

# SUPPLEMENTAL MATERIALS

## AGENDA ITEM XII-D (1)

### Consideration and possible action to adopt proposed repeal and replacement of Rule 1.16, concerning contracts, including grants, for materials and/or services

RECOMMENDATION: Approval

#### Background Information:

The Texas Higher Education Coordinating Board (THECB) proposes the repeal and new adoption of Rule 1.16, concerning contracts and grants for materials and/or services. Specifically, the repeal, via separate rulemaking, and new rule will clarify and streamline the agency's contracting process by doing the following:

#### Rule 1.16(a):

- increases the authority of the Commissioner of Higher Education to execute agreements up to \$5 million;
- clarifies the commissioner will provide written notification to the Board of the THECB (Board) chair and vice chair, and chair of the Agency Operations Committee before execution of an agreement that totals more than \$1 million, including all amendments; and
- sets out the reporting requirements that the Director of Contracts and Procurement will comply with, as required by law.

#### Subsection (b):

- provides that an agreement that exceeds \$5 million requires Board approval, except those that the agency is required by law to execute, i.e. non-discretionary pass through funding; and
- sets out the reporting requirements that the Director of Contracts and Procurement will comply with, as required by law, for contracts exceeding \$5 million.

#### Subsection (c):

- provides that a deputy or associate commissioner has authority to enter into an agreement that totals \$100,000 or less, including all amendments; and
- provides that an assistant commissioner has authority to enter into an agreement that totals \$10,000 or less, including all amendments.

#### Subsection (d):

- requires the commissioner to provide a quarterly report to the Board listing all agreements entered into by the Board that are \$10,000 or greater, including all amendments.

Subsection (e):

- sets out the statutory requirement for the Board to approve in an open meeting certain changes to contracts for goods or services, as set out in Government Code Chapter 2155.

Subsection (f):

- requires the agency to use the procedures set out in its Procurement and Contract Management Handbook, Grant Management Handbook, and risk assessment tool to determine which contracts and grants require enhanced monitoring.

The proposed increase in delegation of authority from the Board to the Commissioner of Higher Education reflects the current landscape of agency operations and the high volume of contracts, interagency contracts, and grant agreements that require swift execution.

The Board will receive quarterly notification of all agreements over \$10,000. The commissioner, via agency staff, will notify the Board chair, vice chair, and chair of the Agency Operations Committee of each agreement that will exceed \$1 million before execution of the agreement. This will allow any of the Board leadership to notify the commissioner or general counsel of any concerns with the contract before execution of the contract.

The increase in authority to execute contracts up to \$10,000 for assistant commissioners and up to \$100,000 for deputy and associate commissioners provides greater efficiency in the contracting process for smaller dollar contracts that, once properly procured, do not require additional approvals.

Nichole Bunker-Henderson, General Counsel, will present this item and be available to answer questions.

Date Published in the *Texas Register*: January 28, 2022.

The 30-day comment period with the *Texas Register* ended on: February 27, 2022.

No comments have been received regarding this rule.

## Chapter 1 - Agency Administration

## Subchapter A - GENERAL PROVISIONS

1.16. Contracts, Including Grants, for Materials and/or Services

~~[(a) The Board shall approve all requests for the purchase or acquisition of materials and/or services if the cost for those materials and/or services is expected to exceed \$750,000. After a vendor or grantee is selected, a majority of the Chair and Vice Chair of the Board and the Chair of the responsible Board committee shall provide final approval of the contract with the selected vendor or grantee.]~~

~~[(b) The Board shall, in an open meeting, consider any material change to all contracts for goods or services awarded under Texas Government Code, Chapter 2155. A material change to a contract includes extending the length or postponing the completion of a contract for six months or more; or increasing the total consideration to be paid under a contract by at least 10 percent, including by substituting certain goods, materials, products, or services. Goods are supplies, materials, or equipment. Services are the furnishing of skilled or unskilled labor or professional work but do not include a professional service subject to Subchapter A, Chapter 2254, Texas Government Code, service of a state employee, consulting service or service of a consultant as defined by Subchapter B, Chapter 2254, or the service of a public utility.]~~

~~[(c) The Board committee to which an item is assigned shall approve all requests relating to that item for the purchase or acquisition of materials and/or services if the cost for those materials and/or services is greater than \$100,000 but less than or equal to \$750,000. After a vendor or grantee is selected, a majority of the Chair and Vice Chair of the Board and the Chair of the responsible Board committee shall provide final approval of the contract with the selected vendor or grantee.]~~

