

PUBLICATION IN *TEXAS REGISTER*

The Texas Commission on Law Enforcement (Commission) adopts new 37 Texas Administrative Code §211.41, Procurement Protests and Records, without changes to the proposed text as published in the January 31, 2025 issue of the *Texas Register* (50 TexReg 640-642). The rule will not be republished.

This adopted new rule conforms with Texas Government Code §2155.076 and 34 Texas Administrative Code §§20.531-.538. The adopted new rule provides vendors a process for protesting agency procurement actions consistent with rules adopted by the Comptroller.

The public comment period began on January 31, 2025, and ended on March 4, 2025, at the conclusion of the public meeting of the Commission. No public comments were received regarding adoption of the new rule as proposed.

The new rule is adopted under Texas Government Code §2155.076, Protest Procedures, and Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority. Texas Government Code §2155.076 requires the Commission to adopt rules to establish protest procedures for resolving vendor protests relating to purchasing issues. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701 and for the Commission's internal management and control and to contract as the Commission considers necessary for certain services, facilities, studies, and reports.

The new rule as adopted affects or implements Texas Government Code §2155.076, Protest Procedures, and Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority. No other code, article, or statute is affected by this adoption.

The adopted new rule has been reviewed by legal counsel and found to be a valid exercise of the Commission's legal authority.

§211.41. Procurement Protests and Records.

(a) Any actual or prospective bidder who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest the award of the contract by submitting a protest to the Executive Director of the commission.

(1) Such protests must be in writing and received in the Executive Director's office within ten business days after such aggrieved person knows, or should have known, of the occurrence of the action, which is protested.

(2) A formal protest must be sworn to by affidavit before a notary public and contain the following information or documentation:

- (A) a specific identification of the complaint;
- (B) a specific description of each act alleged to have violated the statutory or regulatory provision(s) pursuant to Chapter 2260 of the Texas Government Code;
- (C) a precise statement of the relevant facts;
- (D) an identification of the issue or issues to be resolved;
- (E) argument and authorities in support of the protest; and

(F) a statement that copies of the protest have been mailed or delivered to the commission.

(3) Copies of the protest must be mailed or delivered by the protesting party to the commission and other interested parties.

(b) In the event of a timely protest or appeal under this policy, the commission shall consider the protest and reply in writing before proceeding further with the solicitation or with the award of the contract unless the Executive Director makes a written determination that the award of the contract without delay is necessary to protect interests of the state.

(c) The Chief Financial Officer, or their designee, shall have the authority, prior to appeal to the Executive Director, to settle and resolve the dispute concerning the solicitation or award of a contract. The Chief Financial Officer may solicit written responses to the protest from other interested parties. This does not prohibit a party from submitting a written response without solicitation. If the protest is not resolved by mutual agreement, the Chief Financial Officer will issue a written determination on the protest.

(d) If the Chief Financial Officer determines that no rules or statutory violations have occurred, they shall inform the protesting party, the Executive Director, and other interested parties in writing setting forth the reasons for the determination.

(e) If the Chief Financial Officer determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, they shall inform the protesting party, the Executive Director, and other interested parties in writing setting forth the reasons for the determination and the appropriate remedial action.

(f) If the Chief Financial Officer determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, they shall so inform the protesting party, the Executive Director, and other interested parties in writing setting forth the reasons for the determination, which may include voiding the contract.

(g) The Chief Financial Officer's determination on a protest may be appealed by an interested party to the Executive Director.

(1) An appeal of the Chief Financial Officer's determination must be in writing and must be received in the Executive Director's office no later than ten business days after the date of the Chief Financial Officer's determination.

(2) The appeal shall be limited to review of the Chief Financial Officer's determination.

(3) Copies of the appeal must be mailed or delivered by the appealing party to the commission and other interested parties and must contain an affidavit that such copies have been provided.

(h) If a timely protest of a solicitation or contract award is filed under this section, the Executive Director may delay the solicitation or award of the contract unless the contract must be awarded without delay to protect the best interests of the state.

(i) The Executive Director shall review the protest, the Chief Financial Officer's determination, and the appeal. The Executive Director may refer the matter to the Commissioners for consideration or issue a decision on the protest.

(j) When a protest has been referred to the Commissioners, copies of the appeal, responses of interested parties, if any, and the Executive Director's recommendation shall be delivered to the Commissioners, the appealing party, and other interested parties. The Commissioner's determination of the appeal shall be made on the record and reflected in the minutes of an open meeting and shall be final.

(k) Unless good cause for delay is shown or the Executive Director determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed in a timely manner will not be considered.

(l) A decision issued either by the Commissioners, or in writing by the Executive Director, shall be the final administrative action.

(m) The commission shall maintain sufficient records and reports to verify compliance with applicable law, including:

(1) each contract entered into by the commission;

(2) all contract solicitation documents related to the contract;

(3) all documents that reflect and identify the basis for any decisions relating to a procurement, including actions taken that deviate from requirements or recommendations in the state procurement manual or contract management guide;

(4) all purchase orders, change orders, and invoices associated with the contract;

(5) all contract amendments, renewals, or extensions executed by the commission; and

(6) all other documents necessary to record the full execution and completion of each contract.

(n) The commission may destroy the contract and related documents after the seventh anniversary of the date:

(1) the contract is completed or expires; or

(2) all issues that arise from any litigation, claim, negotiation, audit, Public Information Act request, administrative review, or other action involving the contract or related documents are resolved.

(o) The effective date of this section is May 1, 2025.