



Angelo State University
Operating Policy and Procedure

OP 54.02: Historically Underutilized Businesses

DATE: December 20, 2016

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 Angelo State University (ASU). 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 November every five years, or as needed, by the HUB coordinator / director of purchasing and the executive director of materials management with recommendations for revision forwarded through the vice president for finance and administration to the president by December 15 of the same year.

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, Angelo State 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. Angelo State 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) 7.56% for heavy construction other than building contracts;
 - (2) 14.91% for all building construction, including general contractors and operative builders' contracts;
 - (3) 16.62% for all special trade construction contracts;
 - (4) 16.18% for professional services contracts;
 - (5) 13.58% for all other services contracts; and
 - (6) 16.42% for commodities contracts.

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

- c. Special outreach efforts will be made to identify non-certified HUB vendors currently used by Angelo State. Assisting the HUB vendors in obtaining certification will benefit Angelo State utilizing the HUB, as well as other state agencies utilizing the same HUB in the future. To assist in this outreach, Angelo State, 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, Angelo State will encourage businesses to participate in the TPASS's Mentor-Protégé Program.
- d. Definition
 - (1) 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) 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 ASU 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 TPASS and match HUBs with appropriate ASU staff members.
- b. The HUB coordinator is responsible for obtaining and utilizing the TPASS's Centralized Master Bidders List (CMBL) as the primary reference list for HUB vendors. All Angelo State employees participating in the purchase of goods and services will be held accountable for adhering to the policy outlined in this OP.
- c. Angelo State 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 institution's 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 coordinators 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. 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 Angelo State's needs.
 - (2) The HUB coordinators will also:
 - (a) Provide potential bidders/proposers with the TPASS's list of certified HUBs for subcontracting;
 - (b) Determine whether specific university 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; and
 - (d) Encourage procurement directors to adopt procurement methodologies that encourage and recognize 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 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 Angelo State 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 and departments will collect and provide to the HUB coordinator contractor pay vouchers, 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/HUB coordinator will contact the appropriate project manager/prime contractor 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 director of purchasing, by submitting a completed HSP Change Order Request Form for Contract Modifications. 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/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 director of purchasing/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 director of purchasing/ 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 director of purchasing 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 director of purchasing 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 director of purchasing 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 director of purchasing. The director of purchasing 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. Angelo State will require general/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. 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, Angelo State may, in addition to any other remedies, report non-performance to the commission in accordance with TAC Chapter § 113, Subchapter F (relating to the Vendor Performance and Debarment Program).

4. Purchasing Policy

- a. All ordering departments will ensure that bids/proposals are obtained from businesses that normally sell the goods and services being purchased.
- b. All purchases with HUB vendors will follow the guidelines outlined in OP 54.04 Purchase of Goods and Services.

5. Construction, Consulting, and Professional Services

- a. Construction

Angelo State will solicit qualifications/proposals/bids by advertising in the legal notice section of the local newspaper and by posting a procurement notice on the Electronic State Business Daily (<http://www.txsmartbuy.com/sp>). The HUB coordinators or their representatives will inform general contractors of state policy to award HUBs a good faith effort and will inform qualified HUB vendors of construction project opportunities.

- b. Consulting

If OP 30.05 requires solicitation of proposals, the department will utilize and demonstrate that the HUB directory was used as a resource.

- c. Professional

The procurement of the services of licensed professionals (certified public accountants, architects, optometrists, physicians, surgeons, land surveyors, and professional engineers) shall be based on qualifications only. The HUB directory will be used as a resource in selection of these professionals.

6. 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. The HUB coordinators will also track the extent of the HUB participation by contractors and all major departments in their acquisition programs and make it an agency review item at the executive level.

[Minor Revision: December 20, 2016]

- a. An automated HUB report will be produced monthly to assess agency awards made to HUBs. The report will identify total expenditures, total HUB expenditures 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 TPASS. The liaison will contact 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. Reports to the Board of Regents will be provided as requested.