

GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE D. STATE PURCHASING AND GENERAL SERVICES

CHAPTER 2161. HISTORICALLY UNDERUTILIZED BUSINESSES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2161.001. DEFINITIONS. In this chapter:

(1) "Goods" means supplies, materials, or equipment.

(2) "Historically underutilized business" means an entity with its principal place of business in this state that is:

(A) a corporation formed for the purpose of making a profit in which 51 percent or more of all classes of the shares of stock or other equitable securities are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the corporation's control, operation, and management;

(B) a sole proprietorship created for the purpose of making a profit that is completely owned, operated, and controlled by an economically disadvantaged person;

(C) a partnership formed for the purpose of making a profit in which 51 percent or more of the assets and interest in the partnership are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the partnership's control, operation, and management;

(D) a joint venture in which each entity in the venture is a historically underutilized business, as determined under another paragraph of this subdivision; or

(E) a supplier contract between a historically underutilized business as determined under another paragraph of this subdivision and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of the goods or otherwise warehouses and ships the goods.

(3) "Economically disadvantaged person" means a person who:

(A) is economically disadvantaged because of the person's identification as a member of a certain group, including:

- (i) Black Americans;
- (ii) Hispanic Americans;
- (iii) women;
- (iv) Asian Pacific Americans;
- (v) Native Americans; and
- (vi) veterans as defined by 38 U.S.C. Section 101(2) who have suffered at least a 20 percent service-connected disability as defined by 38 U.S.C. Section 101(16); and

(B) has suffered the effects of discriminatory practices or other similar insidious circumstances over which the person has no control.

(4) "Contract" includes an arrangement under which a state agency receives professional or investment brokerage services.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 1499, Sec. 1.21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1261, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1255 (H.B. [194](#)), Sec. 1, eff. September 1, 2013.

Sec. 2161.0011. COMPTROLLER POWERS AND DUTIES. The comptroller has under this chapter the powers and duties described by Section [2151.004](#)(d).

Added by Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. [3560](#)), Sec. 1.21, eff. September 1, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 81, eff. September 1, 2019.

Sec. 2161.0012. AUTHORITY TO ADOPT RULES. (a) The comptroller may adopt rules to efficiently and effectively administer this chapter. Before adopting a rule under this section, the comptroller must conduct a public hearing regarding

the proposed rule regardless of whether the requirements of Section 2001.029(b) are met.

(b) The comptroller shall follow the procedures prescribed by Subchapter B, Chapter 2001, when adopting a new rule or a change to an existing rule that relates to historically underutilized businesses.

Added by Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.21, eff. September 1, 2007.

Sec. 2161.0015. DETERMINING SIZE STANDARDS FOR HISTORICALLY UNDERUTILIZED BUSINESSES. The comptroller may establish size standards that a business may not exceed if it is to be considered a historically underutilized business under this chapter. In determining the size standards, the comptroller shall determine the size at which a business should be considered sufficiently large that the business probably does not significantly suffer from the effects of past discriminatory practices.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 2.02, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 81, eff. September 1, 2019.

Sec. 2161.002. ADMINISTRATION; RULES. (a) To administer Subchapters B and C, the comptroller may:

- (1) require information from a state agency; and
- (2) adopt rules.

(c) In adopting rules to administer this chapter, the comptroller shall adopt rules that are based on the results of the "State of Texas Disparity Study, A Report to the Texas Legislature as Mandated by H.B. 2626, 73rd Legislature, December 1994" (prepared by National Economic Research Associates, Inc.). The comptroller shall revise the rules in response to the findings of any updates of the study that are prepared on behalf of the state.

(d) The comptroller shall adopt rules to provide goals for increasing the contract awards for the purchase of goods or

services by the comptroller and other state agencies to businesses that qualify as historically underutilized businesses because the businesses are owned or owned, operated, and controlled, as applicable, wholly or partly by one or more veterans as defined by 38 U.S.C. Section 101(2) who have a service-connected disability as defined by 38 U.S.C. Section 101(16). The goals established under this subsection are in addition to the goals established under Subsection (c) and the goals established under Subsection (c) may not be reduced as a result of the establishment of goals under this subsection.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 1499, Sec. 1.22, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. [3560](#)), Sec. 1.117(6), eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1255 (H.B. [194](#)), Sec. 2, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 81, eff. September 1, 2019.

