

1   **ADOPTION OF REPEAL OF**  
2   **SUBCHAPTER A. PURCHASE CONTRACTS**

3   **43 TAC §§210.1 - 210.3**

4   **NEW**

5   **SUBCHAPTER A. GENERAL PROVISIONS**

6   **43 TAC §210.1 AND §210.2**

7   **NEW**

8   **SUBCHAPTER C. CONTRACT MANAGEMENT**

9   **43 TAC §§210.41 - 210.43**

10 **INTRODUCTION.** The Texas Department of Motor Vehicles (department) adopts the repeal of 43 Texas  
11 Administrative Code (TAC) Subchapter A, Purchase Contracts, §§210.1, 210.2, and 210.3; and adopts new  
12 Subchapter A, General Provisions, §210.1 and §210.2, and new Subchapter C, Contract Management,  
13 §§210.41, 210.42, and 210.43. The adopted repeals and new sections are necessary to organize the rules  
14 to begin with the generally applicable provisions, to organize subsequent subchapters by subject matter,  
15 to delete duplicative language, to add a delegation of signature authority, and to bring the department’s  
16 protest, claims and contract monitoring rules into alignment with statute, with the current rules of the  
17 Texas Comptroller of Public Accounts (Comptroller) in 34 TAC, Part 1, and with current department  
18 practices.

19           The department adopts new §210.2 and §210.42, without changes to the text as published in the  
20 November 8, 2024, issue of the *Texas Register* (49 TexReg 8837). These sections will not be republished.  
21 The department adopts new §§210.1, 210.41, and 210.43 with changes at adoption to the proposed text  
22 as published in the November 8, 2024, issue of the *Texas Register* (49 TexReg 8837). These sections will

1 be republished. In conjunction with this adoption, the department is adopting the repeal of Subchapter  
2 A, Purchase Contracts, §§210.1-210.3, which is also published in this issue of the *Texas Register*.

3 **REASONED JUSTIFICATION.** The department is conducting a review of its rules in Chapter 210 in  
4 compliance with Government Code, §2001.039. As a part of the review, the department is adopting  
5 necessary repeals and new sections to update and streamline the rule text, bringing it into compliance  
6 with statute and with current department procedure.

7 Chapter 210 is adopted to be retitled “Procurement and Contracting” to more accurately reflect  
8 the scope of the chapter and to avoid any confusion with adopted new Subchapter C, Contract  
9 Management.

#### 10 Repeal of Subchapter A. Purchase Contracts

11 The adopted repeal of §§210.1, 210.2 and 210.3 allows for the reorganization of the chapter for  
12 clarity and ease of reference. Language from these sections is incorporated into adopted new Subchapter  
13 C, Contract Management, §§210.41 - 210.43.

#### 14 New Subchapter A. General Provisions

15 Adopted new Subchapter A is titled General Provisions, consistent with the organization and  
16 naming conventions found in Chapters 215 and 221 of this title. It includes information that is generally  
17 applicable to the remainder of the chapter.

18 Adopted new §210.1 adds definitions to be applicable to the entire chapter. Definitions in Chapter  
19 210 were previously set out for each section separately, creating confusion and inconsistency. The  
20 chapter-wide definitions adopted in new §210.1 improve clarity, consistency, and readability for the  
21 entire chapter.

22 Adopted new §210.1(a) adds an interpretation provision and references to the State Purchasing  
23 and General Services Act and the Code Construction Act. It provides that terms found in this chapter have

1 the same definitions as set forth in those statutes, unless otherwise specified or unless the context clearly  
2 requires a different meaning. This allows for consistency and clarity among the department’s rules and  
3 other relevant sources of authority.

4       Adopted new §210.1(b) lists specific definitions for words and terms used in Chapter 210. Adopted  
5 new §210.1(b)(1) defines “Act” as Government Code, Chapters 2151 - 2177, otherwise known as the State  
6 Purchasing and General Services Act, which governs purchases made by state agencies. Adopted new  
7 §210.1(b)(2) adds the same definition for “board” that appears in repealed §210.2. Adopted new  
8 §210.1(b)(3) adds a new definition for “contract,” which is more expansive and inclusive of the various  
9 types of contracts the department uses. Adopted new §210.1(b)(4) similarly adds a new definition for  
10 “contractor” to replace the definition of “vendor” in repealed §210.1(b)(5) for clarity and consistency, and  
11 to align with current department contract terminology. Adopted new §210.1(b)(5) adds a definition for  
12 “days” to clarify that throughout the chapter, “days” means calendar days rather than business or working  
13 days, to be consistent with how days are calculated in the Comptroller’s procurement rules in 34 TAC, Part  
14 1. Adopted new §210.1(b)(6) defines “department” for the whole chapter to create consistency and  
15 clarity. Adopted new §210.1(b)(7) adds a definition for “executive director” to identify the individual  
16 responsible for certain duties and authorities in this chapter. Adopted new §210.1(b)(8), (b)(9), and (b)(10)  
17 add definitions for “historically underutilized business,” “interagency contract or interagency agreement,”  
18 and “interlocal contract or interlocal agreement” respectively, citing to the relevant defining statutes for  
19 clarity and consistency. The department adopts new §210.1(b)(9) and (b)(10) with a change at adoption  
20 to decapitalize the word “interagency” and “interlocal,” respectively, the second time the word appears  
21 in the term that is defined. The word “purchase,” was defined with slightly different wording in both  
22 repealed §210.1(b)(4) and repealed §210.2(b)(7); adopted new §210.1(b)(11) defines “purchase” for the  
23 whole Chapter 210 to create consistency and clarity. Adopted new §210.1(b)(12) adds a new definition

