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INTRODUCTION

1. Under the separation of powers established in the Texas Constitution, the legislature writes the laws, executive agencies administer those laws (as written), and courts determine whether those laws are constitutional. *See* Tex. Const. art. II, § 1. Defendant Kelly Hancock, the Acting Texas Comptroller of Public Accounts (the “Comptroller”), has trampled upon this basic civic structure: he has abused emergency rulemaking to rewrite the plain text of a Texas statute—thereby stripping minority- and women-owned small businesses of benefits that they have held for 35 years—upon the false pretext that the statute is unconstitutional.

2. In the 1990s, Texas codified a Historically Underutilized Business (“HUB”) Program to “promote full and equal business opportunities for all businesses in an effort to remedy disparity in state procurement and contracting” by “encourag[ing] the use of [HUBs]. . .” 34 Tex. Admin. Code § 20.281.

3. The statutes implementing the HUB Program, *see* Tex. Gov’t Code Chapter 2161 *et. seq.* (the “HUB Act”); *see also* 34 Tex. Admin Code § 20.281 *et. seq.* (the “HUB Regulations”), define HUBs as Texas small businesses that are majority owned by “economically disadvantaged persons”—specifically: “Black Americans,” “Hispanic Americans,” “women,” “Asian Pacific Americans,” “Native Americans,” and “veterans . . . who have suffered at least a 20 percent service-connected disability. . .” Tex. Gov’t Code § 2161.001.

4. Under the HUB Act, Texas must set “good faith” goals for the percentage of contracted dollars to be awarded to HUBs (i.e., “HUB Utilization Goals”) in (1) the purchases of goods and services and (2) construction contracts. *See* Tex. Gov’t Code §§ 2161.81–82. Thus, by category (e.g., heavy construction), there are Texas-wide HUB Utilization Goals for the dollar value of contracts that Texas aims to award to HUBs. *See* Tex. Admin Code § 20.284(b).

5. Statewide HUB Utilization Goals are the “starting points” for state agencies in setting their own HUB Utilization Goals, which can be “higher or lower than statewide utilization goals.” Tex. Admin. Code § 20.284(a)-(c). Agencies must 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.” *Id.* § (d)-(e). An agency’s “good faith” is demonstrated in part by meeting or exceeding its HUB Utilization Goals. *Id.* Agencies must also make a “good faith effort” to increase HUB Utilization Goals annually. *See* Tex. Gov’t Code § 2161.181.

6. HUB Utilization Goals are not quotas, and HUBs receive no preferential treatment during bidding; unless a HUB is the best value proposition for Texas, the HUB will lose the bid. *See* Tex. Gov’t Code § 2155.074 (requiring a “best value standard for the purchase of goods or services”); *see also* 34 Tex. Admin. Code § 20.281 (“It is the policy of the comptroller to encourage the use of [HUBs] by state agencies and to assist agencies in the implementation of this policy through race, ethnic, and sex-neutral means.”).

7. Instead of enforcing quotas, the HUB Program makes a “good faith effort” to increase HUB contracting by mandating that the Comptroller—who retains primary responsibility for administering the Program—aid HUBs to gain fluency with, and exposure to, the state procurement apparatus. For example, under the statute, the “[C]omptroller shall” certify HUBs to be maintained in a database available to state agencies, train HUBs on bidding, provide notice to HUBs of upcoming contracting opportunities, oversee a HUB mentorship program, and provide a forum for HUBs to present to state agencies. *See, e.g.,* Tex. Gov’t Code § 2161.062 (Assistance to HUBs); *id.* § 2161.065 (Mentor-Protégé Program); *id.* § 2161.064 (HUB Directory); *id.* § 2161.061 (HUB Certification); *id.* § 2161.066 (HUB Forum).

8. In short, the HUB Program does not guarantee state contracts to HUBs, but it affords HUBs a true opportunity to compete for state contracts.

9. Despite clear statutory language demanding that the “Comptroller shall” administer the HUB Program—and a clear statutory definition of HUBs as entities that are owned by minorities, women, and disabled veterans—on December 2, 2025, the Comptroller issued a putative emergency regulation ending the HUB program for entities owned by minorities and women. *See* TRD-202504402 (Dec. 2, 2025) (the “Emergency Regulation” or “Em. Reg.”).¹ Under the Emergency Regulation, the HUB Program will continue only for entities owned by disabled veterans; in fact, the Comptroller has retitled the Program: “VetHUB” (i.e., the “Veteran Heroes United in Business” program). *See id.*

10. The purported basis for the Emergency Regulation—including non-compliance with the 30-day notice and comment period under Texas law—is the supposed need to abide by court rulings striking down unrelated diversity initiatives under the Equal Protection Clause and to enforce Governor Abbott’s executive order requiring “adhere[nce] to the color-blind guarantee of our state and federal Constitutions. . .” Em. Reg. at 1 (citing Ex. Ord. GA-55). These pronouncements are a smokescreen.

11. The Comptroller chose to circumvent notice and comment procedures to eliminate public oversight and input over a Regulation divesting more than 15,000 minority- and women-owned businesses of their HUB certifications. Only about 500 HUBs owned by disabled veterans remain; all are owned by white men. *See* Fiscal 2025 Semi-Annual Expenditure Report, *Statewide Historically Underutilized Business Program*, Texas Comptroller of Public Accounts

¹ A true and correct copy of the Emergency Regulation is attached hereto as Exhibit A; it is also available at: <https://www.sos.state.tx.us/texreg/archive/December122025/Emergency%20Rules/34.PUBLIC%20FINANCE.html#1>

(May 15, 2025).² The purported legal justification for the Emergency Regulation is also spurious. In fact, the District Court for the Western District of Texas recently dismissed an Equal Protection challenge to the HUB Program’s subcontracting requirements. *See Aerospace Solutions, LLC v. Hegar*, No. 24 Civ. 1383, ECF No. 33 (W.D. Tex. 2025); *see also City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 509 (1989) (“narrowly tailored” minority business enterprise programs “to dismantle the closed business system by taking appropriate measures against those who discriminate” satisfy Equal Protection).³

12. Plaintiffs are four minority- and women-owned Texas small businesses and one nonprofit trade association serving minority contractors that have been damaged due to the loss of HUB certifications that had been held for years. Plaintiffs hold millions of dollars in HUB-related contracts. Because of the Emergency Regulation, their prospects for securing future state contracts are greatly diminished. Moreover, because of the Emergency Regulation, Plaintiffs’ current HUB contracts are at risk of cancelation or nonrenewal. In reliance on the Emergency Regulation, the Texas Department of Transportation (“TxDOT”), Texas Health and Human Services Commission (“HHSC”), and Texas Facilities Commission (“TFC”)—the three largest spenders on HUB-related contracts in the first half of 2025—have also stopped complying with the HUB Act’s statutory requirements benefitting minority- and women-owned HUBs. Thus, Plaintiffs have suffered, and continue to suffer, immediate and irreparable harm from the Emergency Regulation and their HUB decertifications.

13. The Comptroller’s illegal rewriting of the HUB Act to invalidate women and minorities’ HUB certifications contravenes the statute’s plain text and purpose in violation of the Texas

² Available At: <https://comptroller.texas.gov/data/purchasing/hub/fy25s/execletter-memo.pdf>

³ Unless otherwise indicated, in quoting cases, all internal quotation marks, footnotes, citations, and quotations are omitted, and all alterations are adopted.

Administrative Procedure Act (“APA”)—while trespassing on Plaintiffs’ rights to Due Process and Equal Protection under the Texas Constitution. Moreover, the Emergency Regulation violates the legislature’s exclusive authority to write statutes and the judiciary’s exclusive authority to determine the constitutionality of statutes—undermining the Texas Constitution’s separation of powers. The Court should declare the Emergency Regulation void, enjoin its enforcement, and order the Comptroller (as well as the heads of TxDOT, HHSC, and TCF) to provide the HUB Program’s statutorily mandated benefits to Texas’s minority- and women-owned small businesses.

JURISDICTION AND VENUE

14. This Court has jurisdiction under Article Five of the Texas Constitution, *see* Tex. Const. art. V, § 8, as well as under Sections 24.008 and 24.011 of the Texas Government Code. *See* Tex. Gov’t Code § 24.008; *id.* § 24.011.

15. This Court also has jurisdiction under Section 2001.038 of the APA, which gives this Court jurisdiction to determine the “validity or applicability of a rule, including an emergency rule adopted under Section 2001.034 . . . in an action for declaratory judgment.” Tex. Gov’t Code § 2001.038(a). Under this provision, “[t]he state agency must be made a party to the action.” *Id.* § 2001.038(c).

16. This Court has power to enjoin application of the Emergency Regulation and *ultra vires* conduct by state officials pursuant to Section 65.011 of Texas Civil Practice and Remedies Code, *see* Tex. Civ. Prac. & Rem. Code § 65.011, and under Section 37.011 of the Texas Uniform Declaratory Judgment Act (“UDJA”). *See* Tex. Civ. Prac. & Rem. Code § 37.011; *accord Sohani v. Sunesara*, 608 S.W.3d 532, 538-39 (Tex. App.—Houston [1st Dist.] 2020, no pet.).

17. Defendants' sovereign immunity does not bar Plaintiffs' claims. No waiver of sovereign immunity is necessary for Plaintiff's claims under the APA, UDJA, Texas Constitution, or Texas civil rights statutes. *See Hegar v. Ryan, LLC*, No. 03-13-00400-CV, 2015 WL 3393917, at *6 (Tex. App.—Austin May 20, 2015, no pet.) (unpublished).

18. All other jurisdictional requirements for filing have been met.

19. Venue is mandatory in Travis County, Texas, under Section 2001.038(b) of the APA. *See* Tex. Gov't Code § 2001.038(b); Tex. Civ. Prac. & Rem. Code § 15.016.

PARTIES

20. Plaintiff Ipsum General Contractors, LLC ("Ipsum") is a Texas limited liability company with its corporate headquarters in Houston, Texas. It is a general contractor that provides construction services.

21. Plaintiff Mpulse Healthcare & Technology, LLC ("Mpulse") is a Texas limited liability company that distributes medical technologies and supplies. Its principal place of business is in Sugar Land, Texas.

22. Plaintiff Williams Professional Water Restoration Service LLC ("WPWRS") is a Texas limited liability company that maintains its principal place of business in Burleson, Texas. WPWRS provides general construction and restoration services.

23. Plaintiff Houston WiFi, Ltd. Co. d/b/a Houston Construction Services ("Houston Construction") is a Texas limited liability company that maintains its principal place of business in Houston, Texas. It is a general contractor.

24. Plaintiff NAMC, Inc. – Greater Houston Chapter ("NAMC Houston") is a nonprofit trade association organized under the laws of Texas with headquarters in Houston, Texas. NAMC was established in 2006 for the benefit of minority- and women-owned contractors.

25. Defendant Kelly Hancock is the Acting Texas Comptroller of Public Accounts. Hancock has served as Comptroller since July 1, 2025, when Glenn Hegar, who previously held the position of Comptroller, stepped down to become Chancellor of the Texas A&M University System. Hancock will stand for election for Comptroller for the first time in November 2026. Hancock is sued only in his official capacity as an agent of Texas, and for acts or omissions that have been (or may be) taken by him under color of law.

26. Defendant the Office of the Texas Comptroller of Public Accounts (“OCPA”) is the state agency principally charged with administering the HUB Program. *See* Tex. Gov’t Code Chapter 2161 *et. seq.* The Comptroller is the head of OCPA.

27. Defendant Marc D. Williams is the Executive Director of TxDOT; he is sued only in his official capacity as an agent of Texas, and for acts or omissions that have been (or may be) taken by him under color of law. TxDOT is the Texas agency tasked with overseeing roads and other transportation infrastructure in Texas. In fiscal year 2024, TxDOT was the Texas agency with the largest HUB expenditures: it spent roughly \$1.25 billion of its total \$14.463 billion in expenditures (8.65%) on HUB-related contracts.⁴ In the first half of fiscal year 2025, TxDOT was again the Texas agency with the largest HUB expenditures: it spent roughly \$632.53 million of its total \$7.934 billion in expenditures (7.97%) on HUB-related contracts.

