

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §11.1 and §11.3 *without changes* to the proposed text as published in the June 22, 2018, issue of the *Texas Register* (43 TexReg 4108) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The Texas Comptroller of Public Accounts (Comptroller) revised and reorganized its rules, 34 TAC Chapter 20, Statewide Procurement and Support Services, in 2017. These revisions became effective on January 24, 2017.

Each state agency is required by Texas Government Code, §2161.003, to adopt the Historically Underutilized Businesses (HUB) rules and by Texas Government Code, §2156.005(d), to adopt the Bid Opening and Tabulation rules. The TCEQ's previous rules adopting the HUB and Bid Opening and Tabulation rules by reference referred to the prior versions of the rules and did not reflect the current numbering of the rules.

Section by Section Discussion

§11.1, Historically Underutilized Business Program

The commission adopts amended §11.1 to update agency rules to reflect current citations of the Comptroller's rules regarding HUB (34 TAC Part 1, Chapter 20, Subchapter, Division 1). Each state agency is required by Texas Government Code, §2161.003, to adopt the Comptroller's HUB rules. The TCEQ's previous rule adopting the HUB rule by reference referred to the prior version of the rule and did not reflect

the current numbering of the rule.

§11.3, Bid Opening and Tabulation

The commission adopts amended §11.3 to update agency rules to reflect current citations of the Comptroller's Bid Opening and Tabulation rules (34 TAC §20.207 and §20.208). Each state agency is required by Texas Government Code, §2156.005(d), to adopt the Comptroller's Bid Opening and Tabulation rules. The TCEQ's previous rule adopting the Bid Opening and Tabulation rules by reference referred to the prior version of the rule and did not reflect the current numbering of the rule.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rules are not subject to Texas Government Code, §2001.0225, because they do not meet the definition of a "Major environmental rule." The intent of the adopted rulemaking is to conform to Texas Government Code, §2161.003 and §2156.005(d). The changes are not expressly to protect the environment and/or reduce risks to human health and environment.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rules and assessed whether they constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rules is to conform to Texas Government Code, §2161.003 and §2156.005(d).

Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), restrict or limit the owner's right to property, nor reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, the adopted rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on July 18, 2018. The comment period closed on July 24, 2018. The commission did not receive any comments on this rulemaking project.

SUBCHAPTER A: HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

§11.1

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC), §5.012, which provides that the commission is responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.102, concerning general powers of the commission; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules; and Texas Government Code, §2161.003, which provides statutory direction to adopt the Texas Comptroller of Public Accounts' (Comptroller) rules under Texas Government Code, §2161.002, as the agency's or institution's own rules.

The adopted rule implements requirements of Texas Government Code, §2161.003, to adopt the Comptroller's rules under Texas Government Code, §2161.002, as the agency's or institution's own rules.

§11.1. Historically Underutilized Business Program.

(a) The commission adopts by reference the rules of the Texas Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter D, Division 1 (relating to Historically Underutilized Businesses).

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

SUBCHAPTER C: BID OPENING AND TABULATION

§11.3

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC), §5.012, which provides that the commission is responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.102, concerning general powers of the commission; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules; and Texas Government Code, §2156.005(d), which provides statutory direction that state agencies making purchases shall adopt the Texas Comptroller of Public Accounts' (Comptroller) rules related to bid opening and tabulation.

The adopted rule implements requirements of Texas Government Code, §2156.005(d), that state agencies making purchases shall adopt the Comptroller's rules related to bid opening and tabulation.

§11.3. Bid Opening and Tabulation.

(a) The commission adopts by reference the rules of the Texas Comptroller of Public Accounts, Statewide Procurement and Support Services in 34 TAC §20.207 and §20.208 (relating to Competitive Sealed Bidding and Competitive Sealed Proposals).

(b) The adoption of this rule is required by Texas Government Code, §2156.005(d), 75th Legislature, 1997.