

An Audit Report on

# **Selected Entities' Compliance with Historically Underutilized Business Requirements**

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**State  
Auditor's  
Office**

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# Selected Entities' Compliance with Historically Underutilized Business Requirements

## Overall Conclusion

Nine of the ten entities audited did not fully comply with historically underutilized business (HUB) requirements. Furthermore, three of the ten entities audited did not make a "good-faith effort" to comply with HUB requirements overall (see text box for good-faith effort criteria). The three entities are the Department of Protective and Regulatory Services, the State Board for Educator Certification, and Southwest Texas State University. The two entities at which we conducted follow-up work, the Health and Human Services Commission (HHSC) and the Texas Education Agency (TEA), are still not fully complying with all the requirements. The Texas Education Agency did not make a good-faith effort to comply. (See Table 1 for Summary of Entities' Noncompliance.)

The lack of compliance with HUB requirements may prevent qualified HUBs from competing for the state's business. Although the agencies had significant noncompliance with the requirements, they did spend funds with HUB vendors (see Appendix 2). Notably, the Preservation Board complied with all of the requirements.

In most cases, there is a correlation between the fulfillment of the HUB coordinator's responsibilities (a component of outreach requirements) and the ability to make a good-faith effort to comply with HUB requirements. The entities that did not make a good-faith effort also did not comply with all of the HUB coordinator requirements.

### What Is the HUB Program?

The historically underutilized business (HUB) program encourages state entities to make state contracting opportunities available to businesses owned by women and minorities. The program was created by the Texas Administrative Code (Title 1, Part 5, Chapter 111, Section B) and the Texas Government Code (Chapter 2161).

### SAO Audit Requirements

According to Government Code 2161.123, the State Auditor's Office is required to assess entities' compliance based on their implementation of HUB procedures and "shall not consider the success or failure to contract with historically underutilized businesses in any specific quantity."

### What Constitutes a "Good-Faith Effort"?

The State Auditor's Office, in consultation with the Building and Procurement Commission, determined that an entity did not make a good-faith effort if it had material noncompliance in at least three of the four areas of HUB requirements. The four areas are planning, outreach, reporting, and subcontracting. Material noncompliance existed when an entity had a 20 percent or greater error rate in three of the four HUB categories.



## **Key Points**

### **Entities Did Not Fully Comply with Outreach Requirements Intended to Increase Awareness of HUB Contracting Opportunities**

Seventy percent of the entities (7 of 10) did not fully comply with outreach requirements, which include holding HUB forums, implementing a mentor-protégé program, and fulfilling the HUB coordinator responsibilities.

### **Entities Did Not Fully Comply with HUB Subcontracting Requirements**

Seventy percent of the entities audited (7 of 10) did not fully comply with subcontracting requirements. For example, the entities awarded contracts to contractors who did not advertise HUB subcontracting opportunities or notify at least three HUBs of the potential for subcontracted work.

### **Several Entities Reported Inaccurate Information to the Texas Building and Procurement Commission**

Eighty percent of the entities (8 of 10) did not fully comply with reporting requirements. Consequently, there is a risk that the State does not have reliable information to evaluate the HUB program and to monitor state HUB participation goals. (For HUB program statistics, see Appendix 2.)

### **Most Entities Complied with Planning Requirements**

Eighty percent of the entities (8 of 10) complied with planning requirements. Key requirements include developing a written plan for increasing HUB use, internal HUB policies and procedures, and a detailed report within the Legislative Appropriation Request identifying the entity's HUB activity.

### **Areas of Noncompliance Remain at the Two Follow-Up Agencies**

In fiscal year 2001, the State Auditor's Office determined that HHSC and TEA did not make good-faith efforts to comply with the HUB requirements, as evidenced by their noncompliance with several areas of HUB requirements. (See An Audit Report on 19 Agencies' Compliance with Historically Underutilized Business Requirements, SAO Report No. 01-035, August 2001.)

