

## **CHAPTER 803. SKILLS DEVELOPMENT FUND**

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

ON **SEPTEMBER 22, 2005**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **October 7, 2005**  
Estimated End of Comment Period: **November 7, 2005**

The Texas Workforce Commission (Commission) proposes amendments to rules concerning the Skills Development Fund. Texas Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency. The Commission has reviewed Chapter 803 and determined that reasons for adopting the chapter exist; however, amendments to the rules are needed in order to update terminology and reflect recent changes in state law.

The Commission proposes the repeal of the following sections of Chapter 803 relating to the Skills Development Fund:

Subchapter C. Program Administration After Award of Contract,  
§§803.31–803.36

The Commission proposes the following new sections to Chapter 803 relating to the Skills Development Fund:

Subchapter C. Program Administration After Award of Contract, §803.31 and  
§803.32

The Commission proposes amendments to the following sections of Chapter 803 relating to the Skills Development Fund:

Subchapter A. General Provisions Regarding the Skills Development Fund,  
§§803.1–803.3

Subchapter B. Program Administration, §803.11–803.15

PART I. PURPOSE, BACKGROUND, AND AUTHORITY  
PART II. EXPLANATION OF INDIVIDUAL PROVISIONS  
PART III. IMPACT STATEMENTS  
PART IV. COORDINATION ACTIVITIES

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

The purpose of the proposed Chapter 803 rule change is to:

- (1) address additional priorities in awarding Skills Development Fund grants as directed by House Bill (HB) 2421, enacted by the 79th Texas Legislature, Regular Session;
- (2) eliminate certain rule language also found in statute;
- (3) remove administrative processes and procedures that are unnecessary in rules; and
- (4) incorporate minor technical edits throughout the rules for improved clarity and consistency.

The additional requirements for Skills Development Fund grants include concurrent participation with the Skills Development Fund and the Texas Enterprise Fund with the Office of the Governor Economic Development and Tourism division; training incentives for small businesses; and the availability of funds for incumbent worker training and training focused on economic development.

Effective June 18, 2005, HB 2421 amended Texas Labor Code §303.005 to prohibit an employer from applying for both a Skills Development Fund grant [in conjunction with a community or technical college or the Texas Engineering Extension Service (TEEX)] and a Texas Enterprise Fund grant, unless the employer and the college file an application for concurrent participation.

Additionally, HB 2421 directs the Commission to consider giving priority to training incentives for small businesses. Pursuant to Texas Labor Code §303.003(b)(2), one of the purposes of the Skills Development Fund is to sponsor small businesses, which is addressed in the current rules under Uses of the Fund. The proposed rules add a cross-reference to this existing section under Procedures for Proposal Evaluation to ensure that the purposes of the Skills Development Fund grants are included in the evaluation of proposals.

## **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

**(Note: Minor, nonsubstantive, editorial changes are made throughout Chapter 803 that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)**

### **SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SKILLS DEVELOPMENT FUND**

#### **§803.2. Definitions**

The Commission proposes removing §803.2(1), the definition of "assessment," and §803.2(2), the definition of "community-based organization," because both terms are defined in Texas Labor Code §303.001(b)(1) and §303.001(b)(2), respectively.

Current §803.2(3), the definition of "customized training project," is reorganized and renumbered as §803.2(1). The Commission amends the definition to state that not only a private business, but also a business consortium, or a community-based organization only in partnership with a public community college, a technical college, or TEEEX, may participate in designing the customized training project.

The Commission proposes the deletion of §803.2(4), the definition of "director," because it is defined in Chapter 800.2 of this title; therefore, it is unnecessary to redefine the term in this chapter. Further, the Commission proposes to update references to director throughout Chapter 803 to "executive director," to correctly reflect the Chapter 800 definition.

Current §803.2(5), the definition of "grant recipient," is reorganized and renumbered as §803.2(2).

Current §803.2(12), the definition of "training provider," is reorganized and renumbered as §803.2(9). The Commission proposes amending the definition to include a community-based organization only in partnership with a public community college, technical college, or TEEEX as a training provider.

### **§803.3. Uses of the Fund**

The Commission proposes to amend §803.3(a) by specifying that a grant recipient may use the Skills Development Fund as start-up or emergency funds, as specified. Additionally, the Commission proposes to amend §803.3(a)(2) by clarifying that the sponsorship of small and medium-sized business networks and consortiums is for the purpose of developing customized training.

## **SUBCHAPTER B. PROGRAM ADMINISTRATION**

### **§803.11. Grant Administration**

The Commission proposes removing §803.11(a) regarding the director's responsibility for grant administration because this information is set forth in Texas Labor Code §303.003(d). Additionally, the Commission proposes removing §803.11(b) because this information is an established grants administration principle not necessary in rule.

The Commission proposes adding new §803.11, which states that grant recipients must enter into an agreement with the Agency to comply with contract requirements, which include, but are not limited to, regulations listed in these paragraphs. The Commission also amends this section by specifying in §803.11(4)(A) that project completion is

contingent upon the determination by the executive director, or designee, that a project has met the training objectives, outcomes, and requirements by allowing an attrition rate of up to 15% of the total number of trainees in the contract. Additionally, the Commission adds in §803.11(4)(B) that the contract's final payment will be withheld for 60 days after the completion of training and after the Agency's receipt of verification from the employer that the trainees are employed.

### **§803.13. Program Objectives**

The Commission proposes amending §803.13(2) by referring to "local workforce development areas" as "workforce areas," as set forth in the definition in §800.2 of this title. Further, the Commission proposes to change references from local workforce development area to workforce area throughout Chapter 803.

The Commission proposes amending §803.13 by including an additional program objective §803.13(6), which allows the Agency, to the greatest extent practicable, to award Skills Development Fund grants as follows: (1) approximately 60% of the funds may be for job retention training; and (2) the remaining funds may be for training for job creation. With the exception of the Skills Development Fund, limited resources have been available to upgrade the skills of existing workers to assist with job retention. Because the Legislature has recognized that the Skills Development Fund is available for training the existing workforce, as well as training to create new jobs, the Commission is establishing a flexible goal to meet the economic needs of the state and the skills' needs of employers.

The Commission proposes removing §803.13(b) because it duplicates information found in §803.13(4).

### **§803.14. Procedure for Requesting Funding**

For consistency with the definition of "private partner," renumbered as §803.2(4), the Commission proposes amending current §803.14(a) and §803.14(c) to remove the term "prospective." Additionally, references to a "joint" proposal in §803.14(a) and §803.14(b) are removed to eliminate confusion with references to "concurrent" proposals. Further, in §803.14(a) regarding applicable Boards reviewing and commenting on Skills Development Fund proposals, it is the Commission's intent that "applicable" refer only to the workforce areas where there is a significant impact on job creation or incumbent worker training.

In addition, §803.14(c) is amended and streamlined to state that a training proposal shall not duplicate a training project available in the workforce area in which the private partner is located.

The Commission proposes new §803.14(d), which requires that proposals disclose other grant funds sought or awarded from the Agency or other state or federal entities. This information does not prevent or hinder consideration of applicants' proposals for Skills

Development Fund grants, rather it allows the Agency to provide technical assistance to the applicants for locating additional funding sources that might be available, and to better understand the total amount of funding for all training impacting the project.

The Commission proposes new §803.14(e), which states that applicants shall indicate whether they are submitting concurrent proposals for the Skills Development Fund and the Texas Enterprise Fund. Concurrent proposal is defined in this section as (1) a proposal for the Skills Development Fund that has been filed and is pending at the time the applicant submits a proposal for the Texas Enterprise Fund, or (2) a proposal for the Texas Enterprise Fund that has been submitted and is pending at the time the applicant submits a proposal for the Skills Development Fund. The addition of this new subsection reflects the direction of HB 2421, which does not allow an applicant to apply for both Skills Development Fund and Texas Enterprise Fund unless the applicant files for concurrent participation in both programs.

The Commission proposes amending §803.14 to add new §803.14(f)(11), which requires that proposals include an indication of a concurrent proposal as set forth in §803.14(e). Current §803.14(d)(11) is renumbered as §803.14(f)(12).

#### **§803.15. Procedure for Proposal Evaluation**

The Commission proposes amending §803.15(a) by adding a cross-reference to the uses of the funds set forth in §803.3(a) to ensure that small businesses are a factor considered in the proposal evaluation procedure. Additionally, for consistency with the definition of private partner at §803.2(4) of this chapter, the Commission proposes amending §803.15(a) to remove the term "prospective."

### **SUBCHAPTER C. PROGRAM ADMINISTRATION AFTER AWARD OF CONTRACT**

#### **§803.31. Grant Recipient Responsibilities**

The Commission proposes the repeal of §803.31 in order to remove redundant administrative processes and procedures from rule that are set forth in the Skills Development Fund contracts.

#### **§803.32. Contract Completion Reports**

The Commission proposes the repeal of §803.32 in order to remove redundant administrative processes and procedures from rule that are set forth in the Skills Development Fund contracts.

#### **§803.33. Contract Payment**

The Commission proposes the repeal of §803.33 to remove redundant administrative processes and procedures from rule that are set forth in the Skills Development Fund contracts.

**§803.34. Notice to Texas Higher Education Coordinating Board**

The Commission proposes the repeal of §803.34 to remove redundant administrative processes and procedures from rule that are set forth in Texas Labor Code §303.34 and in the memorandum of understanding between the Agency and the Texas Higher Education Coordinating Board regarding the Skills Development Fund.

**§803.35. Notice to Local Workforce Development Board**

The Commission proposes the repeal of §803.35 and proposes it as new §803.31, which clarifies that the Agency shall inform a Board in the applicable workforce area of final decisions concerning Skills Development Fund grants in the workforce area.

**§803.36. Waivers**

The Commission proposes the repeal of §803.36 and proposes it as new §803.32 to clarify that in addition to the executive director, the executive director's designee also has the authority to suspend or waive a section of this chapter that is not statutorily imposed, if there is a showing of good cause and a finding that the public interest would be served by such a suspension or waiver.

**PART III. IMPACT STATEMENTS**

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

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

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

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

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

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Luis M. Macias, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to meet the needs of Texas' employers to have a more highly skilled workforce, and provide workers throughout Texas with additional educational and employment opportunities to increase their skills and wages.

#### **PART IV. COORDINATION ACTIVITIES**

Comments on the proposed rules may be submitted to TWC Policy Comments, Policy and Development, 101 East 15<sup>th</sup> Street, Room 440T, Austin, Texas 78778; faxed to 512-475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Labor Code, Chapter 303, regarding the Skills Development Fund.

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## Chapter 803. SKILLS DEVELOPMENT FUND

### SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SKILLS DEVELOPMENT FUND

#### §803.1. Scope and Purpose.

- (a) Purpose. The purpose of the Skills Development Fund is to enhance the ability of public community and technical colleges and the Texas Engineering Extension Service (TEEX) to respond to industry and workforce training needs and to develop incentives for public community and technical colleges, TEEX, or community-based organizations only in partnership with the public community and technical colleges or ~~the~~ TEEX to provide customized assessment and training in a timely and efficient manner.
- (b) Goal. The goal of the Skills Development Fund~~fund~~ is to increase the skills level and wages of the Texas workforce.

#### §803.2. Definitions.

In addition to the definitions contained in §800.2 of this title, the ~~The~~ following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

- ~~(1) Assessment—The evaluation of an employer's workforce needs and requirements.~~
  - ~~(2) Community-based organization—A private nonprofit organization, including a development corporation and faith-based organization, that:
    - ~~(A) provides for education, vocational education, rehabilitation, job training, or internship services or programs; and~~
    - ~~(B) is exempt from the payment of federal income taxes under §501(a) of the Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt entity under §501(c)(3) of that code.~~~~
  - ~~(3) Customized training project—A project designed by a private business or trade union in partnership with a public community or technical college or TEEX for the purpose of providing specialized workforce training to employees or prospective employees of the private business or members of the trade union with the intent of either adding to the workforce or preventing a reduction in the workforce.~~
- (1) Customized training project -- A project that:

(A) provides designed by a private business or trade union in partnership with a public community or technical college or TEEX for the purpose of providing specialized workforce training to employees or prospective employees of the private business or business consortium, or members of the trade union with the intent of either adding to the workforce or preventing a reduction in the workforce; and -

(B) is designed by a private business or business consortium, or trade union in partnership with:

(i) a public community college;

(ii) a technical college;

(iii) TEEX; or

(iv) a community-based organization only in partnership with the public community and technical colleges or TEEX.

(2) Grant recipient -- A recipient of a Skills Development Fund grant that is:

(A) a public community college;

(B) a technical college;

(C) TEEX; or

(D) a community-based organization only in partnership with the public community and technical colleges or TEEX.

~~(4) Director -- The Executive Director of the Texas Workforce Commission.~~

~~(5) Grant recipient -- Any public community or technical college, TEEX, or community-based organizations only in partnership with the public community and technical colleges or the TEEX awarded a grant from the Skills Development Fund.~~

(3)(6) Non-local public community and technical college -- A public community college or technical college providing training outside of its local taxing district.

(4)(7) Private partner -- A Any person, sole proprietorship, partnership, corporation, association, consortium, or private organization that enters into a partnership for a customized training project with:

(A) a public community college;

(B) a ~~or~~ technical college;

(C) ~~TEEX;~~ or

(D) a community-based organizations only in partnership with the public community and technical colleges or ~~the~~ TEEX.

~~(5)~~(8) Public community college -- A state-funded, two-year educational institution primarily serving its local taxing district and service area in Texas and offering vocational, technical, and academic courses for certification or associate's degrees.

~~(6)~~(9) Public technical college -- A state-funded coeducational institution of higher education offering courses of study in vocational and technical education, for certification or associate's degrees.

~~(7)~~(10) Texas Engineering Extension Service (TEEX) -- A higher education agency and service established by the Board of Regents of the Texas A&M University System.

~~(8)~~(11) Trade union -- Any organization, agency, or employee committee in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(9) Training provider -- An entity or individual that provides training, including:

(A) a public community college;

(B) a technical college;

(C) TEEX;

(D) a community-based organization only in partnership with the public community college or technical college or TEEX; or

(E) a person, sole proprietorship, partnership, corporation, association, consortium, governmental subdivision, or public or private organization with whom a public community or technical college or TEEX has subcontracted to provide training.

~~(12) Training provider -- Any public community or technical college or TEEX that provides training; or any person, sole proprietorship,~~

~~partnership, corporation, association, consortium, governmental subdivision or public or private organization with whom a public community or technical college or TEEEX has subcontracted to provide training.~~

### §803.3. Uses of the Fund.

- (a) The Skills Development Fund may be used by a grant recipient public community and technical colleges, TEEEX, or community-based organizations ~~only in partnership with the public community and technical colleges or the TEEEX~~ as start-up or emergency funds for the following purposes:
  - (1) to develop customized training projects for businesses and trade unions; and
  - (2) to sponsor small and medium-sized business networks and consortiums for the purpose of developing customized training.
- (b) TEEEX training activities shall focus on projects that are statewide or are not available from a local public community and junior college district, a local technical college, or a consortium of public community and junior college districts. In developing such projects, TEEEX may participate in a consortium of public community and junior college districts or with a technical college that provides training under Texas Labor Code, Chapter 303.
- (c) Technical college training activities shall focus on projects that are not available from a local public community college, except in the technical college's local service area, and shall be encouraged to focus on projects that are statewide.
- (d) The Skills Development Fund may not be used:
  - (1) to pay the training costs and related costs of an employer ~~that~~who relocates the employer's worksite from one place in Texas to another;
  - (2) for the purchase of any proprietary or production equipment required for the training project of a single local employer;
  - (3) for wages for trainees; or
  - (4) to pay for trainee or instructor travel costs or trainee drug tests.
- (e) The Skills Development Fund may not be used to pay for the lease of equipment if any one of the following four criteria is characteristic of the lease transaction:

