



INTEROFFICE MEMO

Gary Grief, Executive Director LaDonna Castañuela, Charitable Bingo Operations Director

To: Robert G. Rivera, Chairman
Cindy Fields, Commissioner
Mark A. Franz, Commissioner
Erik C. Saenz, Commissioner
Jamey Steen, Commissioner

From: Lea Garey, Senior Contracts Attorney ^{LG}

Date: October 21, 2021

Re: Consideration of and possible discussion and/or action, including adoption, on amendments to 16 TAC §401.101 (Lottery Procurement Procedures)

Attached is a draft rule proposal prepared for submission to the *Texas Register* to adopt amendments to the above-referenced rule without changes to the proposed text as published in the August 27, 2021 issue of the *Texas Register* (46 TexReg 5336) (also attached).

The purpose of the proposed amendments is to update language concerning competitive bidding requirements for agency purchases to reflect amendments to Texas Government Code Chapter 2155 in Senate Bill 799 from the Regular Session of the 87th Texas Legislature, effective September 1, 2021. Senate Bill 799 amended Texas Government Code §2155.132(e) by increasing the dollar amount threshold that triggers a competitive bidding requirement from \$5,000 to \$10,000. While the Commission is exempt from many contracting requirements under Chapter 2155, effort is made to adhere to state procurement guidelines provided by Chapter 2155. Therefore, these proposed amendments to 16 TAC §401.101(c) increase the dollar amount that triggers the requirement that the agency conduct a competitive solicitation from \$5,000 to \$10,000 for most agency purchases or leases of goods and services. The increased threshold would apply to purchases or leases of goods and services first initiated after the effective date of the rule.

The Commission received no written comments on the proposed amendments during the public comment period.

Recommendation: Staff recommends that the Commission adopt amendments to the referenced rule.

1 The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.101
2 (Lottery Procurement Procedures) without changes to the proposed text as published in the August
3 27, 2021 issue of the *Texas Register* (46 TexReg 5336).

4 The purpose of the proposed amendments is to update language concerning competitive
5 bidding requirements for agency purchases to reflect amendments to Texas Government Code
6 Chapter 2155 in Senate Bill 799 from the Regular Session of the 87th Texas Legislature, effective
7 September 1, 2021. Senate Bill 799 amended Texas Government Code §2155.132(e) by increasing
8 the dollar amount threshold that triggers a competitive bidding requirement from \$5,000 to
9 \$10,000. While the Commission is exempt from many contracting requirements under Chapter
10 2155, effort is made to adhere to state procurement guidelines provided by Chapter 2155.
11 Therefore, these proposed amendments to 16 TAC §401.101(c) increase the dollar amount that
12 triggers the requirement that the agency conduct a competitive solicitation from \$5,000 to \$10,000
13 for most agency purchases or leases of goods and services. The increased threshold would apply
14 to purchases or leases of goods and services first initiated after the effective date of the rule.

15 The Commission received no written comments on the proposed amendments during the
16 public comment period.

17 These amendments are adopted under Texas Government Code §466.015(c), which
18 authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102,
19 which authorizes the Commission to adopt rules for the enforcement and administration of the
20 laws under the Commission’s jurisdiction.

21 §401.101. Lottery Procurement Procedures.

22 (a) Definitions. The following words and terms, when used in this subchapter, shall have the
23 following meanings, unless the context clearly indicates otherwise.

1 (1) Act--The State Lottery Act.

2 (2) Agency--For the purposes of this subchapter that deals with procurements for the
3 administration of the lottery, the term "agency" refers to the commission as defined in paragraph
4 (5) of this subsection.

5 (3) Best and Final Offer (BAFO)--A revised final bid or proposal submitted after all
6 clarifications, discussions, and negotiations with the agency.

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

8 (5) Commission--The state agency established under Chapter 466 and Chapter 467,
9 Government Code. However, this subchapter applies only to the procurement of goods and
10 services for the administration of the lottery authorized by the State Lottery Act. For the sake of
11 clarity, this subchapter will refer to the commission as "agency" and to the appointed board as the
12 "Texas Lottery Commission".

13 (6) Cost--The price at which the agency can purchase goods and/or services.

