

MEMORANDUM

TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

**TO: Chair and Members
Department of Family and Protective Services Council**

**FROM: Howard Baldwin
Interim Commissioner**

**SUBJECT: Agenda Item 5h: Recommendation to propose rule changes
in 40 TAC Chapter 732, Contracted Services**

DATE: October 21, 2011



BACKGROUND AND PURPOSE

The Contracts Unit in the Office of General Counsel is recommending changes to 40 TAC, Chapter 732, Contracted Services.

The proposed amendments:

- increase the total period of time that a competitively procured contract may last from 54 months to 60 months. Additionally, the proposed rules creates a waiver process that allows the Commissioner of DFPS to extend a contract beyond 60 months if doing so is in the best interest of the state and enforcement of the 60 month rule would create an undue hardship for DFPS;
- eliminate the programmatic/ancillary dichotomy DFPS uses to review and approve subcontracts and allows DFPS to retain the right to approve or disapprove of the use of any particular subcontractor;
- combine the current Procurement Debriefing rule (Chapter 732.214) and the Procurement Protest rule into a single rule. The proposed rule is modeled on the protest rules of HHSC, the Texas Attorney General, and the Texas Comptroller. Definitions have been added to clarify the terms and positions involved in the initial protest and the appeal process. Timeframes have also been added so that DFPS will have definite timeframes to comply with in cases of protests; and
- broaden the circumstances under which DFPS may make advance payments to contractors. The proposed rules comply with the provisions of Texas Government Code §2155.383 and the guidelines posted on *eXpendit*, the Comptroller's purchasing policy website.

DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
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Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
§732.203	Amend	<ul style="list-style-type: none"> • Increases the total period of time that a competitively procured contract may last from 54 months to 60 months; • Creates a waiver process that allows the Commissioner of DFPS to extend a contract beyond 60 months; and • Deletes an obsolete paragraph regarding outsourcing.
§732.214	Delete	Deleted in its entirety with content moved to proposed new rule §732.229.
§732.226	Amend	Eliminates the programmatic/ancillary distinction DFPS uses to review and approve subcontracts and allows DFPS to retain the right to approve or disapprove of the use of any particular subcontractor.
§732.229	Amend	<ul style="list-style-type: none"> • Combines the current Procurement Debriefing rule (Chapter 732.214) and the Procurement Protest rule into a single rule; • Adds definitions to clarify the terms and positions involved in the protest and appeal process; • Clarifies when a protest is available and how to protest; and • Adds timeframes for DFPS to comply with.
§732.238	Amend	Broadens the circumstances under which DFPS may make advance payments to contractors.

STATUTORY AUTHORITY AND STATUTES AFFECTED

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Department of Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

FISCAL IMPLICATIONS

(a) Fiscal Impact. There will not be costs or revenues to state or local government as a result of enforcing or administering these sections.

(b) Public Costs and Benefits. The public benefit anticipated as a result of the rule changes is greater clarity in rules governing Department procurements and contracts.

(c) Impact on Business. There is no anticipated adverse impact on small, micro, and large businesses as a result of the proposed rule changes because the proposed rule changes should

not affect the cost of doing business; do not impose new requirements on any business; and do not require the purchase of any new equipment or any increased staff time in order to comply.

(d) Local Employment Impact and Takings Statements. No local employment impact statement was required for these rules. The agency is not required to complete a takings impact assessment regarding the proposed sections.

(e) Technology Impact. There is no anticipated impact on technology as a result of the proposed rule changes.

STAKEHOLDER INPUT

Input from DFPS stakeholders involved in contracting was obtained through workgroups and circulation of initial drafts. Additional stakeholder input will be obtained during the comment period following publication of the proposed rules in the *Texas Register*.

RECOMMENDATION

It is recommended that the Council consider the proposed rule action, as discussed in this memorandum, and that the Council recommend proposal, with or without changes to the rules as they are attached to this memo.

ATTACHMENTS

Attached is a copy of the proposed change to the rule section as staff recommended for submittal to the *Texas Register*.