

Section 2.20

Historically Underutilized Business Program

TPASS administers Texas' statewide Historically Underutilized Business (HUB) Program in accordance with Texas Government Code § 2161 and 34 Texas Administrative Code. HUB Program activities are designed to promote full and equal business opportunities for all businesses in state contracting in accordance with the goals specified in the 2009 State of Texas Disparity Study, including updates of the study that are prepared on behalf of the state. State agencies shall make a good faith effort to utilize HUBs in contracts for construction, services (including professional and consulting services) and commodities purchases. Each state agency shall make a good faith effort to assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year in accordance with the following percentages, per 34 Texas Administrative Code §20.13:

- 11.20% for heavy construction other than building contracts;
- 21.10% for all building construction, including general contractors and operative builders contracts;
- 32.90% for all special trade construction contracts;
- 23.70% for professional services contracts;
- 26.00% for all other services contracts; and
- 21.10% for commodities contracts.

Type of Purchase	Procedure
estimated purchases up to \$5,000	Competitive bids not required but purchasing from state of Texas certified HUBs encouraged.
estimated purchases of \$5,000.01 to \$25,000	Agencies must obtain at least 3 informal bids, 2 of which must be from state of Texas certified HUBs.
estimated purchases over \$25,000	Agencies must solicit bids or proposals from all eligible vendors on the Centralized Master Bidders List (CMBL) serving the agency's geographic region.

NOTE: An agency may supplement the CMBL with state of Texas certified HUBs at any time if it determines that it may enhance competition or increase the number of HUBs that submit bids.

Historically Underutilized Business Subcontracting Plan (HSP)

Each state agency that considers entering into a contract with an expected value of \$100,000 or more over the life of the contract (including any renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. If subcontracting opportunities are probable, the soliciting agency will state such probability in its bid, proposal, offer or other applicable expression of interest (solicitation) and require the prime contractors (respondents) to complete and submit an HSP with their response. Agencies should include the HSP form as an attachment to its solicitation. Even if the prime contractor can fulfill the entire contract work specified in the agency's solicitation, the prime contractor must complete and submit an HSP with its response.

In the event prime contractors cannot fulfill the contract with their own equipment, supplies, materials, and/or employees, the agency should instruct prime contractors to use the [CMBL/ HUB Search Directory](#) to identify state of Texas certified HUBs who may be capable of performing the subcontracting opportunities identified in the contract specifications and any other subcontracting opportunities.

Note: TPASS does not endorse, recommend or attest to the capabilities of any company or individual listed within the CMBL/HUB Search Directory.

In accordance with 34 Texas Administrative Code §20.14, a bid, proposal, offer, or other expression of interest to such a solicitation must include a completed HUB subcontracting plan to be considered responsive. Once accepted, the HSP will become a provision of the contract.

In preparing the HSP, if the prime contractor determines that it will be subcontracting any portion of the contract work, the prime contractor must comply with provisions of 34 Texas Administrative Code §20.14 relating to developing and submitting a subcontracting plan. That section allows prime contractors to demonstrate “good faith effort” for recruiting HUB subcontractors through three methods by providing documentation of meeting one or more of the following requirements:

1. Notifying at least three state of Texas certified HUBs and two or more trade organizations or development centers in Texas of the work it intends to subcontract, and providing the HUBs a reasonable time to respond to the notice. Unless circumstances require a different time period determined by the soliciting agency and documented in the agency’s contract file, “**reasonable time**” in this context is at least seven (7) working days prior to the prime contractor submitting its response and HSP to the soliciting agency. The notice shall, in all instances, include a quantitative description of the subcontracting opportunities and identify the location to review plans and contract specifications, information about bonding and insurance requirements, and identify a contact person. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be “day zero” and does not count as one of the seven (7) working days.)

2. Submit documentation that 100% of all available subcontracting opportunities will be performed by one or more HUBs; or,

3. Submit documentation that one or more HUB subcontractors will be utilized and that the total value of those subcontracts will meet or exceed the appropriate contract category HUB goal specified by the contracting agency. The HUB goal will be shown in the instructions section of the HSP. When utilizing this method, HUB subcontractors with which the prime contractor has existing contracts in place for more than five years cannot be claimed for purposes of demonstrating that the HUB goal has been met or exceeded.

If the prime contractor decides to subcontract any part of the contract in a manner that is not consistent with its HUB subcontracting plan, the prime contractor must comply with provisions of Texas Administrative Code §20.14 and submit a revised HUB subcontracting plan before subcontracting any of the work under the contract.

Similarly, if at any time during the term of the contract, the prime contractor desires to make changes to the approved HUB subcontracting plan, proposed changes must be received for prior review and approval by the state agency before changes will be effective under the contract. The prime contractor must comply with provisions of 34 Texas Administrative Code §20.14, relating to developing and submitting a subcontracting plan for substitution of work or of a subcontractor, prior to any alternatives being approved under the HUB subcontracting plan. The state agency shall approve changes by amending the contract or by another form of written agency approval. The reasons for amendments or other written approval shall be recorded in the procurement file. If the prime contractor subcontracts any of the work without prior authorization and without complying with provisions of 34 Texas Administrative Code §20.14, the prime contractor is deemed to have breached the contract and is subject to any remedial action provided by Texas Government Code § 2161, other applicable law and 34 Texas Administrative Code §20.14. The contracting agency may report nonperformance relative to its contracts to TPASS in accordance with 34 Texas Administrative Code §20.108 (Vendor Performance Tracking System) and §20.106 (Debarment).

The prime contractor shall maintain business records documenting its compliance with the approved HSP and shall submit a Progress Assessment Report (PAR) to the ordering entity monthly and in the format required by the contract documents. Documentation of the prime contractor's good faith efforts shall be maintained by the contracting agency in the contract file for determining whether the value of the subcontracts to state of Texas certified HUBs meets or exceeds the HUB subcontracting provisions specified in the contract.

View electronic copies of the [HSP and PAR](#).

Reports

- The HUB Report includes a summary and analysis of expenditures made to Texas certified HUBs by state agencies and institutions of higher education. The report is compiled and published on a semi-annual basis. By using the HUB Report, agencies can track their expenditures and utilize the report as a bench marking tool to meet or exceed their HUB utilization goals in the six (6) procurement categories tracked (i.e., Heavy Construction, Building Construction, Special Trade Construction, Professional Services, Other Services, and Commodities Purchasing). Not only does the HUB Report capture expenditures, but it also contains Supplementary Summary Letters that identify agency Outreach and Good Faith Efforts.
- View [HUB Reports and reporting procedures](#).
- Agencies will continually maintain and compile monthly information relating to the agency's use of Texas certified HUBs, by each operating division, including information regarding subcontractors and suppliers.
- Agencies must refer to the [CMBL/HUB Search Directory](#) to locate state of Texas certified HUBs. If an agency is unable to locate a Texas certified HUB from the CMBL/HUB Search Directory, the agency must make a written notation in the procurement file of all the reference sources used for the purchase.

For further information on HUB Certification, Compliance and HSP, call 1-888-863-5881.