

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 10. Contract Procedures
Subchapter C Contract Monitoring
7 TAC §10.40

The Finance Commission of Texas (the commission) proposes to amend 7 Texas Administrative Code §10.40 (§10.40), concerning enhanced contract and performance monitoring, and the posting of certain contracts on commission supervised finance agency websites. The proposed amendments would remove a redundant provision of the current rule and ensure §10.40 conforms with Texas Government Code, §2261.253.

Adopted in 2017, §10.40 contains the finance agencies' (defined below) procedures concerning contracting 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 (the finance agencies).

Subsection (b)(2) currently limits application of §10.40 to contracts for which requests for bids or proposals were made public on or after September 1, 2015 and contracts exempt from competitive bidding entered into on or after September 1, 2015. Subsection (b)(2) is no longer necessary because the finance agencies no longer have any outstanding contracts for which requests were made before September 1, 2015. The proposed amendments thus remove the now superfluous subsection.

Subsection (b)(3) currently identifies certain documents that are not subject to

§10.40, consistent with Texas Government Code, §2261.253(d). A proposed amendment to the heading of subsection (b)(2) would specify that the documents are not subject to “this section,” replacing current text referring only to “enhanced monitoring.” Other proposed amendments would specify that documents not subject to §10.40 “include” the four documents listed in subsection (b)(2). This is intended to clarify that the list in subsection (b)(2) is not an exhaustive list, and other documents might not be subject to the rule (e.g., documents excluded under another provision of Texas Government Code, §2261.253).

Texas Government Code, §2261.253(c) requires state agencies to “by rule [...] establish a procedure to identify each contract that requires enhanced contract or performance monitoring.” While each finance agency has prescribed and implemented a procedure for identifying those contracts for enhanced monitoring, the proposed amendments add a new paragraph to subsection (c), ensuring full compliance with §2261.253(c).

Subsection (d) currently describes website posting of contracts. A proposed amendment to subsection (d)(1) replaces a specific reference to Texas Government Code, §2261.253(a) with a more general reference to posting in compliance with Texas Government Code, §2261.253. This is intended to clarify that the agencies will comply with respect to contracts that meet the requirements of §2261.253 as a whole.

Wendy Rodriguez, Deputy Commissioner, Texas Department of Banking, on behalf of the Finance Commission of Texas, has determined that

for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Deputy Commissioner Rodriguez has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be that the commission's rules are more easily understood by licensees subject to the rules, and are more easily enforced by the finance agencies.

There is no anticipated cost to persons who are required to comply with the proposed amendments. There will be no adverse economic effect on small or micro-businesses. There will be no difference in the cost of compliance for these entities. There will be no effect on individuals required to comply with the amendments as proposed.

For each year of the first five years that the rule will be in effect, the rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit, or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; and

- positively or adversely affect this state's economy.

To be considered, comments on the proposed amendment to §10.40 must be submitted no later than 5:00 p.m. on August 5, 2024. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendments are proposed 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 proposed new rule are contained in Texas Government Code, Chapter 2261.

§10.40. Enhanced Contract and Performance Monitoring; Website Posting

(a) (No change.)

(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.]~~

~~(2) [(3)] Documents not subject to this section. Documents not subject to this section include the following: [enhanced monitoring. This section does not apply to:]~~

~~(A) memoranda of understanding;~~

~~(B) interagency contracts;~~

~~(C) interlocal agreements; and [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) Identifying contracts that require enhanced monitoring. Each finance agency will include risk assessment factors in its contract management handbook to identify contracts that require enhanced contract or performance monitoring. The risk assessment~~

factors must include the following:

(A) the total contract amount;

(B) the type of contract purchase;

(C) the impact to the agency and its mission; and

(D) the compliance history of the contractor.

~~(3) [(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 [§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).~~