higher;

(C) have completed payment for the course and the examination; and

(D) be issued a Texas Contract Manager Certification.

(f) Training completion. To complete any training required in this section, an eligible applicant must:

(1) register for the applicable training using the electronic registration provided by the division on the official comptroller website;

(2) provide documentation of eligibility acceptable to the director;

(3) attend the applicable training course; and

(4) receive confirmation of course completion from the director.

(g) Certification examinations.

(1) To take any certification examination required in this section, an eligible applicant must register to take the examination using the electronic registration provided by the division on the official comptroller website within:

(A) three months of confirmation of completion of the applicable course by the director; or

(B) the time period determined at the sole discretion of the director with documented extenuating circumstances not to exceed twelve months from confirmation of completion of the applicable course.

(2) If an applicant receives a score of less than 80% following completion of the course, the applicant shall have two additional attempts to obtain a score of 80% or higher during a time period not to exceed six months following completion of the course.

(3) If the applicant does not obtain a score of 80% or higher after three attempts, the applicant must retake the applicable training course prior to retaking the examination.

(h) Certification issuance.

(1) To be issued any certification in this section, eligible applicants must within three months of the issuance of examination completion with a score of 80% or higher, submit:

(A) an application provided by the division on the official comptroller website; and

(B) any other documents required by the director.

(2) If the director determines that all applicable requirements have been satisfied, a certification will be issued to the applicant.

(i) Continuing education.

(1) A procurement professional certified in this section must complete twenty-four hours of in-person or online continuing education every three years, one hour of which must be ethics, to maintain certification. Twenty-three hours of the required hours must be division-sponsored training and one hour may be an elective selected by the professional, subject to division approval. The ethics requirement must be satisfied by division-sponsored training.

(2) A procurement professional dual certified in this section must complete thirty-six hours of in-person or online continuing education every three years, one hour of which must be ethics, to maintain dual certification. Thirty-four hours of the required hours must be division-sponsored training and two hours may be elective courses selected by the professional, subject to division approval. The ethics requirement must be satisfied by division-sponsored training.

(3) A procurement professional certified in this section is required to take the Renewal Refresher course offered by division once every three years in order to maintain certification. The Renewal Refresher course does not count towards continuing education hours.

(4) The Renewal Refresher course must be completed no earlier than two years following the date of initial certification or last renewal. Renewal Refresher courses completed prior to two years following the date of initial certification or last renewal will not be considered applicable to the Renewal Refresher requirement.

(5) Division-sponsored or elective course continuing education will be counted as credit with the completion of the course and approval of the continuing education course credit application. The division will email a certificate of completion to the certified procurement professional upon approval of the continuing education course credit application. The same course may not be taken more than once per renewal period for credit.
(j) Certification renewal.

(1) Certifications issued in this section expire three years following the date of issuance.

(2) Procurement professionals certified in this section must submit an application for certification renewal at least thirty calendar days prior to the expiration date of their certification.

(3) The application must include a certificate of completion of the applicable Renewal Refresher course, and certificates of completion of the division sponsored continuing education required under this rule.

(4) If a certified procurement professional allows the certification to expire, an extension may be requested within thirty calendar days from the date of expiration. If the division approves the extension, the certified procurement professional has sixty calendar days from the date of extension approval to complete the requirements for renewal. If the certified procurement professional does not complete the requirements during the extension period, the initial certification requirements must be completed to receive a new certification.

(5) Certifications awarded or renewed under previous requirements are valid until the date of first renewal.

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

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SUBCHAPTER C. PROCUREMENT METHODS AND CONTRACT FORMATION
DIVISION 2. PROCUREMENT METHODS

34 TAC §20.207

The Comptroller of Public Accounts proposes amendments to §20.207, concerning competitive sealed bidding.

Subsection (a)(1) is amended to replace an outdated method by which a vendor requests a copy of a solicitation with the current methods of using the Electronic State Business Daily and the Centralized Master Bidders List. It incorporates the requirements of Government Code, §2155.075, as amended by Senate Bill 799, 87th Legislature, 2021.

Subsection (a)(10) is amended to remove incorrect or duplicative information. The comptroller may remove vendors from the Centralized Master Bidders List, but such removal is discretionary. This subject matter is covered in §20.107 of this title.

Subsection (a)(9) is amended to delete the instructions for posting and distributing notices of addenda. These instructions are being proposed for relocation into proposed revisions of §20.214 of this title, concerning notice and information posting and distribution and §20.215 of this title, concerning posting time requirements. Subsection (b)(9) is amended to clarify that an agency has discretion to determine whether a bid it receives without addenda is responsive to the solicitation.

Subsection (b)(10) is amended to eliminate an implied conflict with §20.209 of this title, concerning proprietary purchases. Proprietary purchases are expressly permitted by that rule. The revised rule recognizes that proprietary purchases may be accomplished through the competitive sealed bidding process.

Subsection (c) is amended to clarify the requirements for awarding a contract through the competitive sealed bids method.

The rule is amended throughout to clarify that it applies to the comptroller as well as other state agencies with authority to procure goods and services.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule’s applicability; and will not positively or adversely affect this state’s economy.

