

# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

##### SUBCHAPTER D. SOCIO-ECONOMIC PROGRAM

##### DIVISION 1. HISTORICALLY UNDERUTILIZED BUSINESSES

#### 34 TAC §§20.281, 20.282, 20.284, 20.285, 20.288, 20.294 - 20.296, 20.298

The Comptroller of Public Accounts adopts on an emergency basis amendments to §20.281, concerning policy and purpose; §20.282, concerning definitions; §20.284, concerning statewide annual HUB utilization goals; §20.285, concerning subcontracts; §20.288, concerning certification process; §20.294, concerning graduation procedures, §20.295, concerning program review; §20.296, concerning HUB coordinator responsibilities; and §20.298, concerning mentor-protégé program. Under Government Code, §2001.034, the comptroller may adopt emergency rules upon finding that a requirement of state or federal law requires adoption on fewer than 30 days' notice.

These emergency rules are effective December 2, 2025 through April 1, 2026. Emergency rules adopted under Government Code, §2001.034 may be effective for up to 120 days and may be renewed for up to 60 days.

#### BACKGROUND AND PURPOSE

Recent court decisions have changed the legal landscape around race- and sex-based discrimination. In *Students for Fair Admission, Inc. v. Harvard*, 600 U.S. 181 (2023), the Supreme Court prohibited race-based preferences in government benefits. In *United States v. Skrametti*, 145 S. Ct. 1816 (2025), the Supreme Court reiterated that it is unlawful to treat a member of one sex less favorably than the other, absent some pertinent difference. And in *Ames v. Ohio Department of Youth Services*, 605 U.S. 303 (2025), the Supreme Court held that discrimination against members of "majority groups" can still be unlawful discrimination. These precedents apply to the State and are also instructive for construing the Texas Constitution's overlapping protections. See U.S. CONST. amend. XIV; TEX. CONST. art. I, § 3a; see, e.g., *Bell v. Low Income Women of Tex.*, 95 S.W.3d 253, 266 (Tex. 2002). Citing the Texas and U.S. Constitutions and the U.S. Supreme Court, Governor Abbott issued an executive order stating that agencies must "treat people equally regardless of membership in any racial

group" and adhere to "the color-blind guarantee of our state and federal Constitutions by prohibiting all forms of government race discrimination." Executive Order GA-55, (50 TexReg 810).

In *Nuziard v. Minority Business Development Agency*, plaintiffs sued a federal agency that provided benefits to minority-owned businesses. 721 F.Supp. 3d 431 (N.D. Tex., 2024), appeal dismissed, No. 24 10603, 2024 WL 5279784, at \*1 (5th Cir. July 22, 2024). The plaintiffs were small business owners who were denied assistance because their race was not among the "codified list of preferred races/ethnicities" in the statute and rules used to determine eligibility. *Id.* at 448. The agency relied on a presumption that "anyone from the listed groups is 'socially or economically disadvantaged' and thus entitled to services." *Id.* The statute defined an "economically disadvantaged individual" as one "who has been subjected to racial or ethnic prejudice or cultural bias . . . because of the identity of the individual as a member of a group, without regard to any individual quality of the individual that is unrelated to that identity." 15 U.S.C. § 9501; *Nuziard*, 721 F. Supp. 3d at 452. The statute listed groups that it deemed economically disadvantaged, including "Black or African American" and "Hispanic or Latino." *Id.* Because of the explicit references to race and ethnicity, the court applied strict scrutiny. *Id.* at 478. It held that the agency had a compelling interest in remedying discrimination in government contracting, shown through "significant disparity ratios for {minority-owned businesses} in prime contracting." *Id.* at 488. In spite of that compelling interest, the statute was unconstitutional, because it was not narrowly tailored to address that interest. *Id.* at 493. The exclusion of many minority business owners from the presumption of disadvantage, including those from the Middle East and North Asia, was arbitrary. *Id.* at 490. Furthermore, presuming that all members of a group are equally disadvantaged was an "illogical stereotype." *Id.* at 492-493. Finally, there was no "logical endpoint" where the discrimination would be remedied, and the program could be retired. *Id.* at 493-494. Due to the lack of narrow tailoring, the court struck down the racial and ethnic presumptions as unconstitutional under the Fourteenth Amendment. *Id.* at 498.

Like the federal statute at issue in *Nuziard*, Government Code, Chapter 2161 as implemented in §20.282 of this title presumes that certain demographic groups are disadvantaged. The definition of "economically disadvantaged person" in Government Code, §2161.002(3) and the definition of "qualified owner" in §20.282 of this title both explicitly incorporate race, ethnicity, and sex. Like that federal statute, Government Code, Chapter 2161 was adopted with a purpose to address disparities in contracting, established through a study. Like that federal statute, the HUB program's definitions exclude business owners from the Middle East and North Asia. Like that federal statute, the HUB program relies on an illogical stereotype that presumes all members of a demographic group are equally disadvantaged. Like that federal statute, the HUB program has no logical end point. It is clear from

*Nuziard* that the HUB program is not narrowly tailored to meet the strict scrutiny required for racial and ethnic classifications nor the intermediate scrutiny required for sex-based classifications under the state and federal constitutions. Therefore, the highest state and federal law requires the comptroller to undertake emergency rulemaking to remove such classifications from the comptroller's implementation of the HUB program.

