

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

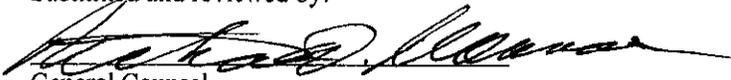
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §9.1, relating to claims for purchase contracts, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

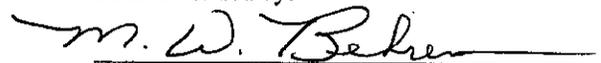
IT IS THEREFORE ORDERED by the commission that the amendments to §9.1 are adopted and are authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:


General Counsel

Recommended by:


Executive Director

110310 NOV 17 05

Minute Number Date Passed

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts
3 amendments to §9.1, concerning claims for purchase contracts.
4 The amendments to §9.1 are adopted without changes to the
5 proposed text as published in the September 9, 2005 issue of the
6 *Texas Register* (30 TexReg 5755) and will not be republished.

7
8 EXPLANATION OF ADOPTED AMENDMENTS

9 House Bill 1940, 79th Legislature, Regular Session, 2005,
10 amended Government Code, Chapter 2260. That chapter contains
11 the procedure for resolving contract claims that arise under the
12 State Purchasing and General Services Act, Government Code,
13 Chapter 2155. The Texas Transportation Commission (commission)
14 has previously adopted §9.1 to implement that procedure.

15
16 The adopted amendments make three changes to the current rule.
17 First, §9.1(b)(3) is amended to update the definition of
18 director of contract services to reflect the incorporation of
19 the former Contract Services Office into the Office of General
20 Counsel. Second, §9.1(d)(1) is amended to provide that
21 negotiations will start no later than 120 days after a claim is
22 received. This change makes the rule consistent with the
23 statutory change made by House Bill 1940. And third, the
24 reference to §1.21 is changed to update the subchapter title.

25

1 COMMENTS

2 No comments on the proposed amendments were received.

3

4 STATUTORY AUTHORITY

5 The amendments are adopted under Transportation Code, §201.101,
6 which provides the commission with the authority to establish
7 rules for the conduct of the work of the department, and more
8 specifically, under Government Code, §2260.052(c), which
9 requires each state agency with rulemaking authority to adopt
10 rules governing the negotiation of claims under Government Code,
11 Chapter 2260.

12

13 CROSS REFERENCE TO STATUTE

14 Government Code, Chapter 2260.

1 SUBCHAPTER A. GENERAL

2 §9.1. Claims for Purchase Contracts.

3 (a) Purpose. Government Code, Chapter 2260, provides a
4 resolution process for certain contract claims against the
5 state. Chapter 2260 applies to purchase contracts of the Texas
6 Department of Transportation entered into under the State
7 Purchasing and General Services Act. This section governs the
8 filing, negotiation, and mediation of a claim.

9 (b) Definitions. The following words and terms, when used
10 in this section, shall have the following meanings, unless the
11 context clearly indicates otherwise.

12 (1) Claim--A claim for breach of a purchase contract
13 between a vendor and the department.

14 (2) Department--The Texas Department of Transportation.

15 (3) Director of contract services--The director of the
16 Contract Services Section of the department's Office of General
17 Counsel [~~contract services office of the department~~].

18 (4) Executive director--The executive director of the
19 department or the director's designee not below the level of
20 office director.

21 (5) Purchase--A procurement action under Government Code,
22 Title 10, Subtitle D, for commodities or non professional
23 services.

1 (6) Vendor--An individual, partnership, corporation, or
2 other business entity that is a party to a written contract for
3 a purchase with the department.

4 (c) Filing of claim. A vendor may file a notice of claim
5 with the director of contract services within 180 days after the
6 date of the event giving rise to the claim. The claim must
7 contain the:

8 (1) nature of the alleged breach;

9 (2) amount the vendor seeks as damages; and

10 (3) legal theory of recovery.

11 (d) Negotiation.

12 (1) The executive director will begin negotiations with
13 the vendor to resolve the claim. The negotiations will begin no
14 later than the 120th [~~60th~~] day after the [~~later of:~~]

15 [~~(A) the date of the termination of the contract;~~]

16 [~~(B) the completion date in the original contract; or~~]

17 [~~(C) the~~] date the claim is received.

18 (2) The negotiation may be written or oral. The
19 executive director may afford the vendor an opportunity for a
20 meeting to informally discuss the disputed matters and provide
21 the vendor an opportunity to present relevant information.

22 (e) Mediation.

23 (1) The department and the vendor may agree to nonbinding

1 mediation. The department will agree to mediation if the
2 executive director determines that the mediation may speed
3 resolution of the claim or otherwise benefit the department.

4 (2) The executive director will appoint a department
5 employee as mediator. The employee must not have had any
6 previous involvement or participation in the administration of
7 the contract or the resolution of the claim.

8 (3) If the vendor objects to the appointment of a
9 department employee as mediator, the department will select and
10 hire a private mediator from outside the department. The costs
11 for the services of a private mediator will be apportioned
12 equally between the department and the vendor.

13 (4) The role of a mediator is limited to assisting the
14 parties in attempting to reach an agreed resolution of the
15 issues.

16 (f) Final offer.

17 (1) The executive director will make a final offer to the
18 vendor within 90 days of beginning negotiations.

19 (2) If the disposition is acceptable to the vendor, the
20 vendor shall advise the director of contract services in writing
21 within 20 days of the date of the final offer. The department
22 will forward an agreed disposition involving payment to the
23 vendor for a final and binding order on the claim.

1 (g) Contested case hearing. If the vendor is dissatisfied
2 with the final offer, or if the claim is not resolved before the
3 90th day after negotiations begin, the vendor may petition the
4 executive director for an administrative hearing to litigate the
5 unresolved issues in the claim under the provisions of §1.21 et
6 seq. of this title (relating to Procedures in Contested Cases
7 [~~Contested Case Procedure~~]).