



# 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 (TTUHSC El Paso) Operating Policy and Procedure (HSCEP OP) is to establish the policy and outline the procedures for the utilization of historically underutilized businesses (HUB) for the purchases of goods and services by TTUHSC El Paso. This HSCEP OP shall apply to all purchases of goods and services regardless of source of funds used for payment.

**REVIEW:** This HSCEP OP will be reviewed on June 1 of every fourth year (E4Y) by the HUB coordinator and the director of Purchasing or designee, with recommendations for revisions forwarded to the chief financial officer and the president by June 15.

### **POLICY/PROCEDURE:**

#### **I. Policy.**

A. The State of Texas is committed to providing purchasing 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 purchasing and contracts. Consequently, TTUHSC El Paso will make a good faith effort to increase the award of goods, services and construction contracts to HUBs in accordance with the Texas Comptroller's adopted rules.

B. TTUHSC El Paso 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) 4.00% for heavy construction other than building contracts;
- (2) 21.10% for all building construction, including general contractors and operative builders' contracts;
- (3) 32.9% for all special trade construction contracts;
- (4) 4.00% for professional services contracts;
- (5) 9.75% for all other services contracts; and
- (6) 21.10% for commodities contracts.

All TTUHSC El Paso offices and departments shall identify and ensure that businesses owned by minorities, disabled veterans 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 TTUHSC El Paso. Assisting the HUB vendors in obtaining certification will benefit TTUHSC El Paso utilizing the HUB as well as other state agencies utilizing the same HUB in the future. To assist in this outreach, TTUHSC El Paso, 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, TTUHSC El Paso will encourage businesses to participate in the Texas Comptroller'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, Disabled American Veterans and American women. These individuals must have a proportionate interest and demonstrate active participation in the control, operation, and management of the business.

## II. Responsibilities.

- A. The president of TTUHSC El Paso will designate a HUB coordinator who will be at least equal in position to the institution's Purchasing director. The Purchasing 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 Texas Comptroller, and match HUBs with appropriate TTUHSC El Paso staff members.
- B. The HUB coordinator is responsible for providing assistance to vendors and ensuring that the Texas Comptroller's Centralized Master Bidders List (CMBL) is utilized as the primary reference list for HUB vendors. All TTUHSC El Paso employees participating in the purchase of goods and services will be held accountable for adhering to this HSCEP OP.
- C. TTUHSC El Paso 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 purchasing 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 purchasing 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, the Texas Comptroller 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 TTUHSC El Paso's needs.
- (2) The HUB Coordinator will also:
- (a) Provide assistance to potential bidders with the Texas Comptroller's Centralized Master Bidder List of certified HUBs for subcontracting.
  - (b) Determine whether specific TTUHSC El Paso goals are appropriate under the Texas Comptroller'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.

### **III. 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 TTUHSC El Paso 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 a HUB subcontracting plan 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 HUB subcontracting plan 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 HUB subcontracting plan to the HUB coordinator for the review and approval process.
- (4) After review and approval of the HUB subcontracting plan good faith effort by the HUB coordinator the Purchasing director will contact the appropriate project manager/prime contractor to provide notification that contract development procedure can begin.
- (5) After contract award, 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 HUB subcontracting plan must be submitted in writing to the Purchasing director, by submitting a completed TTUHSC El Paso HUB Subcontracting Plan 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 Purchasing director and HUB coordinator if the contractor/ vendor has made any contract changes without the prior approval of the Purchasing director and HUB coordinator.
- (6) Prior to approval of any changes, the Purchasing director and/or HUB coordinator shall review all HUB subcontracting plan 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 ensure 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 ensuring 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 ensure 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 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 HUB subcontracting plan.

D. TTUHSC El Paso 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 criterion incorporated into the Texas Comptroller's vendor performance rating system. In making a determination whether a good faith effort has been made in the development of the HUB subcontracting plan, the potential contractor/vendor is required to submit with his bid a HUB subcontracting plan 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 purchasing process includes, at a minimum, the following:

- (1) Whether the respondent utilized the CMBL, the HUB directory, and other internet resources and directories as identified by TTUHSC El Paso 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 TTUHSC El Paso. Copies of the written documentation of the potential subcontractors/suppliers must be included in the HUB subcontracting plan.
- (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 (5) working days prior to the date/time that the responses (bids, proposals, offers, or other applicable expressions of interest) are due to TTUHSC El Paso. Copies of the written documentation to minority or women trade organizations or development centers must be included in the HUB subcontracting plan.
- (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. If a determination is made that the prime contractor failed to implement the HUB subcontracting plan in good faith, TTUHSC El Paso may, in addition to any other remedies, report nonperformance to the Texas Comptroller and/or cancel the existing contract.
- 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.

#### **IV. 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 \$50,000):
  - (1) Purchases of \$50,000 or less: TTUHSC El Paso departments and offices are encouraged to purchase from a HUB whenever possible;
  - (2) Purchases of \$50,000.01, but not greater than \$100,000, 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) TTUHSC El Paso purchases of services greater than \$100,000: 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.**

TTUHSC El Paso 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.** TTUHSC El Paso 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 an operating unit (i.e., division, program, facility, etc.) is unable to locate a HUB vendor from the Texas Comptroller'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.

#### **V. Data Collection and Reporting.**

The HUB coordinator 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.