

CHAPTER 858. PROCUREMENT AND CONTRACT MANAGEMENT REQUIREMENTS FOR PURCHASE OF GOODS AND SERVICES FOR VOCATIONAL REHABILITATION SERVICES

PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE SECRETARY OF STATE.

ON **JANUARY 28, 2026**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **February 13, 2026**
Estimated End of Comment Period: **March 16, 2026**

The Texas Workforce Commission (TWC) proposes amendments to the following section of Chapter 858, relating to Procurement and Contract Management Requirements for Purchase of Goods and Services for Vocational Rehabilitation Services, §858.2.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 858 rule change is to implement House Bill (HB) 2791, 89th Texas Legislature, Regular Session, 2025, which adds Texas Labor Code, §352.060.

Historically, TWC's Vocational Rehabilitation (VR) program operated under procurement authority derived from the Texas Health and Human Services Commission (HHSC) since the program's transfer to TWC in 2016. However, legislation passed during the 88th Texas Legislature (HB 4611) made nonsubstantive revisions to health and human services laws that had the unintended effect of removing the critical statutory connections that allowed TWC's VR program to use this authority.

Without corrective legislation, TWC's authority to use the noncompetitive open enrollment procurement method--a method used for approximately 1,000 active provider contracts--was set to end. This would have jeopardized the timely delivery of essential goods and services for more than 27,000 VR participants annually.

HB 2791 was enacted to resolve this issue by adding Texas Labor Code, §352.060, which provides TWC with direct and explicit statutory authority to procure goods and services for the VR program, including the continued use of open enrollment solicitations and new authority for direct negotiation with qualified vendors. This rule amendment aligns TWC's rules with this new statutory authority.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

§858.2. Noncompetitive Open Enrollment Solicitation

Section 858.2 is amended to align with the new statutory authority provided by HB 2791, which adds Texas Labor Code, §352.060. This section affirms TWC's authority to use a noncompetitive open enrollment solicitation for acquiring goods and services for the VR program. It also outlines the conditions under which TWC may directly negotiate a contract if no responsive applications are received from an open enrollment solicitation, consistent with the provisions in the new statute.

PART III. IMPACT STATEMENTS

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

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rule.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rule.

There are no anticipated economic costs to individuals required to comply with the rule.

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

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to implement Texas Labor Code, §352.060, as added by HB 2791, to provide

TWC with direct statutory authority to continue its existing procurement methods for VR goods and services, including open enrollment solicitations and direct negotiation.

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

Government Growth Impact Statement

TWC has determined that during the first five years the rule will be in effect, it:

- will not create or eliminate a government program;
- will not require the creation or elimination of employee positions;
- will not require an increase or decrease in future legislative appropriations to TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand an existing regulation;
- will not change the number of individuals subject to the rule; and
- will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

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

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rule.

Tammy Ames, Director, Vocational Rehabilitation Division, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to ensure the continuation of essential procurement methods for the VR program. This will allow for timely service delivery to VR participants with disabilities across the state by preventing the potential loss of providers that supply critical goods and services.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

This rulemaking implements statutory provisions as described in this proposed rule document. The public will have an opportunity to comment on the proposed rule changes as set forth below.

PART V. REQUEST FOR IMPACT INFORMATION

TWC requests, from any person required to comply with the proposed rule or any other interested person, information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis. Please submit the requested information to TWCPolicyComments@twc.texas.gov no later than March 16, 2026.

PART VI. PUBLIC COMMENTS

Comments on the proposed rule may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than March 16, 2026.

PART VII. STATUTORY AUTHORITY

The rule is proposed under:

--Texas Labor Code, §352.060, as added by HB 2791, 89th Texas Legislature, Regular Session, 2025, which provides TWC the specific authority to adopt rules for the acquisition of VR goods and services, including rules allowing TWC to purchase VR services through open-enrollment solicitations and direct negotiation;

--Texas Labor Code, §352.103, which provides TWC with the authority to adopt rules for the provision of VR services; and

--Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule implements provisions of Title 4, Texas Labor Code, Chapter 352.

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§858.2. Noncompetitive Open Enrollment Solicitation.

(a) General. The Agency may acquire goods or services through a noncompetitive open enrollment solicitation and enter into enrollment contracts with qualified contractors.

- (1) An open enrollment solicitation must be conducted in an open and fair manner that reasonably provides interested, qualified contractors with an equal opportunity to obtain a contract or do business with the Agency.
- (2) The Agency may consider all relevant factors, as set forth under Texas Labor Code, §352.060(c), ~~past performance~~ when determining whether to award a contract to an applicant.

(b) Direct Negotiation for Vocational Rehabilitation Services. In the event the Agency receives no responsive applications to an open enrollment solicitation for vocational rehabilitation goods or services in a specific area of the state, the Agency's Procurement and Contract Services (PCS) division may directly negotiate a contract under the following conditions:

- (1) The Agency must first make a written determination that an award through the open market solicitation is not available;
- (2) PCS may negotiate with and award a contract to any qualified vendor that meets the requirements of the original solicitation; and
- (3) The resulting contract must be at a price consistent with the current market value of the services and have a term not to exceed five years.