Mr. Currah also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by modernizing and conforming the rule to current statute. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the proposed amendment. There is no physical location for this meeting. The meeting will be held at 10:30 a.m., Central Time, on November 9, 2021. To access the online public meeting by web browser, please enter the following URL into your browser: https://txcpa.webex.com/txcpa/j.php?MTID=m8b9577b7c9e61b42df9dcb2e5b3ed2ed5

To join the meeting by phone at (408) 418-9388, or computer or cell phone using the Webex app, use the access code 2483-537-5287. If prompted, for a password enter 34TAC20. Persons interested in providing comments at the public hearing may contact Gerard MacCrossan, Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by November 8, 2021.

In addition, comments on the proposal may be submitted to Guillermo Navarro, Comptroller of Public Accounts, at P.O. Box 13528 Austin, Texas 78711 or Guillermo.Navarro@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposals in the Texas Register.

These amendments are proposed under Government Code, §2155.0012 and §2156.0012, which authorize the comptroller by rule to efficiently and effectively administer state purchasing of goods and services.

The amendment implements Government Code, §2155.061 and §2155.083.

§20.207. Competitive Sealed Bidding.

(a) Bid submission.
(1) A state agency shall: [Prospective bidders may request specific bid invitations from the comptroller at any time prior to the bid due date and time.]

(A) solicit proposals under this subchapter by making available an invitation for bids that contains all the information needed to make a responsive bid, the factors other than price that will be used to determine best value for the state, and the criteria that will be used to evaluate factors other than price; and

(B) give public notice of the invitation for bids on the ESBD and distribute notice to the CMBL in the manner provided in this subchapter.

(2) A bidder may withdraw its bid by written request at any time prior to the bid due date and time.

(3) A bid received after the bid due date and time established by the bid invitation is a late bid and will not be considered.

(4) A bid received which does not contain adequate bid identification information on the outside of the envelope will be opened to obtain such information and will then be processed as any other bid. If the incorrect information on the envelope causes the bid not to be considered in making an award, the bid will be considered invalid and rejected.

(5) Bids by facsimile are not allowed except under exceptional circumstances and with the written approval of the purchasing agency prior to the bid due date and time.

(6) An unsigned bid is not valid and will be disqualified.

(7) When formal bids are required, bids may not be taken or accepted by telephone.

(8) To claim a preference identified in Subchapter D, Division 2, of this chapter, a bidder shall mark the appropriate box on the preference form and provide sufficient documentation to demonstrate a determination that the bidder may receive the preference. If the appropriate box is not marked, a preference will not be granted unless other documents included in the bid [provide] sufficiently demonstrate that the bidder may receive the preference and is requesting the preference.

(9) [If an error is discovered in a bid invitation, or agency requirements change prior to the opening of a bid, the comptroller will transmit an addendum correcting or changing the specifications to all bidders originally listed on the Centralized Master Bidder List for that bid invitation.] Bids will not be rejected for failure to return an [the] addendum with the bid, if the change is noted on the bid or the product or service specification would not be changed by the addendum. It is the agency's discretion to determine whether the failure to attach an addendum renders the bid nonresponsive.

(10) By signing and submitting a bid to a state agency [the comptroller or to an agency acting under delegated purchasing authority], a bidder affirms that it has not given or offered any economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the bid, and that it does not intend to give or offer any of the foregoing in the future. Signing a bid with a false statement shall void the bid and any resulting contract[1], and the bidder shall be removed from all bidders lists at the comptroller or at the agency acting under delegated purchasing authority.

(b) Bid evaluation.

(1) A state agency [The comptroller] may accept or reject any bid or any part of a bid or waive minor technicalities in a bid, if doing so would be in the state's best interest.

(2) A bid price may not be altered or amended after the bid due date and time except to correct mathematical errors in extension.

(3) No increase in price will be considered after the bid due date and time. A bidder may reduce its price provided it is the lowest and best bidder and is otherwise entitled to the award.

(4) Bid prices are considered firm for acceptance for 30 days from the bid due date and time for open market purchases and 60 days for term contracts, unless otherwise specified in the invitation for bids.

(5) A bid containing a self-evident error may be withdrawn by the bidder prior to an award.

(6) Bid prices which are subject to unlimited escalation will not be considered. A bidder may offer a predetermined limit of escalation in its [his] bid and the bid will be evaluated on the basis of the full amount of the escalation.

(7) A bid containing a material failure to comply with the advertised specifications shall be rejected.

(8) All bids must be based on "F.O.B. destination" delivery terms unless otherwise specified.

(9) If requested in the invitation for bids, samples must be submitted or the bid will be rejected. A state agency may require samples when essential to the assessment of product quality during bid evaluation. A state agency is not required to return samples.

(10) When brand names are specified, bids on alternate brands will be considered if they otherwise meet specification requirements, unless the solicitation is designated as proprietary.

(11) Expedited payment discounts are acceptable but are not considered in making an award. All cash discounts offered will be taken if they are earned by the agency.

(12) No electrical item may be purchased unless the item meets applicable safety standards of federal and state law.

(c) Contract Award.

(1) All awards shall be made to the bidder that offers best value to the state, in compliance [complying] with the best value criteria [used] in the invitation for bids while [bid and] conforming to the advertised [product or service] specifications.