While both entities implemented some of the recommendations noted in the previous audit, material noncompliance in four categories remained at TEA. As a result, the State Auditor's Office determined that TEA still did not make a good-faith effort for fiscal year 2002 (see Appendix 3). HHSC had areas of noncompliance, but did make a good faith effort.

### **Inconsistencies Exist in HUB Requirements and Guidelines**

Due to the Texas Building and Procurement Commission's (TBPC) misinterpretation of the Texas Government Code (Government Code), 60 percent of the entities audited (6 of the 10) accepted Statements of Intent from their contractors, allowing them to opt out of the HUB subcontracting process. Statements of Intent allow contractors to perform all the identified subcontracting work themselves instead of making an effort to subcontract with HUBs.

## ***Summary of Management's Responses***

Management's responses indicate that most entities generally agree with the issues and recommendations in this report. Management of Texas Education Agency generally disagrees with the issues and recommendations contained in this report. Responses are included within each entity's chapter.

## ***Summary of Information Technology Review***

We did not note any instances of an automated system introducing errors in the HUB data. We performed detailed testing of source documentation used by the end users as inputs in the agencies' information systems.

The 10 audited entities use technology to varying degrees. In some cases, the Uniform Statewide Accounting System (USAS) is the only system of record. In other cases, the entities may use their own accounting information systems alone or in conjunction with USAS.

We focused our high-level review of information technology on the entities that were using complex automated systems and/or where errors in output indicated a need for further review. We limited our work to only those systems that support the HUB compliance process.

## ***Summary of Objectives, Scope, and Methodology***

The objectives of this audit were to determine whether selected entities complied with statutory HUB requirements and to assess the entities' efforts to comply with those requirements. We also reviewed the accuracy of entities' self-reported HUB information to TBPC.

The scope of this audit included a review of HUB activities for fiscal year 2002. We audited HUB activities in four compliance areas: planning, outreach, reporting, and subcontracting. We audited HUB activities at seven agencies and three universities. We also performed follow-up work at two agencies determined not to have made good-faith efforts to comply with statutory HUB requirements for fiscal year 2000.

Our methodology consisted of selecting entities to audit, auditing results for compliance and accuracy, and testing samples of supporting documentation.

Table 1

Summary of Noncompliance with HUB Requirements				
("X" indicates noncompliance or material noncompliance with at least one HUB requirement in a particular area. "✓" indicates full compliance. Material noncompliance in three or more areas demonstrates a lack of a good-faith effort.)				
Entity	HUB Requirements:			
	Planning	Outreach	Reporting	Subcontracting
Material Noncompliance <sup>a</sup> – Entities Did Not Make a Good-Faith Effort				
State Board for Educator Certification (page 1)	X	X	X	X
Texas Education Agency - Follow-Up Agency <sup>b</sup> (page 7)	X	X	X	X
Southwest Texas State University (page 18)	X <sup>c</sup>	X	X	X
Department of Protective and Regulatory Services (page 22)	✓	X	X	X
Noncompliance – Entities Made a Good-Faith Effort				
Prairie View A&M University (page 26)	✓ <sup>c</sup>	X	X	X
Parks and Wildlife Department (page 30)	✓	X	X	X
Health and Human Services Commission - Follow-Up Agency <sup>d</sup> (page 34)	✓	X	X	X
Texas Tech University (page 38)	✓ <sup>c</sup>	X	X	X
Public Utility Commission (page 41)	✓	X	X	✓
Department of Public Safety (page 44)	✓	✓	X	✓
Department of Insurance (page 46)	✓	✓	✓	X
Full Compliance				
Preservation Board (No findings)	✓	✓	✓	✓
<p><sup>a</sup> Material noncompliance existed when an entity had a 20 percent or greater error rate in three of the four areas of HUB requirements.</p> <p><sup>b</sup> We audited the Texas Education Agency as a follow-up to the prior HUB audit report (SAO Report No. 01-035). The previous areas of noncompliance were planning, outreach, and reporting. Contracts were not reviewed in the previous audit. Subcontracting rules were effective April 2000, and no contracts were solicited during that audit period.</p> <p><sup>c</sup> Institutions of higher education are exempt from HUB strategic planning requirements (Government Code 2161.123) as referenced in Government Code 2056. However, institutions are subject to other HUB planning requirements.</p> <p><sup>d</sup> We audited the Health and Human Services Commission as a follow-up to the prior HUB audit report (SAO Report No. 01-035). The previous areas of noncompliance were planning, outreach, and reporting. Contracts were not reviewed in the previous audit. Subcontracting rules were effective April 2000, and no contracts were solicited during that audit period.</p>				

