

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §11.1 and §11.3.

Background and Summary of the Factual Basis for the Proposed 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 current rules adopting the HUB and Bid Opening and Tabulation rules by reference refer to the prior versions of the rules and do not reflect the current numbering of the rules.

Section by Section Discussion

§11.1, Historically Underutilized Business Program

The commission proposes to amend §11.1 to update agency rules to reflect current citations of the Comptroller regarding HUB (34 TAC Part 1, Chapter 20, Subchapter D). Each state agency is required by Texas Government Code, §2161.003, to adopt the Comptroller's HUB rules. The TCEQ's current rule adopting the HUB rule by reference refers to the prior version of the rule and does not reflect the current numbering of the rule.

§11.3, Bid Opening and Tabulation

The commission proposes to amend §11.3 to update agency rules to reflect current citations of the Comptroller's Bid Opening and Tabulation rules (34 TAC Part 1, §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 current rule adopting the Bid Opening and Tabulation rules by reference refers to the prior version of the rule and does not reflect the current numbering of the rule.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to bring the references in Chapter 11 into compliance with the Comptroller's rules regarding procurement and support services. Per the Texas Government Code, each state agency is required to adopt rules relating to both HUB and Bid Opening and Tabulation. The Comptroller's HUB and Bid Opening and Tabulation rules were amended on January 24, 2017, thus making the commission's rules inaccurate. The proposed rulemaking brings the commission's rules relating to contracts into compliance with the Comptroller's rules by removing an incorrect reference to the commission and renumbering a subsection reference in TAC relating to agency purchasing requirements.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and clear rules for the procurement practices of the agency.

The proposed rules are not expected to result in fiscal implications for businesses or individuals. The proposed rules update an outdated reference and clarify that the agency's procurement practice is aligned with policies of the Comptroller.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are effect. The proposed rules update an outdated reference and clarify that the agency's procurement practice is aligned with policies of the Texas Comptroller of Public Accounts.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rules do not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal or limit an existing regulation, nor does it increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

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

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

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed 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 proposed rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed 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 proposed rules are 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.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on July 18, 2018, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Paige Bond, 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: <https://www6.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 2018-018-011-AD. The comment period closes on July 24, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Claribel Diaz, Financial Administrative Division, (512) 239-5369.

SUBCHAPTER A: HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

§11.1

Statutory Authority

The amendment is proposed 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 proposed 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 [B] (relating to Historically Underutilized Businesses [Business Program]).

(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 proposed 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 proposed 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 [Texas] Procurement and Support Services in 34 TAC §20.207 and §20.208 [§20.35(b)] (relating to Competitive Sealed Bidding and Competitive Sealed Proposals [Bid Submission, Bid Opening, and Tabulation]),

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, §2156.005(d), 75th Legislature, 1997.