(2) In case of tie bids that [which] cannot be resolved by application of one or more preferences described in §20.306 of this title (relating to Preferences), an award may [shall] be made by drawing lots.

(3) A state agency shall document and retain the reasons for making an award in the contract file.

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

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34 TAC §20.208
The Comptroller of Public Accounts proposes amendments to §20.208 concerning competitive sealed proposals. These amendments are to align the procurement rules with Senate Bill 799, 87th Legislature, 2021, eliminate provisions that are not needed in rule, clarify the language used, and align with current best practices for procurement by competitive sealed proposals.

Subsection (a) is amended to revise and clarify when a state agency may follow the competitive sealed proposals procurement method to acquire goods or services. Paragraphs (2) and (3) in the current rule are proposed for deletion, because they duplicate language in the amendment of §20.82 regarding delegation of solicitations.

Subsection (b)(1) is amended to clarify publication and solicitation requirements, and to incorporate the requirements of Government Code, §2155.075 as amended by Senate Bill 799, 87th Legislature, 2021.

Subsection (c) is amended to provide that a state agency may not open proposals until the published deadline for submitting a proposal has passed, and shall maintain a list of respondents that submitted a proposal in response to each request for proposal. Subsection (d)(1) - (4) are amended for revision to clarify the requirements for negotiation of proposals.

Subsection (d)(5) is deleted because it merely restates a statutory provision and is not applicable to the vast majority of procurements by competitive sealed proposals. Subsection (e) is amended for revision to clarify requirements for contract award. Subsection (f) is deleted because the release of respondent lists shall be governed by the Public Information Act, as provided in Government Code, Chapter 552. Subsection (g) is deleted because the subject matter of comptroller guidance is more specifically addressed in §20.131, concerning the procurement manual and contract management guide.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by modernizing and conforming the rule to current statute. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the proposed amendment. There is no physical location for this meeting. The meeting will be held at 10:30 a.m., Central Time, on November 9, 2021. To access the online public meeting by web browser, please enter the following URL into your browser: https://txcpa.webex.com/txcpa/j.php?MTID=m8b957b7c96e1b42df9dcb2e5b3ed2ed5

To join the meeting by phone at (408) 418-9388, or computer or cell phone using the Webex app, use the access code 2483-537-5287. If prompted, for a password enter 34TAC20. Persons interested in providing comments at the public hearing may contact Gerard MacCrossan, Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by November 8, 2021.

Comments on the proposal may be submitted to Guillermo Navarro, Comptroller of Public Accounts, at P.O. Box 13528, Austin, Texas 78711 or Guillermo.Navarro@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposals in the Texas Register.

These amendments are proposed under Government Code, §§2155.0012 and §2156.0012, which authorize the comptroller by rule to efficiently and effectively administer state purchasing of goods and services.

The amendments implement Government Code, §§2155.061, 2155.075, 2155.083, 2155.264, and Government Code, Chapter 2156, Subchapter C.

§20.208. Competitive Sealed Proposals.

(a) Availability of method.

[(4)] A [The comptroller or other] state agency may follow the [a procedure using] competitive sealed proposals procurement method to acquire goods or services if it [the comptroller or agency] determines that competitive sealed bidding and informal competitive bidding [for the purchase or type of purchase] are not practical or are disadvantageous to the state.

[(2) A state agency shall send its proposal specifications and criteria to the division for approval or request the division to develop the proposal specifications and criteria.]

[(3) The division shall determine whether to delegate sole oversight of the acquisition to a state agency or to retain oversight of the procurement.]

(b) Solicitation of proposals. A [The division or other] state agency shall:

(1) solicit proposals under this subchapter by making available a request for proposals that contains all the information needed to submit a responsive proposal, the factors other than price that will be used to determine best value for the state, and the criteria that will be used to evaluate factors other than price; and

(2) give public notice of the [a] request for proposals on the ESBD and distribute notice to the CMBL in the manner provided in [for requests for sealed bids under] this subchapter.

(c) Opening [and filing] of proposals; respondent list [public inspection]. A [The division or other] state agency may not open proposals until the published deadline for submitting a proposal has passed, and shall maintain a list of respondents that submitted a proposal in response to [received for] each request for proposal.

(d) Negotiation of proposals.

(1) A [The division or other] state agency may discuss acceptable or potentially acceptable proposals with a respondent [offerors] to assess its [an offeror's] ability to meet the specifications of the solicitation [requirements]. When the division is carrying out a [managing the] request for proposals [process], it may [shall] invite a state [requisitioning] agency to participate in discussions with respondents [conducted under this section].

(2) After receiving a proposal but before making an award, a [the division or other] state agency may permit the respondent [offeror] to revise its [the] proposal one or more times to obtain the best and final offer.
(3) A [The division or other] state agency may not disclose information derived from proposals or discussions with a respondent to any [submitted from] competing respondent prior to award or cancellation of the solicitation [officers in conducting discussions under this section].

(4) A [The division or other] state agency shall provide each respondent that submitted an acceptable or potentially acceptable proposal [officer] an equal opportunity to discuss and revise proposals.

(5) In accordance with Government Code, §2155.453, a state governmental entity that issues a request for proposals for technological products or services for homeland security or law enforcement purposes must allow a business entity to substitute the qualifications of its executive officers or managers for the qualifications required of the business entity in the request for proposals.