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# Detailed Results

## Chapter 1

### State Board for Educator Certification

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For fiscal year 2002, the State Board for Educator Certification (Board) had material noncompliance in all four historically underutilized business (HUB) categories: planning, outreach, reporting, and subcontracting. Because the Board exceeded a 20 percent error rate in at least three out of four categories, we determined that it did not make a good-faith effort (see Appendix 4 for a description of HUB categories).

As required by Government Code 2161.123, the State Auditor's Office assessed compliance based on the implementation of program procedures and did "... not consider the success or failure to contract with historically underutilized businesses in any specific quantity." In fiscal year 2002, the Board spent \$11.9 million within procurement categories that are eligible for HUB participation; it spent 9 percent (\$1.1 million) of that amount with HUBs (see Appendix 2).

#### Chapter 1-A

#### Planning

The Board did not fully comply with planning requirements in Texas Government Code (Government Code) 2161.123. The Board did not mention specific HUB programs in its strategic plan. The statute states that an entity should include in its strategic plan a written plan for increasing the entity's use of HUBs. The plan must include:

- A policy or mission statement related to increasing the use of HUBs by the entity.
- Goals to be met by the entity in carrying out the policy and mission.
- Specific programs to be conducted by the entity to meet the goals stated in the plan, including a specific program to encourage contractors to use HUBs as partners and subcontractors.

The planning aspects of the HUB program should be the guiding factor in establishing and implementing a successful HUB program. Noncompliance with planning requirements could have contributed to the Board's noncompliance with the other three areas of HUB requirements.

#### Recommendation

To comply with Government Code 2161.123, the Board should adjust its strategic plan to include specific programs to be conducted by the Board to meet the goals stated in the plan.

## Management's Response

*SBEC agrees that it did not meet the requirements of the third goal. SBEC, however, in June 2000, adopted the following related objective as part of its strategic planning process: "When possible, SBEC shall extend to a minimum of three businesses identified by the General Services Commission as HUBs the opportunity to bid on all products and services submitted to the private sector." SBEC agrees with SAO and will incorporate into the 2005–2007 strategic plan a specific (as opposed to a general) program for encouraging contractors to use historically underutilized businesses as partners and subcontractors. In addition, SBEC now has a clear policy/mission statement and goals to be met by the agency. SBEC will post the statement and its goals on the agency's website.*

*Implementation Dates:*

*Modification of Strategic Plan – June 2005*

*Policy/Mission Statement – March 2003*

*Responsible Persons: Executive Director, General Counsel, and Chief Financial Officer, Purchaser/HUB Coordinator*

Chapter 1-B

## Outreach

The Board did not fully comply with outreach requirements found in the Texas Administrative Code (TAC). Specifically:

- The Board's HUB coordinator's responsibilities were not defined. As a result, we could not ensure that the HUB coordinator had the appropriate authority to carry out the responsibilities listed in TAC, Section 111.26. TAC states that the duties and responsibilities of HUB coordinators include facilitating compliance with the following: good-faith effort criteria, HUB reporting, contract administration, and marketing and outreach efforts for HUB participation.
- The Board was unable to provide sufficient evidence of communication between the HUB coordinator and the executive director. TAC 111.26 states that the HUB coordinator should be in a position that reports to, communicates with, and provides information to the entity's executive director. This communication is important so that the HUB coordinator can advise the executive director about and assist with meeting HUB requirements.
- The Board did not sponsor a HUB forum or invite HUBs to make in-house marketing presentations. The purpose of forums is to increase HUBs' understanding of contracting with state entities. TAC 111.27 states that each entity with a biennial appropriation exceeding \$10 million shall participate in forums. Specifically, each entity should take the following actions:
  - ♦ Design its own forum program and model the program, to the extent appropriate, after the format established by the Texas Building and Procurement Commission (TBPC).

