



TO: Health and Human Services Commission
Executive Council

DATE: December 6, 2018

FROM: Kay Molina, Associate Commissioner of
Compliance and Quality Control, PCS

AGENDA ITEM: 2.o

SUBJECT: Contract Monitoring

BACKGROUND: Federal Legislative Other: Program Initiative

The new §391.213 and §391.215 make necessary updates to rules in Texas Administrative Code, Title 1, Chapter 391, Subchapter B, concerning contract monitoring roles and responsibilities and enhanced contract monitoring.

Government Code Chapter 2261 requires a state agency that procures goods and services to adopt rules that address contract monitoring responsibilities and enhanced contract monitoring. Specifically, §2261.202 requires each state agency that makes procurements to which Chapter 2261 applies to establish and adopt by rule a policy that clearly defines the contract monitoring roles and responsibilities, if any, of internal audit staff and other inspection, investigative, or audit staff.

Section 2261.253(c) requires that a state agency, by rule, establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing officer. Section 2261.253(c) similarly requires that the agency's contract management office or procurement director immediately notify the agency's governing officer of any serious issue or risk that is identified with respect to a contract monitored under this subsection.

ISSUES AND ALTERNATIVES:

HHSC is determined to move quickly on any rule changes to ensure that HHSC's procurement processes are in compliance with all statutory, regulatory, and best practice requirements.

STAKEHOLDER INVOLVEMENT:

The proposed rules were published in the November 9, 2018, issue of the *Texas Register*.

FISCAL IMPACT:

None

SERVICES IMPACT STATEMENT:

As these are administrative rules of the agency, there will be no impact to the agency's client population.

RULE DEVELOPMENT SCHEDULE:

November 9, 2018	Publish proposed rules in <i>Texas Register</i>
December 6, 2018	Present to HHSC Executive Council
December 2018	Publish adopted rules in <i>Texas Register</i>
January 2019	Effective date

PROPOSED PREAMBLE

The Texas Health and Human Services Commission (HHSC) proposes new §391.213, concerning Contract Monitoring Roles and Responsibilities, and §391.215, concerning Enhanced Contract Monitoring in Title 1, Part 15, Chapter 391, Subchapter B of the Texas Administrative Code.

BACKGROUND AND PURPOSE

Government Code Chapter 2261, which applies to state contracting standards and oversight, requires each state agency to adopt rules that address contract monitoring responsibilities and enhanced contract monitoring. Specifically, §2261.202 requires a state agency that procures goods or services on its own, independent of the comptroller and not under Education Code §51.9335 or §73.115 or under Government Code §2155.131 or §2155.132, to establish and adopt by rule a policy that clearly defines the contract monitoring roles and responsibilities, if any, of internal audit staff and other inspection, investigative, or audit staff.

Section 2261.253(c) requires that each state agency, by rule, shall establish a procedure to identify each contract for goods or services from a private vendor that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing officer. Section 2261.253(c) also requires that the agency's contract management office or procurement director immediately notify the agency's governing officer of any serious issue or risk that is identified with respect to a contract that requires enhanced contract monitoring.

SECTION-BY-SECTION SUMMARY

Proposed new §391.213, relating to contract monitoring roles and responsibilities, clarifies the staff and program areas within HHSC involved in the various aspects of contract monitoring.

Proposed new §391.215, relating to enhanced contract monitoring, clarifies the factors that determine which contracts require enhanced monitoring; provides direction for procedures and notification of serious issues or risk that is identified with respect to a monitored contract; and states the exceptions for specific contract types that do not require enhanced monitoring.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the new rules are in effect, there is no anticipated impact to costs and revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the sections will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of employee positions;
- (3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to the agency;
- (5) the proposed rules will create new rules that Government Code §2261.202 and §2261.253(c) require HHSC to adopt;
- (6) the proposed rules will not expand, limit, or repeal an existing rule;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that the proposed rules will not have an adverse economic effect on small and micro-businesses or rural communities. Consequently, an economic impact statement and regulatory flexibility analysis, pursuant to Government Code §2006.002, are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

HHSC has determined that the proposed rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government. Accordingly, Government Code §2001.0045 does not apply to these rules.

PUBLIC BENEFIT

Katherine Molina, Associate Commissioner of the Office of Compliance and Quality Control, has determined that for each year of the first five years the rules are in effect, the public will benefit from clarifying the contract monitoring process in rules that is required by statute.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code §2007.043.

PUBLIC COMMENT

Questions concerning the proposed rules may be directed to Katherine Molina at (512) 406-2451.

Written comments on the proposed rules may be submitted to Katherine Molina, Associate Commissioner of Compliance and Quality Control, Procurement and Contracting Services, Texas Health and Human Services Commission, 1100 W. 49th Street, Mail Code 2020, Austin, Texas 78756; or e-mailed to Katherine.Molina@hhsc.state.tx.us.

Comments must be received no later than 30 days from the date of publication of the proposed rules in the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on Proposed Rule 19R003" in the subject line.

STATUTORY AUTHORITY

The new rules are proposed under Government Code §531.0055(e) and §531.033, which provide the Executive Commissioner of HHSC with rulemaking authority, and under Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring.

The new rules affect Government Code §§531.00553, 2261.202, and 2261.253.

This agency hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

TITLE 1 ADMINISTRATION.
PART 15 TEXAS HEALTH AND HUMAN SERVICES COMMISSION.
CHAPTER 391 PURCHASE OF GOODS AND SERVICES BY THE TEXAS
HEALTH AND HUMAN SERVICES COMMISSION.
SUBCHAPTER B CONTRACTS.

§391.213. Contract Monitoring Roles and Responsibilities.

The contract monitoring roles and responsibilities of the Texas Health and Human Services Commission (HHSC) internal audit staff and other inspection, investigative, or compliance staff are as follows:

(1) The Internal Audit Division will perform internal audit activities, which will include assisting and consulting regarding contract monitoring issues, based on the results of a risk assessment or upon request for consulting services. The Internal Audit Division will also perform audits of the contract management function and systems when audits are warranted by the results of risk assessment or included in the audit plan approved by HHSC's Executive Commissioner pursuant to Government Code §2102.005 and §2102.008.

(2) The Procurement and Contracting Services Division will seek to improve contract compliance by maintaining a system of record serving as a central repository for agency contracts so the agency can perform management, reporting, and contract compliance reviews.

(3) HHSC does not have a criminal enforcement unit. HHSC reports criminal activity related to agency contracts to the appropriate authorities as set out in statute.

(4) The contract manager/project manager that oversees a contract will monitor and report to other appropriate agency divisions regarding contract compliance.

(5) HHSC's Historically Underutilized Business Program will assist the administering division or divisions and contract management staff in monitoring agency contracts in connection with applicable historically underutilized and minority business contract requirements.

(6) HHSC's Compliance and Quality Control Division will continually review procurement policies and procedures, templates and forms, manuals and large solicitation documents to ensure compliance with state law and the State of Texas Procurement and Contract Management Guide.

§391.215. Enhanced Contract Monitoring.

(a) HHSC shall identify contracts that require enhanced monitoring.

(b) In determining which contracts require enhanced monitoring, HHSC shall consider factors including:

(1) contract amount;

(2) risk;

(3) special circumstances of the project; and

(4) the scope of the goods or services provided.

(c) HHSC shall adopt procedures to administer the enhanced contract monitoring program.

(d) Information on contracts that require enhanced monitoring will be reported to the HHSC Executive Commissioner at least quarterly. The Executive Commissioner will be notified immediately of any serious issues or risks that is identified with respect to such a contract.

(e) This section does not apply to a memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.