Unlike race, ethnic, and sex-based classifications, veteran status and disability status are subject only to rational basis scrutiny. *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256 (1979) (state statute preferencing veterans over non-veterans was subject only to rational basis review and approved as constitutional). There are no judicial decisions suggesting that a program to assist disabled veterans only is unconstitutional.

To ensure that the comptroller does not implement the HUB program in an unconstitutional way, these emergency rules eliminate each classification that could be applied in an unconstitutional manner. Without those classifications, the program will serve small businesses owned by service-disabled veterans, regardless of their race, sex, or ethnicity. The comptroller will refer to this program as Veteran Heroes United in Business, or VetHUB. HUBs that are currently certified will retain their certification until the comptroller reviews their eligibility for VetHUB. The comptroller intends to carry out this review expeditiously.

These emergency rules do not require agencies to terminate or modify existing contracts, modify solicitations that are currently open for responses, or resolicit solicitations that have closed. A vendor that is required to submit a HUB subcontracting plan may rely on the comptroller's HUB directory as of the date it selects HUBs, and its plan will comply with these rules even if the HUBs' certifications are subsequently revoked. If the HUBs are later revoked, an agency will have discretion to work with the vendor to amend its HUB subcontracting plan.

These emergency rules eliminate statewide quantitative HUB utilization goals that relied on suspect eligibility criteria to be viable. Agencies are instructed to set their own goals for increasing the utilization of VetHUB businesses.

Under these emergency rules, agencies and their employees shall implement the VetHUB program on a race-neutral, ethnicity-neutral, and sex-neutral basis, mindful that the Texas and U.S. Constitutions prohibit discrimination and require equal protection under the law.

#### LEGAL AUTHORITY

This emergency rulemaking is authorized under Government Code, §2001.034 and §2161.002, and Texas Constitution, Article XVI, §1. Government Code, §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if the comptroller finds that a requirement of state or federal law requires it. Under Government Code, §2161.002, the comptroller may adopt rules to efficiently and effectively administer the Historically Underutilized Business program. The Texas Constitution requires the comptroller to "faithfully preserve, protect, and defend the Constitution and the laws of the United States and this State." Texas Constitution, Article XVI, §1. The comptroller accordingly finds that a requirement of state or federal law requires immediate adoption of these emergency rules on fewer than 30 days' notice.

#### §20.281. Policy and Purpose.

It is the policy of the comptroller to encourage the use of historically underutilized businesses (HUBs) by state agencies and to assist agencies

in the implementation of this policy through race, ethnic, and sex-neutral [gender-neutral] means. The purpose of the HUB program is to promote full and equal business opportunities for all businesses [in an effort to remedy disparity in state procurement and contracting in accordance with the HUB utilization goals specified in the State of Texas Disparity Study]. All rules, guidance, and statutes related to the HUB program must be interpreted, applied, and implemented in accordance with the prohibition against race- and sex-based discrimination imposed by Texas Constitution, Article I, Section 3a, and United States Constitution, Amendment XIV.

#### §20.282. Definitions.

The following words and terms, when used in this division, shall have the following meanings, unless the context clearly indicates otherwise. Additional applicable definitions are located in §20.25 of this title.

(1) Applicant--A corporation, sole proprietorship, partnership, joint venture, limited liability company, or other business organization that applies to the comptroller for certification as a historically underutilized business.

(2) Application--The information, documents, and representations submitted by an applicant that constitute its request for certification as a historically underutilized business.

(3) Commodities--Any tangible goods.

(4) Disparity study--The State of Texas Disparity Study - 2009, conducted by MGT of America, Inc., dated March 30, 2010, or any updates of the study that are prepared on behalf of the state as provided by Government Code, §2161.002(c).

(5) Economically disadvantaged person--Has the meaning assigned by Government Code, §2161.001(3), subject to the prohibition against race- and sex-based discrimination imposed by Texas Constitution, Article I, Section 3a, and United States Constitution, Amendment XIV.

(6) Graduation--When a certified HUB exceeds the size standards and becomes ineligible for continued certification as a result.

(7) Historically underutilized business (HUB)--A business organization described in subparagraphs (A) - (F) of this paragraph that is certified by the comptroller because it has not exceeded the size standards established by §20.294 of this title, maintains its principal place of business in Texas, and is:

(A) a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more qualifying owners;

(B) a sole proprietorship created for the purpose of making a profit that is 100% owned, operated, and controlled by a qualifying owner;

(C) a partnership formed for the purpose of making a profit in which 51% of the assets and interest in the partnership is owned by one or more qualifying owners;

(D) a joint venture in which each entity is described by subparagraphs (A), (B), (C), or (E) of this paragraph [a HUB];

(E) a supplier contract between an entity described by subparagraphs (A), (B), (C), or (D) of this paragraph [a HUB] and a prime contractor under which the HUB is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies; or

(F) a business other than described in subparagraphs (B), (C), (D), and (E) of this paragraph, which is formed for the purpose of making a profit and is otherwise a legally recognized business

organization under the laws of the State of Texas, provided that at least 51% of the assets and 51% of any classes of stock and equitable securities are owned by one or more qualifying owners.