Sec. 2161.003. AGENCY RULES. A state agency, including an institution of higher education, shall adopt the comptroller's rules under Section [2161.002](#) as the agency's or institution's own rules. Those rules apply to the agency's construction projects and purchases of goods and services paid for with appropriated money without regard to whether a project or purchase is otherwise subject to this subtitle.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.23, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 81, eff. September 1, 2019.

Sec. 2161.004. APPLICABILITY; INTENT. (a) This chapter and rules adopted by the comptroller under this chapter apply to state agency construction projects and purchases of goods and

services that are paid for with appropriated money and made under the authority of this subtitle or other law.

(b) The legislature intends that all qualified businesses have access to compete for business from the state.

(c) Section 2161.003 and Subsections (a) and (b) of this section do not apply to a project or contract subject to Section 201.702, Transportation Code.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.23, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 82, eff. September 1, 2019.

Sec. 2161.005. TRANSFER OF FUNDS FOR PURCHASING. If the state auditor reports to the comptroller under Section 2161.123(d) that a state agency is not complying with Section 2161.123, the comptroller shall report that fact to the Legislative Budget Board. If the Legislative Budget Board determines that, one year after the date of the state auditor's report to the comptroller, the agency is still not complying with Section 2161.123, the budget board may, under Section 69, Article XVI, Texas Constitution, direct the emergency transfer of the agency's appropriated funds for making purchases under purchasing authority delegated under Section 2155.131 to the appropriate state agency. The amount transferred from the agency's funds to the appropriate agency shall be an amount determined by the Legislative Budget Board.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.23, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 83, eff. September 1, 2019.

SUBCHAPTER B. GENERAL POWERS AND DUTIES

Sec. 2161.061. CERTIFICATION OF HISTORICALLY UNDERUTILIZED BUSINESSES. (a) The comptroller shall certify historically underutilized businesses.

(b) As one of its certification procedures, the comptroller may:

(1) approve the 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 under substantially the same definition, to the extent applicable, used by Section 2161.001, if the local government or nonprofit organization meets or exceeds the standards established by the comptroller; and

(2) certify a business that is certified by a local government or by a nonprofit organization as a historically underutilized business under this chapter.

(c) To maximize the number of certified historically underutilized businesses, the comptroller shall enter into agreements with local governments in this state that conduct certification programs described by Subsection (b) and with nonprofit organizations. The comptroller may terminate an agreement if a local government or nonprofit organization fails to meet the standards established by the comptroller for certifying historically underutilized businesses. The agreements must take effect immediately and:

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

(2) provide for the efficient updating of the comptroller database containing information about historically underutilized businesses and potential historically underutilized businesses; and

(3) provide for a method by which the comptroller may efficiently communicate with businesses certified by the local government or nonprofit organization and provide those businesses with information about the state historically underutilized business program.

(d) A local government or a nonprofit organization that certifies historically underutilized businesses, minority business enterprises, women's business enterprises, or disadvantaged business enterprises as described in Subsections (b) and (c) shall

complete the certification of an applicant or provide an applicant with written justification of its certification denial within the period established by the comptroller in its rules for certification activities.

(e) A local government or a nonprofit organization that certifies historically underutilized businesses under Subsection (c) or that conducts a certification program described by and approved under Subsection (b) shall make available to the public an online searchable database containing information about historically underutilized businesses, minority business enterprises, women's business enterprises, and disadvantaged business enterprises certified by the local government or nonprofit organization, including:

- (1) the name of the business;
- (2) the contact person or owner of the business;
- (3) the address and telephone number of the business;
- (4) the type or category of business, including relevant capabilities of the business and the North American Industry Classification System codes for the business; and
- (5) the expiration date of the business's certification.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.03(a), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1499, Sec. 2.03, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1422, Sec. 13.01, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. [3560](#)), Sec. 1.22, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 85, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 86, eff. September 1, 2019.

Sec. 2161.062. ASSISTANCE TO HISTORICALLY UNDERUTILIZED BUSINESSES. (a) The comptroller shall seek the advice of the governor, legislature, and state agencies in identifying and

developing opportunities for historically underutilized businesses.

(b) The comptroller shall offer historically underutilized businesses assistance and training regarding state procurement procedures.

(c) The comptroller shall advise historically underutilized businesses of available state contracts and shall advise historically underutilized businesses to apply for registration on the comptroller's master bidders list.