(e) Contract award.

(1) A [The division or other] state agency may [shall make a written] award [officer] a contract to the respondent [officer] whose proposal offers the best value for the state [considering price, past vendor performance, vendor experience or demonstrated capability, and the evaluation factors in the request for proposals].

(2) A [The division or other] state agency shall refuse all offers if none of the offers submitted is acceptable, and may refuse any offer that is not in the best interest of the state.

(3) A [The division or other] state agency shall determine which proposal offers the best value for the state in accordance with Government Code, §§2155.074, 2155.075 and 2156.125, as applicable.


Release of respondent list. After a contract is awarded, the list of respondents submitting proposals for the solicitation shall be released upon request and in compliance with Government Code, Chapter 552.

Guidelines. The comptroller may promulgate and maintain guidelines for the conduct of and review of procurement transactions conducted using competitive sealed proposals.

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

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34 TAC §20.211

The Comptroller of Public Accounts proposes amendments to §20.211, concerning small purchases. This amendment would align the maximum value of a small purchase by a state agency in rule with Government Code, §2155.132, as amended by Senate Bill 799, 87th Legislature, 2021. The amendment provides that for purchases of goods which the purchasing agency estimates to be of a total value of less than $10,000 the purchasing agency shall conduct such procurements in compliance with the processes outlined in the state procurement manual and contract management guide described in §20.131 of this title.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule’s applicability; and will not positively or adversely affect this state’s economy.

Mr. Currah also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by modernizing and conforming the rule to current statute. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the proposed amendment. There is no physical location for this meeting. The meeting will be held at 10:30 a.m., Central Time, on November 9, 2021. To access the online public meeting by web browser, please enter the following URL into your browser: https://txcpa.webex.com/txcpa/j.php?MTID=m8b957b7c9e61b42df9dcb2e5b3ed2ed5

To join the meeting by phone at (408) 418-9388, or computer or cell phone using the Webex app, use the access code 2483-537-5287. If prompted, for a password enter 34TAC20. Persons interested in providing comments at the public hearing may contact Gerard MacCrossan, Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by November 8, 2021.

Comments on the proposal may be submitted to Guillermo Navarro, Comptroller of Public Accounts, at P.O. Box 13528 Austin, Texas 78611 or Guillermo.Navarro@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposals in the Texas Register.

These amendments are proposed under Government Code, §2155.0012 and §2262.051, which authorize the comptroller by rule to efficiently and effectively administer state purchasing of goods and services and develop and periodically update a contract management guide.

The amendments implement Government Code, §2155.132 and §2262.052.

§20.211. Small Purchases.

For purchases of goods which the purchasing agency estimates to be of a total value of less than $10,000 ($5,000), the purchasing agency shall conduct such procurements in compliance [a manner consistent] with the processes outlined in the state procurement manual and [the] contract management guide described in §20.131 of this title (relating to Procurement Manual and Contract Management Guide).

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 October 4, 2021.
TRD-202103910
34 TAC §20.214

The Comptroller of Public Accounts proposes amendments to §20.214, concerning notice and information posting requirements. These amendments are proposed to align the procurement rules with Senate Bill 799, 87th Legislature, 2021, eliminate provisions that are not needed in rule, clarify the language used, and align with current best practices. The term “response” is defined in Chapter 20, and the proposed revision will use that term consistent with its definition.

Subsection (a) is amended to provide that each state agency shall post its own notices or solicitations on the Electronic State Business Daily (ESBD). Subsection (b) is revised to more clearly outline the notice requirements for the ESBD. Subsection (b)(2) is amended for clarity. Subsection (b)(3) is revised to remove information about posting, posting time, and notifications of solicitation addenda. This information has been relocated, including in proposed §20.215 of this Title, concerning Posting Time Requirements. Subsection (b)(4) is deleted because vendors on the Centralized Master Bidders List will no longer have a responsibility to check the Electronic State Business Daily for addenda. Instead, it will be the responsibility of the agency to notify vendors on the Centralized Master Bidders List of each addendum.

New subsection (c) will require advance notice of intent to conduct high-value solicitations to be posted on the Electronic State Business Daily consistent with Government Code, §2155.051, as amended by SB 799, 87th Legislature, 2021.

New subsection (d) clarifies that a requirement to post information online is independent from and in addition to a requirement to distribute information to vendors.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule’s applicability; and will not positively or adversely affect this state’s economy.

Mr. Currah also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by modernizing and conforming the rule to current statute. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the proposed amendment. There is no physical location for this meeting. The meeting will be held at 10:30 a.m., Central Time, on November 9, 2021. To access the online public meeting by web browser, please enter the following URL into your browser: https://txcpa.webex.com/txcpa/j.php?MTID=m8b957b7c9e81b42df9dcb2e5b3ed2ed5


(a) Each state agency shall [directly and electronically] post its own notices or solicitations on [solicitation packages for procurement contract opportunities using] the ESBD.