28. Defendant Stephanie Muth is the Executive Commissioner of HHSC; she is sued only in her official capacity as an agent of Texas, and for acts or omissions that have been (or may be) taken by her under color of law. HHSC is the Texas agency charged with administering programs such as Medicaid and providing long-term support services to seniors and people with disabilities. In fiscal year 2024, HHSC was the Texas agency with the second largest HUB

⁴ HUB spending by agency is available at: <https://comptroller.texas.gov/data/purchasing/hub/fy25s/>. The first half of fiscal year 2025 is the last period for which information on HUB spending is available.

expenditures: it spent about \$206.4 million of its \$1.63 billion in total expenditures (12.65%) on HUB-related contracts. In the first half of fiscal year 2025, HHSC was again the Texas agency with the second largest HUB expenditures: it spent roughly \$192.1 million of its \$813.14 million in total expenditures (23.63%) on HUB-related contracts.

29. Defendant Will Mckerall is the Executive Director of TFC; he is sued only in his official capacity as an agent of Texas, and for acts or omissions that have been (or may be) taken by him under color of law. TFC is the Texas agency charged with overseeing the planning, management, construction, operation, purchase/sale, and leasing of state facilities. In 2024, TFC was the Texas agency with the sixth largest HUB expenditures: it spent about \$155.7 million of its total \$989.4 million in expenditures (15.67%) on HUB-related contracts. In the first half of fiscal year 2025, TFC was the Texas agency with the third largest HUB expenditures: it spent about \$113.29 of a total \$634.59 million in expenditures (17.85%) on HUB-related contracts.

DISCOVERY

30. The Plaintiffs intend to conduct discovery under level 3 of the Texas discovery rules. *See* Tex. R. Civ. P. 190.4.

NONMONETARY RELIEF

31. Plaintiffs seek nonmonetary relief. *See* Tex. R. Civ. P. 47(c)(5).

FACTUAL ALLEGATIONS

I. The HUB Program's Statutory Framework.

32. In the 1990s, Texas passed the HUB Act to remedy its long history of *de jure* and *de facto* discrimination in state contracting.

33. As part of the HUB Act's passage, Texas commissioned a disparity study of contracting rates at state agencies during fiscal years 1989 to 1993. *See* Tex. Gov't Code § 2161.002. That

study, published in 1994, “identified discrimination in all categories” of state contracts. *See* MGT of America Inc., *Final Report: A Historically Underutilized Business (HUB) Disparity Study of State Contracting 2009 Final Report*, Texas Comptroller of Public Accounts, 5 (March 30, 2010).⁵ Follow-up studies in 2009 and 2016 continued to find persistent discrimination and recommended that Texas reinforce its HUB Program. *See id.*⁶

34. The HUB Act defines a HUB as a sole proprietor, partnership, or corporation in which at least 51 percent of securities are owned by “economically disadvantaged persons.” *See* Tex. Gov’t Code § 2161.001(2)(A).

35. The term “economically disadvantaged person” is defined to include:

- a. “(i) Black Americans; (ii) Hispanic Americans; (iii) women; (iv) Asian Pacific Americans; (v) Native Americans; and (vi) veterans . . . who have suffered at least a 20 percent service-connected disability;” or
- b. “any person who “has suffered the effects of discriminatory practices or other similar insidious circumstances.” Tex. Gov’t Code § 2161.001(3).

36. To “encourag[e] the use of [HUBs],” 34 Tex. Admin. Code § 20.281, the HUB Act mandates that Texas establish state-wide HUB Utilization Goals for the contracted amounts to be awarded to HUBs and that state agencies set their own HUB Utilization Goals. *See* Tex. Gov’t Code §§ 2161.181-82; Tex. Admin. Code § 20.284. State agencies must make “good faith” efforts to meet those Goals and to grow Goals year-over-year. *See id.*

⁵ Available At: <https://www.angelo.edu/live/files/26224-2009-tx-disparity-studypdf>.

⁶ Disparities in government contracting are also well documented across the largest cities in Texas. *See, e.g.*, MGT of America Inc., *Houston TX 2023 M/WBE Disparity Study*, Houston Office of Bus. Opportunity (May 7, 2024); Colette Holt & Assoc., *City of Austin Disparity Study 2022*, City of Austin (July 2022); Colette Holt & Assoc., *The City of San Antonio Disparity Study 2023*, San Antonio (2023); Colette Holt & Assoc., *City of Fort Worth, Texas Disparity Study 2020*, Fort Worth (2020); Colette Holt & Assoc., *Dallas County, Texas Disparity Study 2015*, Dallas (2015).

37. The HUB Act also encourages the use of HUBs in subcontracting. *See* Tex. Gov't Code § 2161.252; Tex. Admin. Code § 20.284. For example, when a Texas agency “considers entering into a contract with an expected value of \$100,000 or more,” that agency must “determine whether there will be subcontracting opportunities under the contract.” Tex. Gov't Code § 2161.252(a). If subcontracting is “probable,” then the agency must require that each bid on the contract include a “[HUB] subcontracting plan” (“HSP”). *Id.*

38. Each HSP must demonstrate “good faith.” Tex. Gov't Code § 2161.253. This can principally be achieved by stating that (1) the contractor will use HUB subcontractors (at least sufficiently to meet the HUB Utilization Goal); (2) the contractor informed HUB subcontractors of the opportunity but justifiably chose to go with (lower cost) non-HUB subcontractors; or (3) will perform all the work itself and avoid subcontracting. *See* Tex. Gov't Code § 2161.253; 34 Tex. Admin. Code § 20.285(d)(1)–(4).

39. While the HUB Program adopts “good faith” measures to ensure that HUBs are competing for state contracts and subcontracts on a level playing field, the HUB program does not institute quotas; nor does the statute mandate preferential treatment for HUBs in bidding. *See* Tex. Gov't Code § 2155.074 (requiring a “best value standard for the purchase of goods or services”); *see also* 34 Tex. Admin. Code § 20.281 (“It is the policy of the comptroller to encourage the use of [HUBs] by state agencies and to assist agencies in the implementation of this policy through race, ethnic, and sex-neutral means.”).

40. Instead, the HUB Act seeks to remedy the informational and relational deficits that have plagued HUBs in Texas for generations. For example, the HUB Act requires that the “Comptroller shall:”

- a. “offer [HUBs] assistance and training regarding state procurement procedures,”
Tex. Gov’t Code § 2161.062;
- b. “advise [HUBs] of available state contracts. . .,” *id.*;
- c. advise [HUBs] to apply for registration on the comptroller’s master bidders
list. . .,” *id.*;
- d. “send [HUBs] an orientation package on certification or recertification. . .,” *id.*;
- e. “design a mentor-protege program to foster long-term relationships between
prime contractors and [HUBs]. . .,” *id.* § 2161.065; and
- f. “design a program of forums in which [HUBs] are invited by state agencies to
deliver technical and business presentations. . .,” *id.* § 2161.066.

41. To manage these services, and expose HUBs to state procurement agents, the Comptroller certifies qualified HUBs and maintains an online HUB directory. *See* Tex. Gov’t Code § 2161.061; *id.* § 2161.064; *see also* 34 Tex. Admin. Code § 20.288 (Certification Process); *id.* § 20.293 (HUB Directory).⁷

42. Beyond the Comptroller, the HUB Act also imposes requirements on other state agencies. For example, “state agencies with biennial budgets that exceed \$10 million shall designate a staff member” to serve as a “HUB coordinator” to facilitate HUB contracting. Tex. Gov’t Code § 2161.062(e); *see also* 34 Tex. Admin. Code § 20.296 (HUB Coordinator). And “each state agency that has a [HUB] coordinator shall aggressively identify and notify individual [HUBs] regarding opportunities to make a presentation regarding the types of goods and services supplied by the [HUB]. . .” Tex. Gov’t Code § 2161.066(e).

⁷ The HUB directory is available at: <https://mycpa.cpa.state.tx.us/tpassemblsearch/tpassemblsearch.do>

43. Similarly, the HUB ACT requires that such a “state agency shall maintain and compile monthly information relating to the use by the agency and each of its operating divisions of [HUBs], including information regarding subcontractors” and “shall report” information relating to HUB use to the Comptroller. Tex. Gov’t Code § 2161.122(a)-(c). This data then underpins the agency’s mandatory “strategic plan”—i.e., “a written plan for increasing the agency’s use of [HUBs] in purchasing and public works contracting.” Tex. Gov’t Code § 2161.123. And such a agency “shall prepare a report for each fiscal year documenting progress under its plan for increasing use of [HUBs]” to be filed with the governor. Tex. Gov’t Code § 2161.124.

44. Thousands of minority- and women-owned businesses have participated in, and benefitted from, the HUB program over the last 35 years. For decades, Texas small businesses have organized their activities around the HUB program: they have invested capital, hired employees, obtained loans, and built operations around HUB requirements.

45. In Fiscal Year 2024, the Comptroller’s database included 16,995 HUBs; 3,634 of those HUBS were awarded approximately \$4.1 billion in state contracts (of approximately \$20 billion in total state contracts). *See* Fiscal 2024 Annual Expenditure Report, *Statewide Historically Underutilized Business Program*, Texas Comptroller of Public Accounts (Nov. 15, 2024).⁸ These contracts awarded to HUBs support significant numbers of jobs across Texan small businesses—especially in the construction, professional services, IT, and manufacturing sectors.

II. The Comptroller Undermined the HUB Program Via Emergency Regulation in Violation of the HUB Act’s Plain Text and Statutory Purpose.

46. On October 28, 2025, the Comptroller announced “a freeze on the issuance of new and renewed Historically Underutilized Business (HUB) certifications for state procurement, pending

⁸ Available At: <https://comptroller.texas.gov/data/purchasing/hub/fy25s/execletter-memo.pdf>

further action to ensure the program’s administrative procedures and rules are constitutional.” Press Release, *Historically Underutilized Business Certification Process Suspended by Acting Texas Comptroller*, OCPA (Oct. 28, 2025).⁹

47. The guidance accompanying the October 28 press release explained, “[t]he Comptroller’s Office is in the process of revising its administration of the HUB program and corresponding rules in light of the governor’s issuance of Executive Order GA-55 and recent decisions of the U.S. Supreme Court.” Guidance, *Prohibiting Unlawful Discrimination in State Contracting*, OCPA (Oct. 28, 2025).¹⁰

48. On December 2, 2025, the Comptroller released the Emergency Regulation, proclaiming that—effective immediately—the HUB program would not benefit businesses owned by women and minorities; rather, it would be “restructured” to “focus[] exclusively on small businesses owned and operated by veterans with a 20 percent or higher service-connected disability.” Press Release, *Acting Texas Comptroller Kelly Hancock Announces Emergency Regulations for Revamped VetHUB Program*, OCPA (Dec. 2, 2025).¹¹

49. Thus, despite the explicit statutory dictate that the “[C]omptroller shall” administer the HUB program to entities that are majority owned by “(i) Black Americans; (ii) Hispanic Americans; (iii) women; (iv) Asian Pacific Americans; (v) Native Americans; and (vi) veterans . . . who have suffered at least a 20 percent service-connected disability . . .”—the Comptroller decided to administer the HUB program only to the last category. Tex. Gov’t Code § 2161.001(3)(A).

⁹ Available At: <https://comptroller.texas.gov/about/media-center/news/20251028-historically-underutilized-business-certification-process-under-review-by-acting-texas-comptroller-1761686774358>.

¹⁰ Available At: <https://comptroller.texas.gov/about/media-center/news/20251028-historically-underutilized-business-certification-process-under-review-by-acting-texas-comptroller-1761686774358>.

¹¹ Available At: <https://comptroller.texas.gov/about/media-center/news/20251202-acting-texas-comptroller-kelly-hancock-announces-emergency-rules-for-revamped-vethub-program-1764695317378>.