- ♦ Sponsor presentations by HUBs at the entity.
  - ♦ Advertise the forums in appropriate trade publications to target HUBs.
  - ♦ Identify and invite HUBs to make marketing presentations on the types of goods and services they provide.
- The Board did not have a mentor-protégé program for fiscal year 2002. According to TAC 111.28, each state entity with a biennial appropriation that exceeds \$10 million should implement a mentor-protégé program to provide professional guidance and support to facilitate protégés' development and growth as HUBs.

### **Recommendations**

To comply with TAC 111.26, 111.27, and 111.28, the Board should:

- Ensure that the HUB coordinator has the appropriate responsibilities.
- Provide the HUB coordinator with opportunities to communicate with the executive director.
- Design and implement a forum program and invite HUBs to make in-house marketing presentations.
- Develop a mentor-protégé program.

### **Management's Response**

*SBEC agrees with SAO.*

*SBEC has employed a Certified Texas Purchasing Manager (CTPM)/HUB Coordinator whose responsibilities include adherence and compliance to TAC 111.26, 111.27 and 111.28. In addition, the HUB Coordinator will report to the Executive Director monthly HUB usage reports. The HUB Coordinator has begun the recruitment of local HUBs to make in-house marketing presentations. The HUB Coordinator has attended the Quarterly HUB Cooperative Committee Meeting and will continue to do so. It is a part of SBEC's new HUB initiative, to partner with other state agencies, for participation in scheduled Economic Opportunity Forums. SBEC has begun communications with the Commission for guidance on implementation of a mentor-protégé program. SBEC may likely have to modify its current adopted rules, which will require posting on the Texas Register for comment.*

*Implementation Date:*

*Rule Change – May 2003*

*HUB Coordinator - January 6, 2003*

*In-house Marketing Presentation – April 2003*

*Mentor-Protégé Program – May 2003*

*Responsible Persons: Executive Director, General Counsel, Human Resources Director, Chief Financial Officer, and HUB Coordinator.*

Chapter 1-C

**Reporting**

The Board did not fully comply with reporting requirements found in TAC 111.16 and Government Code 2161.122. Specifically:

- The Board did not compile internal monthly HUB usage reports. TAC 111.16 and Government Code 2161.122 state that entities shall maintain, and compile monthly, information relating to the entity's and its operating divisions' use of HUBs, including information regarding subcontractors and suppliers. It is essential that decision makers receive these reports so that they may implement and monitor the HUB program.
- The Board did not require prime contractors to submit expenditure reports for each month they made payments to subcontractors. TAC 111.16 states that on a monthly basis state entities shall require contractors/vendors to identify their HUB subcontractors and the amount paid for purchases. These reports are designed to ensure that entities are able to monitor the use of HUBs as subcontractors.
- The Board over-reported the number of contracts awarded because it included contract renewals. The Board was unable to quantify the over-reported number.

**Recommendations**

To comply with TAC 111.16 and Government Code 2161.122, the Board should:

- Compile internal monthly HUB usage reports.
- Require prime contractors to submit expenditure reports for each month they pay subcontractors.
- Ensure that the number of contracts awarded is accurate.