(b) Each state agency that issues a [procurement contract] solicitation estimated to exceed $25,000 [in value] shall post on the ESBD and issue to all bidders in the relevant categories and regions that were listed on the Centralized Master Bidders List at the time of the solicitation:

(1) either [Either] the entire [bid or proposal] solicitation [package] or a notice that includes all information necessary to make a responsive response [bid, proposal, or other applicable expression of interest for the procurement contract], including the following minimum information required for each procurement as outlined in Government Code, §2155.083(g) and §2155.075:

(A) a brief description of the goods or services to be procured and any applicable NIGP class and item code for the goods and services;

(B) the last date and time on which responses [bids, proposals, or other applicable expressions of interest] will be accepted;

(C) the estimated quantity of goods or services to be procured;

(D) the estimated date on which the goods or services to be procured will be needed; and

(E) the name, business mailing address, e-mail address, and business telephone number of the state agency employee a person may contact to inquire about all necessary information related to making a response; or [bid or proposal or other applicable expression of interest for the procurement contract].

(2) a [A] notice when [the procurement contract has been awarded or when] the state agency has either awarded or decided not to award a contract resulting from the solicitation; and [makes the procurement].

(3) notice of each [Any] addendum to the [original procurement] solicitation, [must be posted no later than the next business day following its release to the public. The time and date for receiving solicitation responses should be changed to allow sufficient time for all recipients of the original procurement solicitation to receive and respond to the addendum prior to the time and date for receiving solicitation re-
sponses, but the posting times set forth in this subchapter do not apply for addenda (that is, an addendum is not necessarily required to be posted for the full posting period applicable to the original solicitation). Each state agency is responsible for posting notices of addenda, if applicable, to each procurement solicitation. The state agency is also responsible for posting solicitation cancellation notices on the ESBD.

[(4) It is the responsibility of the potential bidder or respondent to review the ESBD or contact the state agency prior to the bid or posting closing date to determine if an addendum has been issued.]

(c) At least two months before a state agency issues a solicitation estimated to exceed $20 million in value, it shall post a notice of intent to procure the goods and services to be solicited on the ESBD, including applicable NIGP class and item codes. The notice must appear on the ESBD for at least two months. This subsection does not apply to a solicitation issued by the comptroller under Government Code, §2155.061.

(d) Posting notices or information on the ESBD does not fulfill a requirement to distribute the posted material to vendors on the CMBL. A state agency that is required to distribute notices or information to vendors on the CMBL must do so by mail or email even if it posts the same notices or information on the ESBD.

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

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34 TAC §20.215
The Comptroller of Public Accounts proposes amendments to §20.215, concerning posting time requirements.

Subsections (a) and (b) are amended for clarity, and to incorporate the minimum posting time requirement in Government Code, §2155.083(i). Subsection (c) is amended to address notices of award in addition to notices of cancellation. Subsection (d) is amended to specify the required posting time for solicitation addenda. Current subsection (e) is deleted because it merely restates Government Code, §2155.083(j), and to avoid any implication that the Statewide Procurement Division of the Comptroller has authority to declare a state agency contract void.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule’s applicability; and will not positively or adversely affect this state’s economy.

Mr. Currah also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by modernizing and conforming the rule to current statute. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Guillermo Navarro, Comptroller of Public Accounts, at P.O. Box 13528 Austin, Texas 78711 or Guillermo.Navarro@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposals in the Texas Register.

These amendments are proposed under Government Code, §2155.0012 and §2156.0012, which authorize the comptroller by rule to efficiently and effectively administer state purchasing of goods.

The amendments implement Government Code, §2155.083.
(a) Entire solicitation. If the state agency posts the entire solicitation package, including attachments, the solicitation must be posted until [for] the latest of:

(1) 14 calendar days after the date the solicitation package is first posted; or

(2) the date the state agency will no longer accept responses, which must be at least 14 calendar days after the date the solicitation package is first posted [bids, proposals, or other applicable expressions of interest for the procurement].

(b) Notice of solicitation [Notices]. If documents or attachments related to the solicitation must be obtained from another source, a notice of solicitation must be posted until [for] the latest of:

(1) 21 calendar days after the date the notice is first posted; or

(2) the date the state agency will no longer accept responses, which must be at least 21 calendar days after the date the notice is first posted [bids, proposals, or other applicable expressions of interest for the procurement].

(c) Notice of award or cancellation [Cancellation]. If the state agency awards the contract or decides not to make the procurement, the state agency must post a notice [amend the posting] to indicate the effective date of the cancellation or award within two business days of canceling or awarding the solicitation.

(d) Addenda or notices of addenda. Each addendum to a solicitation must be posted no later than the next business day after it was released to any potential bidder. If an addendum may require potential bidders to process and adjust to the information it contains in order to make a more appropriate response, the state agency must reasonably extend the time and date after which the state agency will no longer accept responses. The minimum posting time for an addendum ends on the same day as the minimum posting time of the corresponding solicitation. [A state agency may not award a contract and shall continue to accept bids or proposals or other applicable expressions of interest for the solicitation for at least 21 calendar days after the date the state agency first posted notice of the solicitation or 14 calendar days after the date the state agency first posted the entire bid or proposal solicitation package.]

