

[The University of Texas System](#)

Business Procedures Memorandum

58-09-98

Historically Underutilized Business (HUB) Program

STATUTORY AND ADMINISTRATIVE REFERENCES: *See [Appendix 1](#)*

BACKGROUND:

The Policy on Contracting with Minority and Female-owned Small Business Firms was approved by the [U. T. Board of Regents](#) in August 1990 pursuant to action by the 71st [Legislature](#). Actions by the 72nd and 73rd Legislatures and by the [Office of the Governor](#), through Executive Order AWR 93-7, led to amendments approved by the Board in April 1994 that renamed the policy as the *Policy on Utilization of Historically Underutilized Business (HUB) Firms*, specified administrative responsibilities and required program elements, and established a new management emphasis consistent with the new legislation.

The legislative intent of the 74th and 75th Legislatures, as expressed in their respective General Appropriations Acts, is that each state agency and institution of higher education makes a good faith effort to increase purchases and contract awards to HUB firms based on the results of the statewide disparity study completed in 1995 and implements rules adopted by the [General Services Commission \(GSC\)](#).

POLICY

It is the policy of [The University of Texas System](#) to promote full and equal opportunity for all businesses to provide materials, supplies, and equipment, as well as, construction, professional and other services needed to support the mission, administrative, and logistical operations of the U. T. System Administration and [U. T. System component institutions](#). The U. T. System Administration and U. T. System component institutions commit to a good faith effort to increase purchases from and contract awards to Historically Underutilized Business (HUB) firms consistent with Texas' goals for (1) HUB participation and (2) overall economic development and prosperity.

This boardroom-to-basement policy applies to the acquisition of commodities and services (professional, construction, and other services) by the U. T. System Administration and component institutions (including auxiliary enterprises) utilizing treasury or non-treasury funds.

DEFINITIONS

"Historically Underutilized Businesses" are the business enterprises defined in [references\(e\)](#) and [\(j\) in Appendix 1](#).

"Treasury Funds" are funds maintained in the state treasury and paid through the [State Comptroller's Office](#) for the U. T. System Administration or a component institution.

"Non-Treasury Funds" are all funds paid by the U. T. System Administration or a component institution that are not deposited in the state treasury.

HUB Program Planning and Direction

The following specifies HUB Program administrative responsibilities.

U. T. System Administration

[The Chancellor](#), with delegation to and support from the Executive Vice Chancellor for [Health Affairs](#) and the Vice Chancellor for [Academic Affairs](#) exercises oversight responsibility for implementation of the HUB Program throughout the U. T. System. Authority for program implementation in [System Administration](#) also is delegated to the Executive Officers heading the several staff operating divisions. The Chancellor shall develop the HUB program strategic plans for U. T. System Administration required by references (a), (c), (j), and (n).

The Executive Vice Chancellor for [Business Affairs](#) provides functional staff expertise and support and advises the Chancellor, the Executive Vice Chancellor for Health Affairs and the Vice Chancellor for Academic Affairs regarding all phases of the [HUB program](#). The Executive Vice Chancellor for Business Affairs shall develop the HUB program action plan for U. T. System Administration required by reference (n).

U. T. System Components

The [Chief Administrative Officer \(CAO\)](#) of each component institution is responsible for implementation of the institutional HUB program.

CAOs shall develop the component strategic and action plans required by [references \(a\), \(c\), \(j\), and \(n\)](#).

Annual Adjusted (Underutilized) HUB Goals [[References \(d\), \(e\), \(f\), and \(j\)](#)]

U. T. System Administration and component institutions shall make good faith efforts to meet or exceed the following annual goals for underutilized HUB participation in purchases of and contracts for commodities and services:

Purchasing Category	Percentage of HUB Utilization Goals (Availability)	Percentage of Adjusted HUB Utilization Goals (Underutilized)	Percentage of Other HUB Utilization Goals (Overutilized)
Heavy Construction other than Building	11.9	6.6 [HI (5.4), AS/AI (0.1), BL (1.2)]	5.3 [WO]
Building Construction	26.1	25.1 [BL (2.4), HI (15.5), WO (7.2)]	1.0 [AS, AI]
Special Trade Construction	57.2	47.0 [BL (4.3), HI (42.7)]	10.2 [WO (8.7), AS/AI (1.5)]
Professional Services	20.0	18.1 [[WO (11.6), HI (5.1), BL (1.4)]	1.9 [AS/AI]

Other Services	33.0	33.0 [HI (9.9), AS/AI (2.3), BL (3.5), WO (17.3)]	0.0
Commodities	12.6	11.5 [BL (0.8), WO (7.6) HI (3.1)]	1.1 [AS/AI]

HI – Hispanic, AS – Asian Pacific, AI – American Indian, BL – Black, WO – White Female

Agency Program Infrastructure [[Reference \(j\), Art. III. A-E, G](#)]

U. T. System Administration and component institutions shall implement actions specified below:

- Specify an operating division structure.
- Establish a Staff Coordinating Group.
- Establish an Agency Outreach Program:

Outreach strategies involve every practical means for informing the HUB vendor community of business opportunities with U. T. System agencies.

