

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

AGENDA REQUESTED: November 14, 2012

DATE OF REQUEST: October 26, 2012

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Charlotte Horn, (512) 239-0779

CAPTION: Docket No. 2012-1663-RUL. Consideration for publication of the proposed amendment to Section 11.1, Historically Underutilized Business Program, of 30 TAC Chapter 11, Contracts.

The proposed rulemaking would update the Historically Underutilized Business (HUB) Rule. The Texas Comptroller of Public Accounts conducted a disparity study in 2009 and as the result of the new study, made revisions to Title 34, Part 1, Chapter 20, Subchapter B (HUB rules). These revisions became effective on September 14, 2011. A state agency is required by Texas Government Code, Section 2161.003 to adopt the HUB rules. TCEQ's current rule adopting the HUB rules by reference refers to a previous version of the rule and does not reflect the current numbering of the rule. (Laura Cagle, Amy Mendez) (Rule Project No. 2012-036-011-AS)

Dorca Zaragoza-Stone
Deputy Director

John Racanelli
Division Director

Charlotte Horn
Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: October 26, 2012

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Dorca Zaragoza-Stone, Deputy Director
Office of Administrative Services

Docket No.: 2012-1663-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 11, Contracts
Update the Historically Underutilized Business (HUB) Program Rules
Rule Project No. 2012-036-011-AS

Background and reason(s) for the rulemaking:

The Texas Comptroller of Public Accounts conducted a disparity study in 2009 and as the result of the new study, made revisions to Title 34, Part 1, Chapter 20, Subchapter B, Texas Procurement (HUB rules). These revisions became effective on September 14, 2011. A state agency is required by Texas Government Code, §2161.003 to adopt the HUB rules. TCEQ's current rule adopting the HUB rules by reference refers to a previous version of the rule and does not reflect the current numbering of the rule.

Scope of the rulemaking:

The proposed rulemaking would amend 30 TAC §11.1, Historically Underutilized Business Program.

A.) Summary of what the rulemaking will do:

The proposed rulemaking would amend 30 TAC §11.1 by adopting the Texas Comptroller of Public Accounts HUB rules by reference.

B.) Scope required by federal regulations or state statutes:

Texas Government Code, §2161.003 requires that TCEQ adopt the Texas Comptroller of Public Accounts HUB rules.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

- Texas Water Code, §5.103
- Texas Government Code, §2161.003

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Effect on the:

A.) Regulated community:

By amending this rule, no additional effect is expected on the regulated community. The regulated community and TCEQ must comply with the Texas Comptroller of Public Accounts HUB rules whether TCEQ corrects this rule or not.

B.) Public:

By amending this rule, no additional effect is expected on the public.

C.) Agency programs:

By amending this rule, no additional effect is expected on agency programs.

Stakeholder meetings:

There were no stakeholder meetings planned for this rulemaking project.

Potential controversial concerns and legislative interest:

No controversial issues are expected.

Will this rulemaking affect any current policies or require development of new policies?

No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

Should TCEQ not move forward with this rulemaking, TCEQ's rules will reference outdated HUB rules and incorrect rule citations.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: November 14, 2012

Anticipated *Texas Register* publication date: November 30, 2012

Public hearing date (if any): None.

Public comment period: November 30 – January 7, 2013

Anticipated adoption date: April 24, 2013

Agency contacts:

Laura Cagle, Rule Project Manager, 239-1293, Financial Administration Division
Amy Mendez, Staff Attorney, 239-5917
Charlotte Horn, Texas Register Coordinator, 239-0779

Attachments

None.

Commissioners
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Re: Docket No. 2012-1663-RUL

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Tucker Royall
Office of General Counsel
John Racanelli
Laura Cagle
Charlotte Horn

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes an amendment to 30 TAC §11.1.

Background and Summary of the Factual Basis for the Proposed Rule

The Texas Comptroller of Public Accounts (Comptroller) conducted a disparity study in 2009 and as the result of the new study, made revisions to Title 34, Part 1, Chapter 20, Subchapter B (Historically Underutilized Business (HUB) rules). These revisions became effective on September 14, 2011. A state agency is required by Texas Government Code, §2161.003 to adopt the HUB rules. TCEQ's current rule adopting the HUB rules by reference refers to a previous version of the rule and does not reflect the current numbering of the rule.

Section Discussion

§11.1, Historically Underutilized Business Program

The proposal would amend §11.1 to update the reference to the Texas Comptroller of Public Accounts HUB rules. Should TCEQ not adopt this amended rule, TCEQ's rule will reference outdated HUB rules and incorrect rule numbers.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no fiscal implications are

anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rule is administrative in nature and update agency rules concerning HUBs to adopt, by reference, revisions made by the Comptroller to Title 34 of the Texas Administrative Code. The agency is required by Texas Government Code, §2161.0003 to adopt HUB rules. The proposed rule implements requirements that are already in effect, and there will be no fiscal implications for the agency or other units of state or local government as a result of adopting the revision to the HUB rules.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be compliance with state law and administrative consistency with Comptroller HUB rules.

The proposed rule, which adopts HUB rules by reference, would not have a fiscal impact on individuals or businesses that provide goods and services to the agency since HUB requirements became effective statewide on September 14, 2011. The proposed rule is required by state law.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The proposed rule adopts HUB provisions (as required by state law) that have already been implemented statewide.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect. The proposed rule adopts HUB requirements as required by state law.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed amendment in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the

proposed amendment is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule". The intent of the proposed rulemaking is to reflect the current numbering of the Comptroller's HUB rules. The changes are not expressly to protect the environment and reduce risks to human health and environment.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rule and performed an assessment of whether this proposed amendment constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this amendment is to update and correct references to rules. Promulgation and enforcement of this proposed amendment would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, there are no burdens imposed on private real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Submittal of Comments

Written comments may be submitted to Charlotte Horn, Texas Register Coordinator, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2012-036-011-AS. The comment period closes January 7, 2013. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information,

please contact Laura Cagle, Historically Underutilized Business Program Office, 512-239-1293.

**SUBCHAPTER A: HISTORICALLY UNDERUTILIZED BUSINESS
PROGRAM**

§11.1

Statutory Authority

The amendment is proposed under the Texas Water Code, §5.013, Rules, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and any other laws of the state.

The proposed amendment implements the Texas Comptroller of Public Account's Historically Underutilized Business rules under Title 34, Part 1, Chapter 20, Subchapter B, as required by Texas Government Code, §2161.003.

§11.1. Historically Underutilized Business Program.

(a) The commission adopts by reference the rules of the Texas Comptroller of Public Accounts in 34 Texas Administrative Code Part 1, Chapter 20, Subchapter B (relating to Historically Underutilized Business Program [, Texas Procurement and Support Services in 34 TAC §§20.11 - 20.22 and §§20.26 - 20.28 (relating to Historically Underutilized Business Program), transferred effective September 1, 2007, as published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4237)].

(b) The adoption of this rule is required by Texas Government Code, §2161.003,
76th Legislature, 1999.