- (1) ~~The~~ ~~the~~ lease transfers ownership of the equipment to the lessee at the end of the lease term;
- (2) ~~The~~ ~~the~~ lease contains a bargain purchase option;
- (3) ~~The~~ ~~the~~ lease term is equal to 75% or more of the estimated economic life of the leased equipment; or
- (4) ~~The~~ ~~the~~ present value of the minimum lease payments at the inception of the lease, excluding executory costs, equals at least 90% of the fair value of the leased equipment.

## **SUBCHAPTER B. PROGRAM ADMINISTRATION**

### **§803.11. Grant Administration.**

Grant recipients must enter into an agreement with the Agency to comply with contract requirements that include, but are not limited to:

- (1) submitting all required reports, including financial and performance reports, in the format and time frame required by the Agency;
  - (2) maintaining fiscal data needed for independent verification of expenditures of funds received for the customized training project;
  - (3) cooperating and complying with Agency monitoring activities as required by Chapter 800, Subchapter H, of this title (relating to Agency Monitoring Activities); and
  - (4) submitting contract completion reports:
    - (A) Project completion is contingent upon the executive director's, or designee's, determination that a project has met the training objectives, outcomes, and requirements by allowing an attrition rate of up to 15% of the total number of trainees in the contract.
    - (B) The final payment of the contract will be withheld for 60 days after the completion of training and after receipt by the Agency of verification from the employer that the trainees are employed.
- (a) ~~The Director is responsible for the distribution of money from the Skills Development Fund. The Director may designate an employee or employees of the Agency who are knowledgeable in the administration of grants to administer the program.~~

~~(b) The Agency is not required to fund all proposals for customized training projects that are submitted.~~

### **§803.12. Limitations on Awards.**

The Agency may impose any or all of the following limitations on the amount of funds awarded under any specific grant:

- (1) ~~A~~ limit of \$500,000 for the training project of a single employer;
- (2) ~~A~~ limit of 10% of the grant amount for the allowable purchase of any proprietary or production equipment required for the training project;
- (3) ~~A~~ limit of 10% for administrative costs related to direct training for the training project of a single employer; or
- (4) ~~A~~ limit of 15% for administrative costs related to direct training for the training project of entities other than a single employer.

### **§803.13. Program Objectives.**

~~(a)~~—The following are the program objectives in administering the Skills Development Fund:

- (1) ~~To~~ ~~to~~ ensure that funds from the program are spent in all areas of this state and expand the state's capacity to respond to workforce training needs;
- (2) ~~To~~ ~~to~~ develop projects in ~~local~~ workforce development areas through collaboration with the Boards;
- (3) ~~To~~ ~~to~~ develop projects that, at completion of the training, will result in wages equal to or greater than the prevailing wage of persons with similar knowledge and experience in that occupation in the local labor market for the participants in the customized training project;
- (4) ~~To~~ ~~to~~ prioritize the processing of grant requests from ~~local~~ workforce development areas where the unemployment rate is higher than the state's annual average unemployment rate; and
- (5) ~~To~~ ~~to~~ sponsor creation and attraction of high-value, high-skill jobs for the state that will facilitate the growth of industry and emerging occupations.
- (6) To the greatest extent practicable, the Agency will award Skills Development Fund grants as follows:

(A) Approximately 60% of the funds may be for job retention training; and

(B) The remaining funds may be for training for job creation.