(8) Historically underutilized business (HUB) coordinator--The staff member designated by a state agency to be primarily responsible for overseeing the implementation of HUB laws and monitoring attainment of HUB utilization goals.

(9) HUB directory--The Historically Underutilized Business Directory published on the comptroller's website.

(10) HUB subcontracting plan--Written plan identifying whether a contract will be self-performed or include the use of subcontractors, which subcontractors will be used, how much of the contract each subcontractor will receive, and how subcontractors were selected.

(11) Mentor-Protégé Program--A program designed by the comptroller to encourage agencies to work with prime contractors and HUBs to foster long-term relationships.

(12) Non-treasury funds--Funds that are not state funds subject to the custody and control of the comptroller and available for appropriation by the legislature.

(13) Other services--All services other than construction and professional services, including consulting services subject to Government Code, Chapter 2254, Subchapter B.

(14) Person--A human being.

(15) Principal place of business--The location where the qualifying owner or owners of the business direct, control, and coordinate the business's daily operations and activities.

(16) Professional services--Services of certain licensed or registered professions that must be purchased by state agencies under Government Code, Chapter 2254, Subchapter A.

(17) Qualifying owner--A person who:

(A) is a resident of the State of Texas;

(B) has a proportionate interest and demonstrates active participation in the control, operation, and management of an applicant;

(C) is a service-disabled veteran, [member of one of the following groups:]

*[(i) Black Americans, which includes persons having origins in any of the Black racial groups of Africa;]*

*[(ii) Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;]*

*[(iii) American Women, which includes all women of any ethnicity except those specified in clauses (i), (ii), (iv), and (v) of this subparagraph;]*

*[(iv) Asian Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, the Northern Marianas, and Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Sri Lanka, Bhutan or Nepal;]*

*[(v) Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; and]*

*[(vi)] [Service-disabled Veterans,] which includes veterans as defined by 38 U.S.C. §101(2) who have suffered at least a 20% service-connected disability as defined by 38 U.S.C. §101(16),*

*[who are not Black Americans, Hispanic Americans, American Women, Asian Pacific Americans, or Native Americans; and]*

*[(D) is a U.S. citizen, born or naturalized, or a service-disabled veteran as defined by 38 U.S.C., §101(2) who has suffered at least a 20% service-connected disability as defined by 38 U.S.C., §101(16).]*

(18) Resident of the State of Texas-- An individual who:

(A) physically resides in the state for a period of not less than six consecutive months prior to submitting an application for HUB certification, and lists Texas as their residency in their most recent tax return submitted to the U.S. Internal Revenue Service, or;

(B) has established, to the satisfaction of the comptroller, a Texas domicile for a period of time sufficient to demonstrate their intention to permanently reside in the state consistently over a substantial period of time.

(19) Response--A submission made in answer to an invitation for bid, request for proposal, or other purchase solicitation document, which may take the form of a bid, proposal, offer, or other applicable expression of interest.

(20) Subcontractor--An entity that contracts with a prime contractor to work or contribute toward completing work under a purchase order or other contract. The term does not include employees of the contractor but includes contracted workers who will work on the contract.

(21) Size standards--Graduation and eligibility thresholds established by the comptroller under §20.294 (relating to Graduation Procedures).

(22) Term contract--A statewide contract established by the comptroller as a supply source for user entities for specific commodities or services.

(23) Vendor Identification Number (VID)--A 13-digit identification number used in state government to identify the bidder or business for payment or award of contracts, certification as a HUB, and on the bidders list.

(24) Work--Providing goods or performing services pursuant to a contract.

(25) Working day--Normal business day of a state agency, not including weekends, federal or state holidays.

§20.284. *Statewide Annual HUB Utilization Goals.*

(a) In accordance with §20.281 of this title (relating to Policy and Purpose) and Government Code, §2161.181 and §2161.182, each state agency shall make a good faith effort to utilize HUBs in contracts for construction, services (including professional and consulting services) and commodities purchases. Each state agency may achieve the statewide and the annual HUB utilization goals specified in the state agency's Legislative Appropriations Request by contracting directly with HUBs or indirectly through subcontracting opportunities.

(b) The statewide HUB utilization goals are qualitative, with the goal of increasing participation of service-disabled veteran in state purchasing and contracts.[:]

[(1) 11.2% for heavy construction other than building contracts;]

[(2) 21.1% for all building construction, including general contractors and operative builders contracts;]

[(3) 32.9% for all special trade construction contracts;]

[(4) 23.7% for professional services contracts;]

~~[(5) 26.0% for all other services contracts; and]~~

~~[(6) 21.1% for commodities contracts.]~~

(c) [State agencies shall establish HUB utilization goals for each procurement category identified in subsection (b) of this section. Agencies may set their HUB utilization goals higher or lower than the statewide utilization goals. However, the statewide HUB utilization goals shall be the starting point for establishing state agency-specific goals.] State agency-specific HUB utilization goals shall be based on:

- (1) a state agency's fiscal year expenditures and total contract expenditures;
- (2) the availability to a state agency of HUBs [in each procurement category];
- (3) the state agency's historic utilization of HUBs; and
- (4) other relevant factors.

