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STATE OF TEXAS • ACTING COMPTROLLER OF PUBLIC ACCOUNTS

Prohibiting Unlawful Discrimination in State Contracting

The Texas Comptroller of Public Accounts has suspended new certifications of Historically Underutilized Businesses (HUBs) pending further action to ensure the program's administrative procedures and rules comply with the U.S. and Texas constitutions. The Comptroller's office reminds state agencies and institutions of higher education that discrimination based on race, ethnicity, or sex has no place in public contracting in Texas. The Comptroller's Office is in the process of revising its administration of the HUB program and corresponding rules in light of the governor's issuance of Executive Order GA-55 and recent decisions of the U.S. Supreme Court.

Agencies may not award a government contract based on race, ethnicity, or sex. Instead, competition for state contracts must be conducted based strictly on legal criteria, in order to produce best value for the state. Agencies are prohibited from preferencing some vendors — and disfavoring others — based on race, ethnicity, or sex. That means agencies may not award points in an evaluation, including through a HUB designation, based on the race, ethnicity or sex of the vendor. In the case of a tie bid, the contractor must be selected in accordance with the order of preference listed in the Texas Procurement and Contract Management Guide.

These principles govern every phase of the solicitation and award process for state procurement. That includes both the operative contract and any subcontracting undertaken by a vendor.

The basis for each contract award must be documented in the procurement file. It is subject to examination by the Comptroller, the State Auditor, committees of the Legislature, and other compliance entities. Moreover, the procurement file is an open record that may be requested by members of the public. Discrimination on the basis of race, ethnicity or sex may be a valid reason for protesting a contract award and may lead to lawsuits.

While new certifications are suspended, the Comptroller's office will continue collecting business participation data and will undertake rulemaking and other actions to ensure the state procurement process uses only race- and sex-neutral standards. The action does not affect existing contracts or other non-HUB related reporting requirements, and eligible businesses may continue to compete for state contracts and register with the Centralized Master Bidders List.

If you have any questions about state procurement, please contact the Comptroller's Statewide Procurement Division, spd.policy@cpa.texas.gov.