[(e) Contract void. A contract award is void if made by a state agency in violation of the applicable minimum required posting time or if no ESBD posting was made.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.
SUBCHAPTER E. SPECIAL CATEGORIES OF CONTRACTING

DIVISION 2. STATEWIDE PROCUREMENT DIVISION SERVICES - TRAVEL AND VEHICLES

34 TAC §20.406

The Comptroller of Public Accounts proposes amendments to §20.406, concerning purpose and applicability.

This rule is amended to add qualified cooperative entity to the list of the eligible entities that can use comptroller's contract travel services to be consistent with Government Code, §2171.055, as amended by Senate Bill 1122, 87th Legislature, 2021.

Senate Bill 1122 introduced the definition of qualified cooperative entity and its authorization to participate in the comptroller's contracts for travel services when engaged in official business. The inclusion of qualified cooperative entity is proposed to align comptroller's rules with statute and clarify applicable rules to travel services participants.

The amendments to subsection (b)(2) adds qualified cooperative entities as authorized participants in the comptroller's contracts for travel services.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public conforming the rule to current statute. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the proposed amendment. There is no physical location for this meeting. The meeting will be held at 10:30 a.m., Central Time, on November 9, 2021. To access the online public meeting by web browser, please enter the following URL into your browser: https://txcpa.webex.com/txcpa/j.php?MTID=m8b957b7c9e61b42df9dcb2e5b3ed2ed5

To join the meeting by phone at (408) 418-9388, or computer or cell phone using the Webex app, use the access code 2483-537-5287. If prompted, for a password enter 34TAC20. Persons interested in providing comments at the public hearing may contact Gerard MacCrossan, Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by November 8, 2021.

In addition, comments on the proposal may be submitted to Guillermo Navarro, Comptroller of Public Accounts, at P.O. Box 13528 Austin, Texas 78711 or Guillermo.Navarro@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposals in the Texas Register.

The amendments are proposed under the authority of Government Code, §2171.002.

The amendments implement Government Code, §2171.055.


(a) Purpose. This subchapter governs the use of contract travel services and state travel credit cards by state officials and employees and other eligible persons. Contract travel services may include state credit cards, travel agencies, airlines, vehicles, internet based reservation and ticketing, lodging and other modes and necessities of state business related travel. The purpose of this subchapter is to encourage travelers to obtain the lowest overall cost of travel services. These rules do not alter, amend or affect the requirements in Government Code, Chapter 660 relating to travel or the comptroller's statutes and rules.

(b) Applicability. This subsection defines the persons and entities eligible to use contract travel services.

(1) State agencies. State agency officials and employees, in the executive branch, shall use the contract travel services as required by this subchapter whenever those services provide the most efficient travel resulting in the total lowest cost. State agencies may and are encouraged to purchase travel services at rates lower than the contract travel services rates.

(2) Other governmental entities. Officers and employees of the following entities may, but are not required to, participate in the travel services pursuant to this subchapter. These entities may use contract travel services upon approval by the comptroller of their application for the use of contract travel services:

(A) an institution of higher education as defined in Education Code, §61.003 when the entity uses travel agency services or when the services are purchased from funds other than general revenue or education or general funds as defined by Education Code, §51.009;

(B) Employees Retirement System when the travel is paid from other than general revenue funds;

(C) counties;

(D) municipalities;

(E) public junior colleges;

(F) school districts;

(G) emergency communication districts; [and]

(H) qualified cooperative entity as the term is defined under Government Code, § 2171.055; and

(I) the supreme court, the court of criminal appeals, the courts of appeals, and other entities in the judicial branch.

(c) Official government business. Contract travel services shall be used only for official governmental business, unless the travel services contractor offers the same services for personal use. No
contractor is required to allow the use of contract travel services for other than official governmental business.

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

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SUBCHAPTER F. CONTRACT MANAGEMENT
DIVISION 1. CONTRACT ADMINISTRATION
34 TAC §20.487
The Comptroller of Public Accounts proposes amendments to §20.487, regarding invoicing standards.

The amendment to subsection (a) clarifies the contractor's responsibility to facilitate payment by submitting a detailed invoice. The amendment in subsection (b) provides that a state agency must notify a vendor of an error or disputed amount in an invoice submitted for payment no later than the 21st day after the agency receives the invoice, and shall include in the notice a detailed statement of the amount of the invoice which is disputed. The amendment also provides that state agencies may withhold up to 110% of any disputed amount from payment to the contractor. This aligns the rule with Government Code §2251.042 as amended by House Bill 1476, 87th Legislature, 2021.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legisliative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the new rule would have no significant fiscal impact on the state government, units of local government, or individuals. The new rule would benefit the public by conforming the rule to current statute and agency policy. There would be no anticipated significant economic cost to the public. The new rule would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the proposed amendment. There is no physical location for this meeting. The meeting will be held at 10:30 a.m., Central Time, on November 9, 2021. To access the online public meeting by web browser, please enter the following URL into your browser: https://txcpa.webex.com/txcpa/j.php?MTID=m8b957b7c9e61b42df9db2e5b3ed2ed5
To join the meeting by phone at (408) 418-9388, or computer or cell phone using the Webex app, use the access code 2483-537-5287. If prompted, for a password enter 34TAC20. Persons interested in providing comments at the public hearing may contact Gerard MacCrossan, Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by November 8, 2021.