(d) Each state agency shall make a good faith effort to assist HUBs in receiving a portion of the total value of all contracts that the state agency expects to award in a fiscal year. Factors in determining a state agency's good faith shall include:

(1) the state agency's performance in meeting or exceeding their HUB utilization goals or the statewide HUB utilization goals as they included as part of their legislative appropriations request in accordance with Government Code, §2161.127; and

(2) the state agency's adoption and implementation of the following procedures:

(A) prepare and distribute information on procurement procedures in a manner that encourages participation in state contracts by all businesses;

(B) divide proposed requisitions into reasonable lots in keeping with industry standards and competitive bid requirements;

(C) where feasible, assess bond and insurance requirements and design requirements that reasonably permit more than one business to perform the work;

(D) specify reasonable, realistic delivery schedules consistent with a state agency's actual requirements;

(E) ensure that specifications, terms, and conditions reflect a state agency's actual requirements, are clearly stated, and do not impose unreasonable or unnecessary contract requirements;

(F) provide potential bidders with referenced list of certified HUBs for subcontracting;

~~[(G) develop and apply a written methodology to determine whether their HUB utilization goals are appropriate under the Disparity Study, or whether the statewide HUB utilization goals from the Disparity Study are appropriate for the state agency, and taking into account the provisions of Government Code, §2161.002(d).]~~

(G) [(H)] identify potential subcontracting opportunities in all contracts and require a HUB subcontracting plan for contracts of \$100,000 or more over the life of the contract (including any renewals), where such opportunities exist, in accordance with Government Code, §2161.251;

(H) [(H)] seek HUB subcontracting in contracts that are less than \$100,000 whenever possible;

(I) [(J)] provide, at a state agency's option, courtesy reviews of respondents' HUB subcontracting plans required to be submitted with responses pursuant to Government Code, §2161.252; and

(J) [(K)] provide, at a state agency's option, HUB-subcontracting-plan-compliance training to potential respondents during pre-bid, pre-offer, and pre-proposal conferences, or at agency HUB forums.

(e) A state agency may also demonstrate good faith under this section by submitting a supplemental letter with documentation to the comptroller with their HUB report or legislative appropriations request including other relevant information, such as:

(1) identifying the percentage of contracts (prime and subcontracts) awarded to businesses that are not HUBs, but that are owned by qualified owners [economically disadvantaged persons as defined in Government Code, §2161.001];

(2) demonstrating that a different goal from that identified in subsection (b) of this section was appropriate given the state agency's types of purchases;

(3) demonstrating that a different goal was appropriate given the particular qualifications required by a state agency for its contracts;

(4) demonstrating that a different goal was appropriate given that graduated HUBs cannot be counted toward the goal; or

(5) demonstrating assistance to business entities in obtaining HUB certification.

#### §20.285. Subcontracts.

(a) Analyzing potential contracts of \$100,000 or more. In accordance with Government Code, Chapter 2161, Subchapter F, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before it solicits responses, determine whether subcontracting opportunities are probable under the contract.

(1) State agencies shall use the following steps to determine if subcontracting opportunities are probable under the contract:

(A) examine the scope of work to be performed under the proposed contract and determine if it is likely that some of the work may be performed by a subcontractor;

(B) check the HUB directory for HUBs that may be available to perform the contract work; and

(C) consider whether subcontracting is probable for only a subset of the work expected to be performed or the funds to be expended under the contract.

(2) State agencies may consider additional sources of information regarding the probability of subcontracting, including:

(A) information from other state agencies and local governments; and

(B) information about past state contracts with similar scopes of work.

(b) Requiring HUB subcontracting plans.

(1) If a state agency determines that subcontracting opportunities are probable, the solicitation shall state that probability and explicitly require that any response include a completed HUB subcontracting plan to be considered responsive. The solicitation shall state the applicable HUB utilization goal, and provide information on where to find and how to complete the comptroller's HUB subcontracting plan form.

(2) A state agency shall require HUB subcontracting plans to be submitted with each response. If a state agency permits responses to be submitted in parts, with deadlines for each part, the solicitation shall specify which deadline applies to the HUB subcontracting plan

and shall not open responses until after the HUB subcontracting plan is due.

(3) When a state agency requires a subcontracting plan, a bid, proposal, offer, or other applicable expression of interest for the contract must contain a plan to be considered responsive. [A state agency shall reject any response that does not include a completed and timely HUB subcontracting plan due to material failure to comply with Government Code, §2161.252(b).]

(4) If a properly submitted HUB subcontracting plan contains minor deficiencies, such as failure to sign or date the plan or failure to submit already-existing evidence that a good faith effort was completed, the state agency may allow the respondent to cure the minor deficiency. A state agency may not allow a respondent to cure material deficiencies, including completion of a good faith effort after the response deadline (such as contacting [minority] trade organizations or producing the statement of how the respondent intends to self-perform the work that is required by subsection (d)(4) of this section).