50. Indeed, the Comptroller has renamed the Hub Program to be the “Veteran Heroes United in Business” program or “VetHUB”—effectively retitling the statute. The Comptroller made no effort to analyze and alter the statute on an individual provision basis, as a court would do if faced with a good faith constitutional challenge to a statute (which the Emergency Regulation is not). Instead, the Comptroller threw out entire provisions of the statute and effectively wholesale rewrote them.

51. The Comptroller purports to have made these changes via emergency rulemaking that bypassed Texas’s notice and comment procedures. *See, e.g.*, Tex. Gov’t Code § 2001.023(a) (“A state agency shall give at least 30 days’ notice of its intention to adopt a rule before it adopts the rule.”); *id.* § 2001.029(b) (“Before adopting a rule, a state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing.”).

52. Upon promulgating the Emergency Regulation, on December 2, 2025, the Comptroller emailed notices to some—but not all—HUBs owned by minorities and women to inform them that their HUB certifications would be canceled in 30 days unless they could show that they also qualify for HUB certification based upon being owned by a disabled veteran.

53. On January 6, 2026, the Comptroller emailed notices to some—but not all—HUBs owned by minorities and women to inform them that their HUB certifications were canceled. However, the Comptroller decertified all minority- and women-owned HUBs on this date, regardless of whether they received an email notification.

54. Since the Emergency Regulation went into effect, the number of certified HUBs dropped from more than 15,000 to about 500. Of the 500 remaining HUBs, which are owned by disabled veterans, all are owned by white men. *See Fiscal 2025 Semi-Annual Expenditure Report 2025, Statewide Historically Underutilized Business Program*, Texas Comptroller of Public Accounts

(May 15, 2025) (“The ‘Service-Disabled Veteran’ category does not include women or individuals who are in the Asian Pacific American, Black American, Hispanic American and Native American ethnicities.”).¹²

55. Agencies across Texas have also drastically reduced their HUB Utilization Goals. In fiscal year 2025, the statewide HUB Utilization Goals—i.e., the “starting point” for all agency-level HUB Utilization Goals—included the following targets: “11.2 percent for heavy construction other than building contracts; 21.1 percent for all building construction, including general contractors and operative builders’ contracts; 32.9 percent for all special trade construction contracts; 23.7 percent for professional services contracts; 26.0 percent for all other services contracts; and 21.1 percent for commodities contracts.” Statewide Procurement Division, *Procurement and Contract Management Guide*, State of Texas 64 (Ver. 4.0, 2025).¹³ However, in the wake of the Emergency Regulation, Texas A&M, for example, has reduced its HUB Utilization Goals to 1% across all these categories. The University of Texas System has, likewise, reduced its HUB Utilization Goals to 1.75% or lower across all categories—illustrating the Comptroller’s dismantling of the legislatively enacted HUB Program. *See* Office of HUB Programs, *HSP Option 2*, The University of Texas System (Jan. 26, 2026).¹⁴

III. Plaintiffs Suffered Immediate and Irreparable Injury from the Emergency Regulation.

56. Plaintiffs have suffered, and will continue to suffer, significant injuries because of the Emergency Regulation and their HUB decertifications.

¹² Available At: <https://comptroller.texas.gov/data/purchasing/hub/fy25s/execletter-memo.pdf>

¹³ Available At: <https://comptroller.texas.gov/purchasing/publications/procurement-contract.php>.

¹⁴ Available At: <https://www.utsystem.edu/sites/default/files/offices/historically-underutilized-business/HSP-Option-2---Subcontracting-HUBs-only--rev.01.26.2026-.pdf>.

A. Ipsum.

57. Ipsum is a general contractor. Its main lines of business are: (1) clearing and grubbing; (2) grading and excavation; (3) sanitary and sewer; (4) domestic, fire, water, and storm drainage; (5) erosion control; and (6) concrete, asphalt paving, and road construction. Ipsum employs about twenty people in Texas.

58. Ipsum is wholly owned by a Hispanic American, Ruben Mercado Jr., who founded the company in 2015. Ipsum held a HUB certification for over ten years until it was decertified by the Comptroller on January 6, 2026, because of the Emergency Regulation. Approximately 75% of Ipsum's contracts are HUB-related. Many of its largest contracts are with state universities. Ipsum generated almost \$3 million in revenue from HUB-related contracts in the last two years.

59. Given the centrality of Ipsum's HUB status to its business, the Emergency Regulation threatens to destroy Ipsum. In fact, many of the HUB-related opportunities Ipsum was pursuing have disappeared. For example, Ipsum drafted a bid proposal on at least one HUB project—totaling about \$1 million. However, the bidding process for that work terminated prematurely due to the Emergency Regulation's changes to the HUB Program. Moreover, an existing HUB-related contract for \$2 million of work with UT MD Anderson—that was scheduled to end in August 2027—was abruptly terminated on February 23, 2026.

B. Mpulse.

60. Mpulse is a small business that is wholly-owned and managed by Tyrone Dixon, a Black American. It held a HUB certification for over fifteen years until it was decertified by the Comptroller on January 6, 2026, because of the Emergency Regulation.

61. Mpulse's primary lines of business are: (1) distributing technical hardware and software; (2) supplying medical products; and (3) providing maintenance, repair, and operations products.

Mpulse's main customers are universities—including those affiliated with the state of Texas. Mpulse employs ten people in Texas.

62. All Mpulse contracts—including its four active contracts—are HUB-related; consequently, the Emergency Regulation poses an existential threat to Mpulse's business. In 2025, Mpulse secured a contract with the University of Texas system that generates significant revenue. However, Mpulse's university clients are reviewing Mpulse's contracts because of the Emergency Regulation's changes to the HUB Program and Mpulse's decertification. Mpulse stands to lose millions of dollars in revenue because of the Comptroller's conduct.

C. WPWRS.

63. WPWRS is a small business that provides general construction and restoration services but specializes in structural disaster restoration, including water/fire/mold damage restoration and biohazard remediation.

64. WPWRS is wholly owned, managed, and controlled by Cortena Williams, a Black American woman with over ten years of experience in the restoration industry. Ms. Williams incorporated WPWRS in Texas in November 2024. WPWRS held a HUB certification from April 21, 2025, until the Comptroller decertified it on January 6, 2026, because of the Emergency Regulation.

65. Prior to the issuance of the Emergency Regulation, WPWRS expected HUB-related contracts to generate more than half of its forecasted revenue for fiscal year 2026. In fact, WPWRS marketed itself as a HUB-certified entity and was in the process of bidding on two HUB-related opportunities with Parkland Health & Hospital System and Texas A&M University. Negotiations with both entities ended because WPWRS lost its HUB status. Absent

recertification as a HUB, WPWRS will be forced to overhaul its entire business model and will forfeit opportunities worth millions.

D. Houston Construction.

66. Houston Construction is a general contractor; its main lines of business are: (1) commercial building, (2) concrete paving, (3) concrete pouring, (4) plastering, (5) masonry, (6) demolition services, (7) painting, and (8) drywalling.

67. Houston Construction is wholly owned, managed, and controlled by a Hispanic American, Ray Gutierrez, who has decades of experience in construction. Houston Construction was a certified HUB for over 20 years, until it was decertified by the Comptroller on January 6, 2026, because of the Emergency Regulation.

68. Approximately half of Houston Construction's contracts over the last several years were tied to its HUB certification. Prior to the issuance of the Emergency Regulation, Houston Construction was preparing bids for HUB-related contracts that would likely generate revenue well over \$5 million. Houston Construction's HUB decertification will devastate its business.

E. NAMC Houston.

69. NAMC Houston is one of twenty-two chapters affiliated with the National Association of Minority Contractors, Inc., a nonprofit trade association established in 1969 to "position deserving minority and female-owned businesses to win contracts, increase branding visibility, and expand their client base through relationship development opportunities."

70. NAMC Houston's mission is to:

- a. Provide education and training to minority contractors in construction.
- b. Promote the economic and legal interests of minority contracting firms.
- c. Advocate law and government actions for minority contractors.

- d. Bring about wider procurement and business opportunities for minority contractors.
- e. Reduce and remove the barriers to full equality for minority contractors.
- f. Build bridges between minority contractors and the entities for which they work.
- g. Create a forum for minority contractors to share information and mutual support.

71. The Emergency Regulation impedes NAMC Houston’s capacity to achieve these goals. NAMC Houston’s members include more than 150 minority- and women-owned firms—with 70% identifying as Hispanic and 30% identifying as Black American. Most NAMC Houston members were HUB certified prior to the Emergency Regulation and corresponding decertification; contracts tied HUB certifications made up significant portions of their revenues.

72. In the wake of the Emergency Regulation, the clients of NAMC Houston members are: (1) canceling HUB-related contracts; (2) declining to renew HUB-related contracts as routinely had occurred in the past; and (3) opening bidding on HUB-related contracts that had been routinely renewed in the past.¹⁵ These include contracts with TxDOT, HHSC, and TFC. The loss of HUB-related contracts is costing NAMC Houston members millions of dollars in revenue. Many NAMC Houston members have business models that are designed around their HUB status. Those businesses will be unable to weather the storm created by the Emergency Regulation—leading to closures, bankruptcies, and mass layoffs across Texas.

¹⁵ While the Emergency Regulation purports not to affect current contracts and bidding, that is not what is occurring on the ground. *See* Em. Reg. at 4 (“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. . .”).

CLAIMS FOR RELIEF
(Against the Comptroller and OCPA)

I. Violation of Statutory Text and Purpose—Tex. Gov’t Code § 2001.038; Tex. Gov’t Code § 2001.174; Tex. Gov’t Code § 2161.001; Tex. Gov’t Code §§ 2161.061-62.

73. Plaintiffs re-allege and incorporate by reference all the above paragraphs as if they were fully set forth herein.

74. Under Section 2001.038 of the APA, “the validity or applicability of a rule, including an Emergency Regulation adopted under Section 2001.034, may be determined in an action for declaratory judgment if it is alleged that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff.” Tex. Gov’t Code § 2001.038(a).

75. For this provision, a rule is void “if (1) the agency had no statutory authority to promulgate it; (2) it was not promulgated pursuant to proper procedure; or (3) it is unconstitutional.” *Muth v. Voe*, 691 S.W.3d 93, 110 (Tex. App.—Austin 2024, pet. filed). A rule is facially invalid if it (1) conflicts with the statutory language; (2) contradicts the objectives of the statute; or (3) imposes burdens, preconditions, and limitations beyond what the statute requires. *See Texas Bd. of Chiropractic Examiners v. Texas Med. Ass’n*, 616 S.W.3d 558, 569 (Tex. 2021).

76. Similarly, under Section 2001.174 of the APA, a court shall “reverse” agency actions, such as Plaintiffs’ HUB decertifications, “if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (A) in violation of a constitutional or statutory provision; (B) in excess of the agency’s statutory authority; [or] (C) made through unlawful procedure. . .” Tex. Gov’t Code § 2001.174(2).

77. The Emergency Regulation is facially invalid under Section 2001.038(a) because it violates the plain text of the HUB Act; Plaintiffs' HUB decertifications are invalid under Section 2001.174 for the same reason.

78. The HUB Act unambiguously defines HUBs as entities that are majority owned by “(i) Black Americans; (ii) Hispanic Americans; (iii) women; (iv) Asian Pacific Americans; (v) Native Americans; and (vi) veterans . . . who have suffered at least a 20 percent service-connected disability . . .” *See* Tex. Gov't Code § 2161.001.

79. The HUB Act mandates that “[t]he [C]omptroller shall certify [HUBs]” meeting this definition. Tex. Gov't Code § 2161.061. The HUB Act also mandates that the “Comptroller shall” administer the HUB Program to all HUBs meeting this definition—including by providing a litany of services to HUBs. *See, e.g.,* Tex. Gov't Code § 2161.062 (e.g., notification of upcoming bids). The HUB Act also clearly states that 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 [HUBs]. . .” Tex. Gov't Code § 2161.181.