14 (7) Electronic State Business Daily or Business Daily--An online directory administered
15 by the Comptroller of Public Accounts, or its successor, that publishes solicitations for the purpose
16 of informing vendors of procurement opportunities and provides public notice of contract awards.

17 (8) Emergency procurement--A situation requiring the state agency to make the
18 procurement more quickly to prevent a hazard to life, health, safety, welfare, or property or to
19 avoid undue additional cost to the state.

20 (9) Goods--Supplies, materials, and equipment.

21 (10) IFB--A written invitation for bids.

1 (11) Lottery--The procedures and operations of the agency under the State Lottery Act
2 through which prizes are awarded or distributed by chance among persons who have paid, or
3 unconditionally agreed to pay, for a chance or other opportunity to receive a prize.

4 (12) Nonresident bidder or proposer--A person whose principal place of business is not in
5 Texas, but does not include a bidder whose majority owner or parent company has its principal
6 place of business in Texas.

7 (13) Principal place of business--The state in which the head office of a business is located,
8 and generally, where the executive management is located and the business records are maintained.

9 (14) Produced in Texas--Those goods that are manufactured in Texas, excluding the sole
10 process of packaging or repackaging. Packaging or repackaging does not constitute being
11 manufactured in Texas.

12 (15) Proprietary purchase--A product or service that is unique to a single vendor or
13 manufacturer and is not available from other sources.

14 (16) Resident bidder or proposer--A person whose principal place of business is in this
15 state, including a contractor whose ultimate parent company or majority owner has its principal
16 place of business in this state.

17 (17) RFP--A written request for proposals.

18 (18) RFQ--A written request for qualifications.

19 (19) Services--The furnishing of skilled or unskilled labor or professional work.

20 (20) State or statewide contract--A contract for goods or services established and
21 administered by another state agency (e.g., Texas Comptroller of Public Accounts, Texas
22 Department of Information Resources) for use by all state agencies.

1 (21) Texas Lottery Commission--The appointive board or commission established in
2 Chapter 467, Government Code.

3 (b) Use and Effect. This subchapter is prescribed for the performance of the statutory powers and
4 functions vested in the agency. In no event shall they, or any of them, be construed as a limitation
5 or restriction upon the exercise of any discretion authorized to be exercised by the Texas Lottery
6 Commission.

7 (c) Procurement method.

8 (1) For the purchase or lease of goods and services not expected to exceed \$10,000, or for
9 the purchase or lease of goods and services available under a state contract, a competitive
10 solicitation, whether formal or informal, may be conducted, but is not required.

11 (2) For the purchase or lease of goods and services not expected to exceed \$25,000, the
12 agency, at a minimum, will conduct an informal competitive solicitation in an attempt to obtain at
13 least three competitive bids and will solicit at least two HUB vendors.

14 (3) For the purchase or lease of goods and services expected to exceed \$25,000, the agency
15 will conduct a formal competitive solicitation in an attempt to obtain at least three competitive
16 bids or proposals and will solicit at least two HUB vendors.

17 (4) Printing services. For the purchase of printing services over \$2,500, the agency will
18 submit print job specifications and bid requests to the State Print Shops. If no responsive bids are
19 received from a State Print Shop or, after the results of the bid evaluation, the agency determines
20 that best value would be achieved through a private sector vendor, the agency may perform a
21 competitive solicitation outlined in paragraph (2) or (3) of this subsection.

22 (5) Emergency procurement. Notwithstanding paragraphs (1) - (4) of this subsection, the
23 agency may make an emergency purchase or lease of goods or services. Prior to making an

1 emergency purchase or lease of goods or services, the existence of an emergency should be
2 documented. For emergency purchases in excess of \$10,000, the agency may conduct an informal
3 competitive solicitation in an attempt to obtain at least three competitive bids, whenever possible.
4 For emergency purchases in excess of \$25,000, the procurement will be posted on the Electronic
5 State Business Daily; however, the minimum posting requirements do not apply. Posting of the
6 advertisement and/or the award notice satisfies this requirement. In response to an emergency, the
7 agency may procure goods or services in the most expeditious manner deemed appropriate,
8 including from a sole source.

