

## **SUMMARY OF PROPOSED RULE**

37 Tex. Admin. Code § 211.41. *Procurement Protests and Records.*

This proposed new rule would conform with Texas Government Code § 2155.076 by providing vendors a process for protesting agency procurement actions consistent with rules adopted by the Comptroller.

## **RESUMEN DE LA NORMA PROPUESTA**

37 Tex. Admin. Code § 211.41. *Protestas y registros de adquisiciones.*

Esta nueva regla propuesta se ajustaría al Texas Government Code § 2155.076 al proporcionar a los proveedores un proceso para protestar contra las acciones de adquisición de la agencia en consonancia con las reglas adoptadas por el Contralor.

## **PUBLICATION IN *TEXAS REGISTER***

The Texas Commission on Law Enforcement (Commission) proposes new 37 Texas Administrative Code §211.41, Procurement Protests and Records. This proposed new rule conforms with the Texas Government Code §2155.076 and 34 Texas Administrative Code §§20.531-.538. The proposed new rule would provide vendors a process for protesting agency procurement actions consistent with rules adopted by the Comptroller.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed new rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be a positive benefit to the public by conforming with Texas Government Code §2155.076 to establish a process for protesting agency procurement actions. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

- (1) the proposed rule does not create or eliminate a government program;
- (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

- (4) the proposed rule does not require an increase or decrease in fees paid to the agency;
- (5) the proposed rule does not create a new regulation;
- (6) the proposed rule does not expand, limit, or repeal an existing regulation;
- (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed new rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new rule is proposed pursuant to 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 proposed 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 proposal.

The proposed new rule has been reviewed by legal counsel and has been found to be within the Commission's authority to adopt.

§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.