(c) Completing a HUB subcontracting plan. The HUB subcontracting plan shall consist of a completed form prescribed by the comptroller, with attachments as appropriate.

(d) Demonstrating good faith in the development of a HUB subcontracting plan. The HUB subcontracting plan must demonstrate that the respondent developed it in good faith. For each part of the work that the solicitation identified as a probable subcontracting opportunity and each part of the work that the respondent actually intends to subcontract, the respondent must demonstrate its good faith development of a HUB subcontracting plan by a method described in paragraphs (1)-(4) of this subsection.

(1) Solicitation Method. To complete the solicitation method, the respondent shall comply with all requirements of this clause.

(A) The respondent shall divide the work into reasonable lots or portions consistent with prudent industry practices.

(B) The respondent shall notify, in writing, at least two trade organizations or development centers that serve disabled veterans [economically disadvantaged persons], of the subcontracting opportunities that the respondent intends to subcontract.

(C) The respondent shall notify, in writing, at least three HUBs of the subcontracting opportunities that the respondent intends to subcontract. The respondent shall provide the notice described in this subclause to three or more HUBs per subcontracting opportunity that provide the type of work required.

(D) The notices required by subparagraphs (B) and (C) of this paragraph shall include the scope of work, information regarding location to review plans and specifications, information about bonding and insurance requirements, required qualifications, and other contract requirements and identify a contact person.

(E) The respondent shall provide the notices required by subparagraphs (B) and (C) of this paragraph at least seven working days prior to submission of the response. Neither the day on which the notice is sent nor the day on which the respondent submits its response count as one of the required seven working days. A state agency may determine that circumstances require a different time period than seven working days but must notify potential vendors of the requirement and document the justification in the contract file.

(F) The respondent shall submit documentation of having provided the notices required by subparagraphs (B) and (C) of this paragraph, including copies of relevant correspondence with the recipients, with its HUB subcontracting plan.

(G) If the respondent selects a non-HUB business to perform a subcontract instead of a HUB that bid for the same subcontract work, the respondent shall include a written justification for the selection in its HUB subcontracting plan.

(H) The respondent shall retain documentation of its compliance with each aspect of the solicitation method and submit it to the state agency upon request.

(2) All-HUB-Subcontractors Method. The respondent may use the all-HUB-subcontractors method to demonstrate a good faith effort for any subcontracting opportunity by submitting documentation that 100% of subcontracting opportunities will be performed by HUBs.

(3) Meeting-or-Exceeding-HUB-Goal Method. The respondent may use the meeting-or-exceeding-HUB-goal method to demonstrate a good faith effort for any subcontracting opportunity by submitting documentation that it will utilize one or more HUBs to perform subcontracts with a total value that will meet or exceed the HUB utilization goal identified by the procuring state agency in the solicitation.

(4) Self-performing Method. The respondent may use the self-performing method to demonstrate a good faith effort for any subcontracting opportunity by providing a statement of how it intends to fulfill the entire contract, including each subcontracting opportunity, with its own equipment, supplies, materials, and employees. The respondent shall provide the following if requested by the procuring state agency:

(A) evidence of existing staffing to meet contract objectives;

(B) monthly payroll records showing employees engaged in the contract;

(C) on-site reviews of company headquarters or work site where services are to be performed; and

(D) documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the work.

(5) Subcontracting to a HUB Protégé. If the respondent is a mentor in a mentor-protégé agreement that is registered with the comptroller under §20.298 of this title (relating to Mentor-Protégé Program), the respondent may demonstrate a good faith effort for any subcontracting opportunity by subcontracting the work to its protégé.

(6) The respondent shall use the HUB directory to identify HUBs. If the respondent uses any alternate source, it accepts the risk that its HUB subcontracting plan may be noncompliant due to inaccurate HUB certification information. A business listed in the HUB directory at the time of the good faith effort is considered a HUB for purposes of evaluating a HUB subcontracting plan, even if the business later graduates or has its HUB status revoked or expired.

(e) Accepting or rejecting the HUB subcontracting plan. The state agency shall review the respondent's HUB subcontracting plan prior to award. The HUB subcontracting plan shall become a provision of the state agency's contract. The agency and contractor may agree to revise the submitted HUB subcontracting plan in accordance with subsection (b)(4) of this section. State agencies shall review the documentation submitted by the respondent to determine if the respondent made a good faith effort. A state agency may reject [If the state agency determines that] a HUB subcontracting plan that was not developed in good faith or [the good faith effort] was not completed [incomplete, the state agency shall reject the response]. The state agency shall document the reasons for rejection in the contract file. If an agency finds

that businesses identified in a HUB subcontracting plan are no longer HUBs, it may invite the vendor to submit a revised plan that identifies active HUBs.

(f) Contractor records. The contractor shall maintain records documenting its compliance with the HUB subcontracting plan.

(g) Progress assessment reports. The contractor shall submit a progress assessment report to the state agency with each invoice, in the format required by the comptroller. A state agency may, at its option, allow electronic submissions of the compliance report required by this subsection so long as the electronically-submitted compliance reports are in the format and contain all information required by the comptroller. The progress assessment report shall be a condition for payment.