80. The Emergency Regulation conflicts with the statute's text by excising women- and minority-owned entities out of the statutory definition of HUBs and denying them the services the “Comptroller shall” provide under the statute. *See, e.g., Davis v. Morath*, 624 S.W.3d 215, 222 (Tex. 2021) (an “agency is not at liberty to add to or subtract from” statutory text); *Ryan*, 2015 WL 3393917, at *13 (affirming the voiding of a Comptroller rule because it “impose[d] additional burdens, conditions, or restrictions in excess of or inconsistent with” the “plain language” and “the overall statutory scheme”).¹⁶

¹⁶ The only discretion granted to the Comptroller in the HUB Act to constrict the definition of what qualifies as a HUB is to determine at what size a small business is too large to merit HUB-related assistance. *See* Tex. Gov't Code § 2161.0015 (“The comptroller may establish size standards that a business may not exceed if it is to be

81. The Emergency Regulation also conflicts with the statutory purpose of the HUB Act. *See* Tex. Gov’t Code § 2161.181 (“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 [HUBs] based on rules adopted by the comptroller to implement the disparity study. . .”); *id.* § 2161.004(b) (“The legislature intends that all qualified businesses have access to compete for business from the state.”); *see also* 34 Tex. Admin. Code § 20.281 (“It is the policy of the comptroller to encourage the use of [HUBs] by state agencies. . .”).

82. In fact, the statute specifically states that, when the Comptroller devises rules, the goal of increasing the number of veteran-owned HUBs cannot negatively impact the goal of increasing the number of minority- and women-owned HUBs as outlined in a state-commissioned disparity study on diversity in state procurement. *See* Tex. Gov’t Code § 2161.002(c)-(d).

83. Because of the Emergency Regulation, the number of HUBs in Texas dropped from about 16,000 to about 500 that are all owned by white men—illustrating the Comptroller’s mangling of the HUB Act’s statutory purpose to “encourage the use” of HUBs.¹⁷

considered a historically underutilized business. . .”). This explicit and singular statutory grant of discretion over HUB eligibility demonstrates that no other discretion to reduce HUB eligibility is granted.

¹⁷ Beyond merely conflicting with the statutory text, the Emergency Regulation also conflicts with the Comptroller’s own regulatory framework in the HUB Regulations. The Emergency Regulation purports to amend eight regulations to remove applicability to minority- and women-owned HUBs. *See* Em. Reg. at 1 (citing 34 Tex. Admin. Code § 20.281; *id.* § 20.282; *id.* § 20.284; *id.* § 20.285; *id.* § 20.288; *id.* § 20.294; *id.* § 20.295; *id.* § 20.296; *id.* § 20.298).

II. Violation of Separation of Powers—Tex. Gov’t Code § 2001.038; Tex. Gov’t Code § 2001.174; Tex. Const. art. II, § 1.

84. Plaintiffs re-allege and incorporate by reference all the above paragraphs as if they were fully set forth herein.

85. Under Section 2001.038 of the APA, “the validity or applicability of a rule, including an Emergency Regulation adopted under Section 2001.034, may be determined in an action for declaratory judgment if it is alleged that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff.” Tex. Gov’t Code § 2001.038(a).

86. For this provision, a rule is void “if (1) the agency had no statutory authority to promulgate it; (2) it was not promulgated pursuant to proper procedure; or (3) it is unconstitutional.” *Muth*, 691 S.W.3d at 110.

87. Similarly, under Section 2001.174 of the APA, a court shall “reverse” agency actions, such as Plaintiffs’ HUB decertifications, “if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (A) in violation of a constitutional or statutory provision; (B) in excess of the agency’s statutory authority; [or] (C) made through unlawful procedure. . .” Tex. Gov’t Code § 2001.174(2).

88. The Emergency Regulation—and Plaintiffs’ corresponding HUB decertifications—are invalid under APA Sections 2001.038 and 2001.174 because they violate the Texas Constitution.

89. Under the Texas Constitution, “The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: those which are Legislative to one, those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the

instances herein expressly permitted.” Tex. Const. art. II, § 1. Thus, the Texas Constitution contains an “explicit prohibition against one government branch exercising a power attached to another.” *Perry v. Del Rio*, 67 S.W.3d 85, 91 (Tex. 2001).

90. This provision ensures “that a power which has been granted to one department of government may be exercised only by that branch to the exclusion of others,” and thus “any attempt by one department of government to interfere with the powers of another is null and void.” *Ex parte Giles*, 502 S.W.2d 774, 780 (Tex. Crim. App. 1974). Officers from one branch may only exercise powers of another branch in narrow circumstances that must be specified in the Constitution itself. *See Fin. Comm’n of Texas v. Norwood*, 418 S.W.3d 566, 570 (Tex. 2014) (“Exceptions to the constitutionally mandated separation of powers are never to be implied in the least; they must be ‘expressly permitted’ by the Constitution itself.”) (quoting Tex. Const. art. II, § 1).

91. A separation of powers violation can occur in two ways: (1) “when one branch of government assumes, or is delegated, to whatever degree, a power that is more properly attached to another branch;” or (2) “when one branch unduly interferes with another branch so that the other branch cannot effectively exercise its constitutionally assigned powers.” *Martinez v. State*, 503 S.W.3d 728, 733 (Tex. App.—El Paso 2016, pet. ref’d) (emphasis in original).

92. Pursuant to the separation of powers framework, the legislature retains exclusive power to draft and revise statutes. *See, e.g., State v. Rhine*, 297 S.W.3d 301, 305 (Tex. Crim. App. 2009) (“The Texas Constitution vests law-making power in the legislature. Only the legislature can exercise that power, subject to restrictions imposed by the constitution.”). The Comptroller

usurped this exclusive authority of the legislature when—via emergency rulemaking—he revised the statute’s definition of a HUB and retitled the HUB Program as “vetHUB.”¹⁸

93. In fact, in 2025, the Texas legislature considered and rejected a bill that would have restricted the definition of HUBs to entities owned by disabled veterans. *See* 2025 Texas House Bill No. 167, Texas Eighty-Ninth Legislature (“TITLE: Relating to the implementation of diversity, equity, and inclusion initiatives and certain prohibited considerations in contracting by governmental entities.”). Thus, the Comptroller did by emergency rule what the legislature affirmatively declined to do by statute—in cutting the HUB Program, the Comptroller overrode the legislature’s determination.

94. Likewise, pursuant to the Texas Constitution’s separation of powers framework, the judiciary retains exclusive authority to declare a statute unconstitutional. *See Norwood*, 418 S.W.3d at 572–73 (“The ultimate power to construe constitutional provisions lies solely with the courts.”); *see also Todd v. State*, 956 S.W.2d 777, 780 (Tex. App.—Waco 1997, pet. ref’d) (“The constitutionality of statutes is for the judiciary.”).

95. Accordingly, “as a rule,” agencies “lack authority to decide” the constitutionality of statutes. *Edwards Aquifer Auth. v. Day*, 369 S.W.3d 814, 844 (Tex. 2012); *see Norwood*, 418 S.W.3d at 572 (“[T]he Legislature has no authority to interpret or declare a matter of constitutional construction, nor may it delegate such authority to an administrative agency.”); *City of Dallas v. Stewart*, 361 S.W.3d 562, 568 (Tex. 2012) (“Agencies, we have held, lack the ultimate power of constitutional construction.”); *Cent. Power & Light Co. v. Sharp*, 960 S.W.2d 617, 618 (Tex. 1997) (per curiam) (“the agency lacks the authority to decide th[e] issue” of whether the “underlying statute is unconstitutional”).

¹⁸ In the Emergency Regulation, the Comptroller also overstepped the rulemaking authority granted to him by the legislature to “adopt rules to efficiently and effectively administer this chapter.” Tex. Gov’t Code § 2161.0012.

96. Texas courts reject attempts by agencies to claim this power. *See, e.g., City of Richardson v. Bowman*, 555 S.W.3d 670, 686 (Tex. App.—Dallas 2018, pet. denied) (challenges to constitutionality are “pure questions of law” that are outside the agency’s purview because “administrative agencies lack the ultimate power of constitutional construction”); *Juliff Gardens, L.L.C. v. Texas Comm’n on Env’t Quality*, 131 S.W.3d 271, 279 (Tex. App.—Austin 2004, no pet.) (“Although the Commission’s staff is trained in dealing with permitting matters, it is not empowered to determine the constitutionality of statutes.”).

97. The Comptroller explicitly grounded the Emergency Regulation’s elimination of HUB certifications from women- and minority-owned businesses upon the HUB Act’s supposed violation of Equal Protection—thereby usurping the judiciary’s exclusive power to determine constitutionality. *See, e.g., Em. Ord.* at 3 (“[T]he 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.”).

98. In fact, the Comptroller also cited constitutionality in notifying Plaintiffs that their HUB certifications were cancelled: “Under the emergency rules that were posted to the Texas Register addressing the Historically Underutilized Business (HUB) program effective Dec. 2, 2025, your business was removed from the HUB directory. To ensure the Comptroller’s office implements and administers the HUB program in a constitutional manner, these emergency rules eliminate each classification that could violate the U.S. and Texas constitutions. Without those classifications, the program now serves small businesses owned by service-disabled veterans

(SDVs) with at least a 20 percent disability rating, regardless of race, sex or ethnicity, and is referred to as Veteran Heroes United in Business or VetHUB.”

99. Simply put, the Comptroller improperly wielded executive authority and attempted to exercise the powers of the legislative and judicial branches of government.

III. Non-compliance with Emergency Rulemaking Requirements—Tex. Gov’t Code § 2001.035; Tex. Gov’t Code § 2001.038; Tex. Gov’t Code § 2001.034.

100. Plaintiffs re-allege and incorporate by reference all the above paragraphs as if they were fully set forth herein.

101. Under Section 2001.035 of the APA, “[a] rule is voidable unless a state agency adopts it in substantial compliance with Sections 2001.022 through 2001.034.” Tex. Gov’t Code § 2001.035(a). For purposes of this provision, “an agency’s order substantially complies with a procedural rulemaking requirement if it accomplishes the legislative objectives underlying the requirement and comes fairly within its character and scope.” *Pub. Util. Comm’n of Texas v. Luminant Energy Co. LLC*, 691 S.W.3d 448, 465 (Tex. 2024).

102. Under Section 2001.038 of the APA, “the validity or applicability of a rule, including an Emergency Regulation adopted under Section 2001.034, may be determined in an action for declaratory judgment if it is alleged that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff.” Tex. Gov’t Code § 2001.038(a). For this provision, a rule is void “if (1) the agency had no

statutory authority to promulgate it; (2) it was not promulgated pursuant to proper procedure; or (3) it is unconstitutional.” *Muth*, 691 S.W.3d at 110.¹⁹

103. The Emergency Regulation is void under these provisions because the Comptroller lacked a valid basis to invoke emergency rulemaking authority. *See* Tex. Gov’t Code § 2001.034.

104. The APA ordinarily requires an agency to engage in notice and comment procedures before promulgating a rule. *See, e.g.*, Tex. Gov’t Code § 2001.023 (30 day notice); Tex. Gov’t Code § 2001.029 (public comment). However, these procedural requirements can be lifted in extreme circumstances to address crises. Under Section 2001.034 of the APA, “a state agency may adopt an Emergency Regulation without prior notice or hearing, or with an abbreviated notice and a hearing that it finds practicable, if the agency: (1) 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; and (2) states in writing the reasons for its finding under Subdivision (1).” Tex. Gov’t Code § 2001.034(a).

105. For two reasons, the Comptroller did not satisfy the requirements for emergency rulemaking before passing the Emergency Regulation.

106. *First*, the Comptroller cannot engage in emergency rulemaking with respect to HUBs because the HUB Act specifically requires the Comptroller to hold a hearing on all rules under all circumstances. *See* Tex. Gov’t Code § 2161.0012(a) (“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.”). Nothing in the

¹⁹ Beyond its procedural defects, for the reasons stated in Claims I, II, VIII, IX, and XI, the Comptroller lacked statutory and constitutional authority to promulgate the Emergency Regulation; the Emergency Regulation is, therefore, also necessarily invalid under Tex. Gov’t Code § 2001.038.

general provisions of the APA, allowing for emergency rulemaking, obviate this specific requirement from the HUB Act for public hearing on all rules relating to the HUB Program.