(d) The comptroller shall send historically underutilized businesses an orientation package on certification or recertification. The package shall include:

(1) a certificate issued in the historically underutilized business's name;

(2) a description of the significance and value of certification;

(3) a list of state purchasing personnel;

(4) information regarding electronic commerce opportunities;

(5) information regarding the Texas Marketplace website; and

(6) additional information about the state procurement process.

(e) A state agency with a biennial budget that exceeds \$10 million shall designate a staff member to serve as the historically underutilized businesses coordinator for the agency during the fiscal year. The procurement director may serve as the coordinator. In agencies that employ a historically underutilized businesses coordinator, the position of coordinator, within the agency's structure, must be at least equal to the position of procurement director. In addition to any other responsibilities, the coordinator shall:

(1) coordinate training programs for the recruitment and retention of historically underutilized businesses;

(2) report required information to the comptroller; and

(3) match historically underutilized businesses with

key staff within the agency.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 1499, Sec. 2.04, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 87, eff. September 1, 2019.

Sec. 2161.063. ASSISTING STATE AGENCIES. (a) The comptroller shall encourage state agencies to use historically underutilized businesses by:

(1) working with state agencies to establish a statewide policy for increasing the use of historically underutilized businesses;

(2) assisting state agencies in seeking historically underutilized businesses capable of supplying required goods or services;

(3) assisting state agencies in identifying and advising historically underutilized businesses on the types of goods and services the agencies need; and

(4) assisting state agencies in increasing the amount of business placed with historically underutilized businesses.

(b) The comptroller shall assist the Texas Department of Economic Development in performing the department's duties under Section [481.0068](#).

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 1499, Sec. 2.05, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 87, eff. September 1, 2019.

Sec. 2161.064. DIRECTORY. (a) The comptroller shall compile, in the most cost-efficient form, a directory of businesses certified as historically underutilized businesses under Section [2161.061](#).

(b) The comptroller at least semiannually shall update the

directory and provide access to the directory electronically or in another form to each state agency.

(c) Depending on the needs of a state agency, the comptroller shall provide access to the directory electronically or in another form.

(d) The comptroller shall provide a copy of the directory to every municipality in January and July of each year. On request, the comptroller shall make the directory available to other local governments and the public.

(e) A state agency, including the comptroller, shall use the directory in determining awards of state purchasing and public works contracts.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 1499, Sec. 2.06, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 87, eff. September 1, 2019.

Sec. 2161.065. MENTOR-PROTEGE PROGRAM. (a) The comptroller shall design a mentor-protege program to foster long-term relationships between prime contractors and historically underutilized businesses and to increase the ability of historically underutilized businesses to contract with the state or to receive subcontracts under a state contract. Each state agency with a biennial appropriation that exceeds \$10 million shall implement the program designed by the comptroller.

(b) Participation in the program must be voluntary for both the contractor and the historically underutilized business subcontractor.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 2.08, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 88, eff. September 1, 2019.

Sec. 2161.066. HISTORICALLY UNDERUTILIZED BUSINESS FORUMS.

(a) The comptroller shall design a program of forums in which historically underutilized businesses are invited by state agencies to deliver technical and business presentations that demonstrate their capability to do business with the agency:

(1) to senior managers and procurement personnel at state agencies that acquire goods and services of a type supplied by the historically underutilized businesses; and

(2) to contractors with the state who may be subcontracting for goods and services of a type supplied by the historically underutilized businesses.

(b) The forums shall be held at state agency offices.

(c) Each state agency with a biennial appropriation that exceeds \$10 million shall participate in the program by sending senior managers and procurement personnel to attend relevant presentations and by informing the agency's contractors about presentations that may be relevant to anticipated subcontracting opportunities.

(d) Each state agency that has a historically underutilized businesses coordinator shall:

(1) design its own program and model the program to the extent appropriate on the program developed by the comptroller under this section; and

(2) sponsor presentations by historically underutilized businesses at the agency.

(e) The comptroller and each state agency that has a historically underutilized businesses coordinator shall aggressively identify and notify individual historically underutilized businesses regarding opportunities to make a presentation regarding the types of goods and services supplied by the historically underutilized business and shall advertise in appropriate trade publications that target historically underutilized businesses regarding opportunities to make a presentation.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 2.08, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 89,

eff. September 1, 2019.

SUBCHAPTER C. PLANNING AND REPORTING REQUIREMENTS

Sec. 2161.121. REPORT OF CONTRACTS AWARDED TO HISTORICALLY UNDERUTILIZED BUSINESSES. (a) The comptroller shall prepare a consolidated report that:

(1) includes the number and dollar amount of contracts awarded and paid to historically underutilized businesses certified by the comptroller;

(2) analyzes the relative level of opportunity for historically underutilized businesses for various categories of acquired goods and services; and

(3) tracks, by vendor identification number and, to the extent allowed by federal law, by social security number, the graduation rates for historically underutilized businesses that grew to exceed the size standards determined by the comptroller.

(b) Each state agency shall send to the comptroller information required by Section [2161.122](#) and other information required by the comptroller for the preparation of the comptroller's report not later than March 15 and September 15 of each year.

(c) The comptroller shall base its report on the compilation and analysis of reports received under Subsection (b) and other information maintained or received by the comptroller.

(d) The comptroller shall send to the presiding officer of each house of the legislature:

(1) on May 15 of each year, a report on the previous six-month period; and

(2) on November 15 of each year, a report on the preceding fiscal year.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 1499, Sec. 2.07, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 48 (H.B. [2472](#)), Sec. 19, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 48 (H.B. [2472](#)), Sec. 22(4), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. [59](#)), Sec. 99(22), eff. September 1, 2013.

Reenacted and amended by Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 90, eff. September 1, 2019.

Sec. 2161.122. INFORMATION GATHERING BY STATE AGENCY. (a) To ensure accuracy in reporting, a state agency shall maintain and compile monthly information relating to the use by the agency and each of its operating divisions of historically underutilized businesses, including information regarding subcontractors and suppliers required by Subsection (b).

(b) A contractor or supplier awarded a contract by a state agency shall report to the agency the identity of each historically underutilized business to whom the contractor or supplier awarded a subcontract for the purchase of goods or services.

(c) Each state agency shall report to the comptroller in accordance with Section [2161.125](#) the following information with regard to the expenditure of both treasury and nontreasury funds:

(1) the total dollar amount of purchases and payments made under contracts awarded to historically underutilized businesses;

(2) the number of businesses participating in any issuance of state bonds by the agency;

(3) the number of contracts awarded to businesses with regard to the agency's acquisition, construction, or equipping of a facility or implementation of a program; and

(4) the number of bids, proposals, or other applicable expressions of interest made by historically underutilized businesses with regard to the agency's acquisition, construction, or equipping of a facility or implementation of a program.

(d) A state agency participating in a group purchasing program shall send to the comptroller in the agency's report under Section [2161.121](#) a separate list of purchases from historically underutilized businesses that are made through the group purchasing program, including the dollar amount of each purchase allocated to

the reporting agency.

(e) A state agency's report is a record of the agency's purchases for which the agency selected the vendor. If the vendor was selected by the comptroller as part of its state contract program, the comptroller shall include the purchase in the comptroller's report of its own purchases unless the comptroller made a sole source purchase for the agency under Section [2155.067](#). The state agency for which the purchase was made shall report the selection of the vendor on its report as if the agency selected the vendor when the agency drew specifications for goods or services that are proprietary to one vendor.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 1499, Sec. 1.24, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 91, eff. September 1, 2019.

Sec. 2161.123. STRATEGIC PLANNING. (a) Each state agency, including the comptroller, that is required to have a strategic plan under Chapter [2056](#) shall include in its strategic plan a written plan for increasing the agency's use of historically underutilized businesses in purchasing and public works contracting. The governing board of each university system or institution of higher education not included in a university system, other than a public junior college, shall prepare a written plan for increasing the use of historically underutilized businesses in purchasing and public works contracting by the system or institution.

(b) The plan must include:

(1) a policy or mission statement relating to increasing the use of historically underutilized businesses by the state agency;

(2) goals to be met by the agency in carrying out the policy or mission; and

(3) specific programs to be conducted by the agency to meet the goals stated in the plan, including a specific program to

encourage contractors to use historically underutilized businesses as partners and subcontractors.

(c) On request, the comptroller shall provide technical assistance to a state agency that is preparing its plan.

(d) The comptroller and the state auditor shall cooperate to develop procedures providing for random periodic monitoring of state agency compliance with this section. The state auditor shall report to the comptroller a state agency that is not complying with this section. In determining whether a state agency is making a good faith effort to comply, the state auditor shall consider whether the agency:

(1) has adopted rules under Section [2161.003](#);

(2) has used the comptroller's directory under Section [2161.064](#) and other resources to identify historically underutilized businesses that are able and available to contract with the agency;

(3) made good faith, timely efforts to contact identified historically underutilized businesses regarding contracting opportunities;

(4) conducted its procurement program in accordance with the good faith effort methodology set out in comptroller rules; and

(5) established goals for contracting with historically underutilized businesses in each procurement category based on:

(A) scheduled fiscal year expenditures; and

(B) the availability of historically underutilized businesses in each category as determined by rules adopted under Section [2161.002](#).