9 (6) Proprietary purchase. When the agency believes that a purchase of goods or services
10 over \$10,000 is proprietary to one vendor or one manufacturer, a written proprietary purchase
11 justification will be included in the procurement file. If the estimated purchase price exceeds
12 \$25,000, the procurement will be posted on the Electronic State Business Daily prior to a purchase
13 order or contract being issued.

14 (7) Notwithstanding paragraphs (1) - (4) of this subsection, the agency may make a
15 purchase or lease of goods or services under any other procedure not otherwise prohibited by law.

16 (d) Informal competitive solicitations.

17 (1) An informal competitive solicitation is a process conducted in an effort to receive at
18 least three competitive bids for a specifically identified good or service, without the advertisement
19 and issuance of an IFB or RFP. The bids may be solicited by letter, electronic mail, facsimile, or
20 telephone call. The following information will be recorded by the agency in the procurement file:

21 (A) the name and telephone number of each person or company to which the
22 solicitation was provided;

23 (B) the name and telephone number of the person or company submitting the bid;

- 1 (C) the date the bid was received;
- 2 (D) the amount of the bid;
- 3 (E) bidder's Historically Underutilized Business status; and
- 4 (F) the name and telephone number of the person receiving the bid for the agency.

5 (2) The agency will award a contract to the qualified bidder submitting the lowest and best
6 bid, except that the agency may reject all bids if it is determined to be in the best interest of the
7 state.

8 (3) The contract will be awarded by the issuance of a written purchase order.

9 (e) Formal competitive solicitations.

10 (1) A formal competitive solicitation is a process conducted in order to receive at least
11 three sealed competitive bids or proposals pursuant to the issuance of an IFB, RFP, RFQ, or
12 another statewide contract process, respectively.

13 (A) An IFB will be used when the agency is able to describe, by way of established
14 specifications, exactly what it wishes to procure, and wants bidders to offer such at a specific price.

15 (B) An RFP will be used when the agency knows generally what it wishes to
16 procure in order to accomplish a certain goal(s) or objective(s); requirements cannot be completely
17 and accurately described; requirements can be satisfied in a number of ways, all of which could be
18 acceptable; or, where oral or written communications with proposers may be necessary in order to
19 effectively communicate requirements and/or assess proposals, and the agency wants proposers to
20 offer a solution(s) to address such need(s) at a specific price(s). The RFP process allows for
21 negotiations between a proposer and the issuing agency.

22 (C) An RFQ will be used when the agency wants to procure professional services
23 and evaluate proposers solely on their qualifications.

1 (2) The agency will advertise formal competitive solicitations, whether by IFB, RFP, or
2 RFQ on the Electronic State Business Daily in accordance with the Comptroller of Public
3 Accounts posting time requirements. The agency may advertise such solicitations in other media
4 determined appropriate by the agency.

5 (3) For all formal competitive solicitations, the agency will award a contract to the most
6 qualified bidder or proposer as determined during the evaluation of the bids or proposals. The
7 agency may reject all bids or proposals if it is determined to be in the best interest of the agency.
8 At the time a purchase order is issued or a contract is executed, the agency will notify, in writing,
9 all other bidders or proposers of the contract award by facsimile, email or by certified mail. Any
10 information relating to the solicitation not made privileged from disclosure by law will be made
11 available for public disclosure, after award of a contract, pursuant to the Texas Public Information
12 Act.

13 (4) For those formal competitive solicitations where fewer than two bids or proposals are
14 received, the agency will document the reasons, if known, for the lack of two bids or proposals. If
15 fewer than two bids or proposals are received, the agency may cancel the solicitation and conduct
16 another solicitation, or it may award a contract if one acceptable bid or proposal is received.

17 (5) For formal competitive solicitations where an IFB is used, the agency will award a
18 contract to the qualified bidder submitting the lowest cost responsible bid meeting all
19 specifications and providing the best value for the agency, as determined during the evaluation of
20 the bids. Negotiations are not authorized when utilizing an IFB procurement method; however, if
21 only one response is received, negotiations are allowed, provided, negotiations may not result in a
22 material change to the advertised specifications.