107. Second, even if HUB rules could be promulgated on an emergency basis without public hearing, no grounds for emergency rulemaking existed here. No “imminent peril to the public health, safety, or welfare. . .” necessitated cessation of the HUB program. Nor did any state or federal law require adoption of the Emergency Regulation on less than 30 days’ notice.

108. The stated legal basis for the Emergency Regulation is inapposite. The Emergency Regulation relies principally on a district court decision in *Nuziard v. Minority Bus. Dev. Agency*, striking down the Minority Business Development Agency’s (“MBDA”) grant of preferential credit access to minorities, as the basis for the erroneous conclusion that the HUB Act violates the Equal Protection Clause. *See* 721 F. Supp. 3d 431, 498 (N.D. Tex. 2024); Em. Reg. at 2. However, *Nuziard* (a non-binding authority) struck down a federal program that is distinguishable from the HUB Program. And *Nuziard*, which was decided in March 2024, was more than a year old when the Comptroller issued the Emergency Regulation in December 2025—illustrating that no time-sensitive basis for circumventing notice and comment rulemaking existed.²⁰

109. Moreover, on December 22, 2025, a Court in the Western District of Texas dismissed a complaint brought by a small business contending that the HUB Program’s subcontracting requirements violated the rights of white- and male-owned businesses under the

²⁰ The Supreme Court cases cited in the Emergency Regulation—applying the Equal Protection Clause, Title VI, and Title IX in far afield contexts—shed little light on this HUB Program. *See United States v. Skrmetti*, 605 U.S. 495, 511 (2025) (ban on hormone treatments for transgender minors); *Ames v. Ohio Dep’t of Youth Servs.*, 605 U.S. 303, 306 (2025) (employment discrimination against straight white woman); *Students for Fair Admission, Inc. v. Harvard*, 600 U.S. 181 (2023) (affirmative action in college admissions). By contrast, Supreme Court decisions acknowledging state power to adopt “narrowly tailored” minority business enterprise programs “to dismantle the closed business system by taking appropriate measures against those who discriminate on the basis of race or other illegitimate criteria” are the law of the land. *J.A. Croson Co.*, 488 U.S. at 509; *accord Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 238 (1995).

Equal Protection Clause. *See Aerospace Solutions, LLC v. Hegar*, No. 24 Civ. 1383, ECF No. 33 (W.D. Tex. 2025). Thus, the Comptroller’s position that the HUB Program is unconstitutional has been rejected by a federal court. This further demonstrates the pretextual nature of the Comptroller’s constitutional justification for scrapping the HUB Program.

110. But even if the purported constitutional defects in the HUB program exist—which they do not, as explained above—they would not generate an exigency sufficient to suspend notice and comment requirements and they would not justify the wholesale rewriting and/or rescission of numerous statutes. The HUB program has existed for the last 35 years; 30 days of notice and comment could be tolerated. Furthermore, the Comptroller announced a freeze on HUB certifications on October 28—35 days before promulgating the Emergency Regulation on December 2. Given that the Comptroller had already delayed its erasure of the HUB Program by 35 days, it could have delayed another 30 days for the public consideration mandated in the APA.

IV. Failure to Provide 30 Day Notice of Rulemaking—Tex. Gov’t Code § 2001.035; Tex. Gov’t Code § 2001.038; Tex. Gov’t Code § 2001.023.

111. Plaintiffs re-allege and incorporate by reference all the above paragraphs as if they were fully set forth herein.

112. Under Section 2001.035 of the APA, “[a] rule is voidable unless a state agency adopts it in substantial compliance with Sections 2001.022 through 2001.034.” Tex. Gov’t Code § 2001.035(a). For purposes of this provision, “an agency’s order substantially complies with a procedural rulemaking requirement if it accomplishes the legislative objectives underlying the requirement and comes fairly within its character and scope.” *Luminant Energy*, 691 S.W.3d at 465.

113. Under Section 2001.038 of the APA, “the validity or applicability of a rule, including an Emergency Regulation adopted under Section 2001.034, may be determined in an

action for declaratory judgment if it is alleged that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff.” Tex. Gov’t Code § 2001.038(a). For this provision, a rule is void “if (1) the agency had no statutory authority to promulgate it; (2) it was not promulgated pursuant to proper procedure; or (3) it is unconstitutional.” *Muth v.*, 691 S.W.3d at 110.

114. Under the APA, “[a] state agency shall give at least 30 days’ notice of its intention to adopt a rule before it adopts the rule” by publishing the proposed rule in the Texas Register and a “plain language” summary on its website. Tex. Gov’t Code § 2001.023(a)-(b).

115. The Comptroller did not provide 30 days’ notice of the Emergency Regulation or publish a “plain language” summary. Accordingly, the Emergency Regulation is procedurally defective. *See, e.g., Combs v. Ent. Publications, Inc.*, 292 S.W.3d 712, 723 (Tex. App.—Austin 2009, no pet.) (striking a Comptroller rule for procedural noncompliance).

V. Failure to Provide Impact Statements—Tex. Gov’t Code § 2001.035; Tex. Gov’t Code § 2001.038; Tex. Gov’t Code § 2001.024.

116. Plaintiffs re-allege and incorporate by reference all the above paragraphs as if they were fully set forth herein.

117. Under Section 2001.035 of the APA, “[a] rule is voidable unless a state agency adopts it in substantial compliance with Sections 2001.022 through 2001.034.” Tex. Gov’t Code § 2001.035(a). For purposes of this provision, “an agency’s order substantially complies with a procedural rulemaking requirement if it accomplishes the legislative objectives underlying the requirement and comes fairly within its character and scope.” *Luminant Energy*, 691 S.W.3d at 465.

118. Under Section 2001.038 of the APA, “the validity or applicability of a rule, including an Emergency Regulation adopted under Section 2001.034, may be determined in an

action for declaratory judgment if it is alleged that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff.” Tex. Gov’t Code § 2001.038(a). For this provision, a rule is void “if (1) the agency had no statutory authority to promulgate it; (2) it was not promulgated pursuant to proper procedure; or (3) it is unconstitutional.” *Muth*, 691 S.W.3d at 110.

119. Under the APA, notice of a proposed rule must include (among other things):
 - a. a “fiscal note” that states the “estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule,” Tex. Gov’t Code § 2001.024(a)(4)(C);
 - b. a note that states the “public benefits expected as a result of adoption of the proposed rule” and the “probable economic cost to persons required to comply with the rule,” *id.* § 2001.024(a)(5)(B); and
 - c. “any other statement required by law.” *Id.* § 2001.024(a)(9).

120. One such “other statement required by law” is a small business impact statement. *See* Tex. Gov’t Code § 2006.002(c)(1) (“Before adopting a rule that may have an adverse economic effect on small businesses or rural communities, as applicable, a state agency shall prepare: (1) an economic impact statement that estimates the number of small businesses or rural communities subject to the proposed rule, projects the economic impact of the rule on small businesses or rural communities, and describes alternative methods of achieving the purpose of the proposed rule. . .”).

121. In promulgating the Emergency Regulation, the Comptroller provided no statements regarding the impact it would have on any constituency—even though the Emergency

Regulation will have obvious adverse impacts on small businesses such as Plaintiffs.

Accordingly, the Emergency Regulation is procedurally defective.

VI. Failure to Allow Public Comment and Hearing—Tex. Gov’t Code § 2001.035; Tex. Gov’t Code § 2001.038; Tex. Gov’t Code § 2001.029.

122. Plaintiffs re-allege and incorporate by reference all the above paragraphs as if they were fully set forth herein.

123. Under Section 2001.035 of the APA, “[a] rule is voidable unless a state agency adopts it in substantial compliance with Sections 2001.022 through 2001.034.” Tex. Gov’t Code § 2001.035(a). For purposes of this provision, “an agency’s order substantially complies with a procedural rulemaking requirement if it accomplishes the legislative objectives underlying the requirement and comes fairly within its character and scope.” *Luminant Energy*, 691 S.W.3d at 465.

124. Under Section 2001.038 of the APA, “the validity or applicability of a rule, including an Emergency Regulation adopted under Section 2001.034, may be determined in an action for declaratory judgment if it is alleged that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff.” Tex. Gov’t Code § 2001.038(a). For this provision, a rule is void “if (1) the agency had no statutory authority to promulgate it; (2) it was not promulgated pursuant to proper procedure; or (3) it is unconstitutional.” *Muth*, 691 S.W.3d at 110.

125. Under the APA, “[b]efore adopting a rule, a state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing.” Tex. Gov’t Code § 2001.029(a). The agency must also “grant an opportunity for public hearing before it adopts a substantive rule” if it is requested by (1) at least 25 people; (2) a government division; (3) or an association with at least 25 members. *Id.* § 2001.029(b).

126. The Comptroller violated Texas Government Code Section 2001.029 by issuing the Emergency Regulation without giving Plaintiffs, or other interested people, “a reasonable opportunity to submit data, views, or arguments, orally or in writing,” prior to the rule’s adoption.

127. The Comptroller also violated Texas Government Code Section 2001.029 by issuing the Emergency Regulation without giving Plaintiffs the opportunity to participate in—or even request—a public hearing.

VII. Lack of Reasoned Justification—Tex. Gov’t Code § 2001.035; Tex. Gov’t Code § 2001.038; Tex. Gov’t Code § 2001.033.

128. Plaintiffs re-allege and incorporate by reference all the above paragraphs as if they were fully set forth herein.

129. Under Section 2001.035 of the APA, “[a] rule is voidable unless a state agency adopts it in substantial compliance with Sections 2001.022 through 2001.034.” Tex. Gov’t Code § 2001.035(a). For purposes of this provision, “an agency’s order substantially complies with a procedural rulemaking requirement if it accomplishes the legislative objectives underlying the requirement and comes fairly within its character and scope.” *Luminant Energy*, 691 S.W.3d at 465.

130. Under Section 2001.038 of the APA, “the validity or applicability of a rule, including an Emergency Regulation adopted under Section 2001.034, may be determined in an action for declaratory judgment if it is alleged that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff.” Tex. Gov’t Code § 2001.038(a). Under this provision, a rule is void “if (1) the agency had no

statutory authority to promulgate it; (2) it was not promulgated pursuant to proper procedure; or (3) it is unconstitutional.” *Muth*, 691 S.W.3d at 110.

131. Under the APA, when promulgating a rule, an agency must provide a “reasoned justification” for that rule consisting of: “(A) a summary of comments received from parties interested in the rule that shows the names of interested groups or associations offering comment on the rule and whether they were for or against its adoption; (B) a summary of the factual basis for the rule as adopted which demonstrates a rational connection between the factual basis for the rule and the rule as adopted; and (C) the reasons why the agency disagrees with party submissions and proposals.” Tex. Gov’t Code § 2001.033.

132. The Comptroller violated Texas Government Code Section 2001.033 by failing to issue an order that contains a “reasoned justification for the rule as adopted” that contains “a summary of comments received from parties interested in the rule,” and “a summary of the factual basis for the rule as adopted that demonstrates a rational connection between the factual basis for the rule and the rule as adopted.” Accordingly, the Emergency Regulation is procedurally defective.

VIII. Deprivation of Due Course of Law—Tex. Gov’t Code § 2001.038; Tex. Gov’t Code § 2001.174; Tex. Const. art. I, § 19.

133. Plaintiffs re-allege and incorporate by reference all the above paragraphs as if they were fully set forth herein.

134. Under Section 2001.038 of the APA, “the validity or applicability of a rule, including an Emergency Regulation adopted under Section 2001.034, may be determined in an action for declaratory judgment if it is alleged that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff.” Tex. Gov’t Code § 2001.038(a). For this provision, a rule is void “if (1) the agency had no

statutory authority to promulgate it; (2) it was not promulgated pursuant to proper procedure; or (3) it is unconstitutional.” *Muth*, 691 S.W.3d at 110.