1 for “respondent” to replace the definition of “interested party” in repealed §210.2(b)(6), because the  
2 adopted definition is more specific and in better alignment with current procurement terminology and  
3 department contract language.

4       Adopted new §210.2 creates a new delegation of signature authority. The department’s board  
5 previously delegated contract approval and signature authority through action and a board resolution  
6 that incorporated department contract procedures. Adopted new §210.2 eliminates the need for yearly  
7 board action on that item and reduces risk by providing a consistent standard that is transparent and  
8 readily accessible. It also satisfies the requirement found in Government Code, §2261.254, that the  
9 governing body of a state agency must either sign or delegate signature authority for those contracts  
10 exceeding \$1,000,000. The delegation is applicable to all types of contracts and agreements and allows  
11 the executive director to delegate authority further, as authorized by statute.

12 New Subchapter C. Contract Management.

13       Adopted new Subchapter C incorporates and modifies language from repealed §§210.1 - 210.3.

14       Adopted new §210.41 incorporates language from repealed §210.1, concerning claims for  
15 purchase contracts. Adopted new §210.41 does not incorporate the definitions in repealed §210.1,  
16 because definitions are adopted to be reorganized into adopted new §210.1. Additionally, as compared  
17 to the language in repealed §210.1, adopted new §210.41 and §210.42 replace the word “vendor” with  
18 either “contractor” or “respondent,” depending on which is appropriate under the new definitions of  
19 those terms in adopted new §210.1(b), for consistency with agency contracting terminology. Adopted  
20 new §210.42 also changes the term “interested parties” found in repealed §210.1 to “respondent,” as  
21 defined in adopted new §210.1(b), for consistency and clarity. Adopted new §210.41 includes other non-  
22 substantive punctuation, grammatical, and organizational changes to the language from repealed §210.1.  
23 In adopted new §210.41, the word “mediation” is assigned the meaning set forth in Civil Practice and

1 Remedies Code, §154.023, and in §210.41(d)(3), the qualifications of the mediator are updated to be  
2 consistent with the Attorney General’s model rule, 1 TAC §68.49. Similarly, in adopted new §210.41(d)(4),  
3 potential mediation costs are addressed to be consistent with the Attorney General’s model rule, 1 TAC  
4 §68.53. In adopted new §210.41(e)(2), which incorporates language from repealed §210.1(f)(2), the word  
5 “shall” is changed to “must” for clarity and consistency. Government Code, §311.016 defines the word  
6 “must” as “creates or recognizes a condition precedent,” which is the intended meaning in adopted new  
7 §210.41(e)(2). The definitions in Government Code, §311.016 apply to Chapter 210 according to  
8 Government Code, §311.002(4).

9         The department adopts §210.41(d) with changes at adoption to modify the first sentence in  
10 §210.41(d), and to correct the citation to the Civil Practice and Remedies Code in §210.41(d)(3). In the  
11 first sentence in §210.41(d), the department changed the term “impartial party” to “impartial third party”  
12 to be consistent with the terminology in Government Code, Chapter 2009 and the Attorney General’s  
13 model rule, 1 TAC §68.47. The department also replaced the word “subchapter” with the word “section”  
14 because mediation is only addressed in §210.41 of Subchapter C of Chapter 210. In addition, the  
15 department deleted the word “the” before the reference to Civil Practice and Remedies Code, §154.023  
16 because the word is not necessary. In §210.41(d)(3), the department replaced the citation to Civil Practice  
17 and Remedies Code, §154.022 with the citation to Civil Practice and Remedies Code, §154.052, which is  
18 the correct citation, and added a comma to the citation.