(e) In conducting an audit of an agency's compliance with this section or an agency's making of a good faith effort to implement the plan adopted under this section, the state auditor shall consider the success or failure of the agency to contract with historically underutilized businesses in accordance with the agency's goals described by Subsection (d)(5).

(f) If the state auditor reports to the comptroller that a state agency is not complying with this section, the comptroller

shall assist the agency in complying.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 1499, Sec. 1.25, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 785, Sec. 36, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1266, Sec. 4.08, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. [3560](#)), Sec. 1.23, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 92, eff. September 1, 2019.

Sec. 2161.124. STATE AGENCY PROGRESS REPORTS. (a) Each state agency, including the comptroller, shall prepare a report for each fiscal year documenting progress under its plan for increasing use of historically underutilized businesses.

(b) The comptroller shall develop a standard form for the report.

(c) The state agency shall file the report with the governor, lieutenant governor, and the speaker of the house of representatives not later than December 31 of each year.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 2003, 78th Leg., ch. 785, Sec. 37, eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 93, eff. September 1, 2019.

Sec. 2161.125. CATEGORIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES. The comptroller, in cooperation with each state agency reporting under this subchapter, shall categorize each historically underutilized business included in a report under this subchapter by sex, race, and ethnicity and by whether the business qualifies as a historically underutilized business because it is owned or owned, operated, and controlled, as applicable, wholly or partly by one or more veterans as defined by 38 U.S.C. Section 101(2) who have suffered at least a 20 percent service-connected disability as defined by 38 U.S.C. Section

101(16).

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.24, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1255 (H.B. 194), Sec. 3, eff. September 1, 2013.

Sec. 2161.126. EDUCATION AND OUTREACH. Before October 15 of each year, the comptroller shall report to the governor, the lieutenant governor, and the speaker of the house of representatives on the education and training efforts that the comptroller has made toward historically underutilized businesses. The report must include the following as related to historically underutilized businesses:

- (1) the comptroller's vision, mission, and philosophy;
- (2) marketing materials and other educational materials distributed by the comptroller;
- (3) the comptroller's policy regarding education, outreach, and dissemination of information;
- (4) goals that the comptroller has attained during the fiscal year;
- (5) the comptroller's goals, objectives, and expected outcome measures for each outreach and education event; and
- (6) the comptroller's planned future initiatives on education and outreach.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 2.09, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 48 (H.B. 2472), Sec. 20, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 94, eff. September 1, 2019.

Sec. 2161.127. LEGISLATIVE APPROPRIATIONS REQUESTS.
(a) Each state agency must include as part of its legislative appropriations request a detailed report for consideration by the

budget committees of the legislature that shows the extent to which the agency complied with this chapter and rules of the comptroller adopted under this chapter during the two calendar years preceding the calendar year in which the request is submitted. To the extent the state agency did not comply, the report must demonstrate the reasons for that fact. The extent to which a state agency complies with this chapter and rules of the comptroller adopted under this chapter is considered a key performance measure for purposes of the appropriations process.

(b) The report under Subsection (a) must include:

(1) the agency's goals established under Section [2161.123](#)(d)(5) for contracting with historically underutilized businesses during the two calendar years preceding the calendar year in which the request is submitted;

(2) a statement regarding whether the goals established under Section [2161.123](#)(d)(5) were met during the two calendar years preceding the calendar year in which the request is submitted; and

(3) if the goals established under Section [2161.123](#)(d)(5) were not met during the two calendar years preceding the calendar year in which the request is submitted:

(A) a statement of the percentage by which the agency's actual use of historically underutilized businesses deviated from the agency's goals; and

(B) an explanation of why the goals were not met.
Added by Acts 1999, 76th Leg., ch. 1499, Sec. 2.09, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. [3560](#)), Sec. 1.25, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 95, eff. September 1, 2019.

SUBCHAPTER D. PURCHASING GOALS

Sec. 2161.181. GOALS FOR PURCHASES OF GOODS AND SERVICES. A state agency, including the comptroller, shall make a

good faith effort to increase the contract awards for the purchase of goods or services that the agency expects to make during a fiscal year to historically underutilized businesses based on rules adopted by the comptroller to implement the disparity study described by Section [2161.002\(c\)](#).

