

1 **CHAPTER 857. PURCHASE OF GOODS AND SERVICES FOR VOCATIONAL**
2 **REHABILITATION SERVICES BY TEXAS WORKFORCE COMMISSION**

3
4 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
5 ***REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
6 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.**
7

8 The Texas Workforce Commission (TWC) proposes the repeal of Chapter 857 in its entirety,
9 relating to the Purchase of Goods and Services for Vocational Rehabilitation Services by Texas
10 Workforce Commission:

11
12 Section 857.1. Noncompetitive Procurement

13
14 PART I. PURPOSE, BACKGROUND, AND AUTHORITY

15 PART II. IMPACT STATEMENTS

16 PART III. COORDINATION ACTIVITIES

17 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

18 The purpose of the proposed chapter repeal is to streamline TWC rules by incorporating the
19 relevant portions of this chapter into Chapter 858, Vocational Rehabilitation Services Contract
20 Management, which is being amended and renamed in a separate proposed rulemaking.

21
22 Effective September 1, 2016, pursuant to Texas Labor Code §351.002, the administration of
23 vocational rehabilitation (VR) services was transferred from the Texas Department of Assistive and
24 Rehabilitative Services (DARS) to TWC. To ensure continuity and avoid any impact on customers,
25 the administrative rules shared by all DARS programs were duplicated into Chapters 850, 857, and
26 858 of TWC's rules upon transfer of the programs. Because the rules established DARS'
27 administrative framework and served all DARS programs, they overlap certain existing TWC
28 administrative rules and contain numerous references to programs that were not transferred to TWC.

29
30 Chapter 857 consists of one section, §857.1, which authorizes the use of open-enrollment solicitation
31 and interagency contracting, in addition to other noncompetitive procurement methods. To
32 streamline TWC rules and preserve the relevant subsections of §857.1, the chapter should be
33 repealed and its relevant content should be amended and moved to Chapter 858, which will be
34 renamed "Vocational Rehabilitation Purchases and Contracts" to reflect the additional content.

35
36 **PART II. IMPACT STATEMENTS**

37 Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the
38 repeal is in effect, the following statements will apply:

39
40 There are no additional estimated costs to the state and to local governments expected as a result
41 of the repeal.

42
43 There are no estimated cost reductions to the state and to local governments as a result of the
44 repeal.

1 There are no estimated losses or increases in revenue to the state or to local governments as a
2 result of the repeal.

3
4 There are no foreseeable implications relating to costs or revenue of the state or local
5 governments as a result of the repeal.

6
7 There are no anticipated economic costs to individuals required to comply with the rules.

8
9 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
10 communities as a result of enforcing or administering the rules.

11
12 Based on the analyses required by Texas Government Code §2001.024, TWC has determined
13 that the requirement to repeal or amend a rule, as required by House Bill 1290, 85th Texas
14 Legislature, Regular Session, 2017 (to be codified at Texas Government Code §2001.0045), does
15 not apply to this rulemaking. Additionally, Texas Labor Code §352.101 requires TWC's three-
16 member Commission to adopt rules necessary to integrate the vocational rehabilitation programs,
17 including recommending adopting rules to implement the integration. Therefore, the exception
18 identified in §2001.0045(c)(9) also applies.

19
20 Takings Impact Assessment

21 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
22 affects private real property, in whole or in part or temporarily or permanently, in a manner that
23 requires the governmental entity to compensate the private real property owner as provided by
24 the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or
25 §19, Article I; or an action that restricts or limits the owner's right to the property that would
26 otherwise exist in the absence of the governmental action, and is the producing cause of a
27 reduction of at least 25 percent in the market value of the affected private real property,
28 determined by comparing the market value of the property as if the governmental action is not in
29 effect with the market value of the property as if the governmental action is in effect. The
30 Commission completed a Takings Impact Analysis for the proposed rulemaking action under
31 Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action,
32 as discussed elsewhere in this preamble, is to streamline TWC rules by incorporating the relevant
33 portions of Chapter 857 into Chapter 858, Vocational Rehabilitation Services Contract
34 Management, which is being amended and renamed in a separate proposed rulemaking.

35
36 The proposed rulemaking action will not create any additional burden on private real property.
37 The proposed rulemaking action will not affect private real property in a manner that would
38 require compensation to private real property owners under the US Constitution or the Texas
39 Constitution. The proposed rulemaking also will not affect private real property in a manner that
40 restricts or limits an owner's right to the property that would otherwise exist in the absence of the
41 governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas
42 Government Code, Chapter 2007.

