

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
TDHCA Governing Board Approved Draft of  
10 TAC §1.405, Bonding Requirements

Disclaimer

Attached is a proposed rule action that proposes an amendment to 10 TAC §1.405, Bonding Requirements, which was approved by the TDHCA Governing Board on February 21, 2019. This action will entail the amendment of the current rule at 10 TAC 10 TAC §1.405, Bonding Requirements. This document, including its preamble, is expected to be published in the March 8, 2019, 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 March 8, 2019  
   End: 5:00 p.m. Austin local time on April 8, 2019

Comments received after 5:00 p.m. Austin local time on April 8, 2019, 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](mailto:brooke.boston@tdhca.state.tx.us)

Written comments may be submitted 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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Preamble, including required analysis, for proposed amendment to 10 TAC §1.405, Bonding Requirements

The Texas Department of Housing and Community Affairs (the Department) proposes an amendment to 10 TAC Chapter 1, Administration, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.405, Bonding Requirements. The purpose of the revision is to add the Homeless Housing and Services Program (HHSP) and Ending Homelessness Fund (EH Fund) to the list of programs which are subject to the requirements of this section. HHSP and EH Fund are not currently listed under this section. However, in accordance with the State of Texas Uniform Grant Management Standards, which govern state fund awards to local governments, HHSP which is funded with state general revenue, and EH Fund are required to adhere to the bonding requirements of this section. This rule amendment will add HHSP and EH Fund to the list of applicable programs, as well as make several revisions to statutory citations.

Tex. Gov't Code §2001.0045(b) does not apply to the rule amendment under exception item (9) because it is necessary to implement state legislation, specifically making sure that state funds are appropriately identified as being subject to the Uniform Grant Management Standards. However, even though excepted, there is no cost to this rule action because HHSP subrecipients have already had bonding requirements in place contractually. The correction is only administrative in nature. Because no costs are associated with this proposed rule action, no costs or impacts warrant a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV'T CODE §2001.0221.

Mr. Cervantes has determined that, for the first five years the proposed amendment will be in effect:

1. The amended rule does not create or eliminate a government program, but relates to the activity of the Department to ensure that Developments appropriately follow applicable regulations regarding bonding.
2. The amended rule does not require a change in work that will require the creation of new employee positions, nor is the amendment significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The amended rule does not require additional future legislative appropriations.
4. The amended rule does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department
5. The amended rule is not creating a new regulation, it is merely administratively adding a program to which this section of rule will be applicable. Those program subrecipients are already subject to this requirement contractually.
6. The amended rule makes as noted in number 5 above.
7. The amended rule will increase the number of entities subject to the rule's applicability by adding the HHSP subrecipients; however, those subrecipients are contractually already obligated to such requirements. Therefore, while new in rule, it is not in fact a new requirement for those entities.
8. The amended rule will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting this

rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111(g).

1. The Department has evaluated this proposed action and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the Department ensuring that Developments already participating in Department programs adhere to appropriate bonding requirements and only adds the nine subrecipients that are eligible under the HHSP. As none of those subrecipients would classify as small or micro-businesses, no small or micro-businesses are subject to the rule.

3. The Department has determined that because HHSP subrecipients are not small or micro-businesses, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The amended rule does not contemplate nor authorize a taking by the Department; therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the amended rule has no economic effect on local employment because the rule relates only to formalizing a requirement that was already in contract.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this rule is already effectively in practice contractually, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). David Cervantes, Acting Director, has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amended section will be assurance that programs subject to bonding requirements are reflected as such in rule. There will not be any economic cost to any individuals subject to the amended rule as the processes described by the rule have already been in existence.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the amended section is in effect, enforcing or administering the amended section does not have any foreseeable implications related to costs or revenues of the state or local governments.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 8, 2019 to April 8, 2019, to receive input on the proposed amended 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 78711-3941, 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 April 8, 2019.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't 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.

## §1.405, Bonding Requirements

(a) The requirements described in this subsection relate only to construction or facility improvements for DOE WAP, HOME, CDBG, NSP, HHSP, EH Fund, and ESG Subrecipients.

(1) For construction contracts exceeding \$100,000, the Subrecipient must request and receive Department approval of the bonding policy and requirements of the Subrecipient to ensure that the Department is adequately protected.

(2) For construction contracts in excess of \$100,000, and for which the Department has not made a determination that the Department's interest is adequately protected, a "bid guarantee" from each bidder equivalent to 5% of the bid price shall be requested. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. A bid bond in the form of any of the documents described in this paragraph may be accepted as a "bid guarantee."

(A) A performance bond on the part of the Subrecipient for 100% of the contract price. A "performance bond" is one executed in connection with a contract, to secure fulfillment of all obligations under such contract.

(B) A payment bond on the part of the subcontractor/vendor for 100% of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(C) Where bonds are required, in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223, "Surety Companies Doing Business with the United States."

(b) A unit of government must comply with the bond requirements contained in ~~of~~ Texas Civil Statutes, Articles 2252, 2253, and 5160, and including Tex. Gov't Code ch. 2253 and Tex. Local Government Gov't Code, §252.044 and §262.032, as applicable.