

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
TDHCA Governing Board Approved Draft of
10 TAC §1.4, Protest Procedures for Contractors

Disclaimer

Attached is a draft of proposed new 10 TAC §1.4, Protest Procedures for Contractors, that was approved by the TDHCA Governing Board on May 24, 2018. This action will entail the repeal of the current rule at this section, and a contemporaneous new rule being proposed to replace it. This document, including its preamble, is expected to be published in the June 8, 2018, edition of the Texas Register and that published version will constitute the official version for purposes of public comment and can be found at the following link: <https://www.sos.texas.gov/texreg/index.shtml>.

Public Comment

Public Comment Period: Start: 8:00 a.m. Austin local time on June 11, 2018
End: 5:00 p.m. Austin local time on July 11, 2018

Comments received after 5:00 p.m. Austin local time on July 11, 2018, will not be accepted.

Written comments may be submitted, in hard copy/fax or electronic formats to:

Texas Department of Housing and Community Affairs
Attn: Brooke Boston
Rules Comments
P.O. Box 13941
Austin, Texas 78711-3941
Email: brooke.boston@tdhca.state.tx.us

Written comments may be submitted in hard copy or email formats within the designated public comment period. Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
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Mailing Address: PO Box 13941, Austin, TX 78711-3941
Main Number: 512-475-3800 Toll Free: 1-800-525-0657
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Preamble and proposed new of 10 TAC §1.4, Protest Procedures for Contractors

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC §1.4, Protest Procedures for Contractors. The purpose of the proposed new section is to update the rule to reflect the most current Texas Comptroller of Public Account's (the "Comptroller") rules relating to procurement, found at 34 TAC Chapter 20, Subchapter F, Division 3, and provide improved organization and clarity in the rule.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

1. The proposed rule does not create or eliminate a government program;
2. The proposed rule will not require a change in the number of employees of the Department;
3. The proposed rule will not require additional future legislative appropriations;
4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for the updating and improved clarity of that rule;
6. The proposed rule will not expand an existing regulation;
7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and
8. The proposed rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be improved compliance with Comptroller rules and increased clarity and organization. There will not be any economic cost to any individuals required to comply with the new section, because the processes described by the rule have been in place through the rule found at this section being repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 11, 2018, to July 11, 2018, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 77111-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time JULY 11, 2018.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

§1.4, Protest Procedures for Contractors

(a) Purpose. The purpose of this rule provides for the Department's compliance with 34 TAC Chapter 20, Subchapter F, Division 3, the rules of the Texas Comptroller of Public Accounts addressing procurement, which require state agencies to adopt protest procedures consistent with the Comptroller's procedures.

(b) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Board--The Governing Board of the Department.

(2) Department--The Texas Department of Housing and Community Affairs.

(3) Interested Parties--means all vendors who have submitted bids or proposals for the contract involved. A list of interested parties is available upon request from the Department.

(4) Protest--A written objection submitted to the Department by any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a procurement contract by the Department.

(c) These procedures are for Department procurements only. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with a solicitation, evaluation, or award may formally protest to the Department's Purchasing Officer.

(d) To be considered timely, the Protest must be filed in accordance with the requirements of 34 TAC §20.535(b).

(e) To be considered complete, the Protest must be in writing, signed by an authorized representative, notarized, and contain:

(1) a specific identification of the statutory or regulatory provision(s) that the Person submitting the Protest alleges to have been violated;

(2) a specific description of each act made by the Department that the Person submitting the Protest alleges to have been violated specified in the statutory or regulatory provision(s) identified in paragraph (1) of this Subsection;

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

(A) sufficient documentation to establish that the Protest has been timely filed;

(B) a description of the adverse impact to the Department or the state; and

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

(4) a statement of the argument and authorities that the Person submitting the Protest offers in support of the Protest;

(5) an explanation of the subsequent action the Person submitting the Protest is requesting; and

(6) except for a Protest that concerns the solicitation documents or actions associated with the publication of solicitation documents, a statement confirming that copies of the Protest have been mailed or delivered to other identifiable Interested Parties.

(f) The Purchasing Officer shall have the initial authority to settle and resolve the Dispute concerning the solicitation or award of a contract. The Purchasing Officer may dismiss the Protest if it is not timely filed or does not meet the requirements of this section. The Purchasing Officer may solicit written responses to the Protest from other Interested Parties.

(g) If the Protest is not resolved by mutual agreement, the Purchasing Officer will provide a written recommendation to the Department's Executive Director.

(h) The Executive Director shall issue a final written determination on the Protest within 15 calendar days after receipt of the Purchasing Officer's recommendation in accordance with the requirements of 34 TAC §20.537(c).

(i) In the alternative, the Executive Director may, in his or her discretion, refer the matter to the Department's Governing Board for their consideration at a regularly scheduled meeting. The decision of the Board shall be final.

(j) A protesting party may appeal the determination of the Executive Director under section (g) of this section to the Department's Governing Board. An appeal of the Executive Director's determination must be in writing and received by the Purchasing Officer not later than 10 calendar days after the date the Executive Director sent written notice of their determination. The scope of the appeal shall be limited to review of the Executive Director's determination. The protesting party must mail or deliver to all other interested parties a copy of the appeal, which must contain a certified statement that such copies have been provided.

(1) The appeal will be presented for consideration at the next regularly scheduled meeting of the Governing Board. The decision of the Governing Board shall be final.

(2) An appeal that is not filed timely shall not be considered unless good cause for delay is shown in writing relating to issues that are significant to agency procurement practices or procedures, or the Department's General Counsel makes such a determination.

(k) All documents collected by the Department as part of a solicitation, evaluation, and/or award of a contract shall be retained with the procurement file according to Department's Records Retention Schedule.

(l) The Department reserves all of its rights under 34 TAC §20.536. The Department may award a solicitation or award without delay, in spite of a timely filed Protest, to protect the best interests of the state.