23 (f) RFP.

1 (1) Submission. When an RFP is used by the agency, the RFP will contain, at a minimum,
2 the following:

3 (A) a general description of the goods and/or services to be provided, and a specific
4 identification of the goals or objectives to be achieved;

5 (B) a description of the format proposals must follow and the elements they must
6 contain;

7 (C) the time and date proposals are due, and the location and person to whom they
8 are to be submitted;

9 (D) an identification of the process to be utilized in evaluating proposals; and

10 (E) a listing of the factors to be utilized in evaluating proposals and awarding a
11 contract. At a minimum, the factors should include:

12 (i) the proposer's price to provide the goods or services;

13 (ii) the probable quality of the offered goods or services;

14 (iii) the agency's evaluation of the likelihood of the proposal to produce the
15 desired outcome for the agency, considering, among other criteria:

16 (I) the quality of the proposer's past performance in contracting with
17 the agency, with other state entities, or with private sector entities;

18 (II) the qualifications of the proposer's personnel;

19 (III) the experience of the proposer in providing the requested goods
20 or services;

21 (IV) the financial status of the proposer; and

22 (iv) whether the proposer performed the good faith effort required by the
23 HUB subcontracting plan, when the agency has determined that subcontracting is probable.

1 (2) Evaluation Process. The agency will, prior to the deadline for receipt of proposals,
2 develop and establish comprehensive evaluation criteria to be utilized by an evaluation committee
3 in evaluating the proposals. All proposals that are responsive to the RFP will be reviewed by the
4 evaluation committee. Part of the initial evaluation process may include an inspection trip to the
5 proposer's facilities, and/or proposers may be requested to make an oral presentation to the
6 committee. The evaluation committee may seek advice from consultants. If consultants are
7 employed, they may be provided all information provided by the proposers. The evaluation
8 committee will evaluate and score all proposals in accordance with the evaluation criteria.

9 (3) Best and Final Offers (BAFO). The agency may select top proposers, which may each
10 be given an opportunity to discuss, clarify, and negotiate with the agency, and submit revisions to
11 their respective proposals to the agency through a BAFO process. During discussions between the
12 proposers and the agency, no information from a competing proposal may be revealed by the
13 agency to another competitor. Any type of auction practice or allowing the transfer of technical
14 information is specifically prohibited. At the conclusion of the discussions, BAFOs may be
15 formally requested from the proposers and a deadline will be set for submission. BAFOs will be
16 submitted by supplemental pages and not a complete resubmission of the proposal. All BAFOs
17 will be reviewed by the evaluation committee. The evaluation committee will evaluate and score
18 the BAFO response together with the original proposal in accordance with the evaluation criteria.

19 (4) Negotiation. If a BAFO process is not used, the agency will attempt to negotiate a
20 contract with the selected proposer. If a contract cannot be negotiated with the selected proposer
21 on terms the agency determines reasonable, negotiations with that proposer will be terminated, and
22 negotiations will be undertaken with the next highest scored proposer. This process will be
23 continued until a contract is executed by a proposer and the agency, or negotiations with all

1 qualified proposers are terminated. If no contract is executed, the agency may cancel the
2 solicitation.

3 (5) Multiple Award. The agency may award a contract to two or more vendors or
4 contractors using a single solicitation to furnish the same or similar supplies or services, where
5 more than one vendor or contractor is needed to meet the agency's requirements for quantity,
6 delivery, or service.

7 (g) RFQ.

8 (1) Submission. When an RFQ is used by the agency, the RFQ will contain, at a minimum,
9 the following:

10 (A) a general description of the professional services to be performed, and a specific
11 identification of the goals or objectives to be achieved;

12 (B) a description of the format proposals must follow and the elements they must
13 contain;

14 (C) the time and date proposals are due, and the location and person to whom they
15 are to be submitted;

16 (D) an identification of the process to be utilized in evaluating proposals and
17 awarding a contract; and

18 (E) a listing of the factors to be utilized in evaluating proposals and awarding a
19 contract. At a minimum, the factors should include:

20 (i) the demonstrated competence and qualifications to perform the services;

21 (ii) the quality of the proposer's past performance in contracting with the
22 agency, with other state entities, or with private sector entities;

23 (iii) the financial status of the proposer;

1 (iv) the qualifications of the proposer's personnel;
2 (v) the experience of the proposer in providing the requested services; and
3 (vi) whether the proposer performed the good faith effort required by the
4 HUB subcontracting plan, when the agency has determined that subcontracting is probable.