19         Adopted new §210.42 incorporates language concerning protests from repealed §210.2, except  
20 for the definitions, which are adopted to be reorganized into adopted new §210.1. Adopted new §210.42  
21 updates language from repealed §210.2 to more accurately describe the department’s procedures for  
22 protests of department purchases, and to make non-substantive punctuation, grammatical and  
23 organizational improvements. Adopted new §210.42(a) incorporates language from repealed §210.2 but

1 updates the term “vendor” to “respondent” for clarity and consistency with the new definitions in  
2 adopted new §210.1.

3 Adopted new §210.42(b) updates the department’s protest rules to be consistent with the  
4 Comptroller’s current rules in 34 TAC Chapter 20, as required by Government Code, §2155.076. Adopted  
5 new §210.42(b)(1) will only authorize vendors who have submitted a response to a department  
6 solicitation to file a protest. This aligns with the Comptroller’s rule, 34 TAC §20.534, and limits protests to  
7 those who have proper standing. Adopted new §210.42(b) describes the requirements for a properly filed  
8 protest, which is consistent with the language used in the Comptroller’s rule, 34 TAC §20.535 regarding  
9 filing requirements for a protest.

10 Adopted new §210.42(c) adds deadlines for a protest to be filed timely, which would vary  
11 depending on the type of protest. This adopted language replaces repealed §210.2(c)(1), which had the  
12 same filing deadline regardless of protest type. The adopted new deadlines will be easier to determine  
13 and calculate accurately because they are based on the specific solicitation and award dates, whereas  
14 repealed §210.2(c)(1) was based on when the protestor “knew or should have known” an action had  
15 occurred. This change aligns adopted new §210.42 with the Comptroller’s rule, 34 TAC §20.535, and will  
16 provide certainty and transparency in the protest process.

17 Adopted new §210.42(d), (f), and (g) incorporate language from repealed §210.2(d), (e), and (f),  
18 but only authorizes the department’s executive director or procurement director to move forward with a  
19 contract award or performance under a contract while a protest is pending, and only authorize the  
20 department’s procurement director to informally resolve a protest, or issue a written determination on a  
21 protest. Repealed §210.2(d), (e), and (f) authorized the department’s executive director’s designee to take  
22 such actions. The procurement director is the department staff member with the most visibility into the  
23 procurement process by virtue of supervising the department’s Purchasing Section and is therefore in the

1 best position to make initial decisions on matters involving purchasing decisions. Adopted new  
2 §210.42(d), (f), and (g) will ensure that protest decisions are made by those with the most knowledge of  
3 and authority over the matter.

4 Adopted new §210.42(e) addresses the actions the department may take on a protest, including  
5 the dismissal of an untimely protest or a protest that does not meet the filing requirements. This will allow  
6 the department increased efficiency in disposing of improper protests, so that it can focus its time and  
7 resources on resolving the protests that comply with the filing requirements.

8 Adopted new §210.42(g) incorporates language from repealed §210.2(f), but replaces the term  
9 “interested parties” with the word “respondents” to align with the new definitions in adopted new §210.1  
10 for clarity and consistency.

11 Adopted new §210.42(h) updates the department’s protest rule to be consistent with the  
12 Comptroller’s current rule, 34 TAC §20.538, as required by Government Code, §2155.076. Adopted new  
13 §210.42(h) requires that appeals of a written determination be filed with the general counsel and that the  
14 general counsel may either make the final determination or refer it to the executive director for final  
15 determination. Additionally, adopted new §210.42(h) replaces the term “interested parties” from  
16 repealed §210.2(g) with the word “respondent” and deletes the word “working” before the word “days”  
17 to align with the new definitions adopted in new §210.1 for clarity and consistency.

18 Adopted new §210.43 incorporates language from repealed §210.3 concerning enhanced  
19 contract monitoring. Adopted new §210.43 is titled “Enhanced Contract and Performance Monitoring” to  
20 align with statutory language in Government Code, §2261.253. Adopted new §210.43 replaces the word  
21 “vendor” from repealed §210.3 with the word “contractor” throughout to align with the new definitions  
22 in adopted new §210.1. Additionally, as compared to the repealed language of §210.3, the language of  
23 adopted new §210.43(a) adds two additional factors to the risk assessment to determine which contracts

1 require enhanced contract or performance monitoring: adopted new §210.43(a)(5) adds “special  
2 circumstances of the project,” and adopted new §210.43(a)(6) adds “the scope of the goods, products or  
3 services provided under the contract.” These additions align with the current risk assessment tool used  
4 by the department’s Purchasing Section.

5 The department adopts §210.43(b) and (c) with changes at adoption to change the word “will” to  
6 “shall” to be consistent with the terminology in Government Code, §2261.253(c).

