

SUBCHAPTER U. ENHANCED CONTRACTS AND PERFORMANCE MONITORING
28 TAC §1.2201

INTRODUCTION. The Texas Department of Insurance proposes new 28 TAC Chapter 1, Subchapter U, consisting of new §1.2201. The proposed new rule implements procedures for contracts for the purchase of goods or services from private vendors.

EXPLANATION. TDI proposes the new rule in response to SB 20, 84th Legislature, Regular Session (2015). SB 20 requires each state agency by rule to establish a procedure to identify contracts that require enhanced contract or performance monitoring and prescribes certain reporting requirements. The proposed rule includes four criteria to determine whether enhanced contract or performance monitoring is appropriate and establishes the new procedure. The procedure specifies that the procurement director will report all contracts requiring enhanced contract or performance monitoring to the appropriate commissioner. The appropriate commissioner is the commissioner of insurance for contracts related to TDI, the commissioner of workers compensation for contracts related to the Division of Workers' Compensation, or both commissioners for contracts related to both DWC and TDI.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Mike Powers, director, Procurement and General Services, Administrative Operations Division, has determined that for each year of the first five years the proposed section is in effect, there will be no measurable fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. Mr. Powers does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. TDI has determined that the public benefits as a result of enforcing the rule will be to enhance reporting requirements for certain kinds of purchasing contracts, and increased government transparency and accountability. The proposed new §1.2201 does not create or impose any new costs on parties outside TDI.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. TDI has determined that there will be no effect on small or micro businesses required to comply with this proposed rule. Any costs to entities or to individuals who are required to comply with

the proposed rule are imposed by SB 20, not by the rule. Therefore, no economic impact statement or regulatory flexibility analysis is required under Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you wish to comment on this proposal you must do so in writing no later than 5 p.m., Central time, on June 6, 2016. Please send one copy of your comments to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. You must simultaneously submit an additional copy of the comment to Mike Powers, Director, Procurement and General Services, Administrative Operations Division, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to mike.powers@tdi.texas.gov. If you wish to request a public hearing on this proposal, you must submit your request separate from your comments to the Texas Department of Insurance, Office of Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov before the close of the public comment period. If a hearing is held, written comments and public testimony presented at the hearing will be considered.

STATUTORY AUTHORITY. The new rule is proposed under Government Code §2261.253, Insurance Code §36.001, and Labor Code §402.00113. Government Code §2261.253(c) states that each state agency shall by rule establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the officer who governs the agency. Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state. Labor Code §402.00113 provides that DWC is administratively attached to TDI.

CROSS REFERENCE TO STATUTE. Government Code §2261.253 is implemented by this rule.

SUBCHAPTER U. ENHANCED CONTRACTS AND PERFORMANCE MONITORING

28 TAC §1.2201. Enhanced Contracts and Performance Monitoring. Under Government Code §2261.253, the Texas Department of Insurance implements the following procedures for contracts for the purchase of goods or services from private vendors until the contract expires or is completed.

(1) For each contract with a value greater than \$25,000, the procurement director will evaluate whether enhanced contract or performance monitoring is appropriate. The procurement director may evaluate whether enhanced contract or performance monitoring is appropriate for contracts with a value less than \$25,000. Criteria that may be considered include:

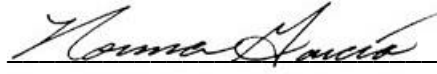
- (A) total cost of the contract, including contract renewals;
- (B) risk of loss to the department under the contract;
- (C) department resources available for enhanced contract or performance monitoring; and
- (D) whether the vendor is a foreign or domestic person or entity.

(2) After evaluation of the contract, if enhanced contract or performance monitoring is appropriate, the procurement director or designee will immediately report to the commissioner of insurance, the commissioner of workers' compensation, or both commissioners, as appropriate based on the subject matter of the contract:

- (A) the basis for determination as to whether enhanced contract or performance monitoring is appropriate;
- (B) include any serious issues or risks identified with the contract, if applicable; and
- (C) if enhanced contract or performance monitoring is appropriate, the department's plan for carrying out the enhanced contract or performance monitoring.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 20, 2016.

A handwritten signature in cursive script, appearing to read "Norma Garcia", is positioned above a horizontal line.

Norma Garcia
General Counsel
Texas Department of Insurance