5 (2) Evaluation Process. The agency will, prior to the deadline for receipt of proposals,
6 develop and establish comprehensive evaluation criteria to be utilized by an evaluation committee
7 in evaluating the proposals. All proposals that are responsive to the RFQ will be reviewed by the
8 evaluation committee. The evaluation committee will evaluate and score all proposals in
9 accordance with the evaluation criteria.

10 (3) Negotiation. The agency will then attempt to negotiate a contract, for a fair and
11 reasonable price, with the selected proposer; or, the agency may engage in simultaneous
12 negotiations with multiple proposers. If a contract cannot be negotiated with the selected proposer
13 on terms the agency determines reasonable, negotiations with that proposer will be terminated, and
14 negotiations will be undertaken with the next highest scored proposer. This process will continue
15 until a contract is executed by a proposer and the agency, or negotiations with all qualified
16 proposers are terminated. If no contract is executed, the agency may cancel the solicitation.

17 (h) Preferences.

18 (1) If, after application of the preferences required by Texas law, a tie continues, the
19 contract award will be made by the drawing of lots.

20 (2) A bidder or proposer entitled to a preference(s) under Texas law shall claim the
21 preference(s) in its bid or proposal.

22 (i) Contract terms. A contract for the purchase or lease of goods or services relating to the
23 implementation, operation, or administration of the lottery will provide that the executive director

1 may terminate the contract, without penalty, if an investigation made pursuant to the Act reveals
2 that the person to whom the contract was awarded would not be eligible to receive a sales agent
3 license under the State Lottery Act, Texas Government Code, §466.155. An IFB, RFP or RFQ
4 may require that bidders or proposers provide in their bids or proposals sufficient information to
5 allow the agency to determine whether the bidder or proposer meets the eligibility requirements
6 for a sales agent license.

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TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments and new rules may be directed to Sarah Swanson, General Counsel, via email at rules@tsl.texas.gov, or mail, P.O. Box 12927, Austin, Texas, 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. The amendments and new rule are proposed under Government Code, §661.022(c), as added by HB 2063, which requires state agencies to adopt rules relating to the operation of the agency family leave pool, and Government Code, §661.002(c), which requires state agencies to adopt rules relating to the operation of the agency sick leave pool.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 661.

§2.12. *Sick Leave Pool.*

(a) A sick leave pool is established to alleviate hardship caused to an employee and the employee's immediate family if a catastrophic injury or illness forces the employee to exhaust all eligible leave time earned by that employee and to lose compensation time from the state [Pursuant to Government Code Chapter 661, Subchapter A (regarding Sick Leave Pool), the commission authorizes a sick leave pool program to allow an agency employee to voluntarily transfer earned sick leave to a pool for use by other employees].

(b) The director-librarian or designee shall administer the sick leave pool.

(c) The prescribed procedures relating to the operation of the sick leave pool will be published [itemized] in the agency's *Employee Guide*.

(d) Operation of the pool shall be consistent with Government Code, Chapter 661, Subchapter A (relating to State Employee Sick Leave Pool).

§2.13. *State Employee Family Leave Pool.*

(a) A state employee family leave pool is established to provide eligible state employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement and for caring for a seriously ill family member or the employee.

(b) The director-librarian or designee shall administer the sick leave pool.

(c) The prescribed procedures relating to the operation of the family leave pool will be published in the agency's *Employee Guide*.

(d) Operation of the pool shall be consistent with Government Code, Chapter 661, Subchapter A-1 (relating to State Employee Family Leave Pool).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 12, 2021.