~~[(d) All contracts, including grants, whose amounts payable are less than or equal to \$100,000 must be approved in accordance with this subsection (d) of this section unless the Board or a Board committee or the Board Chair, Vice Chair, and Chair of the responsible Board committee has approved such agreements.]~~

~~[ (1) The Commissioner or the Deputy Commissioner with primary oversight of a particular contract shall approve every such contract, including grants, for the purchase or acquisition of materials and/or services if the contract or grant amount is less than or equal to \$100,000 but greater than \$5,000.]~~

~~[(2) Assistant Commissioners, in addition to the Commissioner and Deputy Commissioners, may approve contracts, including grants, within their area of responsibility, if the amount payable is less than or equal to \$5,000.]~~

~~[(c) The Commissioner shall provide a report to the Board, at least quarterly, describing all contracts, including grants, for the purchase or acquisition of materials and/or services that were executed pursuant to subsection (d) of this section and not considered by the Board or a Board committee or by the Board Chair, Vice Chair, and Chair of the responsible Board committee.]~~

~~[(f) The Chair and Vice Chair of the Board have the authority to approve emergency purchase requests and contracts for materials and/or services over \$100,000 that must be entered into in order to prevent a hazard to life, health, safety, welfare, property or to avoid undue additional cost to the state. Emergency purchase requests and contracts are exempt from subsections (a) and (c) of this section.]~~

~~[(g) In the event that the agency is required by statute to enter into a contract or grant for the purchase or acquisition of materials and/or services with a value of over \$100,000, approval of such a request or contract or grant by the Board or a Board committee pursuant to subsection (a) or (c) of this section, as appropriate, shall not be required when such a contract or grant award involves no discretion by the Board or agency staff. The Commissioner or a Deputy Commissioner, in accordance with subsection (d) of this section, shall approve such contracts or grants and report them to the Board at the next quarterly Board meeting following the approval.]~~

~~[(h) In the event that a contract or grant for a given amount has been approved by either the Board or a Board committee, as applicable, and circumstances alter such that the expenditure necessary under the contract or grant increases by less than ten percent, the Commissioner or a Deputy Commissioner, in accordance with subsection (d) of this section, may approve such an increase. Should the increase in expenditure equal or exceed ten percent or extend the length of or postpone completion of the contract by six months or more for contracts for goods or services awarded under Texas Government Code, Chapter 2155, approval must be sought in accordance with subsection (b) of this section. Should the increase in expenditure equal or exceed ten percent for contracts or grants not covered by Chapter 2155 but which were approved by either the Board or a Board committee or by a majority of the Board Chair, Vice Chair, and the Chair of the responsible Board committee, the contract or grant must be submitted for approval by a majority of the Board Chair, Vice Chair, and the Chair of the responsible Board committee.]~~

~~[(i) In the event that the Board or a Board committee, as applicable, has approved the issuance of a solicitation request for the purpose of obtaining materials and/or services that will result in the letting of contracts, including grants, to multiple vendors or providers of services, any resulting contract or grant which by itself shall have a cost greater than \$100,000 must be approved by a majority of the Chair and Vice Chair of the Board and the Chair of the responsible Board committee unless such contracts are approved by the Board or the responsible Board committee, as appropriate. The Commissioner or a Deputy Commissioner, in accordance with subsection (d) of this section, shall provide final approval of contracts or grants with the selected vendors or grantees if the contract amount is less than or equal to \$100,000; the Board Chair, Vice Chair and the Chair of the responsible Board committee shall be notified in such event.]~~

~~[(j) For each contract for the purchase of goods or services that has a value exceeding \$1 million:]~~

~~[(1) there must be contract reporting requirements that provide information on the following:]~~

~~[(A) compliance with financial provisions and delivery schedules under the contract;]~~

~~[(B) corrective action plans required under the contract and the status of any active corrective action plan; and]~~

~~[(C) any liquidated damages assessed or collected under the contract.]~~

~~[(2) Verification is required of:]~~

~~[(A) the accuracy of any information reported under paragraph (1) of this subsection that is based on information provided by a contractor; and]~~

~~[(B) the delivery time of goods or services scheduled for delivery under the contract.]~~

~~[(3) Any such contract for the purchase of goods or services that has a value exceeding \$1 million may be entered into only if the contract is approved and signed by the Commissioner, to whom the Board hereby delegates such approval and signature authority. In exercising such approval authority, the Commissioner shall use the approval process established in subsection (a) of this section.]~~