7 **SUMMARY OF COMMENTS.**

8 No comments on the adopted new sections or repeals were received.

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**SUBCHAPTER A. GENERAL PROVISIONS**

11

**43 TAC §210.1 AND §210.2**

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**STATUTORY AUTHORITY.** The department adopts new Subchapter A, §210.1 and §210.2 in Chapter 210  
under Transportation Code, §1001.0411(b), which authorizes the executive director of the Texas  
Department of Motor Vehicles (department) to delegate duties or responsibilities; Transportation Code,  
§1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the  
authority to adopt rules that are necessary and appropriate to implement the powers and the duties of  
the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice  
stating the nature and requirements of all available formal and informal procedures; Government Code,  
§2260.052(c), which requires state agencies to develop rules to govern negotiation and mediation of  
contract claims; Government Code, §2161.003, which requires state agencies to adopt the Texas  
Comptroller of Public Accounts’ historically underutilized business rules as their own rules; Government  
Code, §2261.254(d), which authorizes the board to delegate approval and signature authority for



1 contracts; and the statutory authority referenced throughout the preamble and in the rule text, which is  
2 incorporated herein by reference.

3 **CROSS REFERENCE TO STATUTE.** The adopted new sections implement Government Code, Title 10,  
4 Subtitle D, Chapters 771 and 791, and §2001.004; and Transportation Code, Chapters 1001 and 1002.

5  
6 Text.

7 210.1. Definitions.

8 (a) As used throughout this chapter, the words and terms defined in the State Purchasing and  
9 General Services Act, Government Code, Title 10, Subtitle D, and the Code Construction Act,  
10 Government Code, Chapter 311 will have the same meaning defined therein, and each word or term  
11 listed in this chapter will have the meaning set forth herein, unless:

12 (1) its use clearly requires a different meaning; or  
13 (2) a different definition is prescribed in this section, or for a particular section of this  
14 chapter or portion thereof.

15 (b) The following words and terms, when used in this chapter, will have the following meaning  
16 unless the context clearly indicates otherwise:

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

19 (2) Board--The Board of the Texas Department of Motor Vehicles.

20 (3) Contract--A legally enforceable written agreement, including a purchase order,  
21 between the department and a contractor for goods, products, or services.

22 (4) Contractor--An individual or business entity that has a contract to provide goods,  
23 products, or services to the department.

1 (5) Days--Calendar days.

2 (6) Department--The Texas Department of Motor Vehicles.

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

4 (8) Historically underutilized business (HUB)--A business as defined in Government  
5 Code, §2161.001(2).

6 (9) Interagency contract or interagency agreement--An agreement entered into under  
7 the Interagency Cooperation Act, Government Code, Chapter 771.

8 (10) Interlocal contract or interlocal agreement--An agreement entered into under the  
9 Interlocal Cooperation Act, Government Code, Chapter 791.

10 (11) Purchase--Any form of acquisition for goods, products, or services, including by  
11 lease or revenue contract, under the Act.

12 (12) Respondent--An individual or business entity that has submitted a bid, proposal, or  
13 other expression of interest in response to a specific solicitation for goods, products, or services.

14

15 210.2. Delegation of Approval and Signature Authority.

16 (a) Purpose. The purpose of this section is to establish the approval authority and  
17 responsibilities for executing contracts required by the department.

18 (b) Applicability. This section applies to all contracts, interagency contracts, interlocal contracts,  
19 as well as informal letters of agreement, memoranda, and agreements.

20 (c) Board Delegation. The board delegates the following duties and authorities to the executive  
21 director of the department:

22 (1) the duty and authority to execute contracts, to include approving and signing  
23 contracts on behalf of the department;

1 (2) the authority to further delegate contract approval and signature authority to the  
2 executive director’s designees for contracts with a dollar value up to and including \$1,000,000; and

3 (3) the authority to further delegate contract approval and signature authority to a  
4 deputy executive director of the department for contracts with a dollar value exceeding \$1,000,000 as  
5 allowed by Government Code, §2261.254.

6

7 ~~[SUBCHAPTER A. PURCHASE CONTRACTS]~~

8 **STATUTORY AUTHORITY.** The department adopts the repeal of Chapter 210, Subchapter A, Purchase  
9 Contracts, under Transportation Code, §1002.001, which provides the board of the Texas Department of  
10 Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to  
11 implement the powers and the duties of the department; Government Code, §2001.004, which requires  
12 state agencies to adopt rules of practice stating the nature and requirements of all available formal and  
13 informal procedures; Government Code, §2155.076, which requires state agencies, by rule, to develop  
14 and adopt protest procedures for resolving vendor protests relating to purchasing issues; Government  
15 Code, §2260.052(c), which requires state agencies to develop rules to govern negotiation and mediation  
16 of contract claims; Government Code, §2261.253(c), which requires state agencies, by rule, to establish  
17 a procedure to identify each contract that requires enhanced contract monitoring; and the statutory  
18 authority referenced throughout the preamble, which is incorporated herein by reference.