135. Similarly, under Section 2001.174 of the APA, a court shall “reverse” agency actions, such as Plaintiffs’ HUB decertifications, “if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (A) in violation of a constitutional or statutory provision; (B) in excess of the agency’s statutory authority; [or] (C) made through unlawful procedure. . .” Tex. Gov’t Code § 2001.174(2).

136. The Emergency Regulation—and Plaintiffs’ corresponding HUB decertifications—are invalid under APA Sections 2001.038 and 2001.174 because they violate the Texas Constitution.

137. Under the Due Course Clause of the Texas Constitution (aka the Due Process Clause), “[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.” Tex. Const. art. I, § 19.

138. Licenses and certifications granted by the state can create “vested property rights” and “legitimate claims to entitlement” that cannot be taken away absent “due process”—i.e., “notice and opportunity to be heard.” See *Mosley v. Texas Health & Hum. Servs. Comm’n*, 593 S.W.3d 250, 264 (Tex. 2019); see, e.g., *House of Tobacco, Inc. v. Calvert*, 394 S.W.2d 654, 657 (Tex. 1965) (due process violation based on revocation of cigarette distribution license).²¹

When a statute mandates that a license/certificate be granted—without affording discretion to the

²¹ Cf. *Bell v. Burson*, 402 U.S. 535, 539 (1971) (“Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.”); *Bowlby v. City of Aberdeen, Miss.*, 681 F.3d 215, 220 (5th Cir. 2012) (“Privileges, licenses, certificates, and franchises . . . qualify as property interests for purposes of procedural due process.”); *Jabary v. City of Allen*, 547 F. App’x 600, 610 (5th Cir. 2013) (summary order) (“Permits and licenses relate to the maintenance of a person’s livelihood and, therefore, suspension of issued licenses involves state action that adjudicates important interests of the licensees.”).

agency—it strongly suggests that “vested property rights” and “legitimate claims to entitlement” exist with respect to that license/certificate. *See Lee v. Texas Workers’ Comp. Comm’n*, 272 S.W.3d 806, 817 (Tex. App.—Austin 2008, no pet.) (“To determine whether a particular statute creates a constitutionally protected property interest, we ask whether the statute or implementing regulations place substantive limitations on official discretion. Statutes or regulations limit official discretion if they contain explicitly mandatory language, i.e., specific directives to the decisionmaker that if the regulations’ substantive predicates are present, a particular outcome must follow.”); *accord Texas Educ. Agency v. Am. YouthWorks, Inc.*, 496 S.W.3d 244, 262 n.97 (Tex. App.—Austin 2016), *aff’d sub nom.*, 555 S.W.3d 54 (Tex. 2018).

139. The state of Texas, and the Comptroller, created “vested property interests” and “legitimate claims to entitlement” to HUB certifications when it passed the HUB Act and granted Plaintiffs HUB certifications. Plaintiffs are minority- and women-owned small businesses that satisfy the statutory definition of HUBs and the HUB Act mandates that the Comptroller certify HUBs (so defined) without any room for discretion. *See Tex. Gov’t Code* § 2161.001 (“The comptroller shall certify [HUBs].”); *see, e.g., Texas State Bd. of Pharmacy v. Martin*, 343 S.W.2d 535, 537 (Tex. Civ. App.—Austin 1961, writ ref’d n.r.e.) (licensing board violated due process by denying pharmacist’s renewal application where, “in applying for a renewal of his license, [he] met all statutory requirements”). Plaintiffs’ interests are critical and well-established; Plaintiffs rely on HUB certifications for their livelihoods, have held HUB certifications for years, and reasonably relied on the certifications’ continued validity.

140. Having established such “vested property interests” and “legitimate claims to entitlement,” the Comptroller was prohibited from invalidating Plaintiffs’ HUB certifications

without adherence to minimum procedural protections. The Comptroller did not provide adequate notice and opportunity to be heard before HUB decertification.

141. On December 2, 2025, the Comptroller emailed some—but not all—minority- and women-owned HUBs that he would cancel their HUB certifications in 30 days.

142. The December 2, 2025, email states: “. . . HUBs that are currently certified under a classification other than SDV will be removed from the HUB directory upon the effective date of the emergency rules. This letter shall serve as notice that we have reviewed the classification of your business and determined it should be removed from the directory. If you believe this removal is in error or if you alternatively qualify as an SDV, please notify us at VetHUBprogram@cpa.texas.gov within 30 days, and we will collect the appropriate documentation to move to SDV status. If we do not hear from you, or if you cannot meet the SDV criteria, your business’s certification will be revoked under 34 Texas Administrative Code Section 20.291. If you were certified as an SDV through one of the state’s certification partners, your certification will remain intact . . .”

143. This email does not provide an opportunity for a HUB to challenge the Comptroller’s new definition for what qualifies as a HUB; it only allows for challenges to decertification on the basis that a HUB is owned by a disabled veteran.

144. On January 6, 2026, the Comptroller notified some—but not all—minority- and women-owned HUBs that they were decertified via email. However, the Comptroller decertified all minority- and women-owned HUBs on that date.

145. The January 6, 2026, email states: “Under the emergency rules that were posted to the Texas Register addressing the Historically Underutilized Business (HUB) program effective Dec. 2, 2025, your business was removed from the HUB directory. To ensure the

Comptroller’s office implements and administers the HUB program in a constitutional manner, these emergency rules eliminate each classification that could violate the U.S. and Texas constitutions. Without those classifications, the program now serves small businesses owned by service-disabled veterans (SDVs) with at least a 20 percent disability rating, regardless of race, sex or ethnicity, and is referred to as Veteran Heroes United in Business or VetHUB. . .”

146. Ipsum received the January 6, 2026, decertification notice but not the December 2, 2025, warning.

147. Mpulse received the January 6, 2026, decertification notice but not the December 2, 2025, warning.

148. WPWRS received both the December 2, 2025, warning and the January 6, 2026, decertification notice.

149. Houston Construction received the January 6, 2026, decertification notice but not the December 2, 2025, warning.

150. About 30% of NAMC Houston members received the December 2, 2025, warning and most NAMC Houston members received the January 6, 2026, decertification notice.

151. The Comptroller deprived the Plaintiffs of their “vested property interests” and “legitimate claims to entitlement” without due process when he canceled Plaintiffs’ HUB certifications without affording Plaintiffs adequate notice and/or opportunity to contest the cancellation of their HUB certifications.²²

²² In fact, in his haste to decertify HUBs without meaningful review, the Comptroller decertified some HUBs that are owned by service disabled veterans because those service-disabled veterans are also minorities or women. Those HUBs are now attempting to satisfy the administrative procedures for recertification.

IX. Deprivation of Equal Rights—Tex. Gov’t Code § 2001.038; Tex. Gov’t Code § 2001.174; Tex. Const. art. I, § 3a.

152. Plaintiffs re-allege and incorporate by reference all the above paragraphs as if they were fully set forth herein.

153. Under Section 2001.038 of the APA, “the validity or applicability of a rule, including an Emergency Regulation adopted under Section 2001.034, may be determined in an action for declaratory judgment if it is alleged that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff.” Tex. Gov’t Code § 2001.038(a).

154. For this provision, a rule is void “if (1) the agency had no statutory authority to promulgate it; (2) it was not promulgated pursuant to proper procedure; or (3) it is unconstitutional.” *Muth*, 691 S.W.3d at 110.

155. Similarly, under Section 2001.174 of the APA, a court shall “reverse” agency actions, such as Plaintiffs’ HUB decertifications, “if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (A) in violation of a constitutional or statutory provision; (B) in excess of the agency’s statutory authority; [or] (C) made through unlawful procedure. . .” Tex. Gov’t Code § 2001.174(2).

156. The Emergency Regulation—and Plaintiffs’ corresponding HUB decertifications—are invalid under APA Sections 2001.038 and 2001.174 because they violate the Texas Constitution.

157. Under the Equal Rights Amendment to the Texas Constitution, “[e]quality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin.” Tex. Const. art. I, § 3a. This provision “is more extensive and provides more specific protection than both the United States and Texas due process and equal protection guarantees.” *In Int. of*

McLean, 725 S.W.2d 696, 698 (Tex. 1987). However, “[f]ederal equal-protection cases are instructive with regard to equal-protection challenges under the Texas Constitution.” *Klumb v. Houston Mun. Emps. Pension Sys.*, 458 S.W.3d 1, 13 (Tex. 2015).

158. Although “the simple repeal or modification of desegregation or antidiscrimination laws, without more, never has been viewed as embodying a presumptively invalid racial classification,” the state violates the Equal Protection Clause where such an initiative “works something more than the ‘mere repeal’ of a desegregation law by the political entity that created it” by “burden[ing] all future attempts to integrate. . .” through distortion of political structures. *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 483-84 (1982).

159. Here, the Texas legislature—i.e., the body that passed the HUB Act to remedy racial disparities in government contracting—did not repeal the HUB Program. In fact, in 2025, the Texas legislature considered and rejected a bill that would have limited HUBs to entities owned by disabled veterans. *See* 2025 Texas House Bill No. 167, Texas Eighty-Ninth Legislature (“TITLE: Relating to the implementation of diversity, equity, and inclusion initiatives and certain prohibited considerations in contracting by governmental entities.”).

160. Thus, the Acting Comptroller—who is yet to stand for election in Texas—promulgated the Emergency Regulation to accomplish by fiat exactly what the Texas legislature refused to do: repeal the HUB Act for women- and minority-owned businesses. Moreover, by using emergency rulemaking, the Comptroller distorted the normal notice and comment procedure for regulations under Texas law and the normal legislative process for revising a statute.

161. The Comptroller’s selective repeal of the HUB Program—to maintain HUB benefits for entities owned by disabled veterans, a group consisting entirely of white men—is

designed to disadvantage women and minorities. *See Seattle*, 458 U.S. at 485 (“[W]hen the political process or the decision-making mechanism used to address racially conscious legislation—and only such legislation—is singled out for peculiar and disadvantageous treatment, the governmental action plainly rests on distinctions based on race.”); *see also Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977) (“Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role.”).

162. Indeed, unlike race, ethnicity, and sex—i.e., the classifications that the Emergency Regulation targets—neither veteran status nor disability is a suspect or quasi-suspect classification for the Equal Protection analysis. *See City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 442-43 (1985) (disability); *Johnson v. Robison*, 415 U.S. 361, 374-76 (1974) (veteran status). The Emergency Regulation’s removal of HUB benefits from suspect and quasi-suspect classes—while maintaining benefits for a non-suspect class—gets the law exactly backwards.

163. If upheld, the Emergency Regulation will vastly reduce the number of contracts that Texas awards to minority- and women-owned businesses. In fiscal year 2024, Texas awarded only 11.49% of state contracted funds to HUBs. *See Fiscal 2024 Annual Expenditure Report, Statewide Historically Underutilized Business Program*, Texas Comptroller of Public Accounts (Nov. 15, 2024). That number will decline drastically this year without the HUB Program.

X. *Ultra Vires* Conduct Violating HUB Act Certification Requirements—Tex. Civ. Prac. & Rem. Code § 37.003 & § 37.011; Tex. Gov’t Code § 2161.001.

164. Plaintiffs re-allege and incorporate by reference all the above paragraphs as if they were fully set forth herein.

165. Under the UDJA, “[a] court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. . .” Tex. Civ. Prac. & Rem. Code § 37.003(a). The UDJA allows private parties to seek declaratory relief against state officials for *ultra vires* conduct—i.e., (1) conduct without legal or statutory authority, or (2) failure to perform purely ministerial acts. *See Texas Nat. Res. Conservation Comm’n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002); *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373-73 (Tex. 2009); *accord Green v. Harris Cnty. Inst. of Forensic Scis.*, No. 20 Civ. 00357, 2021 WL 3159801, at *4 (Tex. App.—Houston [1st Dist.] July 27, 2021, pet. denied) (unpublished).²³

166. The HUB Act mandates that “[t]he comptroller shall certify [HUBs].” Tex. Gov’t Code § 2161.061. No discretion is granted to the Comptroller. *See, e.g., City of Hous. v. Hous. Mun. Employees Pension Sys.*, 549 S.W.3d 566, 582 (Tex. 2018) (“Use of the word ‘shall’ in a statute evidences the mandatory nature of a duty imposed.”).

