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| MEMORANDUM **TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** |

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| TO: | Department of Family and Protective Services Logo**Chair and Members Department of Family and Protective Services Council** |
| FROM: | **John J. Specia, Jr.**  **Commissioner** |
| SUBJECT: | **Agenda Item 6h: Recommendation to propose rule changes in 40 TAC, Chapter 732, Contracted Services** |
| DATE: | **October 18, 2013** |

## BACKGROUND AND PURPOSE

Effective September 1, 2013, all DFPS procurement functions previously handled by DFPS were transferred to the Procurement and Contracting Services (PCS) Division of HHSC. Since DFPS no longer handles procurements, the Department must revise its current Procurement and Contracting rules to reflect the transfer of this function to HHSC. All DFPS rules in Title 40, Chapter 732 of the Texas Administrative Code (TAC) focusing exclusively on purchasing and acquisitions will be deleted in their entirety and replaced by rules that reference the appropriate HHSC Procurement rules. Additional technical corrections were made to § 732.111 to replace a reference to rules concerning Historically Underutilized Businesses (HUBs) that were previously adopted by the former General Services Commission, with an updated reference to the current Comptroller of Public Accounts rules.

DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Current Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
| --- | --- | --- |
| §732.105 | Amend | Delete all language related to purchases conducted by DFPS. |
| §732.107 | Repeal | Delete entire rule that references DFPS conducting procurements. |
| §732.111 | Amend | Corrects the reference to the General Services Commission HUB Rules, which no longer exist, and replaces it with correct reference to the Texas Comptroller of Public Accounts HUB Rules. |
| §732.113 | Repeal | Delete entire rule that references DFPS conducting emergency procurements. |
| §732.115 | Repeal | Delete entire rule that references DFPS conducting procurements. |
| §732.202 | Amend | Delete portions of rule that reference DFPS conducting procurements and include language that clarifies that all DFPS purchases are conducted by HHSC. |
| §732.203 - §732.213 | Repeal | Delete entire rule that references DFPS conducting procurements. |
| §732.215 - §732.229 | Repeal | Delete entire rule that references DFPS conducting procurements. |

## STATUTORY AUTHORITY AND STATUTES AFFECTED

The modification is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Department of Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Human Resources Code §40.058, which grants DFPS the authority to enter into contracts, and Government Code §531.0055(f), which grants the Health and Human Services Executive Commissioner operational authority and responsibility for the procurements of a Health and Human Services agency, including the Department of Family and Protective Services.

## FISCAL IMPLICATIONS

(a) Fiscal Impact. For each of the first five years that the rules will be in effect there will not be costs or revenues to state or local government as a result of enforcing or administering this section.

(b) Public Costs and Benefits. For each of the first five years that the proposed sections will be in effect, the public benefit anticipated as a result of the rule change will be that that the rules will reflect current procedures. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

(c) Impact on Business. There is no anticipated adverse impact on small, micro, and large businesses as a result of the proposed rule change because the proposed rule change should not affect the cost of doing business; does not impose new requirements on any business; and does not require the purchase of any new equipment or any increased staff time in order to comply.

(d) Local Employment Impact and Takings Statements. No local employment impact statement was required for these rules. The agency is not required to complete a takings impact assessment regarding the proposed sections.

(e) Technology Impact. There is no anticipated impact on technology as a result of the proposed rule change.

## STAKEHOLDER INPUT

Input from DFPS stakeholders involved in contracting was obtained through workgroups and circulation of initial drafts. Additional stakeholder input will be obtained during the comment period following publication of the proposed rules in the *Texas Register*.

## RECOMMENDATION

It is recommended that the Council consider the proposed rule action, as discussed in this memorandum, and that the Council recommend proposal, with or without changes to the rules as they are attached to this memo.

## ATTACHMENTS

Attached is a copy of the proposed change to the rule section as staff recommended for submittal to the *Texas Register*.