**Management's Response**

*SBEC agrees with SAO that if did not compile monthly HUB usage reports. SBEC has included in the duties of the HUB Coordinator the requirements to compile and report to the Executive Director monthly usage reports.*

*SBEC agrees with SAO that it did not require the prime contractors to submit expenditure reports for each month they paid subcontractors. However, SBEC respectfully submits that the contracts that were awarded with the requirement for subcontracting did not contain those opportunities. SBEC agrees to identify more clearly subcontracting opportunities in future solicitations.*

*SBEC agrees with SAO that the Board was unable to quantify the number of contracts. The Board had reported the award of 7 contracts to HUB vendors and in the HUB Reports for 2002, from the TBPC website. SBEC's understanding from the language in the instructions for Supplemental Reporting was that all contracts awarded to HUB's should be identified. The definition identifies "spot purchases" as purchases "which should be competitively bid should also be reported as individual contracts." This statement contradicts the interpretation of "spot purchases." Spot purchases are identified as non-competitive bid purchases. SBEC also understands that the instructions for Supplemental Reporting for Fiscal Year 2003 have been changed to include non-competitive bid awards.*

Chapter 1-D

## **Subcontracting**

The Board did not fully comply with subcontracting requirements found in TAC 111.14. Of the two contracts tested, which totaled \$487,213, we found the following errors:

- The Board did not adhere to the criteria defined by TAC for use in determining whether subcontracting opportunities for HUBs were probable. According to TAC 111.14, when determining whether subcontracting opportunities are probable, state entities shall use the HUB participation goals (relating to Annual Procurement Utilization Goals) and research the Centralized Master Bidders List, the HUB Directory, the Internet, and other directories identified by TBPC for HUBs that may be available to perform the contract work.
- The Board awarded both contracts to the same vendor, who did not perform the following tasks required by TAC 111.14:
  - ♦ Divide the contract work into reasonable lots or portions
  - ♦ Provide evidence that the contractor notified three or more HUBs that the contractor intended to subcontract
  - ♦ Show that it gave the HUBs at least five days to respond to a bid for subcontracting
  - ♦ Provide written justification if a non-HUB was selected through a means other than a competitive bid process
  - ♦ Advertise subcontracting opportunities in general media, trade associations, or minority-focused media
  - ♦ Encourage noncertified HUBs to become HUB-certified

## **Recommendations**

To comply with TAC 111.14, the Board should:

- Adhere to the criteria defined by TAC for use in determining whether subcontracting opportunities for HUBs are available.
- Ensure that contracts are awarded to contractors who comply with TAC requirements.

### **Management's Response**

*SBEC agrees with SAO. The criteria defined by TAC for use in determining whether subcontracting opportunities for HUBs was not sufficiently stated in the solicitation where those opportunities might have been available. SBEC's CTPM and legal counsel will provide clear and concise language that identifies those opportunities or if no opportunity is available.*

*Implementation Date:*

*Compliance with TAC – January 2003*

*Responsible Persons: Legal Counsel, CTPM/HUB Coordinator*

Chapter 1-E

### **Summary of Strengths**

The Board complied with HUB rules in the following areas:

- It adopted TBPC's HUB rules as its own.
- Its Legislative Appropriation Request included the appropriate HUB information.
- It accurately reported to TBPC the number of bids received.

## Texas Education Agency—Follow-Up Agency

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In August 2001, the State Auditor’s Office reported that the Texas Education Agency (Agency) did not make a good-faith effort to comply with the HUB requirements, as evidenced by noncompliance in three of the four basic HUB areas (see *An Audit Report on 19 Agencies’ Compliance with Historically Underutilized Business Requirements*, SAO Report No. 01-035, August 2001).

Follow-up work found that while the Agency did implement some of the prior audit recommendations, it had material noncompliance in all four HUB categories: planning, outreach, reporting, and subcontracting in fiscal year 2002. Because the Agency exceeded a 20 percent error rate in all four categories, we determined that it did not make a good-faith effort (see Appendix 4 for a description of HUB categories).