~~(b) In processing requests referenced in subsection (a)(4) of this section, the Director, or his or her designee, shall give priority in processing to grant requests from local workforce development areas where the unemployment rate is higher than the state's annual average unemployment rate. Notwithstanding the priority in processing, the other objectives within this section apply.~~

#### **§803.14. Procedure for Requesting Funding.**

- (a) After obtaining the review and comments of the Board in the applicable local workforce development area(s), where there is a significant impact on job creation or incumbent worker training, a prospective private partner, or a trade union, together with a public community or technical college or TEEEX, shall present to the ~~executive director~~ Director, or his or her designee, a joint proposal requesting funding for a customized training project or other appropriate use of the fund.
- (b) TEEEX, or the public community or technical college that is a partner to a ~~joint~~ training proposal for a grant from the Skills Development Fund, may be non-local.
- (c) The training proposal ~~shall must~~ not duplicate a training project available in the local workforce development area in which the prospective private partner is located. ~~TEEX, or the public community or technical college that is a partner to the joint training proposal, the private partner, and the Board must disclose other grant funds sought from the Agency, such as Achieving Performance Excellence (APEX) grants, for the training project covered in the training proposal.~~
- (d) Proposals shall disclose other grant funds sought or awarded from the Agency or other state and federal entities for the proposed job training project.
- (e) Applicants shall indicate whether they are submitting concurrent proposals for the Skills Development Fund and the Texas Enterprise Fund. For the purposes of this subsection, "concurrent proposal" shall mean:
- (1) a proposal for the Skills Development Fund that has been submitted and is pending at the time an applicant submits a proposal for the Texas Enterprise Fund; or

(2) a proposal for the Texas Enterprise Fund that has been submitted and is pending at the time an applicant submits a proposal for the Skills Development Fund.

(f)(d) Proposals shall be written and contain the following information:

- (1) The ~~the~~ number of proposed jobs created and/or retained;
- (2) A ~~a~~-brief outline of the proposed training project, including the skills acquired through training;
- (3) A ~~a~~-brief description of the measurable training objectives and outcomes;
- (4) The ~~the~~ occupation and wages for participants who complete the customized training project;
- (5) A ~~a~~-budget summary, disclosing anticipated project costs and resource contributions, including the dollar amount the ~~prospective~~-private partner is willing to commit to the project;
- (6) A ~~a~~-signed agreement between the ~~prospective~~-private partner and the public community or technical college or TEEX outlining each entity's roles and responsibilities if a grant is awarded;
- (7) A ~~a~~-statement explaining the basis for the determination that there is an actual or projected labor shortage in the occupation in which the proposed training project will be provided that is not being met by an existing institution or program in the ~~local-workforce development~~ area;
- (8) A ~~a~~-comparison of costs per trainee for the customized training project and costs for similar instruction at the public community or technical college or TEEX;
- (9) A ~~a~~-statement describing the ~~prospective~~-private partner's equal opportunity employment policy;
- (10) A ~~a~~-list of the proposed employment benefits; ~~and~~
- (11) An indication of a concurrent proposal as required by subsection (e) of this section; and
- (12)(11) Any ~~any~~-additional information deemed necessary by the Agency to complete evaluation of a proposal.

### **§803.15. Procedure for Proposal Evaluation.**

- (a) The ~~executive director~~ Director, or his or her designee, shall evaluate each proposal considering the purposes listed in §803.3(a) of this subchapter, the program objectives listed in §803.13 of this subchapter (relating to Program Objectives), and procedures~~the factors listed in §803.14(e) of this subchapter (relating to Procedure for Requesting Funding)~~, along with the prevailing wage for occupations in the local labor market area, the financial stability of the ~~prospective~~ private partner, the regional economic impact, and any other factors unique to the circumstances that~~which~~ the Agency determines are appropriate.
- (b) The Agency ~~shall~~will notify the Board in the applicable ~~local~~workforce ~~development~~area(s) when the Agency is evaluating a proposal so as to inform the Board of potential workforce activities in the workforce area(s).
- (c) If the Agency determines that a proposal is appropriate for funding through the Skills Development Fund, the executive director~~Director~~, or his or her designee, shall enter into a contract with the grant recipient on behalf of the Agency.

