

SUBCHAPTER N. HISTORICALLY UNDERUTILIZED BUSINESSES

28 TAC §1.1601

1. INTRODUCTION. The Texas Department of Insurance proposes amending 28 TAC §1.1601, concerning Historically Underutilized Businesses. The proposed amendment updates the department's rule to incorporate by reference the rules adopted by the Texas Comptroller of Public Accounts for historically underutilized businesses, as required by Texas Government Code §2161.003.

2. EXPLANATION. The department originally adopted §1.1601 on September 26, 2000, to implement Government Code §2161.003, which adopted by reference General Services Commission rules regarding historically underutilized businesses for the purchase of goods and services paid for with appropriated money. As originally adopted, §1.1601 was located in 1 TAC §§111.11 – 111.28.

The General Services Commission was abolished in 2001 by SB 311, 77th Legislature, Regular Session, and its duties and powers were transferred to the Texas Building and Procurement Commission. The department's rules remained in 1 TAC §§111.11 – 111.28.

In 2007, the Legislature transferred some of the duties and powers of the Texas Building and Procurement Commission to the comptroller with House Bill 3560, 80th Legislature, Regular Session. The authority to adopt rules addressing historically

underutilized businesses under Texas Government Code §2161.0012 was included in this transfer.

Following the transfer of duties and powers of the Texas Building and Procurement Commission to the comptroller, the Texas secretary of state transferred and reorganized 1 TAC §§111.11 – 111.28, relocating the sections to 34 TAC §§20.11 – 20.28. The transfer and reorganization occurred on July 6, 2007, and is located at 32 TexReg 4237.

The transfer and reorganization resulted in new numbering of the rules addressing historically underutilized businesses, but it was not a substantive change to the rules themselves. The secretary of state transferred and reorganized the rules under Government Code §2002.058, and under HB 3560, the rules were to continue in effect until superseded by an act of the comptroller. This did not constitute a rulemaking procedure under Government Code Chapter 2001. The comptroller updated the rules addressing historically underutilized businesses and added an additional section in 2011. These updated rules addressing historically underutilized businesses remain at 34 TAC §§20.10 – 20.28.

The proposed amendment does not make a substantive change to the adoption by reference of the comptroller's rules addressing historically underutilized businesses. Rather, the purpose of the proposed amendment is for clarity and ease of locating the most current version of the rules addressing historically underutilized businesses the department adopted by reference.

3. FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Mike Powers, procurement and general services director, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

4. PUBLIC BENEFIT AND COST NOTE. Mr. Powers has determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of the proposed section will be ensuring that the department's rules conform to Government Code §2161.003 by including the updated reference and clearly adopting by reference the comptroller's historically underutilized business rules.

5. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. The department has determined that amended §1.1601 will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses. Government Code §2161.003 applies equally to all state agencies and requires that all state agencies adopt the comptroller's historically underutilized business rules by reference. In addition, this proposed amendment only updates the citation in the department's rule and does not make a change in the department's historically underutilized business policy or procedure. As a result, and in compliance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

6. TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

7. REQUEST FOR PUBLIC COMMENT. If you wish to comment or request a hearing on this proposal, you may do so no later than 5:00 p.m., Central time, on September 29, 2014. The department requires two copies of your comments or hearing request. Send one copy by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. Send the other copy by mail to the Texas Department of Insurance, Procurement and General Services, Mail Code 108-1A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to mike.powers@tdi.texas.gov. A hearing request must be on a separate page from any written comments.

8. STATUTORY AUTHORITY. TDI proposes amended §1.1601 under Government Code §2161.003 and Insurance Code §36.001. Section 2161.003 of the Government Code requires that the Texas Department of Insurance adopt the comptroller's rules for historically underutilized businesses. Section 36.001 of the Insurance Code provides that the commissioner of insurance may adopt rules and regulations to execute the

duties and functions of the Texas Department of Insurance only as authorized by statute.

9. CROSS-REFERENCE TO STATUTE. Section 1.610 implements Government Code §2161.003.

10. TEXT.

§1.1601. Historically Underutilized Businesses. The Texas Department of Insurance adopts ~~[by reference]~~ the rules of the Comptroller of Public Accounts relating to the Historically Underutilized Business Program at 34 TAC Chapter 20, subchapter B ~~[promulgated by the General Services Commission regarding historically underutilized businesses, which are set forth in 1 TAC §§ 111.11-111.28].~~

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued at Austin, Texas, on August 13, 2014.



Sara Waitt, General Counsel

Texas Department of Insurance