19 **CROSS REFERENCE TO STATUTE.** The adopted repeals implement Government Code, Title 10, Subtitle D;  
20 and Transportation Code, Chapters 1001 and 1002.

21

22 Text.

23 [~~§210.1. Claims for Purchase Contracts.~~]

1           ~~[(a) Purpose. Government Code, Chapter 2260, provides a resolution process for certain~~  
2 ~~contract claims against the state. Chapter 2260 applies to purchase contracts of the Texas Department~~  
3 ~~of Motor Vehicles entered into under the State Purchasing and General Services Act. This section~~  
4 ~~governs the filing, negotiation, and mediation of a claim.]~~

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

7                     ~~[(1) Claim—A claim for breach of a purchase contract between a vendor and the~~  
8 ~~department.]~~

9                     ~~[(2) Department—Texas Department of Motor Vehicles.]~~

10                    ~~[(3) Executive director—The executive director of the department or the director's~~  
11 ~~designee not below the level of division director.]~~

12                    ~~[(4) Purchase—A procurement action under Government Code, Title 10, Subtitle D, for~~  
13 ~~commodities or non-professional services.]~~

14                    ~~[(5) Vendor—An individual, partnership, corporation, or other business entity that is a~~  
15 ~~party to a written contract for a purchase with the department.]~~

16           ~~[(c) Filing of claim. A vendor may file a notice of claim with the executive director within 180~~  
17 ~~days after the date of the event giving rise to the claim. The claim must contain the:]~~

18                     ~~[(1) nature of the alleged breach;]~~

19                     ~~[(2) amount the vendor seeks as damages; and]~~

20                     ~~[(3) legal theory of recovery.]~~

21           ~~[(d) Negotiation.]~~

22                     ~~[(1) The executive director will begin negotiations with the vendor to resolve the claim.~~  
23 ~~The negotiations will begin no later than the 120th day after the date the claim is received.]~~

1                   ~~[(2) The negotiation may be written or oral. The executive director may afford the~~  
2                   ~~vendor an opportunity for a meeting to informally discuss the disputed matters and provide the vendor~~  
3                   ~~an opportunity to present relevant information.]~~

4                   ~~[(e) Mediation.]~~

5                   ~~[(1) The department and the vendor may agree to nonbinding mediation. The~~  
6                   ~~department will agree to mediation if the executive director determines that the mediation may speed~~  
7                   ~~resolution of the claim or otherwise benefit the department.]~~

8                   ~~[(2) The executive director will appoint a department employee as mediator. The~~  
9                   ~~employee must not have had any previous involvement or participation in the administration of the~~  
10                  ~~contract or the resolution of the claim.]~~

11                  ~~[(3) If the vendor objects to the appointment of a department employee as mediator,~~  
12                  ~~the department will select and hire a private mediator from outside the department. The costs for the~~  
13                  ~~services of a private mediator will be apportioned equally between the department and the vendor.]~~

14                  ~~[(4) The role of a mediator is limited to assisting the parties in attempting to reach an~~  
15                  ~~agreed resolution of the issues.]~~

16                  ~~[(f) Final offer.]~~

17                  ~~[(1) The executive director will make a final offer to the vendor within 90 days of~~  
18                  ~~beginning negotiations.]~~

19                  ~~[(2) If the disposition is acceptable to the vendor, the vendor shall advise the executive~~  
20                  ~~director in writing within 20 days of the date of the final offer. The department will forward an agreed~~  
21                  ~~disposition involving payment to the vendor for a final and binding order on the claim.]~~

22                  ~~[(g) Contested case hearing. If the vendor is dissatisfied with the final offer, or if the claim is not~~  
23                  ~~resolved before the 270th day after the claim is filed with the department, the vendor may petition the~~

1 ~~executive director for an administrative hearing before the State Office of Administrative Hearings to~~  
2 ~~litigate the unresolved issues in the claim under the provisions of Government Code, Chapter 2260,~~  
3 ~~Subchapter C.]~~

4  
5 ~~[\$210.2. Protest of Department Purchases under the State Purchasing and General Services Act.]~~

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

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

12 ~~[(1) Act – Government Code, Chapters 2151–2177, the State Purchasing and General~~  
13 ~~Services Act.]~~

14 ~~[(2) Board – Board of the Texas Department of Motor Vehicles.]~~

15 ~~[(3) Department – Texas Department of Motor Vehicles.]~~

16 ~~[(4) Division – An organizational unit in the department.]~~

17 ~~[(5) Executive director – The executive director of the department.]~~

18 ~~[(6) Interested party – A vendor that has submitted a bid, proposal, or other expression~~  
19 ~~of interest for the purchase involved.]~~

