

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 10. Contract Procedures
Subchapter C. Contract Monitoring
§10.40. Enhanced Contract and Performance Monitoring; Website Posting

The Finance Commission of Texas (commission) adopts new 7 TAC §10.40, concerning enhanced contract and performance monitoring, and the posting of certain contracts on finance agency websites.

The commission adopts new §10.40 without changes to the proposed text as published in the December 29, 2017, issue of the *Texas Register* (42 TexReg 7485).

The commission received no written comments on the proposal.

The purpose of adopted new §10.40 is to place into regulation the finance agencies' procedures concerning contracts for the purchase of goods or services from private vendors. The finance agencies are the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner.

Subsection (a) states the purpose of the new rule, which provides the procedures applied by the finance agencies concerning contracts for the purchase of goods or services from private vendors.

Subsection (b) outlines the applicability of the rule to finance agency contracts made public or entered into on or after September 1, 2015. Additionally, §10.40(b)(3) lists the types of documents not subject to enhanced monitoring under the rule, as provided by Texas Government Code, §2261.253(d).

Subsection (c) describes the general procedures for contract evaluation and monitoring, including the use of finance agency policies and contract management handbooks and notice to the commission.

Subsection (d) provides for the posting of certain contracts under Texas Government Code, §2261.253(a), as well as the redaction of confidential information under §2261.253(e) prior to posting. The authorization to redact confidential information from these contracts was recently added by the Texas Legislature with the enactment of Senate Bill 533, effective September 1, 2017.

The new rule is adopted under Texas Government Code, §2261.253(c), which requires each state agency to adopt rules establishing a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

The statutory provisions affected by the adopted new rule are contained in Texas Government Code, Chapter 2261.

§10.40. Enhanced Contract and Performance Monitoring; Website Posting.

(a) Purpose. Under Texas Government Code, §2261.253, the finance agencies apply the following procedures concerning contracts for the purchase of goods or services from private vendors.

(b) Applicability.

(1) Finance agencies. This section applies to the agencies governed by the Finance Commission of the State of Texas: the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner.

(2) Date of contracts subject to enhanced monitoring. This section applies to the following:

(A) contracts for which the request for bids or proposal is made public on or after September 1, 2015; and

(B) for contracts exempt from competitive bidding, contracts entered into on or after September 1, 2015.

(3) Documents not subject to enhanced monitoring. This section does not apply to:

(A) memoranda of understanding;

(B) interagency contracts;

(C) interlocal agreements; or

(D) contracts that do not involve a cost.

(c) Contract evaluation and monitoring.

(1) Use of finance agency policies and contract management handbook. Contracts are evaluated and monitored in accordance with each respective finance agency's policies and contract management handbook. Each finance agency maintains a contract management handbook in

accordance with Texas Government Code, §2261.256.

(2) Finance Commission notice. If a finance agency identifies a contract that requires enhanced monitoring, the finance agency will notify the Finance Commission in accordance with its policies and contract management handbook. The finance agency will include in the notification any serious issues or risks identified with the contract.

(d) Website posting.

(1) Posting on finance agency website. Each finance agency will post on its website contracts that meet the posting requirements provided by Texas Government Code, §2261.253(a).

(2) Redaction of confidential information. Before posting the contracts under paragraph (1) of this subsection, each finance agency must redact information that is confidential by law, information excepted from public disclosure by the Texas Public Information Act (Texas Government Code, Chapter 552), and the social security number of any individual in accordance with Texas Government Code, §2261.253(e).

Certification

The agencies hereby certify that the adoption has been reviewed by legal counsel and found to be within the agencies' legal authority to adopt.

Issued in Austin, Texas on February 16, 2018.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner