

Historically Underutilized Businesses (HUB)

In accordance with 34 TAC §20.284, TMB shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for services (including professional and consulting services) and commodities purchases.

TMB shall make a good faith effort to meet or exceed these goals and 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:

- (1) 11.2% for heavy construction other than building contracts;**
- (2) 21.1% for all building construction, including general contractors and operative builder's contracts;**
- (3) 32.9% for all special trade construction contracts;**
- (4) 23.7% for professional services contracts;**
- (5) 26% for all other services contracts; and**
- (6) 21.1% for commodities contracts.**

It is the policy of TMB to achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with Government Code, Chapter 2161, Subchapter F and comptroller HUB Rules, TAC §20.10.

Historically Underutilized Business (HUB) Subcontracting Plan

HUB Subcontracting Plan (HSP) Procedures

In accordance with Government Code, Chapter 2161, Subchapter F and the CPA's HUB Rules, TAC, §20.284 and §20.14, TMB, 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.

- (1) TMB shall use the following steps to determine if subcontracting opportunities are probable under the contract:
 - A. Exam the scope of work to be performed under the proposed contract and determine if it is likely that some of the work may be performed by a subcontractor;
 - B. Research the Centralized Master Bidders List, the HUB Directory, the Internet, and other directories, identified by the CPA, for HUBs that may be available to perform the contract work: and
 - C. TMB may determine that subcontracting is probable for only a subset of the work expected to be performed or the funds to be expended under the contract. If TMB determines that subcontracting is probable on only a portion of a contract, it shall document its reasons in writing for the procurement file.
- (2) In addition, determination of subcontracting opportunities may include, but is not limited to, the following:
 - A. Contacting other state agencies and institutions of higher education to obtain information regarding similar contracting and subcontracting opportunities: and
 - B. Reviewing the history of similar agency purchasing transactions.

Receipt of HUB subcontracting plans

- (1) If, through the analysis in subsection (a) of this section, TMB determines that subcontracting opportunities are probable, then its invitation for bids, request for proposals or other purchase solicitation documents shall state that probability and require a HUB subcontracting plan. A bid, proposal, offer, or other expression of interest to such a solicitation must include a completed HUB subcontracting plan to be considered responsive.
- (2) The HUB subcontracting plan shall be submitted with the respondent's response on or before the due date for responses, except for construction contracts involving alternate delivery methods. For construction contracts involving alternative delivery methods, the HUB subcontracting plan may be submitted up to 24 hours following the date/time that responses are due provided that responses are not opened until the HUB subcontracting plan is received.

- (3) Responses that do not include a completed HUB subcontracting plan in accordance with 34 TAC §20.14(b) shall be rejected due to material failure to comply with Government Code §2161.252(b).
- (4) If a properly submitted HUB subcontracting plan contains minor deficiencies (e.g., failure to sign or date the plan, failure to submit already-existing evidence that three HUBs were contacted), TMB may contact the respondent for clarification to the plan if it contains sufficient evidence that the respondent developed and submitted the plan in good faith.

Requirements of a HUB subcontracting plan

- (1) TMB shall require a respondent to state whether it is a certified HUB. TMB shall also require a respondent to state overall subcontracting and overall certified HUB subcontracting to be provided in the contract. Respondents shall follow procedures in paragraph (2)(A) – (D) of this subsection when developing the HUB subcontracting plan.
- (2) The HUB subcontracting plan shall include the TMB's HUB goals for its HUB business plan, and shall consist of completed forms prescribed by the comptroller and shall include the following:
 - A. Certification that respondent has made a good faith effort to meet the requirements of this section;
 - B. Identification of the subcontractors that will be used during the course of the contract;
 - C. The expected percentage of work to be subcontracted; and
 - D. The percentage of work approximate dollar value of that.
- (3) The successful respondent shall provide all additional documentation required by TMB to demonstrate compliance with good faith requirements prior to contract award. If the successful respondent fails to provide supporting documentation (phone logs, fax transmittals, electronic mail, etc.) within the timeframe specified by TMB to demonstrate compliance with this subsection prior to contract award, that respondent's bid/proposal shall be rejected for material failure to comply with advertised specifications and state law.