20 ~~[(7) Purchase – A procurement action for commodities or non-professional services~~  
21 ~~under the Act.]~~

22 ~~[(c) Filing of protest.]~~

23 ~~[(1) An actual, prospective bidder, or offeror who is aggrieved in connection with the~~

1 ~~solicitation, evaluation, or award of a purchase, may file a written protest. The protest must be~~  
2 ~~addressed to the attention of the executive director. The protest must be received in the office of the~~  
3 ~~executive director within 10 working days after such aggrieved person knows, or should have known, of~~  
4 ~~the action.]~~

5 ~~[(2) The protest must be sworn and contain:]~~

6 ~~[(A) the provision of or rule adopted under the Act that the action is alleged to~~  
7 ~~have violated;]~~

8 ~~[(B) a specific description of the alleged violation;]~~

9 ~~[(C) a precise statement of the relevant facts;]~~

10 ~~[(D) the issue to be resolved;]~~

11 ~~[(E) argument and authorities in support of the protest; and]~~

12 ~~[(F) a statement that copies of the protest have been mailed or delivered to~~  
13 ~~other identifiable interested parties.]~~

14 ~~[(d) Suspension of award or performance. If a protest or appeal of a protest has been filed, then~~  
15 ~~the department will not proceed with the solicitation or the award of the purchase unless the executive~~  
16 ~~director's designee, not below the level of division director, makes a written determination that the~~  
17 ~~award of the purchase should be made without delay to protect substantial interests of the department.~~  
18 ~~If the purchase has already been awarded, then the department will not allow the vendor to continue~~  
19 ~~performance under the contract unless the executive director makes a written determination that~~  
20 ~~continued vendor performance is necessary to protect substantial interests of the department.]~~

21 ~~[(e) Informal resolution. The executive director's designee may informally resolve the dispute,~~  
22 ~~including:]~~

23 ~~[(1) soliciting written responses to the protest from other interested parties; and]~~

1                   ~~[(2) resolving the dispute by mutual agreement.]~~

2                   ~~[(f) Written determination. If the protest is not resolved by agreement, the executive director's~~  
3 ~~designee will issue a written determination to the protesting party and interested parties which sets~~  
4 ~~forth the reason of the determination. The designee may determine that:]~~

5                   ~~[(1) no violation has occurred; or]~~

6                   ~~[(2) a violation has occurred and it is necessary to take remedial action as appropriate to~~  
7 ~~the circumstances, which may include:]~~

8                                 ~~[(A) declaring the purchase void;]~~

9                                 ~~[(B) reversing the award; or]~~

10                                ~~[(C) re-advertising the purchase using revised specifications.]~~

11                   ~~[(g) Appeal.]~~

12                   ~~[(1) An interested party may appeal the determination to the executive director. The~~  
13 ~~written appeal must be received in the executive director's office no later than 10 working days after the~~  
14 ~~date of the determination. The appeal is limited to a review of the determination.]~~

15                   ~~[(2) The appealing party must mail or deliver copies of the appeal to the executive~~  
16 ~~director's designee and other interested parties with an affidavit that such copies have been provided.]~~

17                   ~~[(3) The general counsel of the department shall review the protest, the determination,~~  
18 ~~the appeal, and prepare a written opinion 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 board for its consideration at a regularly scheduled~~  
22 ~~open meeting.]~~

23                   ~~[(5) The board may consider oral presentations and written documents presented by the~~



1 ~~department and interested parties. The board chairman shall set the order and the amount of time~~  
2 ~~allowed for presentation. The board's determination of the appeal shall be adopted by order and~~  
3 ~~reflected in the minutes of the meeting.]~~

4 ~~[(6) The decision of the board or executive director shall be final.]~~

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

8 ~~[(i) Document retention. The department shall maintain all documentation on the purchasing~~  
9 ~~process that is the subject of a protest or appeal in accordance with the retention schedule of the~~  
10 ~~department.]~~

11  
12 ~~[\$210.3. Enhanced Contract Monitoring Program:]~~

13 ~~[(a) The department will apply risk assessment factors to agency contracts as defined in~~  
14 ~~Government Code, §2261.253 to identify those contracts that require enhanced contract or~~  
15 ~~performance monitoring. The risk assessment will consider the following factors:]~~

16 ~~[(1) dollar amount of contract;]~~

17 ~~[(2) total contract duration;]~~

18 ~~[(3) vendor past performance;]~~

19 ~~[(4) risk of fraud, abuse or waste;]~~

20 ~~[(5) business process impact of failure or delay; and]~~

21 ~~[(6) board or executive director's request for enhanced contract or performance~~  
22 ~~monitoring.]~~

23 ~~[(b) The department will notify the board of the results of the risk assessment and present~~

