

1 **Contract and Purchasing Amendments to Chapter 800**
2 **Policy Concept**

3 **Background**

4 Several sections of the Texas Government Code require state agencies to adopt rules
5 regarding contracting and purchasing. Specifically,

- 6 • Section 2261.253 requires agencies to establish, by rule, a procedure to identify each
7 contract that requires enhanced contract performance monitoring;
- 8 • Section 2155.076 requires agencies to establish, by rule, procedures for resolving vendor
9 protests relating to purchasing issues; and
- 10 • Section 2252.202 requires agencies to adopt rules to promote compliance with the
11 requirement that any iron or steel product produced through a manufacturing process and
12 used in the project be produced in the United States.

13 **Issue 1: Enhanced Contract Monitoring—Requirement for Rulemaking**

14 Texas Government Code §2261.253(c) requires state agencies to establish, by rule, a
15 procedure to identify contracts, prior to award, that require enhanced contract or
16 performance monitoring and submit the information to the agency’s governing body. In its
17 Procurement and Contract Management Guide, the Texas Comptroller of Public Accounts
18 has indicated that this requirement applies to “high-dollar and high-risk contracts.” The
19 Texas Workforce Commission (TWC) has a procedure implementing the requirement but
20 needs to adopt the rule.

21 **Decision Point 1**

22 Staff seeks direction on amending TWC Chapter 800 General Administration rules to
23 address the requirement to have a rule for enhanced contract or performance monitoring.

24 **Issue 2: Bid Protest Procedures—Requirement for Rulemaking**

25 According to Texas Government Code §2155.076, each state agency, by rule, “shall develop
26 and adopt protest procedures for resolving vendor protests relating to purchasing issues. An
27 agency’s rules must be consistent with the [Comptroller’s] rules.” TWC has procedures in
28 place and staff has ensured that its procedures are consistent with the Texas Comptroller’s
29 rules in 34 Texas Administrative Code §1.72. However, statute requires the procedures to be
30 adopted into rule.

31 **Decision Point 2**

32 Staff seeks direction on amending Chapter 800 to add the required procedural rules for bid
33 protests.
34

35 **Issue 3: Purchase of Iron or Steel Products—Requirement for Rulemaking**

36 Texas Government Code, Chapter 2252, Subchapter G sets forth certain requirements for
37 projects by governmental entities that involve the purchase of iron or steel products.
38 Specifically, Texas Government Code §2252.202(a) requires that the uniform general

1 conditions for a project¹ in which iron or steel products will be used must require that the bid
2 documents provided to all bidders and the contract include a requirement that any iron or
3 steel product produced through a manufacturing process and used in the project be produced
4 in the United States. Section 2252.202(b) requires a state agency to adopt rules to promote
5 compliance with §2252.202.

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7 **Decision Point 3**

8 Staff seeks direction on adding to Chapter 800 the requirement that affirms TWC’s
9 compliance with §2252.202. Note: A few agencies have adopted a rule to the effect that the
10 agency intends to comply with the statutory requirements of Subchapter G, Chapter 2252.

11 **Issue 4: Historically Underutilized Businesses—Requirement for Rulemaking**

12 In accordance with Texas Government Code §2161.003, TWC adopted the Comptroller’s
13 Historically Underutilized Business (HUB) rules by reference in §800.3.

14 Minor nonsubstantive revisions are required to correct the citation and Comptroller division
15 references. The current rule language refers to “34 TAC Chapter 20, Subchapter D, Division
16 D [sic], Historically Underutilized Businesses.” The TWC rule also refers to the Texas
17 Procurement and Support Services division, which is no longer the name of that division.
18 Proposed language to correct the citation and reference to the Comptroller division is as
19 follows:

20 “In accordance with Texas Government Code §2161.003, the Agency adopts by reference
21 the rules of the Comptroller of Public Accounts, found at Title 34 Texas Administrative
22 Code, §§20.281–20.298, concerning the Historically Underutilized Business (HUB)
23 Program.”

24 **Decision Point 4**

25 Staff seeks direction on amending §800.3 to correct the citation and Comptroller division
26 references.

¹ A “project” is defined as a contract between a governmental entity and another person, including a political subdivision, to: (A) construct, remodel, or alter a building, a structure, or infrastructure; (B) supply a material for a project described by Paragraph (A); or (C) finance, refinance, or provide money from funds administered by a governmental entity for a project described by Paragraph (A). Specific exceptions are laid out in Texas Government Code §2252.203.