Establishing good faith effort by respondent

- (1) Any person submitting a bid, proposal, offer or other applicable expression of interest in obtaining a contract with TMB shall submit a completed HUB subcontracting plan demonstrating evidence of good faith effort in developing that plan. Good faith effort shall be shown through utilization of all methods specified below, and in full conformance with any directions for demonstrations and submission specified in the HUB subcontracting plan template.
 - A. Divide the contract work into reasonable lots or portions to the extent consistent with prudent industry practices.
 - B. Provide written justification of the selection process if the selected subcontractor is not a HUB.
 - C. Provide notice to minority or women trade organizations or development centers according to methods established by the comptroller to assist in identifying HUBs by disseminating subcontracting opportunities to their membership/participants. The notice shall, in all instances, include scope of work, information regarding location to review plans and specifications, information about bonding and insurance requirements, and identify contact person. Respondent must provide notice to organizations or development centers no less than seven (7) working days prior to submission of the response unless circumstances require a different time period, which is determined by the TMB and documented in the contract file.
 - D. Provide documentation of meeting one or more of the following requirements:
 - E. Notify at least three (3) HUB businesses of the subcontracting opportunities that the respondent intends to subcontract. The respondent shall provide the notice described in this section to three or more HUBs per each subcontracting opportunity that provide the type of work required for each subcontracting opportunity identified in the contract specifications or any other subcontracting opportunity the respondent cannot complete with its own equipment, supplies, materials, and/or employees. The notification shall be in writing, and the respondent must document the HUBs contacted on the forms prescribed by the comptroller. The notice shall, in all instances, include the scope of the work, information regarding the location to review plans and specifications, information about bonding and insurance requirements, and identify contact person. The notice shall be provided to potential HUB subcontractors at least seven (7) working days prior to submission of the respondent's response, unless circumstances require a different time period, which is determined by TMB and documented in the contract file;
 - F. Submit documentation that 100% of all available subcontracting opportunities will be performed by one or more HUBs; or

- G. Submit documentation that one or more HUB subcontractors will be utilized and that the total value of those subcontracts will meet or exceed the statewide goal for the appropriate contract category found in 34 TAC §20.284(b), or the established TMB goal, whichever is higher. When utilizing this demonstration method, only HUB contractors holding existing contracts with the person submitting the HUB subcontracting plan for five years or fewer may be claimed.
- (2) The respondent shall use the comptroller's Centralized Master Bidders List, the HUB Directory, Internet resources, and/or other directories as identified by the comptroller or TMB when searching for HUB subcontractors. Respondents may utilize the services of minority, women, and community organizations contractor groups, local, state, and federal business assistance offices, and other organizations that provide assistance in identifying qualified applicants for the HUB program who are able to provide all or select elements of the HUB subcontracting plan.
 - (3) In making a determination if a good faith effort has been made in the development of the required HUB subcontracting plan, TMB may require the respondent to submit supporting documentation explaining how the respondent has made a good faith effort according to each criterion listed in subsection (c)(2)(A) – (D) of this section. The documentation shall include the following:
 - A. How the respondent divided the contract work into reasonable lots or portions consistent with prudent industry practices:
 - B. How the respondent's notices contain adequate information about bonding, insurance, the availability of plans, the specifications, scope of work, required qualifications and other requirements of the contract allowing reasonable time for HUBs to participate effectively;
 - C. How the respondent negotiated in good faith with qualified HUBs, not rejecting qualified HUBs who were also the best value responsive bidder;
 - D. How the respondent provided notice to minority and women trade organizations or development centers to assist in identifying HUBs by disseminating subcontracting opportunities to their membership/participants.
 - (4) A respondent's participation in a Mentor-Protégé Program under Government Code, §2161.065, and the submission of a protégé as a subcontractor in the HUB subcontracting plan constitutes a good faith effort for the particular area to be subcontracted with the protégé. When submitted, TMB may accept a Mentor-Protégé Agreement that has been entered into by the respondent (mentor) and a certified HUB (protégé). The TMB shall consider the following in determining the respondent's good faith effort:

- A. If the respondent has entered into a fully executed Mentor-Protégé Agreement that has been registered with the comptroller prior to submitting the plan, and
 - B. If the respondent's HUB subcontracting plan identifies the areas of subcontracting that will be performed by the protégé.
- (5) If the respondent is able to fulfill all of the potential subcontracting opportunities identified with its own equipment, supplies, materials and/or employees, respondent must sign an affidavit and provide a statement explaining how the respondent intends to fulfill each subcontracting opportunity. The respondent must agree to provide the following if requested by the TMB:
- A. Evidence of existing staffing to meet contract objectives;
 - B. Monthly payroll records showing company staff fully engaged in the contract;
 - C. On site reviews of the company headquarters or work site where services are to be performed; and
 - D. Documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the work.