1 ~~information to the board resulting from the enhanced contract or performance monitoring.]~~

2 ~~[(c) The chief financial officer or procurement manager shall immediately notify the~~

3 ~~department's governing body of any serious issue or risk that is identified under this section.]~~

4

5 **SUBCHAPTER C. CONTRACT MANAGEMENT**

6 **43 TAC §§210.41, 210.42, AND 210.43**

7 **STATUTORY AUTHORITY.** The department adopts new §§210.41, 210.42, and 210.43 in Chapter 210  
8 under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor  
9 Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the  
10 powers and the duties of the department; Government Code, §2001.004, which requires state agencies  
11 to adopt rules of practice stating the nature and requirements of all available formal and informal  
12 procedures; Government Code, §2155.076, which requires state agencies, by rule, to develop and adopt  
13 protest procedures for resolving vendor protests relating to purchasing issues; Government Code,  
14 §2260.052(c), which requires state agencies to develop rules to govern negotiation and mediation of  
15 contract claims; Government Code, §2261.253(c), which requires state agencies, by rule, to establish a  
16 procedure to identify each contract that requires enhanced contract or performance monitoring; and  
17 the statutory authority referenced throughout the preamble and in the rule text, which is incorporated  
18 herein by reference.

19 **CROSS REFERENCE TO STATUTE.** The adopted new sections implement Government Code, Title 10,  
20 Subtitle D, and §2001.004; and Transportation Code, Chapters 1001 and 1002.

21

22 Text.

23 §210.41. Claims for Purchase Contracts.

1 (a) Purpose. Government Code, Chapter 2260, provides a resolution process for certain contract  
2 claims against the state. Chapter 2260 applies to contracts of the department entered into under the  
3 State Purchasing and General Services Act. This section governs the filing, negotiation, and mediation of  
4 a claim. When used in this section, the terms “contract” and “contractor” are defined in Government  
5 Code, §2260.001.

6 (b) Filing of claim. A contractor may file a notice of claim with the executive director within 180  
7 days after the date of the event giving rise to the claim. The claim must contain:

- 8 (1) the nature of the alleged breach;  
9 (2) any amount the contractor seeks as damages; and  
10 (3) the legal theory supporting recovery.

11 (c) Negotiation.

- 12 (1) The executive director shall negotiate with the contractor to resolve the claim;  
13 (2) Negotiations will begin no later than the 120th day after the date the claim is  
14 received by the department;  
15 (3) Negotiations may be written or oral; and  
16 (4) The executive director may afford the contractor an opportunity for a meeting to  
17 informally discuss the claim and provide the contractor with an opportunity to present relevant  
18 information.

19 (d) Mediation. The parties may agree to mediate a claim through an impartial third party. For  
20 the purposes of this section, “mediation” is assigned the meaning set forth in Civil Practice and  
21 Remedies Code, §154.023. The mediation is subject to the provisions of the Governmental Dispute  
22 Resolution Act, Government Code, Chapter 2009. The parties may be assisted in the mediation by legal  
23 counsel or other individual.

1 (1) The department and the contractor may agree to nonbinding mediation;

2 (2) The department will agree to mediation if the executive director determines that  
3 mediation may speed resolution of the claim or otherwise benefit the department;

4 (3) The mediator shall possess the qualifications required under Civil Practice and  
5 Remedies Code, §154.052;

6  
7 (4) Unless otherwise agreed in writing, each party shall be responsible for its own costs  
8 incurred in connection with a mediation, including without limitation, costs of document reproduction,  
9 attorney’s fees, consultant fees and expert fees, and the cost of the mediator shall be divided equally  
10 between the parties.

11 (e) Final offer.

12 (1) The executive director will make a final offer to the contractor within 90 days of  
13 beginning negotiations; and

14 (2) If the final offer is acceptable to the contractor, the contractor must advise the  
15 executive director in writing within 20 days of the date of the final offer. The department will forward a  
16 settlement agreement to the contractor for signature to resolve the claim.

17 (f) Contested case hearing. If the contractor is dissatisfied with the final offer, or if the claim is  
18 not resolved before the 270th day after the claim is filed with the department, then, unless the parties  
19 agree in writing to an extension of time, the contractor may file a request with the executive director for  
20 an administrative hearing before the State Office of Administrative Hearings to resolve the unresolved  
21 issues of the claim under the provisions of Government Code, Chapter 2260, Subchapter C.

22  
23 §210.42. Protest of Department Purchases under the State Purchasing and General Services Act.

1 (a) Purpose. The purpose of this section is to provide a procedure for respondents to protest  
2 purchases made by the department. Purchases made by the Texas Procurement and Support Services  
3 division of the Texas Comptroller of Public Accounts' office on behalf of the department are addressed  
4 in 34 TAC, Part 1, Chapter 20.