In addition, written comments on the proposal may be submitted to Guillermo Navarro, Comptroller of Public Accounts, at P.O. Box 13528 Austin, Texas 78711 or Guillermo.Navarro@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposals in the Texas Register.

This amendment is proposed under the authority of Government Code, §2251.003, to administer the state system of payments for goods and services.

The amendments implement Government Code, Chapter 2251.
§20.487. Invoicing Standards.
(a) To receive payment, a contractor must submit an invoice to the state agency receiving the goods or services. The invoice must include any information required by the customer agency, in addition to the following minimum information:
   (1) the contractor's mailing and e-mail (if applicable) address;
   (2) the contractor's telephone number;
   (3) the name and telephone number of a person designated by the contractor to answer questions regarding the invoice;
   (4) the state agency's name, agency number, and delivery address;
   (5) the state agency's purchase order number, if applicable;
   (6) the contract number or other reference number, if applicable;
   (7) a valid Texas identification number (TIN) issued by the comptroller;
   (8) a description of the goods or services, in sufficient detail to identify the order which relates to the invoice;
   (9) unit numbers corresponding to the amount of the invoice;
   (10) if submitting an invoice after receiving an assignment of a contract, the TIN of the original contractor and the TIN of the successor vendor;
   (11) other relevant information supporting and explaining the payment requested.
(b) A state agency must notify a vendor of an error or disputed amount in an invoice submitted for payment within 21 days of receipt of the invoice by the state agency. The state agency shall return the invoice to the contractor within 10 days of receipt of the invoice and notify the contractor in writing of the error or disputed amount. If the state agency determines that the invoice is incorrect, the state agency shall determine whether the error is to be corrected by the state agency or the contractor. If the contractor is determined to be responsible for the error, the state agency shall issue a corrected invoice, which shall be certified by the state agency. The state agency shall return the invoice to the contractor within 10 days of receipt of the invoice and notify the contractor in writing of the error or disputed amount.
(c) A state agency may request payment for an invoice from the comptroller only after the state agency has:
(1) received, inspected, and accepted delivery of the goods or services covered by the invoice; and

(2) received and accepted a complete and accurate invoice.

(d) In order to request payment from the comptroller, the state agency shall submit the data or information to the comptroller for payment through and according to the requirements of the statewide accounting system administered by the comptroller. A state agency submitting a payment request to the comptroller certifies that:

(1) the goods or services were received in accordance with the purchase order; and

(2) the invoice is correct and properly payable.

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

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DIVISION 3. PROTESTS AND APPEALS

34 TAC §20.535

The Comptroller of Public Accounts proposes an amendment to §20.535, concerning filing requirements.

The amendment will make §20.535 consistent with Government Code, §2262.055. Currently, §20.535 permits protests to be filed when a grade of C or lower is posted in the vendor performance tracking system. However, Government Code, §2262.055 allows only vendors who receive a grade of lower than a C to protest. This amendment to subsection (b)(4) clarifies that only vendor grades of lower than a C may be protested, as provided in Government Code §2262.055.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules’ applicability; and will not positively or adversely affect this state’s economy.

Mr. Currah also has determined that the new rule would have no significant fiscal impact on the state government, units of local government, or individuals. The new rule would benefit the public by conforming the rule to current statute and agency policy. There would be no anticipated significant economic cost to the public. The new rule would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Guillermo Navarro, Comptroller of Public Accounts, at P.O. Box 13528 Austin, Texas 78711 or Guillermo.Navarro@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposals in the Texas Register.

The amendment is proposed under the authority of Government Code, §2262.055(b).

The amendment implements Government Code §2262.055.

§20.535. Filing Requirements.

(a) To be considered by the comptroller, a protest must be:

(1) in writing and contain:

   (A) the specific rule, statute or regulation the protesting vendor alleges the solicitation, contract award or tentative award violated;

   (B) a specific description of each action by the division that the protesting vendor alleges is a violation of the statutory or regulatory provision the protesting vendor identified in subparagraph (A) of this paragraph;

   (C) a precise statement of the relevant facts including:

      (i) sufficient documentation to establish that the protest has been timely filed;

      (ii) a description of the adverse impact to the comptroller and the state; and

      (iii) a description of the resulting adverse impact to the protesting vendor;

   (D) a statement of the argument and authorities that the protesting vendor offers in support of the protest;

   (E) an explanation of the subsequent action the vendor is requesting; and

   (F) a statement confirming that copies of the protest have been mailed or delivered to the using agency;

(2) signed by an authorized representative and the signature notarized;

(3) filed in the time period specified in this section; and

(4) mailed or delivered to:

   (A) the comptroller; and

   (B) the using agency.

(b) To be considered timely, the protest must be filed:

(1) by the end of the posted solicitation period, if the protest concerns the solicitation documents or actions associated with the publication of solicitation documents;

(2) by the day of the award of a contract resulting from the solicitation, if the protest concerns the evaluation or method of evaluation for a solicitation;

(3) no later than 10 days after the notice of award, if the protest concerns the award; or

(4) no later than 10 days after a vendor grade of lower than a C [or lower] is posted in the system, if the protest involves a grade assigned to a contractor in the vendor performance tracking system.

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 October 4, 2021.

