

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §9.3, relating to Protest of Department Purchases under the State Purchasing and General Services Act, 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 verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the general counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §9.3 are adopted and are authorized for filing with the Office of the Secretary 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:

  
Director, Procurement Division

Recommended by:

  
Executive Director

114850 FEB 23 17

Minute Date  
Number Passed

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts  
3 amendments to §9.3, Protest of Department Purchases under the  
4 State Purchasing and General Services Act. The amendments to  
5 §9.3 are adopted without changes to the proposed text as  
6 published in the December 2, 2016, issue of the *Texas Register*  
7 (41 TexReg 9451) and will not be republished.

8

9 EXPLANATION OF ADOPTED AMENDMENTS

10 The department previously adopted §9.3 to provide a procedure  
11 for vendors to protest purchases made by the department.  
12 Revisions to this section are necessary to reflect  
13 organizational changes and to change the division name of the  
14 Comptroller of Public Accounts procurement function.  
15  
16 Amendments to §9.3 update the title of the department employee  
17 responsible for the receipt and processing of protests related  
18 to the applicable purchases. All references to Chief of  
19 Procurement and Field Support Operations are removed throughout  
20 the section and are replaced with Chief Administrative Officer.  
21 The amendments also correct the name of a division in the  
22 comptroller's office from the Comptroller of Public Accounts  
23 Texas Procurement and Support Services Division to the Statewide  
24 Procurement Division.

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 Texas Transportation Commission with the  
7 authority to establish rules for the conduct of the work of the  
8 department, and more specifically, Government Code, §2155.076,  
9 which provides the department with the authority to develop  
10 rules for protest procedures associated with the State  
11 Purchasing and General Services Act.

12

13 CROSS REFERENCE TO STATUTE

14 Government Code, §2155.076 and Transportation Code, §201.101.

SUBCHAPTER A. GENERAL

§9.3. Protest of Department Purchases under the State  
Purchasing and General Services Act.

(a) Purpose. The purpose of this section is to provide a  
procedure for vendors to protest purchases made by the  
department. Purchases made by the Statewide Procurement  
Division [~~Texas Procurement and Support Services division~~] of  
the Comptroller of Public Accounts office on behalf of the  
department are addressed in 34 TAC Chapter 20.

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

(1) Act--Government Code, Chapters 2151-2177, the  
State Purchasing and General Services Act.

(2) Commission--The Texas Transportation Commission.

(3) Department--The Texas Department of  
Transportation.

(4) Chief Administrative Officer [~~of Procurement and  
Field Support Operations~~]-The Chief Administrative Officer [~~of  
Procurement and Field Support Operations~~] of the department.

(5) Statewide Procurement Director--The director of  
statewide procurement in the procurement division of the  
department, or other individual as designated by the Chief  
Administrative Officer [~~of Procurement and Field Support  
Operations~~].

1 (6) Division--An organizational unit in the  
2 department's Austin headquarters.

3 (7) Executive director--The executive director of the  
4 department.

5 (8) Interested party--A vendor that has submitted a  
6 bid, proposal, or other expression of interest for the purchase  
7 involved.

8 (9) Purchase--A procurement action for commodities or  
9 non-professional services under the Act.

10 (c) Filing of protest.

11 (1) An actual or prospective bidder or offeror who is  
12 aggrieved in connection with the solicitation, evaluation, or  
13 award of a purchase may file a written protest. The protest  
14 must be received in the office of the Chief Administrative  
15 Officer [~~of Procurement and Field Support Operations~~] within 10  
16 working days after such aggrieved person knows, or should have  
17 known, of the action.

18 (2) The protest must be sworn and contain:

19 (A) the provision of or rule adopted under the  
20 Act that the action is alleged to have violated;

21 (B) a specific description of the alleged  
22 violation;

23 (C) a precise statement of the relevant facts;

24 (D) the issue to be resolved;

25 (E) argument and authorities in support of the

1 protest; and

2 (F) a statement that copies of the protest have  
3 been mailed or delivered to other identifiable interested  
4 parties.

5 (d) Suspension of award. If a protest or appeal of a  
6 protest has been filed, then the department will not proceed  
7 with the solicitation or the award of the purchase until the  
8 executive director or his or her designee, not below the level  
9 of division director, consults with the Chief Administrative  
10 Officer [~~of Procurement and Field Support Operations~~] and makes  
11 a written determination that the award of the purchase should be  
12 made without delay to protect substantial interests of the  
13 department.

14 (e) Informal resolution. The Statewide Procurement  
15 Director may informally resolve the dispute, including:

16 (1) soliciting written responses to the protest from  
17 other interested parties; and

18 (2) resolving the dispute by mutual agreement.

19 (f) Written determination. If the protest is not resolved  
20 by agreement, the Statewide Procurement Director will issue a  
21 written determination to the protesting party and interested  
22 parties which sets forth the reason for the determination. The  
23 Statewide Procurement Director may determine that:

24 (1) no violation has occurred; or

25 (2) a violation has occurred and it is necessary to

1 take remedial action which may include:

2 (A) declaring the purchase void;

3 (B) reversing the award; and

4 (C) re-advertising the purchase using revised  
5 specifications.

6 (g) Appeal.

7 (1) An interested party may appeal the determination  
8 to the executive director. The written appeal must be received  
9 in the executive director's office no later than 10 working days  
10 after the date of the determination. The appeal is limited to a  
11 review of the determination.

12 (2) The appealing party must mail or deliver copies of  
13 the appeal to the Statewide Procurement Director and other  
14 interested parties with an affidavit that such copies have been  
15 provided.

16 (3) The general counsel shall review the protest, the  
17 determination, and the appeal, and prepare a written opinion  
18 with recommendation to the executive director.

19 (4) The executive director may:

20 (A) issue a final written determination; or

21 (B) refer the matter to the commission for its  
22 consideration at a regularly scheduled open meeting.

23 (5) The commission may consider oral presentations and  
24 written documents presented by the department and interested  
25 parties. The chair shall set the order and the amount of time

1 allowed for presentation. The commission's determination of the  
2 appeal shall be adopted by minute order and reflected in the  
3 minutes of the meeting.

4 (6) The decision of the commission or executive  
5 director shall be final.

6 (h) Filing deadline. Unless the commission determines that  
7 the appealing party has demonstrated good cause for delay or  
8 that a protest or appeal raises issues significant to  
9 procurement practices or procedures, a protest or appeal that is  
10 not filed timely will not be considered.

11 (i) Document retention. The department shall maintain all  
12 documentation on the purchasing process that is the subject of a  
13 protest or appeal in accordance with the retention schedule of  
14 the department.