5 (b) Filing of protest.

6 (1) A respondent who has submitted a written response to a department solicitation  
7 may file a written protest.

8 (2) The protest must contain:

9 (A) the specific statutory or regulatory provision the protestant alleges the  
10 solicitation, contract award or tentative award violated;

11 (B) a specific description of each action by the department that the protestant  
12 alleges violated the identified statutory or regulatory provision;

13 (C) a precise statement of the relevant facts, including:

14 (i) sufficient documentation to establish that the protest has been  
15 timely filed; and

16 (ii) a description of the resulting adverse impact to the protestant,  
17 department and the state;

18 (D) a statement of any issues of law or fact that the protestant contends must  
19 be resolved;

20 (E) a statement of the protestant's argument and authorities that the protestant  
21 offers in support of the protest;

22 (F) an explanation of the subsequent action the protestant is requesting; and

1 (G) a statement that copies of the protest have been mailed or delivered to  
2 other identifiable respondents.

3 (3) The protest must be signed by an authorized representative of the protestant and  
4 the signature to the protest must be notarized.

5 (4) The protest must be filed in the time period specified in this section.

6 (5) The protest must be mailed or delivered to the department, to the attention of the  
7 procurement director.

8 (c) Timeliness. To be considered timely, the protest must be filed:

9 (1) by the end of the posted solicitation period, if the protest concerns the solicitation  
10 documents or actions associated with the publication of solicitation documents;

11 (2) by the day of the award of a contract resulting from the solicitation, if the protest  
12 concerns the evaluation or method of evaluation for a response to the solicitation; or

13 (3) no later than 10 days after the notice of award, if the protest concerns the award.

14 (d) Suspension of contract award or performance. If a protest or appeal of a protest has been  
15 filed, then the department will not proceed with the contract award or performance under the contract  
16 resulting from the solicitation unless the executive director or procurement director makes a written  
17 determination that the contract award should be made or performance under the contract should  
18 proceed without delay to protect the best interests of the state and department.

19 (e) Action by department. Upon receipt of a protest, the department may:

20 (1) dismiss the protest if:

21 (A) it is not timely; or

22 (B) it does not meet the requirements of subsection (b) of this section;

23 or

1 (2) consider the protest under the procedures in this section.

2 (f) Informal resolution. The procurement director may solicit written responses to the protest  
3 from other affected vendors and attempt to settle and resolve the protest by mutual agreement.

4 (g) Written determination. If the protest is not resolved by agreement, the procurement director  
5 will issue a written determination to the protesting party and other respondents, setting forth the  
6 reason for the determination. The procurement director may determine that:

7 (1) no violation has occurred; or

8 (2) a violation has occurred and it is necessary to take remedial action as appropriate to  
9 the circumstances, which may include:

10 (A) declare the purchase void;

11 (B) reverse the contract award; or

12 (C) re-advertise the purchase using revised specifications.

13 (h) Appeal.

14 (1) A protestant may appeal the determination of a protest, to the general counsel. An  
15 appeal must be in writing and received in the office of general counsel not later than 10 days after the  
16 date the procurement director sent written notice of their determination. The scope of the appeal shall  
17 be limited to review of the procurement director's determination.

18 (2) The general counsel may:

19 (A) refer the matter to the executive director for consideration and a final  
20 written decision that resolves the protest; or

21 (B) may issue a written decision that resolves the protest.

1                   (3) An appeal that is not filed in a timely manner may not be considered unless good  
2 cause for delay is shown or the executive director determines that an appeal raises issues that are  
3 significant to agency procurement practices or procedures in general.

4                   (4) A written decision of the executive director or general counsel shall be the final  
5 administrative action of the department.

6

7   §210.43. Enhanced Contract and Performance Monitoring.

8                   (a) The department will apply risk assessment factors to its contracts as defined in Government  
9 Code, §2261.253 to identify those contracts that require enhanced contract or performance monitoring.

10 The risk assessment may consider the following factors:

11                   (1) dollar amount of the contract;

12                   (2) total contract duration;

13                   (3) contractor past performance;

14                   (4) risk of fraud, abuse or waste;

15                   (5) special circumstances of the project;

16                   (6) the scope of the goods, products, or services provided under the contract;

17                   (7) business process impact of failure or delay; and

18                   (8) the board or executive director's request for enhanced contract or performance  
19 monitoring.

20                   (b) The department's contract management office or procurement director shall notify the  
21 board of the results of the risk assessment and present information to the board resulting from the  
22 enhanced contract or performance monitoring.



- 1 (c) The department’s contract management office or procurement director shall immediately
- 2 notify the board of any serious issue or risk that is identified under this section.