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 1499, Sec. 1.26, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 96, eff. September 1, 2019.

Sec. 2161.182. GOALS FOR CONSTRUCTION CONTRACTS. (a) A state agency that contracts for a construction project, including a project under Section [2166.003](#), shall make a good faith effort to increase the construction contract awards that the agency expects to make during a fiscal year to historically underutilized businesses based on rules adopted by the comptroller to implement the disparity study described by Section [2161.002\(c\)](#).

(b) In this section, "project" has the meaning assigned by Section [2166.001](#).

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 1499, Sec. 1.27, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 97, eff. September 1, 2019.

Sec. 2161.183. ESTIMATE OF EXPECTED CONTRACT AWARDS. (a) Not later than the 60th day of its fiscal year, a state agency, including the comptroller:

(1) shall estimate the total value of contract awards the agency expects to make for that fiscal year that are subject to Section [2161.181](#); and

(2) shall estimate the total value of contract awards the agency expects to make for that fiscal year under Chapter [2166](#).

(b) The state agency may revise an estimate as new

information requires.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 98, eff. September 1, 2019.

SUBCHAPTER E. PENALTY

Sec. 2161.231. PENALTY. (a) A person commits an offense if the person:

(1) intentionally applies as a historically underutilized business for an award of a purchasing contract or public works contract under this subtitle; and

(2) knows the person is not a historically underutilized business.

(b) An offense under this section is a third degree felony.
Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER F. SUBCONTRACTING

Sec. 2161.251. APPLICABILITY. (a) This subchapter applies to all contracts entered into by a state agency with an expected value of \$100,000 or more, including:

(1) contracts for the acquisition of a good or service; and

(2) contracts for or related to the construction of a public building, road, or other public work.

(b) This subchapter applies to the contract without regard to:

(1) whether the contract is otherwise subject to this subtitle; or

(2) the source of funds for the contract, except that to the extent federal funds are used to pay for the contract, this subchapter does not apply if federal law prohibits the application of this subchapter in relation to the expenditure of federal funds.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 2.10, eff. Sept. 1, 1999.

Sec. 2161.252. AGENCY DETERMINATION REGARDING SUBCONTRACTING OPPORTUNITIES; BUSINESS SUBCONTRACTING PLAN. (a) Each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest for the contract, determine whether there will be subcontracting opportunities under the contract. If the state agency determines that there is that probability, the agency shall require that each bid, proposal, offer, or other applicable expression of interest for the contract include a historically underutilized business subcontracting plan.

(b) When a state agency requires a historically underutilized business subcontracting plan under Subsection (a), a bid, proposal, offer, or other applicable expression of interest for the contract must contain a plan to be considered responsive. Added by Acts 1999, 76th Leg., ch. 1499, Sec. 2.10, eff. Sept. 1, 1999.

Sec. 2161.253. GOOD FAITH COMPLIANCE WITH BUSINESS SUBCONTRACTING PLAN. (a) When a state agency requires a historically underutilized business subcontracting plan under Section [2161.252](#), the awarded contract shall contain, as a provision of the contract that must be fulfilled, the plan that the contractor submitted in its bid, proposal, offer, or other applicable expression of interest for the contract. The contractor shall make good faith efforts to implement the plan. A contractor's participation in a mentor-protege program under Section [2161.065](#) and submission of a protege as a subcontractor in the contractor's historically underutilized business subcontracting plan constitutes a good faith effort under this section for the particular area of the subcontracting plan involving the protege.

(b) To the extent that subcontracts are not contracted for as originally submitted in the historically underutilized business subcontracting plan, the contractor shall report to the state agency all the circumstances that explain that fact and describe the good faith efforts made to find and subcontract with another

historically underutilized business.

(c) The state agency shall audit the contractor's compliance with the historically underutilized business subcontracting plan. In determining whether the contractor made the required good faith effort, the agency may not consider the success or failure of the contractor to subcontract with historically underutilized businesses in any specific quantity. The agency's determination is restricted to considering factors indicating good faith.

(d) If a determination is made that the contractor failed to implement the plan in good faith, the agency, in addition to any other remedies, may bar the contractor from further contracting opportunities with the agency.

(e) The comptroller shall adopt rules to administer this subchapter.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 2.10, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 13.02, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 99, eff. September 1, 2019.