(h) Monitoring HUB subcontracting plan compliance.

(1) During the term of the contract, the state agency shall monitor the contractor's subcontracting by reviewing each HUB progress assessment report to determine whether it complies with the HUB subcontracting plan. The state agency shall perform monitoring at intervals corresponding to invoice submissions. The state agency shall determine if the value of the payments to HUBs meets or exceeds the HUB subcontracting plan, and whether the contractor is utilizing only subcontractors named in the HUB subcontracting plan. The state agency shall document the contractor's performance in the contract file.

(2) To determine if the contractor is complying with the HUB subcontracting plan, the state agency may consider the following:

(A) whether the contractor gave timely notice to the subcontractor regarding the time and place of the subcontracted work;

(B) whether the contractor facilitated access to the resources needed to complete the work; and

(C) any other information the state agency considers relevant.

(3) If the contractor fails to comply with the HUB subcontracting plan, the state agency shall notify the contractor of the deficiencies and give the contractor an opportunity to submit documentation and explain why its failure to fulfill the HUB subcontracting plan should not be attributed to a lack of good faith effort by the contractor. Any deficiencies identified by the state agency must be rectified by the contractor prior to the next reporting period.

(4) The state agency shall report failure to comply with the HUB subcontracting plan to the comptroller in accordance with §20.509 of this title (relating to Vendor Performance Reporting). If the state agency determines that the contractor failed to implement the HUB subcontracting plan in good faith, the state agency may, in addition to any other remedies, bar the contractor from further contracting opportunities with the agency. The state agency may also report nonperformance to the comptroller for consideration for possible debarment pursuant to Government Code, §2155.077. A debarment for failure to implement the HUB subcontracting plan may be for a period of no more than five years.

(i) Amending the HUB subcontracting plan.

(1) Before the contractor performs or subcontracts any part of the contract in a manner that is not consistent with its HUB subcontracting plan, it shall submit an amended HUB subcontracting plan to the state agency for its review and approval. The contractor shall demonstrate good faith by complying with the requirements of subsection (d) of this section in the development of the amended HUB subcontracting plan. Failure to comply with this section may be deemed

a breach of the contract subject to any remedies provided by Government Code, Chapter 2161 and other applicable law.

(2) The state agency may approve requested changes to the HUB subcontracting plan by amending the contract. The reasons for amending the HUB subcontracting plan shall be recorded in the contract file.

(3) If a state agency expands the scope of work through a change order or contract amendment, including a renewal that expands the scope of work, it shall determine if the additional scope of work contains additional probable subcontracting opportunities. If the state agency determines probable subcontracting opportunities exist, the state agency shall require the contractor to submit for its review and approval an amended HUB subcontracting plan for the additional probable subcontracting opportunities. The contractor shall demonstrate good faith by complying with the requirements of subsection (d) of this section in the development of the amended HUB subcontracting plan.

#### §20.288. Certification Process.

(a) A business seeking certification as a HUB must submit an application through the online HUB certification system, affirming under penalty of perjury that the business qualifies as a HUB.

(b) If requested by the comptroller, the applicant must provide any and all materials and information necessary to demonstrate a qualifying active participation in the control, operation, and management of the HUB.

(c) A person claiming Texas residency must prove residency status by submitting:

(1) a current valid Texas driver's license or I.D. card; and

(2) additional evidence of residency satisfactory to the comptroller, such as an appraisal statement for Texas real property (including whether a homestead exemption was claimed for that real property) or most recent paid utility statements.

(d) The comptroller shall certify the applicant as a HUB or provide the applicant with written justification of its denial of certification within 90 days after the date the comptroller receives an application.

(e) The comptroller may reject an application based on one or more of the following:

(1) the application is not satisfactorily completed;

(2) the applicant does not meet the requirements of the definition of HUB;

(3) the application contains false information;

(4) the applicant does not provide required information in connection with the certification review conducted by the comptroller; or

(5) the applicant has an unfavorable record of performance on prior contracts with the state.

(f) The comptroller may approve the existing certification program of one or more local governments or nonprofit organizations in this state that certify historically underutilized businesses[; ~~minority business enterprises, women's business enterprises,~~] or disadvantaged business enterprises that substantially fall under the same definition, to the extent applicable for HUBs found in Government Code, §2161.001, subject to the prohibition against race- and sex-based discrimination imposed by Texas Constitution, Article I, Section 3a, and United States Constitution, Amendment XIV, and maintain them on the comptroller's HUB directory, if the local government or nonprofit organization:

(1) meets or exceeds the standards established by the comptroller and

(2) agrees to the terms and conditions as required by statute relative to the agreement between the local government or nonprofits for the purpose of certification of HUBs.

