OP 72.12: Historically Underutilized Businesses

DATE: April 2, 2013

PURPOSE: The purpose of this Operating Policy/Procedure (OP) is to establish the policy and outline the procedures for the utilization of historically underutilized businesses (HUBs) for the purchases of goods and services by the Texas Tech University System and its component institutions. This OP shall apply to all purchases of goods and services regardless of source of funds used for payment.

REVIEW: This OP will be reviewed in June of every fourth year by the vice president for administration & finance and chief financial officer and the vice chancellor for facilities planning and construction with substantive revisions forwarded to the president.

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 Historically Underutilized Business (HUB) participation in state procurements and contracts. Consequently, Texas Tech 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. Texas Tech will make a good faith effort to utilize HUBs in contracts and purchases awarded in accordance with the following percentages:

      (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) 32.7 % for all special trade construction contracts;

      (4) 23.6 % for professional services contracts;

      (5) 24.6 % for all other services contracts; and

      (6) 21 % for commodities contracts

All Texas Tech University and System offices and departments shall identify and ensure that businesses owned by HUBs are given an equal opportunity to bid/propose on commodities, services, and construction projects.
c. Definition

(1) HUB is defined by statute as a corporation, sole proprietorship, partnership, joint venture, or a supplier contract between a HUB and a prime contractor that has not exceeded size standards, 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) A Mentor-Protégé Program is a program designed by the Texas Comptroller to assist agencies in identifying prime contractors and HUBs to foster long-term relationships for potential long-term contractual relationships.

2. Responsibilities

a. The president of TTU will designate a HUB coordinator who will be at least equal in position to the institution’s procurement directors. The procurement directors may serve in this capacity, and the vice chancellor for facilities planning and construction, as the chancellor’s designee, will serve as the System HUB coordinator for the System administration and for all facilities projects that fall under the control of the Office of Facilities Planning and Construction, pursuant to Section 07.13, Regents’ Rules. The HUB coordinators shall coordinate programs to recruit, identify, and certify HUBs, report any required information to the Texas Procurement and Support Services Division (TPASS), and match HUBs with appropriate Texas Tech procurement opportunities.

b. The HUB coordinators are responsible for obtaining and utilizing the TPASS’s Centralized Master Bidders List (CMBL) as the primary reference list for HUB vendors. All Texas Tech employees participating in the purchase of goods and services will be held accountable for adhering to the policy outlined in this OP.

c. The HUB coordinator(s) will prepare, publicize, and distribute information on procurement procedures in a manner designed to encourage businesses owned by HUBs to participate in the institution’s acquisition of goods and services.

The HUB coordinators will also:

(1) Provide potential bidders/proposers with the TPASS’s CMBL website, HUB Directory, and/or other directories when searching for HUB subcontractors;

(2) Determine whether specific university goals are appropriate under the TPASS’s disparity study;

(3) 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; and
(d) Encourage utilization of firms that commit to using certified HUB firms to provide a portion of the goods and services.

3. **Historically Underutilized Business Subcontracting**

   a. Before soliciting bids, proposals, offers, or other applicable expressions of interest on a procurement/contract with an expected value of $100,000 or more, HUB coordinators 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 Texas Tech determines were not developed in good faith will be rejected as a material failure to comply with advertised specification.

   b. The HUB coordinator or his/her designee shall review all supporting documentation submitted by a potential contractor/vendor to determine if the proposed HUB subcontracting plan complies with the procurement specifications. No changes will be made to an accepted subcontracting plan prior to its incorporation into the contract.

   c. Contractor/vendor pay vouchers shall be reviewed for compliance with any awarded contract, purchase order, or HUB subcontracting plan.

   d. Texas Tech will require prime contractors to put forth a good faith effort in establishing contracts with HUBs as subcontractors. HUB subcontracting performance will be a criteria incorporated in the vendor performance rating system. Documentation of good faith efforts by the vendor/contractor during the procurement process includes, at a minimum, the following:

      (1) Whether the contractor/vendor divided the contract work into reasonable portions in accordance with prudent industry practices;

      (2) Whether the contractor/vendor sent notices containing adequate information about bonding, insurance, the plans, the specifications, scope of work, and other requirements of the contract to three or more qualified HUBs, providing no less than seven working days' notice to potential subcontractors.

      (3) Whether the contractor/vendor negotiated in good faith with qualified HUBs, not rejecting qualified HUBs who were also the best value responsive bidder/proposer;

      (4) Whether the contractor/vendor documented reasons for rejection or met with the rejected HUB to discuss the rejection. Documentation should include the dollar amount of each bid or proposal submitted.

      (5) Whether the contractor/vendor advertised in general circulation, trade association, and/or minority/women focus media concerning subcontracting opportunities; and

      (6) Whether the contractor/vendor assisted non-certified HUBs to become certified.

   e. 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, Texas Tech may, in addition to any other remedies, report non-performance to the TPASS.

f. General/Prime Contractors Will:

(1) Make all reasonable efforts to maintain their stated HUB participation goal, regardless of reduced scope of services in the contract; and

(2) Prepare and submit established forms within the time designated on each form.

g. The vendor's past performance in meeting the contractual agreement outlined in the award may be a consideration in determining future awards of agency contracts.

4. **Data Collection and Reporting**

The HUB coordinators will coordinate with each other and comply with all HUB reporting requirements, including bi-annual reports to the TPASS.

a. An automated HUB report will be produced monthly to assess agency awards made to HUBs. The report will identify total purchases, type of purchases by subobject code, amount allocated to each HUB category, and percentage of HUB participation.

b. The HUB coordinators will serve as or appoint an individual to act as a liaison between the agency and the TPASS. The liaison will contact the TPASS Small Business Programs for assistance when purchasing difficulties occur under this policy.

c. HUB participation will be included in performance evaluations. The HUB coordinators will keep a monthly record of all HUB purchases. The HUB coordinators will also use the monthly report as a tool to identify the commodities that present the greatest opportunity for HUB participation.

d. Monthly reports will be generated and sent to appropriate vice chancellors, vice presidents, deans, department chairs, etc., to determine current HUB participation by departments in their acquisition programs. Departments will be expected to make a good faith effort to comply with Texas Tech HUB goals.

e. Reports to the Board of Regents will be provided as requested.