Reviewing the HUB subcontracting plan

The HUB subcontracting plan shall be reviewed and evaluated prior to contract award and, if accepted, shall become a provision of TMB's contract. Revision necessary to clarify and enhance information submitted in the original HUB subcontracting plan may be made in an effort to determine good faith effort. TMB shall review the documentation submitted by the respondent to determine if good faith effort has been made in accordance with this section. If TMB determines that a submitted HUB subcontracting plan was not developed in good faith, TMB shall treat that determination as a material failure to comply with advertised specifications, and the subject response (bid, proposal, offer, or other applicable expression of interest) shall be rejected. The reasons for rejection shall be recorded in the procurement file.

Maintaining records

- (1) Prime contractors shall maintain business records documenting compliance with the HUB subcontracting plan and shall submit a compliance report to TMB monthly, in the format required by the comptroller. The compliance report submission shall be required as a condition for payment.

- (2) During the term of the contract, TMB shall monitor the HUB subcontracting plan monthly to determine if the value of the subcontracts to HUBs meets or exceeds the HUB subcontracting provisions specified in the contract. Accordingly, TMB shall audit and require a prime contractor to report to TMB the identity and the amount paid to its subcontractors in accordance with 34 TAC §20.16(b). If the prime contractor is meeting or exceeding the provisions, TMB shall maintain documentation of the prime contractor's efforts in the contract file. If the prime contractor fails to meet the HUB subcontracting provisions specified in the contract, TMB shall notify the prime contractor of any deficiencies. TMB shall give the prime contractor an opportunity to submit documentation and explain to TMB why the failure to fulfill the HUB subcontracting plan should not be attributed to a lack of good faith effort by the prime contractor.

Monitoring HUB subcontracting plan during the contract

- (1) If the selected respondent decides to subcontract any part of the contract in a manner that is not consistent with its HUB subcontracting plan, the selected respondent must comply with provisions of this section and submit a revised HUB subcontracting plan before subcontracting any of the work under the contract. If the selected respondent subcontracts any of the work without prior authorization and without complying with this section, the selected respondent is deemed to have breached the contract and is subject to any remedial actions provided by Government Code, Chapter 2161, other applicable state law and this section. TMB shall report nonperformance relative to its contracts to the comptroller in accordance 34 TAC §20.18.
- (2) If at any time during the term of the contract, the selected respondent desires to make changes to the approved HUB subcontracting plan, proposed changes must be received for prior review and approval by TMB before changes will be effective under the contract. The selected respondent must comply with provisions in this section, 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. TMB 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.

- (3) If a state agency expands the original scope of work through a change order or contract amendment, including contract renewal that expands scope of work, TMB shall determine if the additional scope of work contains additional probable subcontracting opportunities not identified in the initial solicitation. If TMB determines probable subcontracting opportunities exist, TMB will require the selected respondent to submit a HUB subcontracting plan/revised HUB subcontracting plan for the additional subcontracting opportunities.
- (4) To determine if the prime contractor is complying with the HUB subcontracting plan, TMB may consider the following:
 - A. Whether the prime contractor gave timely notice to the subcontractor regarding time and place of the subcontracted work;
 - B. Whether the prime contractor facilitated access to the resources needed to complete the work; and
 - C. Whether the prime contractor complied with the approved HUB subcontracting plan.
- (5) If a determination is made that the prime contractor failed to implement the HUB subcontracting plan in good faith, TMB, in addition to any other remedies, may report nonperformance to the comptroller in accordance with 34 TAC §20.105 and §20.106. In addition, if the prime contractor failed to implement the HUB subcontracting plan in good faith, TMB may revoke the contract for breach of contract and make a claim against the prime contractor.
- (6) TMB shall review its procurement procedures to ensure compliance with this section.