



TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER EL PASO

Operating Policy and Procedure

HSCEP OP: 72.13, **Historically Underutilized Businesses**

PURPOSE: The purpose of this Texas Tech University Health Sciences Center El Paso Operating Policy/Procedure (HSCEP OP) is to establish the policy and outline the procedures for the utilization of Historically Underutilized Business (HUB) for the purchases of goods and services by Texas Tech University Health Sciences Center El Paso (TTUHSCEP). This HSCEP OP shall apply to all purchases of goods and services regardless of source of funds used for payment.

REVIEW: This OP will be reviewed on June 1 of every fourth year (E4Y) by the Director of HUB Operations and the Director of Purchasing or designee, with recommendations for revision submitted to the Chief Financial Officer and the President by June 15.

POLICY/PROCEDURE:

1. Policy.

- a. The State of Texas is committed to providing procurement and contracting opportunities for businesses owned by minorities and women. It is the state's policy to create an environment that will enhance HUB participation in state procurements and contracts. Consequently, TTUHSCEP will make a good faith effort to increase the award of goods, services and construction contracts to HUBs in accordance with the Texas Procurement and Support Services' (TPASS) adopted rules.
- b. TTUHSCEP will make a good faith effort to assist HUBs in receiving a portion of the total contract value of all contracts awarded in a fiscal year in accordance with the following percentages:
 - (1) 11.2% for heavy construction other than building contracts;
 - (2) 16.12% for all building construction, including general contractors and operative builders' contracts;
 - (3) 24.33% for all special trade construction contracts;
 - (4) 7.56% for professional services contracts;
 - (5) 9.94% for all other services contracts; and
 - (6) 21.1% for commodities contracts.

All TTUHSCEP offices and departments shall identify and ensure that businesses owned by minorities and women are given an equal opportunity to bid on commodities, services, leases, and construction projects.

- c. Special outreach efforts will be made to identify noncertified HUB vendors currently used by TTUHSCEP. Assisting the HUB vendors in obtaining certification will benefit TTUHSCEP utilizing the HUB as well as other state agencies utilizing the same HUB in the future. To assist in this outreach, TTUHSCEP, through its HUB Coordinator, will design, sponsor and participate in the Economic Opportunity Forums that provide contract opportunities and training to HUBs and other state agency purchasers. In addition,

TTUHSCEP will encourage businesses to participate in the TPASS's Mentor- Protégé Program.

- d. **Definition.** A HUB is defined by statute as a corporation, sole proprietorship, partnership, or joint venture with its principal place of business in the State of Texas that is formed for the purpose of making a profit in which at least 51 percent of all classes of the shares of stock or other equitable securities are owned by one or more persons who have been historically underutilized (economically disadvantaged) because of their identification as members of certain groups: Black American, Hispanic American, Asian Pacific American, Native American, and American women. These individuals must have a proportionate interest and demonstrate active participation in the control, operation, and management of the business.

2. Responsibilities.

- a. The President of TTUHSCEP will designate a HUB Coordinator who will be at least equal in position to the institution's Procurement Director. The Procurement Director may serve in this capacity, and the Vice Chancellor for Facilities Planning and Construction as the Chancellor's designee will serve as the HUB Coordinator for all facilities projects that fall under the control of the Office of Facilities Planning and Construction pursuant to Board Policy. The HUB Coordinator shall coordinate training programs to recruit, identify, and certify HUBs, report any required information to the TPASS, and match HUBs with appropriate TTUHSCEP staff members.
- b. The HUB Coordinator is responsible for providing assistance to vendors and insuring that the TPASS's Centralized Master Bidders List (CMBL) is utilized as the primary reference list for HUB vendors. All TTUHSCEP employees participating in the purchase of goods and services will be held accountable for adhering to the policy outlined in this HSCEP OP.
- c. TTUHSCEP will utilize this HUB policy as the basis for obtaining the HUB participation goals.
- d. The HUB Coordinator will prepare, publicize, and distribute information on procurement procedures in a manner designed to encourage businesses owned by minorities and women to participate in the institutions' acquisition of goods and services.
 - (1) Special attention will be given to ensure that purchase orders/contract specifications are written to encourage HUB participation. When applicable, the HUB Coordinator may recommend the following actions:
 - (a) Divide proposed requisitions of various supplies and services into reasonable lots in keeping with industry standards and competitive procurement requirements. The intent of such division must be to increase HUB participation rather than to avoid competition or to subvert the competitive bidding process.
 - (b) Except for construction contracts, where statutory requirements are to be followed, develop insurance and bonding requirements so that, if feasible, more than one interested business may perform the work. If the work exceeds the amount for which a performance bond may be obtained, allow the business to perform the amount of work up to the vendor's approved amount of bonding. Performance bond for work to be performed should not be reduced less than 50 percent. Note: As a guideline, TPASS does not require performance bonds on term contract awards of less than \$100,000.