These involve, among other things, participation in economic opportunity forums and fairs including those sponsored by legislators, the [General Services Commission](#), components, and private business entities. Components should plan to participate in these and other outreach activities deemed necessary and beneficial to the HUB program. An important function of outreach is to inform the HUB vendor community of the benefits of registration on the [Centralized Master Bidders List \(CMBL\)](#) and application for certification as a HUB firm. All practical assistance should be provided to facilitate these outcomes.

- Establish an Internal Education and Functional Staff Support Program:
Operating Division Heads require special staff expertise including procurement, accounting, information services, and HUB program development in order to implement effective HUB programs in the areas of their supervision. Primarily, the Staff Coordinating Group should provide this support.
- Develop and maintain internal and external HUB utilization reporting systems.
- Develop and implement procedures across the full spectrum of procurement processes (non-competitive spot purchases, competitive spot purchases, advertisement for bids, requests for proposals, requests for quotations, competitive sealed proposals, etc.) that promote HUB utilization.

AGENCY PROGRAM OPERATIONS

Agency Good Faith Effort Criteria [[Reference \(e\), Sections 111.13 \(c\) \(1-6\), \(d\)](#)].

[U. T. System Administration](#) and component institutions shall adopt procedures to ensure:

1. Preparation and distribution of information on procurement procedures in a manner that encourages participation in state contracts by all

- businesses;
2. Division of proposed requisitions into reasonable lots in keeping with industry standards and competitive bid requirements;
 3. Assessment of bond and insurance requirements and the designing of such requirements to reasonably permit more than one business to perform the work;
 4. Specification of reasonable, realistic delivery schedules consistent with an agency's actual requirements;
 5. That specifications, terms and conditions reflect an agency's actual requirements, are clearly stated, and do not impose unreasonable for unnecessary contract requirements;
 6. Provision of referenced lists of certified HUBs for subcontracting to prime contractors;
 7. Determination of whether specific agency-wide goals are appropriate under the Disparity Study (reference (d) because some HUB groups have not been underutilized within applicable contracting categories and should not be included in the HUB goals for that category. (Goals specified above have been adjusted as required by this procedure); and
 8. Inclusion of supplemental summary providing a more comprehensive representation of component good faith efforts, as prescribed by the General Services Commission, in semi-annual and annual program reporting.

Agency Supplementary Good Faith Effort Criteria [[Reference \(i\)](#)]

U. T. System Administration and component institutions may further demonstrate good faith efforts by:

1. Establishing rules and procedures for increasing HUB utilization.
2. Documenting outreach efforts, including identification of available HUBs, marketing effort, and dissemination of information to HUBs.
3. Writing specifications that encourage use of HUB contractors and subcontractors.
4. Designating an agency HUB coordinator.
5. Complying with HUB reporting requirements.

Agency Delegated/Exempt Purchasing Authority [[References \(a\), \(b\), and \(e\) – \(h\)](#)]

U. T. System Administration and component institutions shall implement procedures pertaining to HUB participation in spot purchases of goods and services having a value of less than \$25,000.

Agency Contracting for Goods and Services [[Reference \(e\), Section 111.14](#)]

U. T. System Administration and component institutions shall require that a potential contractor makes a good faith effort to award subcontracts to HUBs for contracts exceeding \$100,000.

U. T. System Administration and component institutions shall include HUB Subcontracting Good Faith

Effort Guidelines and Goals in all bid and contract documents that exceed \$100,000 for commodities, construction, professional services, and other services. Contractor compliance with good faith effort guidelines is a condition of awarding a contract.

A contractor is presumed to have made a good faith effort if the contractor implements the following procedures:

1. To the extent consistent with prudent industry practice, divides the contract work into reasonable lots.
2. Notifies HUBs of the work that the contractor intends to subcontract. The notice must be in writing, describe the subcontracting opportunities, and identify the location at which contract specifications may be reviewed. The notice must be provided to potential subcontractors prior to submission of the contractor's bid.
3. Sends the notice described in paragraph (2) above to at least five businesses in the current GSC directory of certified HUBs that perform the type of work required in the area in which the work will be performed.
4. If a non-HUB subcontractor is selected through means other than competitive bidding or if a HUB bid is the lowest price responsive bidder to a competitive bid but the HUB bid is not selected, the contractor must document the selection process.
5. Maintains business records documenting compliance with Section 111.14 of the [Texas Administrative Code](#) and makes a compliance report in the format required by the agency's contract documents to the contracting agency, provided that the reporting shall be at least once for each calendar quarter during the term of the contract.
6. If the contract is a state lease contract, the contractor or lessor complies with the requirements of Section 111.14 from and after the occupancy date provided in the lease or at such other time as may be specified in the invitation for the lease contract.