43
44 Government Growth Impact Statement

45 TWC has determined that during the first five years the proposed repeal will be in effect:
46 --the proposed repeal will not create or eliminate a government program;

- 1 --implementation of the proposed repeal will not require the creation or elimination of employee
- 2 positions;
- 3 --implementation of the proposed repeal will not require an increase or decrease in future
- 4 legislative appropriations to TWC;
- 5 --the proposed repeal will not require an increase or decrease in fees paid to TWC;
- 6 --the proposed repeal will not create a new regulation;
- 7 --the proposed repeal will not expand, limit, or eliminate an existing regulation;
- 8 --the proposed repeal will not change the number of individuals subject to the rules; and
- 9 --the proposed repeal will not positively or adversely affect the state's economy.

10
11 Economic Impact Statement and Regulatory Flexibility Analysis

12 TWC has determined that the proposed repeal will not have an adverse economic impact on
13 small businesses or rural communities, as the proposed repeal places no requirements on small
14 businesses or rural communities.

15
16 Mariana Vega, Director, Labor Market and Career Information, has determined that there is no
17 significant negative impact upon employment conditions in the state as a result of the repeal.

18
19 Cheryl Fuller, Director, Vocational Rehabilitation Division, has determined that for each year of
20 the first five years the repeal is in effect, the public benefit will be to streamline TWC rules.

21
22 TWC hereby certifies that the proposed repeal has been reviewed by legal counsel and found to
23 be within TWC's legal authority to adopt.

24
25 **PART III. COORDINATION ACTIVITIES**

26 In the development of these rules for publication and public comment, TWC sought the
27 involvement of the 28 Local Workforce Development Boards (Boards) in Texas. TWC provided
28 the concept paper regarding the repeal to the Boards for consideration and review on June 14,
29 2018. TWC also conducted a conference call with Board executive directors and Board staff on
30 June 22, 2018, to discuss the concept paper. During the rulemaking process, TWC considered all
31 information gathered in order to develop rules that provide clear and concise direction to all
32 parties involved.

33
34 Comments on the proposed repeal may be submitted to TWC Policy Comments, Workforce
35 Program Policy, Attn: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas
36 78778; faxed to (512) 475-3577; or emailed to TWCPolicyComments@twc.state.tx.us.
37 Comments must be received or postmarked no later than 30 days from the date this proposal is
38 published in the *Texas Register*.

39
40 The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide
41 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the
42 effective administration of TWC services and activities.

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44 The repeal affects Title 4, Texas Labor Code, particularly Chapters 351 and 352.

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3
4 **~~§857.1. Noncompetitive Procurement.~~**

5
6 ~~(a) General. HHSC may acquire goods or services on a noncompetitive basis as~~
7 ~~described in this section.~~

8
9 ~~(b) Exception to competitive purchasing. HHSC may utilize a noncompetitive~~
10 ~~procurement method if the purchase consists of one or more of the following~~
11 ~~transactions:~~

12
13 ~~(1) sole source, consistent with guidance from the Comptroller of Public~~
14 ~~Accounts;~~

15
16 ~~(2) proprietary purchase, consistent with guidance from the Comptroller of Public~~
17 ~~Accounts;~~

18
19 ~~(3) emergency purchase:~~

20
21 ~~(A) The emergency underlying the purchase must be documented and~~
22 ~~justified in the procurement file.~~

23
24 ~~(B) Despite the existence of a justified emergency, HHSC must use its best~~
25 ~~efforts to conduct the procurement with as much competition as is~~
26 ~~practical under the circumstances;~~

27
28 ~~(4) purchase from preferred supplier;~~

29
30 ~~(5) an enrollment contract:~~

31
32 ~~(A) An open enrollment must be conducted in an open and fair manner that~~
33 ~~reasonably provides interested, qualified vendors equal opportunity to~~
34 ~~obtain a contract or do business with HHSC; and~~

35
36 ~~(B) An open enrollment must include contract terms and conditions or other~~
37 ~~policies adopted by HHSC and provided to the vendor that establish the~~
38 ~~manner in which individual transactions will be processed;~~

39
40 ~~(6) intergovernmental transfer;~~

41
42 ~~(7) contract renewal consistent with the underlying procurement;~~

43
44 ~~(8) a purchase is required by state or federal law to be awarded on a~~
45 ~~noncompetitive basis;~~

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~~(9) — a purchase for an amount of not more than \$5000.~~

~~(c) Noncompetitive negotiation. HHSC may conduct a noncompetitive negotiation if it:~~

~~(1) — conducts a transaction under a noncompetitive purchasing method; or~~

~~(2) — receives only one qualified response to a solicitation issued under a competitive purchasing method.~~