- (c) Ensure that delivery schedules are established on a realistic basis that will encourage HUB participation to the extent consistent with the ordering department's actual requirements.
 - (d) Ensure requisitions contain terms, conditions, and specifications that do not impose unreasonable or unnecessary contract requirements. The requisitions should accurately reflect TTUHSCEP's needs.
- (2) The HUB Coordinator will also:
- (a) Provide assistance to potential bidders with the TPASS Centralized Master Bidder List of certified HUBs for subcontracting.
 - (b) Determine whether specific TTUHSCEP goals are appropriate under the TPASS's Disparity Study.
 - (c) Identify potential subcontracting opportunities in all contracts requiring a HUB Subcontracting Plan, and seek HUB subcontracting on contracts that do not require a HUB Subcontracting Plan whenever possible.

3. Historically Underutilized Business Subcontracting Plan (HSP) Procedures.

- a. Before soliciting bids, proposals, offers, or other applicable expressions of interest on a contract with an expected value of \$100,000 or more, the HUB Coordinator shall determine if subcontracting opportunities are probable under the contract. If so, a HUB Subcontracting Plan will be required as part of a contractor's or vendor's bid, proposal, offer, or other applicable expression of interest.

Responses that do not include the HUB Subcontracting Plan and responses that TTUHSCEP determines were not developed in good faith will be rejected as a material failure to comply with advertised specification.

- b. The HUB Coordinator shall review all supporting documentation submitted by a potential contractor/vendor to determine if the proposed HUB Subcontracting Plan complies with the bid specifications. No changes will be made to an accepted subcontracting plan prior to its incorporation into the contract.
- c. Offices, departments and project managers will collect and provide to the Purchasing Director contractor progress assessment reports which should reflect the value of contracts awarded to HUB subcontractors, suppliers, or material providers.

In order to comply with state reporting requirements, the following guidelines/steps will be used when processing an HSP for the agency, regardless of the funds used:

- (1) When it has been determined that subcontracting opportunities exist under a contract of \$100,000 or more, the potential contractor/vendor will submit a completed HSP as part of the bid/ proposal.
- (2) Purchasing will receive and review all bids/proposals and will select a bidder based on a selection process.
- (3) Purchasing then will forward the selected bidder's HSP to the HUB Coordinator for the review and approval process.
- (4) After review and approval of the HSP good-faith-effort by the HUB Coordinator, the Director of Purchasing will contact the appropriate project manager/prime

contractor to provide notification that contract development procedure can begin.