167. For purposes of this provision, HUBs are defined by the statute as small businesses owned by “Black Americans,” “Hispanic Americans,” “women,” “Asian Pacific Americans,” “Native Americans,” and “veterans . . . who have suffered at least a 20 percent service-connected disability. . .” Tex. Gov’t Code § 2161.001.

²³ This Claim for *ultra vires* conduct (i.e., Claim X) is brought only against the Comptroller in his official capacity—not against OCPA. *See City of Port Arthur v. Thomas*, 659 S.W.3d 96, 114 (Tex. App.—Beaumont 2022, no pet.) (“[T]he Texas Supreme Court has explained where a plaintiff alleges a state official’s acts or omissions trampled on his rights, the proper defendant in an *ultra vires* lawsuit is the state official not the agency.”).

168. Upon certification, the “Comptroller shall” provide statutorily required benefits to HUBs. *See, e.g.*, Tex. Gov’t Code § 2161.062 (Assistance to HUBs); *id.* § 2161.065 (Mentor-Protégé Program); *id.* § 2161.066 (HUB Forums). Again, no discretion is granted to the Comptroller.

169. On October 28, 2025, the Comptroller announced “a freeze on the issuance of new and renewed Historically Underutilized Business (HUB) certifications for state procurement, pending further action to ensure the program’s administrative procedures and rules are constitutional.” *See* Press Release, *Historically Underutilized Business Certification Process Suspended by Acting Texas Comptroller*, Texas Comptroller of Public Accounts (Oct. 28, 2025). On December 2, 2025, the Comptroller issued the Emergency Regulation removing minority- and women-owned businesses from the definition of HUBs. And on January 6, 2026, the Comptroller decertified all women- and minority-owned HUBs.

170. By refusing to certify—and decertifying—women- and minority-owned small businesses meeting the statutory definition of HUBs, and refusing to provide them with statutorily mandated benefits, the Comptroller engaged in *ultra vires* conduct.

XI. Prohibited Discrimination in Licensing and Certification—Tex. Civ. Prac. & Rem. Code § 106.001.

171. Plaintiffs re-allege and incorporate by reference all the above paragraphs as if they were fully set forth herein.

172. Under Section 106.001 of the Texas Civil Practice and Remedies Code, state officers cannot take certain actions “because of a person’s race, religion, color, sex, or national origin.” Tex. Civ. Prac. & Rem. Code § 106.001. Among other things, officers cannot: (1) “refuse to issue the person a license, permit, or certificate;” (2) “revoke or suspend the person’s

license, permit, or certificate;” (3) “refuse to grant a benefit to the person;” or (4) “refuse to award a contract to the person.” *Id.*

173. The Comptroller has violated this statute by revoking Plaintiffs’ HUB certifications, and/or refusing to recertify them as HUBs, because they are owned by minorities and/or women. The Comptroller’s actions were motivated by a desire to revert Texas to a time when state procurement was monopolized by businesses owned by white men.

CLAIMS FOR RELIEF
(Against Defendants Williams, Muth, and Mckerall)

XII. *Ultra Vires* Conduct Violating HUB Act Reporting Requirements—Tex. Civ. Prac. & Rem. Code § 37.003 & § 37.011; Tex. Gov’t Code § 2161.122.

174. Plaintiffs re-allege and incorporate by reference all the above paragraphs as if they were fully set forth herein.

175. Under the UDJA, “[a] court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. . .” Tex. Civ. Prac. & Rem. Code § 37.003(a). The UDJA allows private parties to seek declaratory relief against state officials for *ultra vires* conduct—i.e., (1) conduct without legal or statutory authority, or (2) failure to perform purely ministerial acts. *See IT-Davy*, 74 S.W.3d at 855; *Heinrich*, 284 S.W.3d at 373-73; *accord Green*, 2021 WL 3159801, at *4.

176. The HUB Act requires that state agencies track what portion of their contracts are being awarded to HUBs every month and report that information back to the Comptroller. *See, e.g.*, Tex. Gov’t Code § 2161.122(a)-(c) (“state agency shall maintain and compile monthly information relating to the use by the agency and each of its operating divisions of [HUBs], including information regarding subcontractors” and “shall report” information relating to HUB use to the Comptroller).

177. For purposes of this provision, HUBs are defined by the statute as small businesses owned by “Black Americans,” “Hispanic Americans,” “women,” “Asian Pacific Americans,” “Native Americans,” and “veterans . . . who have suffered at least a 20 percent service-connected disability. . .” Tex. Gov’t Code § 2161.001.

178. Upon information and belief, after the Emergency Regulation, TxDOT, HHSC, and TFC have stopped collecting data with respect to their contracts with minority- and women-owned HUBs.

179. Upon information and belief, after the Emergency Regulation, TxDOT, HHSC, and TFC have also stopped reporting to the Comptroller regarding their contracts with minority- and women-owned HUBs.

180. TxDOT, HHSC, and TFC’s failure to abide by this explicit statutory requirement of the HUB Act constitutes *ultra vires* conduct by Defendants Williams, Muth, and Mckerall as the leaders of those agencies.

XIII. *Ultra Vires* Conduct Violating Strategic Planning Requirements—Tex. Civ. Prac. & Rem. Code § 37.003 & § 37.011; Tex. Gov’t Code § 2161.123.

181. Plaintiffs re-allege and incorporate by reference all the above paragraphs as if they were fully set forth herein.

182. Under the UDJA, “[a] court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. . .” Tex. Civ. Prac. & Rem. Code § 37.003(a). The UDJA allows private parties to seek declaratory relief against state officials for *ultra vires* conduct—i.e., (1) conduct without legal or statutory authority, or (2) failure to perform purely ministerial acts. *See IT-Davy*, 74 S.W.3d at 855; *Heinrich*, 284 S.W.3d at 373-73; *accord Green*, 2021 WL 3159801, at *4.

183. Under the HUB Act, state agencies must make “strategic plans” for increasing HUB use; the agency’s strategic plan must include: “(1) a policy or mission statement relating to increasing the use of [HUBs] 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 [HUBs] as partners and subcontractors.” Tex. Gov’t Code § 2161.123(b).

184. For purposes of this provision, HUBs are defined by the statute as small businesses owned by “Black Americans,” “Hispanic Americans,” “women,” “Asian Pacific Americans,” “Native Americans,” and “veterans . . . who have suffered at least a 20 percent service-connected disability. . .” Tex. Gov’t Code § 2161.001.

185. Upon information and belief, after the Emergency Regulation, TxDOT, HHSC, and TFC either (1) adopted strategic plans for fiscal year 2026 that do not address the goals of increasing contracting with minority- and women-owned HUBs or (2) have abandoned their strategic plans for fiscal year 2026 targeted at increasing contracting with minority- and women-owned HUBs.

186. TxDOT, HHSC, and TFC’s failure to abide by this explicit statutory requirement of the HUB Act constitutes *ultra vires* conduct by Defendants Williams, Muth, and Mckerall as the leaders of those agencies.

XIV. *Ultra Vires* Conduct Violating Good Faith Requirements—Tex. Civ. Prac. & Rem. Code § 37.003 & § 37.011; Tex. Gov’t Code § 2161.181.

187. Plaintiffs re-allege and incorporate by reference all the above paragraphs as if they were fully set forth herein.

188. Under the UDJA, “[a] court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. . .”

Tex. Civ. Prac. & Rem. Code § 37.003(a). The UDJA allows private parties to seek declaratory relief against state officials for *ultra vires* conduct—i.e., (1) conduct without legal or statutory authority, or (2) failure to perform purely ministerial acts. *See IT-Davy*, 74 S.W.3d at 855; *Heinrich*, 284 S.W.3d at 373-73; *accord Green*, 2021 WL 3159801, at *4.

189. Under the HUB Act, a state agency “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 HUBs. Tex. Gov’t Code § 2161.181; *see also* 34 Tex. Admin. Code § 20.284(d)(1) (“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: the state agency’s performance in meeting or exceeding their HUB utilization goals or the statewide HUB utilization goals. . .”).

190. For purposes of these provisions, HUBs are defined by the statute as small businesses owned by “Black Americans,” “Hispanic Americans,” “women,” “Asian Pacific Americans,” “Native Americans,” and “veterans . . . who have suffered at least a 20 percent service-connected disability. . .” Tex. Gov’t Code § 2161.001.

191. Upon information and belief, after the Emergency Regulation, TxDOT, HHSC, and TFC have ceased making a “good faith” effort to increase the contracts awarded to minority- and women-owned HUBs; they are now directing all HUB-related contracts to companies owned by white, male, service-disabled veterans. These agencies are also drastically reducing their overall HUB contracting.

192. TxDOT, HHSC, and TFC’s failure to abide by this explicit statutory requirement of the HUB Act constitutes *ultra vires* conduct by Defendants Williams, Muth, and Mckerall as the leaders of those agencies.

XV. *Ultra Vires* Conduct Violating HUB Coordinator and Forum Requirements—Tex. Civ. Prac. & Rem. Code § 37.003 & § 37.011; Tex. Gov’t Code § 2161.062; Tex. Gov’t Code § 2161.067.

193. Plaintiffs re-allege and incorporate by reference all the above paragraphs as if they were fully set forth herein.

194. Under the UDJA, “[a] court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. . .” Tex. Civ. Prac. & Rem. Code § 37.003(a). The UDJA allows private parties to seek declaratory relief against state officials for *ultra vires* conduct—i.e., (1) conduct without legal or statutory authority, or (2) failure to perform purely ministerial acts. *See IT-Davy*, 74 S.W.3d at 855; *Heinrich*, 284 S.W.3d at 373-73; *accord Green*, 2021 WL 3159801, at *4.

195. Under the HUB Act, any agency with a biennial budget over \$10 million “shall designate a staff member to serve as the [HUB] coordinator for the agency during the fiscal year” to oversee HUB training, recruitment, retention, reporting, and access to key agency staff. Tex. Gov’t Code § 2161.062(e).

196. Under the HUB Act, every agency with a HUB coordinator must “design its own program” of HUB forums, whereby the agency “shall aggressively identify and notify individual [HUBs] regarding opportunities to make a presentation regarding the types of goods and services supplied by the [HUBs] and shall advertise in appropriate trade publications that target [HUBs] regarding opportunities to make a presentation.” Tex. Gov’t Code § 2161.066(c)-(e).

197. For purposes of these provisions, HUBs are defined by the statute as small businesses owned by “Black Americans,” “Hispanic Americans,” “women,” “Asian Pacific Americans,” “Native Americans,” and “veterans . . . who have suffered at least a 20 percent service-connected disability. . .” Tex. Gov’t Code § 2161.001.

198. TxDOT, HHSC, and TFC are all Texas agencies with biennial budgets exceeding \$10 million. Upon information and belief, in the wake of the Emergency Regulation, these agencies have terminated their HUB coordinators or restricted their HUB coordinators' purviews to serving HUBs owned by white, male, service-disabled veterans. Upon information and belief, these agencies have also ceased inviting minority- and women-owned HUBs to present at HUB forums.

199. TxDOT, HHSC, and TFC's failure to abide by these explicit statutory requirements of the HUB Act constitutes *ultra vires* conduct by Defendants Williams, Muth, and Mckerall as the leaders of those agencies.

XVI. *Ultra Vires* Conduct Violating HUB Subcontracting Requirements—Tex. Civ. Prac. & Rem. Code § 37.003 & § 37.011; Tex. Gov't Code § 2161.252.

