



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

Approved

Denied

From: Lea Garey, Senior Contracts Attorney LG

Date: August 12, 2021

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

Attached is a draft rule proposal prepared for submission to the *Texas Register* for amendments to the above-referenced rule. 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.

Recommendation: Staff recommends the Commission initiate the rulemaking process by publishing the attached proposed rule amendments in the *Texas Register* in order to receive public comments for a period of thirty (30) days.

1 The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.101
2 (Lottery Procurement Procedures). The purpose of the proposed amendments is to update language
3 concerning competitive bidding requirements for agency purchases to reflect amendments to Texas
4 Government Code Chapter 2155 in Senate Bill 799 from the Regular Session of the 87th Texas
5 Legislature, effective September 1, 2021. Senate Bill 799 amended Tex. Gov't Code §2155.132(e)
6 by increasing the dollar amount threshold that triggers a competitive bidding requirement from
7 \$5,000 to \$10,000. While the Commission is exempt from many contracting requirements under
8 Chapter 2155, effort is made to adhere to state procurement guidelines provided by Chapter 2155.
9 Therefore, these proposed amendments to 16 TAC §401.101(c) increase the dollar amount that
10 triggers the requirement that the agency conduct a competitive solicitation from \$5,000 to \$10,000
11 for most agency purchases or leases of goods and services. The increased threshold would apply
12 to purchases or leases of goods and services first initiated after the effective date of the rule.

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

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

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

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

6 (2) Implementation of the proposed amendments does not require the creation of new
7 employee positions or the elimination of existing employee positions.

8 (3) Implementation of the proposed amendments does not require an increase or decrease
9 in future legislative appropriations to the Commission.

10 (4) The proposed amendments do not require an increase or decrease in fees paid to the
11 Commission.

12 (5) The proposed amendments do not create a new regulation.

13 (6) The proposed amendments do not expand or limit an existing regulation.

14 (7) The proposed amendments do not increase or decrease the number of individuals
15 subject to the rule's applicability.

16 (8) The proposed amendments do not positively or adversely affect this state's economy.

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

22 These amendments are proposed under Texas Government Code §466.015(c), which
23 authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102,

1 which authorizes the Commission to adopt rules for the enforcement and administration of the
2 laws under the Commission's jurisdiction.

3 This proposal is intended to implement Texas Government Code Chapter 466.
4 §401.101. Lottery Procurement Procedures.

5 (a) – (b) (No change.)

6 (c) Procurement method.

7 (1) For the purchase or lease of goods and services not expected to exceed \$10,000
8 [~~\$5,000~~], or for the purchase or lease of goods and services available under a state contract, a
9 competitive solicitation, whether formal or informal, may be conducted, but is not required.

10 (2) – (4) (No Change.)

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

21 (6) Proprietary purchase. When the agency believes that a purchase of goods or services
22 over \$10,000 [~~\$5,000~~] is proprietary to one vendor or one manufacturer, a written proprietary
23 purchase justification will be included in the procurement file. If the estimated purchase price

1 exceeds \$25,000, the procurement will be posted on the Electronic State Business Daily prior to a
2 purchase order or contract being issued.

3 (7) (No Change.)

4 (d) – (i) (No Change.)

DRAFT