



Angelo State University
Operating Policy and Procedure

OP 54.02: Historically Underutilized Businesses

DATE: August 13, 2020

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 the funding source used for payment.

REVIEW: This OP will be reviewed in November every five years, or as needed, by the executive director of contracts and materials management and the HUB & logo licensing coordinator with recommendations for revisions 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, women and service disabled-veterans. It is the state's policy to create an environment that will enhance participation of HUBs in state procurements and contracts.
- b. ASU 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, specifically Texas Government Codes [2161.003](#), [2161.062](#), [2161.066](#) and [2161.181](#) and with the [HUB utilization goals](#) adopted by ASU each fiscal year.
- c. All ASU departments shall identify and ensure that HUBs are given an equal opportunity to bid/propose on goods, services, and construction projects.
- d. All ASU employees participating in the purchase of goods and services will be held accountable for adhering to the requirements of this OP.
- e. Definition
 - (1) Per [Texas Government Code Section 2161](#), a HUB vendor is defined as a corporation, sole proprietorship, partnership, joint venture, or a supplier contract between a HUB and a prime contractor that has not exceeded the allowed 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 Americans, Hispanic Americans, Asian Pacific Americans, Native Americans, women or service-disabled veterans. 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 purpose of the [ASU HUB Program](#) is to promote full and equal contracting opportunities for all businesses in the state of Texas and evaluate various options for future program development in accordance with the [State of Texas 2009 Disparity Study](#).
- b. In accordance with [Texas Government Code §2161.062\(e\)](#), the president of ASU 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 Texas Tech University System (TTUS) HUB coordinator for the TTUS administration and for all facility projects that fall under the control of the Office of Facilities Planning and Construction, pursuant to Section 07.13, [Regents' Rules](#).
- c. The HUB coordinator shall coordinate programs to recruit and identify vendors that may qualify for HUB certification and match HUBs with possible prime contractors interested in participating in [ASU's Mentor-Protégé Program](#).
- d. In accordance with Texas Administrative Codes [20.296](#) and [20.297](#), the HUB coordinator will assist ASU departments in complying with the HUB Program requirements and participate in and arrange forums in which HUBs are invited to deliver a business demonstration.
- e. The HUB coordinator is responsible for obtaining and utilizing the [Centralized Master Bidders List \(CMBL\)](#) as the primary reference list for HUB vendors.
- f. The HUB coordinator or his/her designee will prepare, publicize, and distribute information on procurement procedures in a manner designed to encourage HUBs to participate in 's acquisition of goods and services for ASU.

The HUB coordinators will also:

- (1) Provide potential bidders/proposers with the CMBL website, HUB directory, and/or other directories when searching for HUB subcontractors;
- (2) Determine whether specific HUB utilization goals are appropriate under the Texas Comptroller'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;

- (4) Encourage utilization of firms that commit to using certified HUBs 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, the HUB coordinator or his/her designee 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 solicitation response. Responses that do not include the HUB subcontracting plan and responses that ASU determines were not developed in good faith will be rejected as a material failure to comply with advertised specifications.
- b. The HUB coordinator or his/her designee shall review all supporting documentation submitted by a potential contractor 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 a contract.
- c. Contractor pay vouchers and supporting documentation may need to be reviewed for compliance with awarded contracts, purchase orders, or HUB subcontracting plans.
- d. ASU will require prime contractors to put forth a good faith effort in establishing contracts with HUB qualified subcontractors. HUB subcontracting performance will be a criteria included in vendor evaluations. Documentation of good faith efforts by the contractor during the procurement process includes, at a minimum, the following:
 - (1) Whether the contractor divided the contract work into reasonable portions in accordance with prudent industry practices;
 - (2) Whether the contractor sent notices containing adequate information about bonding, insurance, plans, specifications or scope of work, and any 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 negotiated in good faith with qualified HUBs, not rejecting qualified HUBs who were also the best value respondent;
 - (4) Whether the contractor documented reasons for rejection or met with the rejected HUBs to discuss the rejection. Documentation should include the dollar amount of each response submitted;
 - (5) Whether the contractor advertised in general circulations, trade associations, and/or minority/women focused media sources concerning subcontracting opportunities;
 - (6) Whether the contractor assisted vendors that may qualify for HUB certification 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 failed to

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implement the HUB subcontracting plan in good faith, ASU may, in addition to any other remedies, report non-performance to the Texas Comptroller and/or cancel the existing contract.

f. Contractors will:

- (1) Make all reasonable efforts to maintain their stated HUB participation goals, regardless of changes in scope of goods or services in the contract;
- (2) Prepare and submit established forms within the time designated on each form.

g. The contractor's past performance in meeting the requirements outlined in an award may be a consideration in determining future awards of ASU contracts.

4. Data Collection and Reporting

The HUB coordinator will coordinate with other state agency HUB coordinators and comply with all HUB reporting requirements of the Texas Comptroller:

- a. A HUB report will be produced monthly to assess agency awards made to HUBs as prescribed in [Texas Government Code Section 2161.122](#).
- b. Monthly reports will be generated and sent to the vice president for finance and administration to review current utilization of HUBs by departments to share with other executive management. Departments will be expected to make a good faith effort to comply with ASU HUB goals.
- c. Bi-annual reports will be prepared and submitted to the Texas Comptroller by March 15th and September 15th of each year in accordance with [Texas Government Code 2161.121](#).
- d. Not later than the 60th day of its fiscal year, ASU will estimate and post on its website the total value of contract awards subject to Texas Government Code Section [2161.181](#) and [Chapter 2166](#).
- e. HUB reports for the Board of Regents will be provided upon request.