(g) The agreement in subsection (f) of this section must take effect immediately and contain conditions as follows:

(1) allow for automatic certification of businesses certified by the local government or nonprofit organization as prescribed by the comptroller;

(2) provide for the efficient updating of the HUB directory;

(3) provide for a method by which the comptroller may efficiently communicate with businesses certified by the local government or nonprofit organization;

(4) provide those businesses with information about the state's Historically Underutilized Business Program; and

(5) require that a local government or nonprofit organization that enters into an agreement under subsection (f) of this section, complete the certification of an applicant with written justification of its certification denial within the period established by the comptroller in its rules for certification.

(h) The comptroller will not accept the certification of a local government or nonprofit organization that charges money for the certification of businesses to be listed on the HUB directory.

(i) The comptroller may terminate an agreement made under this section if a local government or nonprofit organization fails to meet the standards established by the comptroller for certifying HUBs. In the event of the termination of an agreement, those HUBs that were certified as a result of the agreement will maintain their HUB status during the fiscal year in which the agreement was in effect. Businesses which are removed from the HUB directory as a result of the termination of an agreement with a local government or nonprofit organization may apply to the comptroller for certification.

(j) The certification is valid for a four-year period beginning on the date the comptroller certifies the applicant as a HUB. If the certification was granted by an organization other than the comptroller under subsections (f) and (g) of this section, it is valid for the period granted by that organization.

#### *§20.294. Graduation Procedures.*

(a) **Size Standards.** A HUB shall graduate from being eligible for HUB certification when it has maintained gross receipts or total employment levels during four consecutive years which, including all affiliates, exceed the U.S. Small Business Administration size standards set forth in 13 CFR Part 121.

(b) **Graduation.** ~~[Businesses that achieve the size standards identified in subsection (a) of this section have reached a competitive status in overcoming the effects of discrimination.]~~ The comptroller shall review, as part of the certification or recertification process, the financial revenue or relevant data of a business to determine whether the size standards identified in subsection (a) of this section have been achieved. When the comptroller determines that the business exceeds the applicable size standard, the comptroller shall inform the business that it has graduated and is no longer certified as a HUB, and shall remove the business from the HUB directory.

(c) **Effects of Graduation.**

(1) Businesses that have graduated from the HUB program may not be included in meeting statewide or state agency HUB uti-

lization goals after the end of last reporting period in which they held certification for at least one day.

(2) A business that has graduated or does not qualify as a HUB under this title, shall be eligible to reapply for HUB certification only after demonstrating that it meets the qualifications for HUB, including the size standards.

(3) A business is considered a successor in interest if it has acquired substantially all of the assets and liabilities of another business. The application of the successor in interest to a HUB that has graduated will be treated as a reapplication of the HUB. The successor in interest applicant must show that it meets the size standards before it is considered eligible to apply.

#### *§20.295. Program Review.*

~~[The comptroller shall revise the HUB rules based on updates of disparity studies conducted and prepared on behalf of the State of Texas.]~~ The comptroller may determine the need to reassess the HUB rules ~~[upon receipt of new disparity study information].~~

#### *§20.296. HUB Coordinator Responsibilities.*

(a) In accordance with Government Code, §2161.062(e), state agencies with biennial budgets that exceed \$10 million shall designate a staff member to serve as the Historically Underutilized Business (HUB) Coordinator for the state agency during the fiscal year. The HUB coordinator will advise and assist state agency executive directors and staff in complying with the requirements of this division, Government Code, §321.013, and §2101.011, and Government Code, Chapter 2161.

(b) To demonstrate good faith effort, a state agency shall provide the HUB coordinator with necessary and sufficient resources from its current operations and budget to effectively promote the achievement of all the responsibilities of the HUB coordinator. The HUB coordinator will assist its state agency in the development of the state agency's procurement specifications, HUB subcontracting plans, and evaluation of contracts for compliance. The HUB coordinator should be in a position that reports, communicates, and provides information directly to the state agency's executive director. To assist state agencies and the comptroller with HUB compliance, the duties and responsibilities of HUB coordinators include, but are not limited to, facilitating compliance with the state agency's good faith effort criteria, HUB reporting, contract administration, and marketing and outreach efforts for HUB participation. The comptroller may assist agencies, upon request, to identify other responsibilities of a HUB coordinator for compliance.

(c) The HUB coordinator shall carry out their duties on a race-neutral, ethnicity-neutral, and sex-neutral basis, mindful that the Texas and U.S. Constitutions prohibit discrimination and require equal protection under the law.

#### *§20.298. Mentor-Protégé Program.*

(a) The Mentor-Protégé Program is a program administered by the comptroller in accordance with Government Code, §2161.065, and implemented by state agencies. The purpose of the Mentor-Protégé Program is to foster long-term relationships between experienced contractors and HUBs and to increase the ability of HUBs to obtain and perform contracts and subcontracts for state agency business. Each state agency with a biennial appropriation that exceeds \$10 million shall implement the Mentor-Protégé Program.

(b) Each state agency that implements the Mentor-Protégé program shall consider:

(1) the needs of protégé businesses requesting to be mentored;

(2) the availability of mentors who possess unique skills, talents, and experience related to the mission of the state agency's program; and

(3) the state agency's staff and other resources.