~~[(4) For purposes of this subsection, "contract" includes a grant, other than a grant made to a school district or a grant made for other academic purposes,~~

~~under which the recipient of the grant is required to perform a specific act or service, supply a specific type of product, or both.}]~~

~~[(k) For each contract for the purchase of goods or services that has a value exceeding \$5 million, the contract management office or procurement director must:]~~

~~[- (1) verify in writing that the solicitation and purchasing methods and contractor selection process comply with state law and agency policy; and]~~

~~[- (2) submit to the Board information on any potential issue that may arise in the solicitation, purchasing, or contractor selection process.}]~~

~~[- (3) For purposes of this subsection, "contract" includes a grant, other than a grant made to a school district or a grant made for other academic purposes, under which the recipient of the grant is required to perform a specific act or service, supply a specific type of product, or both.}]~~

~~[(l) Agency staff shall utilize THECB's Procurement and Contract Management Handbook guidelines and the THECB's Risk Assessment tool to determine which contracts require enhanced contract or performance monitoring]~~

(a) The Board delegates to the Commissioner authority to approve and enter into all payable and receivable Agreements, including, contracts, grants, and other agreements, and interagency contracts for which the Agreement, inclusive of all amendments, totals \$5 million or less.

(1) The Commissioner is authorized to approve and sign all Agreements that total up to \$5 million, inclusive of all amendments subject to the notification requirements in subsection (2).

(2) The Commissioner shall provide written notification to the Board Chair, Board Vice Chair and Chair of the Agency Operations committee of any Agreement that totals \$1 million or more, inclusive of all amendments, prior to execution of the Agreement.

(3) For each contract for the purchase of goods or services that has a value exceeding \$1 million, there must be contract reporting requirements that provide information on the following:

(i) compliance with financial provisions and delivery schedules under the contract;

(ii) corrective action plans required under the contract and the status of any active corrective action plan; and

(iii) any liquidated damages assessed or collected under the contract.

(iv) Verification is required of:

(v) the accuracy of any information reported under this subsection that is based on information provided by a contractor; and the delivery time of goods or services scheduled for delivery under the contract.

(b) Any Agreement exceeding \$5 million, inclusive of all amendments, requires Board approval prior to execution of the contract or other Agreement, except those described in subsection (b)(1). The Commissioner is authorized to sign an Agreement or amendment that totals more than \$5 million that has been approved by the Board.

(1) Agreements exceeding \$5 million that the agency is required by law to enter into, i.e. those that are appropriated to the agency as non-discretionary funding to a third party, do not require Board approval and are delegated to the Commissioner for approval and signature.

(2) For each contract for the purchase of goods or services that has a value totaling \$5 million or more, the procurement director must:

(A) verify in writing that the solicitation and purchasing methods and contractor selection process comply with state law and agency policy; and

(B) submit to the Board information on any potential significant issue that may arise in the solicitation, purchasing, or contractor selection process.

(c) In addition to the Commissioner, the following employees have authority to approve an Agreement:

(1) A Deputy or Associate Commissioner if the Agreement, inclusive of all amendments, totals \$100,000 or less.

(2) An Assistant Commissioner, in addition to a Deputy or Associate Commissioner, with primary oversight of a particular Agreement if the Agreement, inclusive of all amendments, totals \$10,000 or less.

(d) The Commissioner shall provide a report to the Board, at least quarterly, describing all Agreements entered into by the agency during the preceding quarter, the total of which, inclusive of all amendments, is \$10,000 or greater.

(e) The Board shall, in an open meeting, consider any material change to all contracts for goods or services awarded under Texas Government Code, Chapter 2155. A material change to a contract includes extending the length or postponing the completion of a contract for six months or more; or increasing the total consideration to be paid under a contract by at least 10 percent, including by substituting certain goods, materials, products, or services. Goods are supplies, materials, or equipment. Services are the furnishing of skilled or unskilled labor or professional work but do not include a professional service subject to Subchapter A, Chapter 2254, Texas Government Code, service of a state employee, consulting service or service of a consultant as defined by Subchapter B, Chapter 2254, or the service of a public utility.

(f) Agency staff shall utilize THECB's Procurement and Contract Management Handbook or Grant Management guidelines and the THECB's Risk Assessment tool to determine which Agreements require enhanced contract or grant monitoring.