



TO: Health and Human Services Commission
Executive Council

DATE: December 6, 2018

FROM: Kay Molina, Associate Commissioner of
Compliance and Quality Control, PCS

AGENDA ITEM: 2.q

SUBJECT: Historically Underutilized Business (HUB)

BACKGROUND: Federal Legislative Other: Program Initiative

The amendment to §391.711 makes necessary updates to the rule in Texas Administrative Code (TAC), Title 1, Chapter 391, Subchapter G, concerning Historically Underutilized Businesses.

Texas Government Code Chapter 2161, which applies to all construction projects and purchases of goods and services paid for with appropriated money, requires each state agency to adopt rules concerning historically underutilized businesses. Specifically, §2161.003 requires each state agency to adopt the Comptroller of Public Accounts (CPA) rules under §2161.002 as the agency's own.

ISSUES AND ALTERNATIVES:

In 2017, the CPA adopted new rules under 34 TAC Chapter 20, Subchapter D, Division 1, and, therefore, §391.711 needs to be amended to adopt the new rules. The amendment also corrects a statutory reference in the rule.

The rules are necessary to ensure that HHSC's procurement processes comply with all statutory, regulatory, and best practice requirements.

STAKEHOLDER INVOLVEMENT:

The proposed rules were published in the [DATE of Texas Register Issue], issue of the *Texas Register*. HHSC did not receive any comments on the proposed rules.

FISCAL IMPACT:

None

SERVICES IMPACT STATEMENT:

As this is an administrative rule of the agency, there will be no impact to the agency's client population.

RULE DEVELOPMENT SCHEDULE:

October 19, 2018	Publish proposed rules in <i>Texas Register</i>
December 6, 2018	Present to HHSC Executive Council
December 2018	Publish adopted rules in <i>Texas Register</i>
January 2019	Effective date

PROPOSED PREAMBLE

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §391.711, concerning Historically Underutilized Businesses.

BACKGROUND AND PURPOSE

Texas Government Code Chapter 2161, which applies to state agency construction contracts and purchases of goods and services paid for with appropriated money, requires each state agency to adopt rules concerning historically underutilized businesses. Specifically, §2161.003 requires each state agency to adopt the Comptroller of Public Accounts (CPA) rules under §2161.002 as the agency's own rules. In 2017, the CPA adopted new rules under 34 Texas Administrative Code (TAC) Chapter 20, Subchapter D, Division 1, and, therefore, §391.711 needs to be amended to adopt the new CPA rules. See the January 20, 2017, issue of the *Texas Register* (42 TexReg 235).

SECTION-BY-SECTION SUMMARY

The purpose of the amendment to §391.711 is to correct the citation of the historically underutilized business rules that HHSC adopts by reference. Currently, §391.711 incorporates 34 TAC Chapter 20, Subchapter B, which has been repealed. The amendment replaces the obsolete cite with the newly adopted Chapter 20, Subchapter D, Division 1 (relating to Historically Underutilized Businesses). The amendment also corrects the statutory reference to Texas Government Code §2161.003.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rule will be in effect, there is no anticipated impact to costs and revenues of state or local governments because of enforcing or administering the proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the section will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of employee positions;

- (3) implementation of the proposed rule will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to the agency;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will not expand, limit, or repeal an existing rule;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Greta Rymal, Deputy Executive Commissioner for Financial Services, has also determined that the proposed rule will not have an adverse economic effect small and micro-businesses or rural communities. Consequently, an economic impact statement and regulatory flexibility analysis, pursuant to Texas Government Code §2006.002, are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT IMPACT STATEMENT

There are no anticipated economic costs to persons who are required to comply with the proposed rule.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

HHSC has determined that the proposed rule does not impose a cost on regulated persons, including another state agency, a special district, or a local government. Accordingly, Texas Government Code §2001.0045 does not apply to this rule.

PUBLIC BENEFIT

Katherine Molina, Associate Commissioner of the Office of Compliance and Quality Control, has determined that for each year of the first five-year period the rule is in effect the public benefit will be correctly referencing the statutory authority and citation of the current CPA rules.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of

government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Questions concerning the proposed rules may be directed to Katherine Molina, at (512) 406-2451.

Written comments on the proposed rule may be submitted to Katherine Molina, Associate Commissioner of Compliance and Quality Control, Procurement and Contracting Services, Texas Health and Human Services Commission, 1100 W. 49th Street, Mail Code 2020, Austin, Texas 78756; or e-mailed to HHSRulesCoordinationOffice@hhsc.state.tx.us. Comments must be received no later than 30 days from the date of publication of the proposed rules in the *Texas Register*.

The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on Proposed Rule 19R004, Section 391.711" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.0055(e) and §531.033, which provides the Executive Commissioner of HHSC with rulemaking authority, and under Texas Government Code §2161.003, which requires state agencies to adopt by reference the historically underutilized business rules of the Comptroller of Public Accounts.

The amendment affects Texas Government Code §531.00553 and Texas Government Code Chapter 2161.

This agency hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

TITLE 1 ADMINISTRATION
PART 15 TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 391 PURCHASE OF GOODS AND SERVICES BY THE TEXAS
 HEALTH AND HUMAN SERVICES COMMISSION
SUBCHAPTER G HISTORICALLY UNDERUTILIZED BUSINESSES

§391.711. Historically Underutilized Business Program.

In compliance with Texas Government Code~~[,]~~ §2161.003~~§2161.033~~, HHSC adopts by reference the Texas Comptroller of Public Accounts rules at 34 TAC Chapter 20, Subchapter D~~[B]~~, Division 1 (relating to Historically Underutilized Businesses ~~[Business Program]~~).