## **SUBCHAPTER C. PROGRAM ADMINISTRATION AFTER AWARD OF CONTRACT**

### **§803.31. Notice to Local Workforce Development Board.**

The Agency shall inform the Board in the applicable workforce area of final decisions made regarding Skills Development Fund grants in the workforce area.

### **§803.32. Waivers.**

The executive director, or designee, may suspend or waive a section of this chapter, not statutorily imposed, in whole or in part upon a showing of good cause and a finding that the public interest would be served by such a suspension or waiver.

### **§803.31. Grant Recipient Responsibilities.**

- (a) ~~The grant recipient shall serve as fiscal agent, shall administer the contract, and in cooperation with the private partner and any separate training provider, submit financial and performance reports to the Agency on a quarterly contract basis.~~
- (b) ~~Grant recipient shall maintain fiscal data needed for independent verification of expenditures of funds received for the customized training project.~~

- ~~(c) Contract amendments must be requested in writing and approved by the Director, of his or her designee, in writing before a change to the contract is implemented.~~
- ~~(d) In a format approved by the Agency, 60 days after execution of the contract the grant recipient shall provide to the Agency a list of trainees enrolled in the training.~~
- ~~(e) The grant recipient shall cooperate with and comply with the Agency monitoring activities as required by Chapter 800, Subchapter H of this title (relating to Agency Monitoring Activities).~~
- ~~(f) The grant recipient shall submit all required reports in the electronic format required by the Agency unless otherwise approved by the Agency.~~
- ~~(g) The grant recipient shall submit to the Agency reports as needed by the Agency upon request of the Agency.~~

**~~§803.32. Contract Completion Reports.~~**

~~No later than 60 days following the end of the contract period for the customized training project, the grant recipient shall provide the Agency with the following information:~~

- ~~(1) a copy of any audit performed on the customized training project;~~
- ~~(2) the number of jobs created or preserved, the occupations the trainees were placed in, and the wages for those occupations at the completion of the customized training project;~~
- ~~(3) a narrative report by the grant recipient summarizing the training project results, including results ensuring that the training objectives and outcomes specified in the contract have been achieved, and may include a brief narrative by the private partners evaluating the training project's effectiveness in meeting the business' workforce needs and requirements;~~
- ~~(4) a detailed breakdown reflecting the expenditure of funds received; and~~
- ~~(5) the grant recipient shall provide the Agency one of the following:
  - ~~(A) payroll records and/or reports certified by an independent auditor or verified by the employer that provide the name, the social security number, the occupation, and the trainee's wage at the completion of the training; or~~~~

(B) ~~a statement from the employer that the wage at the time of job placement for each individual who successfully completes customized training is equal to the prevailing wage for that occupation in the local labor market area.~~

**~~§803.33. Contract Payment.~~**

~~Payment under a contract will be contingent upon the Director's, or his or her designee's, determination that a project has met the training objectives, outcomes, and requirements specified in the contract. The Director may allow an attrition rate of up to 15% based on the total number of trainees as outlined in the contract. The final payment of the contract will be withheld for 60 days after the completion of training and after receipt by the Agency of verification from the employer that the trainees are employed.~~

**~~§803.34. Notice to Texas Higher Education Coordinating Board.~~**

~~The Agency will inform the Texas Higher Education Coordinating Board that a grant from the Skills Development Fund has been made to a public community or technical college or TEEK to provide a customized training project in order that it may conduct its review of the training project pursuant to Texas Labor Code, §303.004.~~

**~~§803.35. Notice to Local Workforce Development Board.~~**

~~The Agency will inform the Board in the applicable local workforce development area(s) when the Agency awards a grant from the Skills Development Fund that impacts the local workforce development area.~~

**~~§803.36. Waivers.~~**

~~The Director may suspend or waive a section of this chapter, not statutorily imposed, in whole or in part upon a showing of good cause and a finding that the public interest would be served by such a suspension or waiver. For purposes of this section, the Director, and not a designee of the Director, is the only person who may approve a waiver.~~