Pursuant to Subsection 111.14(f), the apparent "best value" bidder/proposer is required to complete a checklist and submit supporting documentation explaining the bidder's/proposer's good faith efforts. The checklist and documentation must be submitted within 14 days of selection and prior to the award of the contract. Subsection 111.14(f) lists the minimum information that must be included in the checklist. If a bidder fails to engage in all the activities contained in Subsection 111.14(c), the bidder is not precluded from being awarded a contract. The subsection simply identifies activities that will preemptively establish that the bidder has engaged in good faith efforts. The agency must review whatever information the bidder has submitted to determine whether or not the bidder has engaged in good faith efforts.

Within 14 days of receipt of the checklist and documentation, the agency must complete its review and determination of good faith effort and issue a written Notice of Acceptance or Notice of Deficiency. If the agency determines that the bidder has not engaged in a good faith effort, a Notice of Deficiency stating the reasons for the deficiency is issued. A contract may not be awarded to the bidder and the next "best value" bidder may be evaluated for good faith effort determination.

HUB participation rate or comparative extent of good faith efforts may not be considered as factors in determination of "best value."

Appendices 2 through 6 are procedural models for complying with requirements of Section 111.14 for commodities, professional services, other services, special trade construction, and building constructions respectively. They may be modified as necessary to reflect local operating and market conditions.

HUB PROGRAM REPORTING

Internal Reporting

The U. T. System Administration and U. T. System component institutions (1) shall compile and maintain monthly information relating to the use of HUB firms, including information regarding subcontractors and suppliers as required by [Texas Government Code](#), Section 2161.122, formatted and structured so as to enable effective management control of the HUB program, and (2) shall estimate, no later than the 60th day of the fiscal year, the total value of contract awards expected to be made for that fiscal year that are subject to Texas Government Code, Section 2161.181 and the total value of contract awards expected to be made for that fiscal year under Chapter 2166. Estimates may be revised as new information indicates and will be maintained in agency files.

External Reporting

The U. T. System Administration and U. T. System component institutions shall make semi-annual and annual reports on expenditures for goods and services specified by object codes reportable under the HUB program in accordance with procedures documented in [reference \(o\)](#). Component institutions shall not include expenditures for building construction projects managed by the [U. T. System Office of Facilities Planning and Construction](#) (OFPC).

Additionally, the U. T. System Administration and U. T. System component institutions shall, as specified by reference (o).

- . Submit a supplemental summary letter that provides a more comprehensive representation of the agency's good faith effort. Include the following data in the letter:

Purchase Category	Total Expenditures	Underutilized HUB Payments (%)	Non-certified Underutilized HUB Payments*	HUB Non-Availability Payments**	Adjusted Underutilized HUB Payments (%)
Heavy Construction Building Construction S. T. Construction Professional Services Other Services Commodities	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
TOTAL					

* numerator adjustment; ** denominator adjustment

Use the following definition of HUB non-availability:

"No HUB vendor offering the demanded goods or services could be identified on the augmented Centralized Master Bidders List (CMBL) or the General Services Commission HUB Directory, or underutilized HUB vendors did not respond to solicitations."

- b. Submit the number of HUBs submitting bids and/or proposals for the acquisition, construction, equipping, or operational implementation of state facilities or programs.
- c. Submit the report required by agencies authorized to participate in a

group-purchasing program.

- d. Submit the HUB Strategic Plan Progress Report (SPPR) with agency Annual Financial Reports (AFR).

The U.T. System Administration shall (a) submit the number of HUBs participating in System bond issuances distributed by ethnic group status and gender, and (b) prepare and forward the annual report required by [Texas Education Code](#), Section 55.03 (b) to the Board of Regents for further submission to the Governor and each house of the legislature not later than October 31 of each academic year. This report pertains to minority-owned and woman-owned business participation in contract costs relating to the issuance of bonds and in the total contract costs of items to be financed by such bond proceeds.

APPENDICES

[Appendix 1](#) - *References*

[Appendix 2](#) - *Good Faith Effort Program for **Commodities Contracts***

[Appendix 3](#) - *Good Faith Effort Program for **Professional Services Contracts***

[Appendix 4](#) - *Good Faith Effort Program for **Other Services Contracts***

[Appendix 5](#) - *Good Faith Effort Program for **Special Trade Construction Contracts***

[Appendix 6](#) - *Good Faith Effort Program for **Building Construction Contracts***

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The University of Texas System Administration