- (5) After award of the contract, before **any changes** can be made to the approved HUB Subcontracting Plan, the Project manager/officer or contractor must submit a written request for approval of changes. The request for change to the HSP must be submitted, in writing, to the Purchasing Director, by submitting a completed TTUHSCEP HSP Change Order Request Form for Contract Modifications (Attachment A). Project managers must monitor the contract and allow for sufficient project time for Contractors to initiate amendments, renewals, and termination notices. The Project Manager must notify the Director of Purchasing and the HUB Coordinator if the contractor/ vendor has made any contract changes without the prior approval of the Director of Purchasing and the HUB Coordinator.
- (6) Prior to approval of any changes, the Purchasing Director and/or HUB Coordinator shall review all HSP Change Order requests to determine if the additional scope of work contains additional probable subcontracting opportunities not identified in the initial solicitation.
- (7) If the Purchasing Director and/or HUB Coordinator determines additional probable subcontracting opportunities exist, the contractor/vendor will be notified/instructed to initiate a revised HUB Subcontracting Plan and perform the specified Good-Faith-Effort requirements for the additional probable subcontracting opportunities.
- (8) If the agency expands the original scope of work through a change order or contract amendment **including contract contingencies** that expand the scope of work, the Project Manager shall determine if the additional scope of work contains additional probable subcontracting opportunities not identified in the initial solicitation. If it has been determined that additional probable subcontracting opportunities exist, the Project Manager will submit to the Purchasing Director a change order request form, and the contractor/vendor will be notified by the agency HUB Coordinator to initiate a revised HUB Subcontracting Plan and perform the specified good-faith-effort requirements for the additional probable subcontracting opportunities.
- (9) In order to comply with state contracting requirements after a contract has been awarded, project managers will insure that prime contractors meet their contractual responsibilities. One important aspect of this responsibility is the monthly compliance report (Prime Contractor Progress Assessment Report- PAR). Project managers will require PARs from all prime contractors and report all HUB and non-HUB subcontractor payments, as a condition for payment and will be responsible for insuring that the agency Purchasing Director receives completed copies of the PARs on a monthly and recurring basis for all contracts that are in-progress. For all other contracts not being monitored by project managers, the vendor will be responsible for providing copies of the PARs to the Purchasing Director on a monthly basis as required. When PARs are sent by the vendors as part of the invoice to accounts payable, then the Manager of Accounts Payable will insure that copies of the PARs received are sent to the Purchasing Director. The Purchasing Director will then file the PARs in the procurement record and will provide a working copy to the HUB coordinator for monitoring and reporting purposes.
- (10) During the term of the contract, the HUB Coordinator will monitor the HUB Subcontracting Plans on a monthly basis, by reviewing the monthly Prime Contractor Progress Assessment Reports (PARs) to determine if the value of the subcontracts to HUBs meets or exceeds the HUB Subcontracting provisions specified in the prime contractor's original HSP.

- d. TTUHSCEP will require prime contractors to put forth a good faith effort in establishing contracts with HUBs as subcontractors, suppliers, or material providers. HUB subcontracting performance will be a criteria incorporated in the TPASS vendor performance rating system. In making a determination whether a good faith effort has been made in the development of the HSP, the potential contractor/vendor is required to submit with his bid a HSP and written supporting documentation, clearly explaining the actions taken to prove a good faith effort has been made. Documentation of good faith efforts by the general/prime contractor during the procurement process includes, at a minimum, the following:
- (1) Whether the respondent utilized the Centralized Master Bidders List (CMBL), the HUB Directory, and other Internet resources and directories as identified by TTUHSCEP to identify HUBs that perform the type of work required for each subcontracting opportunity identified in the contract specifications or any other subcontracting opportunity the respondent cannot complete with its own equipment, supplies, materials, and/or employees.
 - (2) Whether the respondent divided the contract work into reasonable lots or portions to the extent consistent with prudent industry practices.
 - (3) Whether the respondent provided written notice to three (3) or more HUBs that perform the type of work required for each subcontracting opportunity identified in the contract specifications or any other subcontracting opportunity the respondent cannot complete with its own equipment, supplies, materials, and/or employees. Notices to HUBs shall contain adequate information about the scope of the work, information regarding location to review plans and specifications, information about bonding and insurance requirements, and a name and telephone number of a contact person. Potential contractor shall allow a minimum of five (5) working days prior to the date/time that the responses (bids, proposals, offers, or other applicable expressions of interest) are due to TTUHSCEP. Copies of the written documentation of the potential subcontractors/suppliers must be included in the HSP.
 - (4) Whether the potential contractor/vendor provided written notice to minority or women trade organizations or small business development centers to assist in identifying HUBs by disseminating subcontracting opportunities to their members/participants. Notices shall contain adequate information about the scope of the work, information regarding location to review plans and specifications, information about bonding and insurance requirements, and a telephone number of a contact person. Potential contractor shall allow a minimum of five working days prior to the date/time that the responses (bids, proposals, offers, or other applicable expressions of interest) are due to TTUHSCEP. Copies of the written documentation to minority or women trade organizations or development centers must be included in the HSP.
 - (5) Whether the respondent negotiated in good faith with qualified HUBs, not rejecting qualified HUBs who were the best value responsive bidders to their subcontracting opportunities. The respondent shall provide written justification of the selection process if a HUB subcontractor is not selected.
- e. Whether contractor/vendor assisted non-certified HUBs to become certified.
- f. Failure of the general/prime contractor to meet the HUB Subcontracting Plan requirements identified during the procurement process may be considered as a basis for a default in the awarded contract. If a determination is made that the contractor/vendor failed to