TRD-202103169

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Earliest possible date of adoption: September 26, 2021

For further information, please call: (512) 463-5591

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TITLE 16. ECONOMIC REGULATION

**PART 9. TEXAS LOTTERY
COMMISSION**

**CHAPTER 401. ADMINISTRATION OF STATE
LOTTERY ACT**

SUBCHAPTER A. PROCUREMENT

16 TAC §401.101

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.101 (Lottery Procurement Procedures). The purpose of the proposed amendments is to update language concerning competitive bidding requirements for agency purchases to reflect amendments to Texas Government Code Chapter 2155 in Senate Bill 799 from the Regular Session of the 87th Texas Legislature, effective September 1, 2021. Senate Bill 799 amended Tex. Gov't Code §2155.132(e) by increasing the dollar amount threshold that triggers a competitive bidding requirement from \$5,000 to \$10,000. While the Commission is exempt from many contracting requirements under Chapter 2155, effort is made to adhere to state procurement guidelines provided by Chapter 2155. Therefore, these proposed amendments to 16 TAC §401.101(c) increase the dollar amount that triggers the requirement that the agency conduct a competitive solicitation from \$5,000 to \$10,000 for most agency purchases or leases of goods and services. The increased threshold would apply to purchases or leases of goods and services first initiated after the effective date of the rule.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mike Fernandez, Administration Director, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit expected is to provide a competitive and efficient procurement process in accordance with state law and guidelines.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

(1) The proposed amendments do not create or eliminate a government program.

- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.
- (4) The proposed amendments do not require an increase or decrease in fees paid to the Commission.
- (5) The proposed amendments do not create a new regulation.
- (6) The proposed amendments do not expand or limit an existing regulation.
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.
- (8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Lea Garey, Senior Contracts Attorney, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at Legal.Input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in the *Texas Register* to be considered.

Statutory Authority

These amendments are proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code Chapter 466.

§401.101. Lottery Procurement Procedures.

(a) - (b) (No change.)

(c) Procurement method.

(1) For the purchase or lease of goods and services not expected to exceed \$10,000 [~~\$5,000~~], or for the purchase or lease of goods and services available under a state contract, a competitive solicitation, whether formal or informal, may be conducted, but is not required.

(2) - (4) (No Change.)

(5) Emergency procurement. Notwithstanding paragraphs (1) - (4) of this subsection, the agency may make an emergency purchase or lease of goods or services. Prior to making an emergency purchase or lease of goods or services, the existence of an emergency should be documented. For emergency purchases in excess of \$10,000 [~~\$5,000~~], the agency may conduct an informal competitive solicitation in an attempt to obtain at least three competitive bids, whenever possible. For emergency purchases in excess of \$25,000, the procurement will be posted on the Electronic State Business Daily; however, the minimum posting requirements do not apply. Posting of the advertisement and/or the award notice satisfies this requirement. In response to an emergency, the agency may procure goods or services in the most expeditious manner deemed appropriate, including from a sole source.

(6) Proprietary purchase. When the agency believes that a purchase of goods or services over \$10,000 [~~\$5,000~~] is proprietary to one vendor or one manufacturer, a written proprietary purchase justification

will be included in the procurement file. If the estimated purchase price exceeds \$25,000, the procurement will be posted on the Electronic State Business Daily prior to a purchase order or contract being issued.

(7) (No Change.)

(d) - (i) (No Change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 13, 2021.

TRD-202103197

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: September 26, 2021

For further information, please call: (512) 344-5392

SUBCHAPTER B. LICENSING OF SALES AGENTS

16 TAC §401.153

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.153 (Qualifications for License). The purpose of the proposed amendments is to update the language concerning lottery retailer eligibility requirements to reflect amendments to Tex. Gov't Code §466.155(a)(4)(C) by House Bill 1545 from the Regular Session of the 86th Texas Legislature that become effective later this year. Specifically, House Bill 1545 amended the State Lottery Act, Texas Government Code Chapter 466, by updating the names of certain alcoholic beverage permits corresponding to prohibited retailer locations to conform to the Alcoholic Beverage Code. Those permit names also need to be updated in Commission Rule 401.153(c)(3).

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Ryan Mindell, Lottery Operations Director, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit expected is greater clarity and understanding of lottery retailer eligibility requirements by aligning the language in the Commission's rule with current law.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

(1) The proposed amendments do not create or eliminate a government program.