200. Plaintiffs re-allege and incorporate by reference all the above paragraphs as if they were fully set forth herein.

201. Under the UDJA, “[a] court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. . .” Tex. Civ. Prac. & Rem. Code § 37.003(a). The UDJA allows private parties to seek declaratory relief against state officials for *ultra vires* conduct—i.e., (1) conduct without legal or statutory authority, or (2) failure to perform purely ministerial acts. *See IT-Davy*, 74 S.W.3d at 855; *Heinrich*, 284 S.W.3d at 373-73; *accord Green*, 2021 WL 3159801, at *4.

202. Under the HUB Act, whenever an agency enters a contract “with an expected value of \$100,000 or more,” it must determine if “subcontracting opportunities under the contract” are probable. Tex. Gov't Code § 2161.252(a). When subcontracting is likely, in soliciting bids, the agency must require that prime contractors submit HSPs. *Id.* Each HSP must demonstrate “good faith.” This can principally be achieved by stating that (1) the contractor will

use HUB subcontractors (at least sufficiently to meet the HUB Utilization Goal); (2) the contractor informed HUB subcontractors of the opportunity but justifiably chose to go with (lower cost) non-HUB subcontractors; or (3) will perform all the work itself and avoid subcontracting. *See* 34 Tex. Admin. Code § 20.285(d)(1)–(4).

203. For purposes of these provisions, HUBs are defined by the statute as small businesses owned by “Black Americans,” “Hispanic Americans,” “women,” “Asian Pacific Americans,” “Native Americans,” and “veterans . . . who have suffered at least a 20 percent service-connected disability. . .” Tex. Gov’t Code § 2161.001.

204. Upon information and belief, after the Emergency Regulation, TxDOT, HHSC, and TFC have ceased requiring that prime contractors submit HSPs explaining their good faith efforts to use minority- and women-owned HUBs.

205. TxDOT, HHSC, and TFC’s failure to abide by this explicit statutory requirement of the HUB Act constitutes *ultra vires* conduct by Defendants Williams, Muth, and Mckerall as the leaders of those agencies.

TEMPORARY INJUNCTION

206. Plaintiffs re-allege and incorporate by reference all the above paragraphs as if they were fully set forth herein.

207. Plaintiffs request that the Court enter a temporary injunction prohibiting the Comptroller and OCPA from enforcing the Emergency Regulation, and reinstating Plaintiffs’ HUB certifications, during the pendency of the litigation. *See* Tex. R. Civ. P. 681-84.

208. Plaintiffs request that the Court enter a temporary injunction prohibiting Defendants Williams, Muth, and Mckerall—as the leaders of TxDOT, HHSC, and TFC—from

changing the HUB programs at those agencies to deny statutorily mandated benefits to minority- and women-owned HUBs.

209. To obtain a temporary injunction, a plaintiff must have a probable right to relief on a cause of action and be faced with imminent irreparable harm. *See Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

210. A “probable right” exists where the party seeking the injunction provides “some evidence” supporting a claim upon which relief may be granted. *In re Texas Nat. Res. Conservation Comm’n*, 85 S.W.3d 201, 204 (Tex. 2002). Plaintiffs will likely prevail on the merits because the Comptroller has overstepped his emergency rulemaking authority by rewriting the HUB Act to change the statutory definition of what qualifies as a HUB in violation of the statute’s plain language.

211. Plaintiffs have shown a *per se* irreparable harm because they have shown a likelihood of success on their claims for declaratory and injunctive relief. *Cf. State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020) (Texas showed *per se* irreparable harm based on establishing probable right to relief on *ultra vires* declaratory judgment claim against local officials). This is especially true given the Comptroller’s violation of the Texas Constitution. *Cf. Operation Rescue-Nat’l v. Planned Parenthood of Houston & Se. Texas, Inc.*, 937 S.W.2d 60, 77 (Tex. App.—Houston [14th Dist.] 1996), *aff’d in part*, 975 S.W.2d 546 (Tex. 1998) (“Under Texas law, a violation of a constitutionally guaranteed right inflicts irreparable injury warranting injunctive relief.”). Plaintiffs have also satisfied the irreparable harm requirement by showing that the Emergency Regulation will negatively impact their livelihoods by reducing their ability to secure contracts and by jeopardizing their current contracts. *See, e.g., Ron v. Ron*, 604 S.W.3d 559, 575 (Tex. App.—Houston [14th Dist.] 2020, no pet.) (irreparable harm established based on showing

that “business would be disrupted and suffer”). In fact, the Emergency Regulation threatens to drive Plaintiffs out of business. *See, e.g., Trinity Water Rsrv., Inc. v. Evans*, 829 S.W.2d 851, 866 (Tex. App.—Beaumont 1992, no pet.) (irreparable harm shown based on evidence that plaintiff “will be forced into bankruptcy”).

212. Granting the requested injunctive relief will not result in any harm to the public welfare or to the Comptroller. In fact, the HUB Program has functioned without such harms for the last 35 years. *See, e.g., Ent. Publications*, 292 S.W.3d at 724 (affirming temporary injunction where trial court “found that the threat of immediate and irreparable injury to [Plaintiff] substantially outweighed the harm, if any, that the Comptroller would suffer as a result of having to reassess its administrative rule and adopt a rule that complied with the procedural requirements of the APA”).

213. Plaintiffs agree to post security in the amount and by the means to be determined by the Court. Because temporary injunctive relief will not present any injury to the Comptroller or the public, Plaintiffs request that the Court set the bond for a nominal amount not to exceed \$200.

214. Plaintiffs intend to file a separate supplement in support of this verified application for temporary injunction, with accompanying declarations to confirm the facts entitling Plaintiffs to immediate injunctive relief. This supplement will set forth the specific grounds and authorities for such temporary injunctive relief.

PERMANENT INJUNCTION

215. Plaintiffs re-allege and incorporate by reference all the above paragraphs as if they were fully set forth herein.

216. After a full adjudication, Plaintiffs request that the Court enter a permanent injunction prohibiting the Comptroller and OCPA from enforcing the Emergency Regulation and ordering the Comptroller and OCPA to recertify Plaintiffs as HUBs.

217. After a full adjudication, Plaintiffs request that the Court enter a permanent injunction prohibiting Defendants Williams, Muth, and Mckerall—as the leaders of TxDOT, HHSC, and TFC—from altering the HUB programs at those three agencies to deny statutorily mandated benefits to women- and minority-owned HUBs.

ATTORNEY FEES

218. Plaintiffs are entitled to recover reasonable and necessary attorney fees that are equitable and just under Texas Civil Practice and Remedies Code § 37.009 for its claims for declaratory relief under the UDJA. Plaintiffs are also entitled to recover reasonable attorney fees under their claims pursuant to Texas Civil Practice and Remedies Code § 1006.002.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court:

1. Declare that the Emergency Regulation is null and void;
2. Temporarily enjoin the Comptroller, OCPA, and all those acting on their behalf from enforcing the Emergency Regulation;
3. Temporarily enjoin Defendants Williams, Muth, and Mckerall, and all those acting on their behalf, from altering TxDOT, HHSC, and TFC's compliance with the HUB Act's statutory requirements to deny benefits to minority- and women-owned HUBs;

4. Permanently enjoin the Comptroller, OCPA, and all those acting on their behalf from enforcing the Emergency Regulation;
5. Permanently enjoin Defendants Williams, Muth, and Mckerall, and all those acting on their behalf, from altering TxDOT, HHSC, and TFC's compliance with the HUB Act's statutory requirements to deny benefits to minority- and women-owned HUBs;
6. Order the Comptroller and OCPA to reinstate Plaintiffs' HUB certifications;
7. Order the Comptroller and OCPA to notify all prime contractors and state agencies that the Emergency Regulation is null and void and that Plaintiffs' HUB certifications have been reinstated;
8. Award Plaintiffs their reasonable fees, costs, and expenses, including attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code § 37.009 and Tex. Civ. Prac. & Rem. Code § 106.002(b); and
9. Award such additional relief as the interests of justice may require.

Dated: March 2, 2026

Respectfully Submitted,

/s/ Chad W. Dunn

Chad W. Dunn

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* *Pro Hac Vice* Forthcoming

VERIFICATION

My name is Ruben Mercado Jr., and I am the President of Ipsum General Contractors, LLC ("Ipsum"). I am executing this declaration as part of my assigned duties and responsibilities. Based on my experience, my assigned responsibilities, and through my review of Ipsum's records and correspondence, I have personal knowledge of the facts contained in Paragraphs 20, 57-59 and 146 of this Original Petition. I declare under penalty of perjury that the facts stated therein are true and correct.

Executed in Harris County, Texas, on February 27, 2026.



Ruben Mercado Jr., President, Ipsum
General Contractors, LLC

VERIFICATION

My name is Tyrone Dixon, and I am the sole owner and manager of Mpulse Healthcare & Technology, LLC (“Mpulse”). I am executing this declaration as part of my duties and responsibilities as CEO. Based on my experience, my responsibilities, and review of Mpulse’s records and correspondence, I have personal knowledge of the facts contained in Paragraphs 21, 60-62 and 147 of this Original Petition. I declare under penalty of perjury that the facts stated therein are true and correct.

Executed in Fort Bend County, Texas, on February 27, 2026.

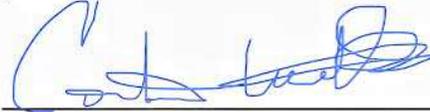
Tyrone Dixon

Tyrone Dixon, President and CEO, Mpulse
Healthcare & Technology, LLC

VERIFICATION

My name is Cortena Williams, and I am the sole owner and manager of Williams Professional Water Restoration Services LLC (“WPWRS”). I am executing this declaration as part of my duties and responsibilities as manager. Based on my experience, my responsibilities, and review of WPWRS’s records and correspondence, I have personal knowledge of the facts contained in Paragraphs 22, 63-65 and 148 of this Original Petition. I declare under penalty of perjury that the facts stated therein are true and correct.

Executed in Johnson County, Texas, on February 27, 2026.



Cortena Williams, Manager, Williams
Professional Water Restoration Services
LLC

VERIFICATION

My name is Ray Gutierrez, and I am the sole owner and manager of Houston WiFi, Ltd. Co. d/b/a Houston Construction Services (“Houston Construction”). I am executing this declaration as part of my duties and responsibilities as manager. Based on my experience, my responsibilities, and review of Houston Construction’s records and correspondence, I have personal knowledge of the facts contained in Paragraphs 23, 66-68 and 149 of this Original Petition. I declare under penalty of perjury that the facts stated therein are true and correct.

Executed in Harris County, Texas, on February 27, 2026.

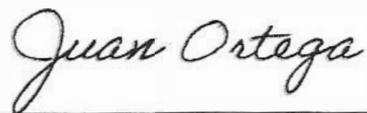


Ray Gutierrez, Manager, Houston WiFi,
Ltd. Co. d/b/a Houston Construction
Services

VERIFICATION

My name is Juan Ortega, and I am the Executive Director of the Executive Board of NAMC, Inc. - Greater Houston Chapter, which is one of twenty-two chapters affiliated with the National Association of Minority Contractors, Inc., a nonprofit trade association. I am executing this declaration as part of my assigned duties and responsibilities. Based on my experience, my assigned responsibilities, and through my review of NAMC, Inc. - Greater Houston Chapter's records and correspondence, I have personal knowledge of the facts contained in Paragraphs 24, 69-72 and 150 of this Original Petition. I declare under penalty of perjury that the facts stated therein are true and correct.

Executed in Harris County, Texas, on February 27, 2026.



Juan Ortega, Executive Director,
NAMC, Inc. - Greater Houston Chapter

Reviewed and approved by:
NATIONAL ASSOCIATION OF
MINORITY CONTRACTORS, INC.:



Wendell R. Stemley, National President
Date: February 27, 2026

EXHIBIT A

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 Tex. Reg. 810-11.

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.

<rule>

§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)[(I)] 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 utilization 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]

(8)[(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.

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

Issued in Austin, Texas, on December 2, 2025.

DON NEAL
General Counsel
Operations and Support Legal Services
Comptroller of Public Accounts