

1 SUBCHAPTER F. SANCTIONS FOR ETHICAL VIOLATIONS BY OTHER ENTITIES

2 §10.251. Application of Subchapter.

3 (a) This subchapter applies only to an individual or entity
4 doing business with the department that is subject to this
5 chapter but not subject to Subchapter D, Score Reduction for
6 Ethical Violations by Architectural, Engineering, and Surveying
7 Service Providers, of this chapter.

8 (b) The sanctions provided by this subchapter are in
9 addition to other actions and remedies available to the
10 department.

11

12 §10.252. Procedure.

13 (a) The executive director may impose a sanction on an
14 entity if a ground for a sanction under §10.101 of this chapter
15 (relating to Required Conduct) exists. The executive director
16 will impose sanctions under this subchapter in accordance with
17 §10.255(c) of this subchapter (relating to Application of
18 Sanction).

19 (b) Except as provided in §10.256(g) of this subchapter
20 (relating to Appeal of Sanction), a sanction is effective on the
21 date specified in the notice of sanction under §10.253 of this
22 subchapter (relating to Notice of Sanction).

1 (c) The imposition of a sanction on an entity does not
2 affect the entity's obligations under an agreement with the
3 department or limit the department's remedies under the
4 agreement.

5 (d) The executive director, concurrent with the delivery of
6 the notice of a sanction other than a reprimand, may suspend an
7 entity without a prior hearing. Before imposing a suspension,
8 the executive director will consider all relevant circumstances,
9 including the severity and willfulness of the conduct, the
10 likelihood of immediate harm to the public, and whether there
11 has been a pattern of inappropriate conduct. The suspension
12 terminates when a final order is entered under §10.256(e) of
13 this subchapter.

14
15 §10.253. Notice of Sanction. If the executive director imposes
16 a sanction under this subchapter, the department will notify the
17 entity by certified mail within five working days after the date
18 of the executive director's decision. The notice will:

19 (1) state the sanction and the time period of the
20 sanction, if applicable;

21 (2) summarize the facts and circumstances underlying the
22 sanction;

1 (3) explain how the sanction was selected, using
2 §10.255(c) of this subchapter (relating to Application of
3 Sanction) as a basis for explanation;

4 (4) if applicable, inform the entity of the imposition of
5 a suspension under §10.252(d) of this subchapter (relating to
6 Procedure); and

7 (5) state that the provider may appeal the reduction in
8 accordance with §10.256 of this subchapter (relating to Appeal
9 of Sanction).

10

11 §10.254. Available Sanctions.

12 (a) The available sanctions, in order of increasing
13 severity, are:

14 (1) a reprimand;

15 (2) prohibition from participating in a specified
16 agreement, whether the agreement was previously awarded or to be
17 awarded or whether funds under the agreement have been paid or
18 are to be paid;

19 (3) a limit on the contract amount or amount of funds
20 that may be awarded or paid to the entity for a period of not
21 more than 60 months; or

22 (4) debarment of the entity for a period of not more than

1 60 months.

2 (b) Before imposing a sanction, the executive director will
3 consider the following factors:

4 (1) the seriousness and willfulness of the act or
5 omission;

6 (2) whether the entity has committed similar acts or
7 omissions and if so, when those acts or omissions were
8 committed;

9 (3) whether the entity, or a third party on behalf of the
10 entity, has fully compensated the department for any damages
11 suffered by the department as a result of the entity's acts or
12 omissions; and

13 (4) any mitigating factors.

14 (c) For the purposes of subsection (b)(4) of this section,
15 the following are mitigating factors:

16 (1) the entity's adoption and enforcement of an internal
17 ethics and compliance program that satisfies the requirements of
18 §10.51 of this chapter (relating to Internal Ethics and
19 Compliance Program);

20 (2) the entity's cooperation with the department in the
21 investigation of ethical violations, including the provision of
22 a full and complete account of the entity's involvement; or

1 (3) the entity's disassociation from individuals and
2 firms that have been involved in the ethical violation.

3
4 §10.255. Application of Sanction.

5 (a) The executive director, at the executive director's
6 sole discretion, may impose a sanction that is less severe, but
7 not more severe, than the sanction recommended under §10.254(c)
8 of this subchapter (relating to Available Sanctions).

9 (b) If an entity commits multiple violations arising out of
10 separate occurrences, the executive director may impose multiple
11 sanctions in accordance with subsection (c) of this section.

12 (c) Figure 43 TAC §10.255(c) sets forth guidelines for
13 application of a sanction by assigning for specific violations
14 of §10.101 of this chapter (relating to Required Conduct), the
15 sanctions available to the executive director as described in
16 §10.254(a) of this subchapter, taking into consideration the
17 factors described in subsection §10.254(b) of this subchapter.

- 1 Figure 43 TAC §10.255(c)
- 2 Guidelines for Application of Sanction based on Grounds and Factors

Ground for Sanction	Sanction			
	Reprimand	Prohibition from entering into a specified agreement	Limit on contract amount	Debarment
§10.101(4) relating to maintaining good standing	allowable with written explanation of justification	allowable with written explanation of justification	allowable with written explanation of justification	recommended
§10.101(3) relating to adherence to civil and criminal laws	allowable with written explanation of justification	allowable with written explanation of justification	recommended only if: <ul style="list-style-type: none"> • the entity meets all mitigating factors listed in §10.254(c), and • the entity has not committed similar acts or omissions and • the seriousness and willfulness of the act or omission is not severe, and • the entity, or a third party on 	recommended if: <ul style="list-style-type: none"> • the entity does not meet all mitigating factors listed in §10.254(c), or • the entity has committed similar acts or omissions, or • the seriousness and willfulness of the act or omission is severe, or • the department has not been