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Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts

Earliest possible date of adoption: November 14, 2021
For further information, please call: (512) 475-2220

SUBCHAPTER G. DEBARMENT

34 TAC §20.588

The Comptroller of Public Accounts proposes new §20.588, concerning effect of debarment. The new section will relocate and restate former §20.82(f), which is simultaneously being proposed for deletion. This proposal would group the rule concerning effect of debarment with other rules concerning debarment in Subchapter G. This reorganization will promote uniformity of application and compliance by state agencies. The new proposal requires state agencies to ensure that vendors currently debarred by the comptroller do not participate in state contracting and requires state agencies to establish procedures to implement this requirement. The new rule also provides that when a vendor is debarred, a state agency must terminate its contracts with the debarred vendor as soon as practicable considering such factors as a need to procure replacement goods and services from an alternate vendor.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the new rule would have no significant fiscal impact on the state government, units of local government, or individuals. The new rule would benefit the public by conforming the rule to current agency policy and promoting uniformity of application and compliance by state agencies relating to debarment. There would be no anticipated significant economic cost to the public. The new rule would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the proposed new rule. There is no physical location for this meeting. The meeting will be held at 10:30 a.m., Central Time, on November 9, 2021. To access the online public meeting by web browser, please enter the following URL into your browser: https://txcpa.webex.com/tx-cpa/j.php?MTID=m8b957b7c9e61b42df9dc2e5b3ed2ed5

To join the meeting by phone at (408) 418-9388, or computer or cell phone using the Webex app, use the access code 2483-537-5287. If prompted, for a password enter 34TAC20. Persons interested in providing comments at the public hearing may contact Gerard MacCrossan, Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by November 8, 2021.

In addition, comments on the proposal may be submitted to Guillermo Navarro, Comptroller of Public Accounts, at P.O. Box 13528, Austin, Texas 78711 or Guillermo.Navarro@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposals in the Texas Register.

The new section is proposed under Government Code, §2155.0012, which authorizes the comptroller by rule to efficiently and effectively administer state purchasing of goods and services.


State agencies shall ensure that vendors currently debarred by the comptroller do not participate in state contracting. Each agency shall establish procedures to ensure contracts are not awarded to, and purchases are not made from, debarred vendors. When a vendor is debarred, a state agency shall terminate its contracts with the debarred vendor as soon as practicable, considering such factors as a need to procure replacement goods and services from an alternate vendor.

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

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SUBCHAPTER I. STATE GRANT FUNDS MANAGEMENT

34 TAC §20.600

The Comptroller of Public Accounts proposes new §20.600, concerning denial of state grant funds for local entities that prohibit or discourage enforcement of public camping ban. The new section will be organized in new Subchapter I, titled State Grant Funds Management.

The new section is proposed to implement the requirements of Local Government Code, Chapter 364, as enacted by House Bill 1925 of the 87th Texas Legislature, 2021. The additions require state agencies to follow the new requirements concerning the denial of state grant funds to local entities that prohibit or discourage the enforcement of any public camping ban. The additions further mandate that local entities must disclose their status under this chapter when applying for state grant funds.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the new rule would have no significant fiscal impact on the state government, units of local government, or individuals. The new rule would benefit the public by conforming the rule to current statute and agency policy. There would be no anticipated significant economic cost to the

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public. The new rule would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Guillermo Navarro, Comptroller of Public Accounts, at P.O. Box 13528, Austin, Texas 78711 or Guillermo.Navarro@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

The new section is proposed under Local Government Code, §364.004(b), which authorizes the comptroller to adopt rules to implement Chapter 364.

The new section implements Local Government Code, §364.004, which describes new requirements applying to the distribution of state grant funds to local entities with respect to violations of Government Code, §364.002.

§20.600. Denial of State Grant Funds for Local Entities that Prohibit or Discourage Enforcement of Public Camping Ban.

(a) This section implements Local Government Code, §364.004 (Denial of State Grant Funds).

(b) This section applies to local entities applying for state grant funds and state agencies awarding state grant funds to local entities.

(c) The terms "local entity," "policy," and "public camping ban" in this section are defined as they are in Local Government Code, Title 11, §364.001.

(d) A local entity may not receive state grant funds, and state grant funds for the local entity must be denied, for the state fiscal year following the year in which a final judicial determination in an action brought by the Attorney General under Local Government Code, §364.003 is made that the entity has intentionally adopted or enforced a policy that prohibited or discouraged the enforcement of a public camping ban.

(e) A local entity applying for state grant funds must affirm in its application that it is not prohibited from receiving state grant funds under Local Government Code, §364.004.

(f) A local entity applying for state grant funds must disclose in its application whether the local entity has been sued by the Attorney General under Local Government Code, §364.003, and if so, the current posture of the lawsuit.

(g) In the event that a local entity receiving state grant funds is sued by the Attorney General under Local Government Code, §364.003 or such a case reaches a final judicial determination, the local entity must immediately disclose the lawsuit or judicial determination to all state agencies that oversee programs from which the entity currently receives state grant funds.

(h) A state agency that awards state grant funds must include appropriate assurances in grant applications and grant agreements to ensure that local entities comply with the provisions contained in this section. A state agency must document that the local entity has made such assurances before initiating any payment of state grant funds to the local entity.

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

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