(c) Agencies may elect to implement the Mentor-Protégé Program individually or in cooperation with other agencies, public entities, or private organizations. Agencies are encouraged to implement a Mentor-Protégé Program to address the needs of protégé businesses in the following areas:

- (1) construction;
- (2) commodities; and
- (3) services.

(d) State agencies may consider, but are not limited to, the following factors in developing their Mentor-Protégé Program:

(1) internal procedures, including an application process, regarding the Mentor-Protégé Program which identifies the eligibility criteria and the selection criteria for mentors and potential HUB protégé businesses;

(2) recruitment of contractor mentors and protégés;

(3) documentation of the roles and expectations of the state agency, the mentor and the protégé;

(4) monitoring progress of mentor-protégé relationships;

(5) key agency resources including senior managers and procurement personnel to assist with the implementation of the program;

(6) partnerships with local governmental and nonprofit entities;

(7) the appropriate length of time for mentor-protégé relationships to continue (generally limited to four years); and

~~[(8) guidance related to the Mentor-Protégé Program in the Disparity Study; and]~~

~~[(9)]~~ assessment of the effectiveness of their Mentor-Protégé Program by conducting periodic surveys and interviews of mentors and protégés.

(e) A state agency's Mentor-Protégé Program implementation must include mentor eligibility and selection criteria. In determining the eligibility and selection of a mentor, state agencies shall require each mentor to be registered on the Centralized Master Bidders List (CMBL); and may additionally consider the following criteria:

(1) whether the mentor has extensive work experience and can provide developmental guidance in areas that meet the needs of the protégé, including but not limited to, business, financial, and personnel management; technical matters such as production, inventory control and quality assurance; marketing; insurance; equipment and facilities; and other related resources;

(2) whether the mentor is in "good standing" with the State of Texas and is not in violation of any state statutes, rules or governing policies;

(3) whether the mentor has mentoring experience;

(4) the number of protégés that a mentor can appropriately assist;

(5) whether the mentor has a successful past work history with the state agency;

(6) the amount of time a HUB has participated as a mentor in the program, or in other agencies' programs; and

(7) whether and to what extent the mentor and protégé businesses share management, board members, partners, current or former employees, or other resources that might indicate that they are related or affiliated businesses.

(f) A state agency's Mentor-Protégé Program implementation must include protégé eligibility and selection criteria. In determining the eligibility and selection of HUB protégés, state agencies may use the following criteria:

(1) whether the protégé is eligible and willing to become certified as a HUB;

(2) whether the protégé's business has been operational for at least one year;

(3) whether the protégé is willing to participate with a mentor and will identify the type of guidance that is needed for its development;

(4) whether the protégé is in "good standing" with the State of Texas and is not in violation of any state statutes, rules, or governing policies;

(5) whether the protégé is involved in a mentoring relationship with another contractor;

(6) the amount of time a HUB has participated as a protégé in the program, or in other agencies' programs; and

(7) whether and to what extent the mentor and protégé businesses share management, board members, partners, employees, or other resources that might indicate that they are related or affiliated businesses.

(g) The mentor and the protégé should agree on the nature of their involvement under the state agency's Mentor-Protégé Program. The state agency will monitor the progress of the relationship. The mentor and protégé relationship should be reduced to writing and may include, but is not limited to, the following:

(1) identification of the developmental areas in which the protégé needs guidance;

(2) the time period which the developmental guidance will be provided by the mentor;

(3) points of contact that will oversee the agreement of the mentor and protégé;

(4) procedure for a mentor to notify the protégé in advance if it intends to withdraw from the program or terminate the mentor-protégé relationship;

(5) procedure for a protégé to notify the mentor in advance if it intends to terminate the mentor-protégé relationship; and

(6) a mutually agreed upon timeline to report the progress of the mentor-protégé relationship to the state agency.

(h) The protégé must maintain its HUB certification status for the duration of the agreement.

(i) Each state agency must notify its mentors and protégés that participation is voluntary. The notice must include written documentation that participation in the state agency's Mentor-Protégé Program implementation is neither a guarantee of a contract opportunity nor a promise of business; but the program's intent is to foster positive long-term business relationships.



(j) State agencies may demonstrate their good faith under this section by submitting a supplemental letter with documentation to the comptroller with their HUB report or legislative appropriations request identifying the progress and testimonials of mentors and protégés that participate in the state agency's program.

(k) Each state agency that implements the Mentor-Protégé Program must report that information to the comptroller upon completion of a signed agreement by both parties. Information regarding the Mentor-Protégé Agreement shall be reported in a form prescribed by the comptroller within 21 calendar days after the agreement has been signed. The comptroller will register that agreement on the approved list of mentors and protégés. Approved Mentor-Protégé Agreements are valid for all state agencies in determining good faith effort for the particular area of subcontracting to be performed by the protégé as identified in the HUB subcontracting plan.

(l) The comptroller shall retain and make available to state agencies all registered Mentor-Protégé Agreements. The sponsoring state agency shall monitor and report the termination of an existing

Mentor-Protégé Agreement that has been registered with the comptroller within 21 calendar days.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 2, 2025.

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Don Neal

General Counsel, Operations and Support Legal Services

Comptroller of Public Accounts

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For further information, please call: (512) 463-0545

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