			<p>behalf of the entity, has fully compensated the department for any damages suffered by the department as a result of the entity's acts or omissions</p>	<p>fully compensated for any damages suffered by the department as a result of the entity's acts or omissions</p>
<p>§10.101(2) relating to offering, giving, or agreeing to give a benefit; or §10.101(1) relating to conflicts of interest</p>	<p>allowable with written explanation of justification</p>	<p>recommended only if:</p> <ul style="list-style-type: none"> • the entity meets all of the mitigating factors of §10.254(c), and • the entity has not committed similar acts or omissions, and • the seriousness and willfulness of the act or omission is not severe, and • the entity, or a third party on behalf of the entity, has 	<p>recommended only if:</p> <ul style="list-style-type: none"> • the entity meets some of the mitigating factors of §10.254(c), and • the entity has not committed similar acts or omissions, and • the seriousness and willfulness of the act or omission is not severe, and • the entity, or a third party on behalf of the entity, has 	<p>recommended if:</p> <ul style="list-style-type: none"> • the entity meets no mitigating factors listed in §10.254(c), or • the entity has committed similar acts or omissions, or • the seriousness and willfulness of the act or omission is not severe, or • the department has not been fully compensated for any damages

		fully compensated the department for any damages suffered by the department as a result of the entity's acts or omissions	fully compensated the department for any damages suffered by the department as a result of the entity's acts or omissions	suffered by the department as a result of the entity's acts or omissions
§10.101(5) relating to notifying the department	recommended only if: <ul style="list-style-type: none"> the entity meets all mitigating factors listed in §10.254(c), and the entity has not committed similar acts or omissions, and the seriousness and willfulness of the act or omission is not severe, and the entity, or a third party on behalf of the entity, has fully 	recommended only if: <ul style="list-style-type: none"> the entity meets some of the mitigating factors of §10.254(c), and the entity has not committed similar acts or omissions, and the seriousness and willfulness of the act or omission is not severe, and the entity, or a third party on behalf of the entity, has fully compensated the 	recommended if: <ul style="list-style-type: none"> the entity has committed similar acts or omissions, or the seriousness and willfulness of the act or omission is severe, or the department has not been fully compensated for any damages suffered by the department as a result of 	recommended only if: <ul style="list-style-type: none"> the entity has committed similar acts or omissions, and the seriousness and willfulness of the act or omission is severe, and the department has not been fully compensated for any damages suffered by the department as a result of the entity's acts or omissions

	compensated the department for any damages suffered by the department as a result of the entity's acts or omissions	department for any damages suffered by the department as a result of the entity's acts or omissions	the entity's acts or omissions	
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1 §10.256. Appeal of Sanction.

2 (a) A sanction, other than a reprimand, and unless ordered
3 or directed by the federal government, may be appealed to the
4 executive director by delivering to the executive director a
5 written notice of appeal within 10 working days after the
6 effective date of the sanction as specified in the notice of
7 sanction. If the notice of appeal is timely delivered, the
8 entity will be given the opportunity for an informal hearing
9 before the executive director. The executive director will set
10 a time for the hearing at the executive director's earliest
11 convenience. The executive director will set time the maximum
12 allowed for oral presentations and the procedure for written
13 documents to be presented by the entity. The executive director
14 will notify the entity in writing within 5 working days of the
15 executive director's determination on the appeal.

16 (b) If the entity is dissatisfied with the determination of
17 the executive director, the entity may request an administrative
18 hearing under §1.21 et seq. of this title (relating to
19 Procedures in Contested Cases). To be effective the request must
20 be received by the executive director within 10 working days
21 after the date that the executive director mails the
22 notification of determination under subsection (b) of this

1 section.

2 (c) The proposal for decision will be presented to the
3 commission at a regularly scheduled open meeting. The
4 commission may consider oral presentations. The commission will
5 make a determination based on the proposal for decision. The
6 commission's determination on the proposal for decision will be
7 adopted by minute order and reflected in the minutes of the
8 meeting.

9 (d) If an appeal to the executive director or by an
10 administrative hearing, as appropriate, is not timely requested
11 under this section, the executive director will issue a final
12 order imposing the sanction when the deadline for requesting an
13 appeal has passed. If an appeal is timely requested, the
14 executive director will issue a final order based on one of the
15 following:

16 (1) the executive director's determination under
17 subsection (a) of this section; or

18 (2) the commission's determination under subsection (c).

19 (e) If the only sanction being imposed is a reprimand, the
20 entity may appeal the reprimand by delivering to the executive
21 director a written notice of appeal and written documentation
22 disputing the reprimand within 10 working days after the

1 effective date of the sanction as specified in the notice of
2 sanction. The executive director will make the determination on
3 an appeal and issue a final order under this subsection.

4 (f) A sanction, other than a suspension or a reprimand, is
5 automatically stayed from the date that the department receives
6 the notice of appeal until a final order is entered by the
7 executive director. On entry of a final order by the executive
8 director imposing the sanction, the full term of the sanction
9 will be imposed on the date of the final order unless the
10 executive director expressly orders that a lesser sanction be
11 imposed.

12 (g) The order of the executive director issued under
13 subsection (e) of this section is final and not subject to
14 judicial review, except as required by law.

15

16 §10.257. Lessening or Removal of Sanction.

17 (a) An entity may request the reduction or removal of a
18 sanction imposed under this subchapter by delivering to the
19 executive director the request in writing and written
20 documentation in support of the request demonstrating changes in
21 the circumstances that were described in the notice of score
22 reduction under §10.253 of this subchapter.

1 (b) The executive director, at the executive director's
2 sole discretion, may decide to reduce or remove the sanction.
3 The executive director will send a written notice of the
4 decision to the entity.

5 (c) The executive director will consider not more than one
6 request under this section during any 12-month period.