implement the HUB Subcontracting Plan in good faith, TTUHSCEP, in addition to any other remedies, may report nonperformance to the commission in accordance with 1 TAC, Chapter 113, Subchapter F (relating to Vendor Performance and Debarment Program).

- g. General/Prime Contractors:
 - (1) Will maintain their stated HUB participation goal regardless of reduced scope of services in the contract; and
 - (2) Will prepare and submit established forms within the time period designated on each form. This will assist agencies in documenting the HUB usage/monitoring of the prime contractor's HUB Subcontracting Plan.
- h. Vendor's past performance in meeting the contractual agreement outlined in the award may be consideration in determining future awards of agency contracts.

4. **Types of Purchases.**

- a. All ordering departments will ensure that bids are obtained from businesses that normally sell the goods and services being purchased.
- b. Delegated Spot Purchases (commodities or services under \$40,000):
 - (1) Purchases of \$15,000 or less: TTUHSCEP departments and offices are encouraged to purchase from a HUB whenever possible;
 - (2) Purchases of \$15,000.01, but not greater than \$40,000, require at least three telephone bids - two bids from certified HUBs, one minority and one woman-owned. If HUBs are unavailable, the department or office must document the lack of required HUB bids;
 - (3) TTUHSCEP purchases of services greater than \$40,000: Purchasing will solicit formal bids. Bids/Proposals will be requested from vendors providing the required classification and servicing the geographic area concerned.
- c. **Catalog Purchasing.**

TTUHSCEP will solicit catalogs and evaluate pricing from approved HUBs in accordance with the catalog purchasing procedures. An approved HUB vendor will be used to the fullest extent possible.
- d. **Construction, Consulting, and Professional Services:**
 - *(1) **Construction.** TTUHSCEP will solicit bids by (a) advertising in the legal notice section of the local newspaper or (b) specifically mailing bid packets, which will include at least one minority and one woman-owned business. The HUB Coordinator or their representative will inform general contractors of state policy to award HUBs a good faith effort.
 - *(2) **Consulting.** If HSCEP OP 50.27 requires solicitation of proposals, the department will utilize and demonstrate that the HUB directory was used as a resource.
 - *(3) **Professional.** The services of some professionals do not require competitive bids. Examples include certified public accountants, architects, optometrists, physicians, surgeons, land surveyors, and professional engineers. The HUB directory will be used as a resource in selection of these professionals.

*Note: In the event a/an operating unit (i.e., division, program, facility, etc.) is unable to locate a HUB vendor from the TPASS's certified HUB Directory or the CMBL, the unit must make a written notation or attach documentation with the spot purchase form or the contract of all referenced sources used and document the unavailability of HUBs.

5. **Data Collection and Reporting.**

The HUB Coordinator of TTUHSCEP will comply with all HUB reporting requirements, including supplemental and annual reports. The HUB Coordinator will also track the extent of the HUB participation by contractors and all major departments in their acquisition programs.