

PROJECT NO. 52805

REVIEW OF 16 TAC §27.170

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO 16 TAC §27.170
AS APPROVED AT THE DECEMBER 2, 2021 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to existing 16 Texas Administrative Code (TAC) §27.170 relating to Enhanced Contract Monitoring Procedure. This proposed rule will clarify the procedure for identifying contracts that require enhanced contract monitoring under Texas Government Code §2261.253.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability;
- and
- (8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Mr. Jay Stone, Program Administrator, Budget & Fiscal Oversight Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Stone has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the higher level of monitoring associated with commission contracts that have a risk level of medium or high. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section.

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by January 4, 2022. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by January 4, 2022. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 52805.

Statutory Authority

The amended rule is proposed under PURA §14.002, which provides the Public Utility Commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The amended rule is also proposed under Texas Government Code §2261.253, which requires each state agency to establish a procedure, by rule, to identify each contract that requires enhanced contract monitoring.

Cross Reference to Statute: Public Utility Regulatory Act §14.002 and Texas Government Code §2261.253.

§27.170. Enhanced Contract Monitoring Procedure.

- (a) The commission ~~will shall~~ assess each contract to determine whether enhanced contract monitoring is necessary.
- (1) The commission ~~will shall~~ use the following factors to determine whether enhanced contract monitoring is necessary:
- (A) ~~vendor performance history; the complexity of the services,~~
 - (B) the contract amount~~;~~
 - (C) ~~contract length; whether the services or contractor are new or changed significantly,~~
 - (D) ~~impact on agency goals; and whether the project involved is a high profile project,~~
 - (E) any other factors that may impact the ~~agency project.~~
- (2) Projects deemed medium or high~~-~~risk ~~based on the factors under subsection (a)(1) will shall~~ be co-monitored by contract and program staff and may involve additional team members such as legal, fiscal, and auditing staff members.
- (b) If a contract is determined to need enhanced monitoring, the commission will require the vendor to provide specific programmatic information on a scheduled basis to determine ~~whether if~~ performance measures are being met.
- (1) Programmatic reports ~~must shall~~ include information related to the performance measures in the contract, as well as any other deliverables.
- (2) Enhanced monitoring may also include site visits, additional meetings with the vendor's staff ~~or and~~ other documentation ~~relevant determined~~ to assess progress ~~toward by the agency towards~~ meeting performance requirements.

- (c) The director of the fiscal division ~~must shall~~ notify the agency governing board of contracts executive staff requiring needing enhanced monitoring through this process.
- (d) This process does not apply to an interagency agreement, interlocal agreement, ~~a~~ memorandum of understanding with another state agency, or a contract for which there is not a cost.

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

**ISSUED IN AUSTIN, TEXAS ON THE 3rd DAY OF DECEMBER 2021 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ANDREA GONZALEZ**