As required by Government Code 2161.123, the State Auditor’s Office assessed compliance based on the implementation of program procedures and did “. . . not consider the success or failure to contract with historically underutilized businesses in any specific quantity.” In fiscal year 2002, the Agency spent \$133 million within procurement categories that are eligible for HUB participation; it spent 11 percent (\$15 million) of that amount with HUBs (see Appendix 2).

### Chapter 2-A

#### Planning

The Agency did not fully comply with the HUB planning requirements in Government Code 2161.123. The Agency did not mention specific HUB programs in its strategic plan. The statute states that an entity should include in its strategic plan a written plan for increasing the entity’s use of HUBs. The written plan must contain:

- A policy or mission statement related to increasing the use of HUBs by the entity.
- Goals to be met by the entity in carrying out the policy and mission.
- Specific programs to be conducted by the entity to meet the goals stated in the plan, including a specific program to encourage contractors to use HUBs as partners and subcontractors.

The planning aspects of the HUB program should be the guiding factor in establishing and implementing a successful HUB program. Noncompliance with planning requirements could have contributed to the Agency’s other instances of noncompliance. This is a repeat finding from the 2001 HUB report.

## Recommendation

To comply with Government Code 2161.123, the Agency should adjust its strategic plan to include specific programs to be conducted to meet the goals as stated in the plan.

## Management's Response

*TEA contends the Agency Strategic Plan for Fiscal Years 2003-2007 contains the basic elements required by Government Code. The plan:*

- *states that the agency carries out policies and procedures to increase the use of minority-owned businesses in accordance with legislative mandates and agency rules,*
- *identifies the overall goal, objective, and strategy for increasing the use of minority-owned businesses and HUB vendors,*
- *and explains, by procurement category, potential opportunities as they relate to the bid process for purchasing goods and services for the operation of the agency.*

*These HUB program processes, guidelines, and policies are further codified in two separate agency operating procedures (“HUB Usage” and “Contracts for Services”), the agency procurement manual, and the agency contracting manual. These publications are developed in concert with the Contract Management Unit staff of the Department of Internal Operations, the Director of Procurement and his staff, and the HUB Coordinator. This group provides regular training sessions on these topics to all agency parties involved in procuring goods and services, including individual contract managers.*

*In the next revision of the strategic plan, TEA will consolidate appropriate information from the above documents and include in more detail the specific program initiatives to increase HUB opportunities in the procurement categories applicable to agency operations.*

## State Auditor's Follow-Up Comment

The issue presented in our finding is that the Agency's strategic plan does not include a specific program to encourage contractors to use HUBs as partners and subcontractors as detailed in Government Code 2161.123. The Agency's plan states that “the preponderance of agency expenditures occurs in the professional services and other services areas. However, these type of agency required services are not generally available through HUB vendors.” The Agency's plan does not mention the specific programs (such as attending HUB forums or recruiting participants for the Agency's mentor-protégé program) or how the Agency will encourage contractors to use HUBs in these already identified areas. Although the Agency contends that the strategic plan for fiscal years 2003–2007 contains the basic elements required by the Government Code, its response acknowledges the need for more detail regarding specific program initiatives to increase HUB opportunities.

## Outreach

The Agency did not fully comply with the HUB outreach requirements in TAC. Specifically:

- The Agency's HUB coordinator is not involved in the development of procurement specifications and the evaluation of contracts for compliance as required by TAC 111.26. Without the HUB coordinator's involvement, there may be an increased risk that the Agency will not provide adequate contracting opportunities to HUBs.
- While the Agency advertised its forum on TBPC's Web site, its forum was not advertised in appropriate trade publications to target HUBs as required by TAC. TAC 111.27 requires agencies with a biennial appropriation exceeding \$10 million to advertise the forums in appropriate trade publications to target HUBs.
- While the Agency indicates that HUBs were invited to make marketing presentations, there was insufficient documentation to verify that these marketing presentations took place.

## Recommendations

To comply with TAC 111.26 and 111.27, the Agency should:

- Ensure that the HUB coordinator is involved in the development of procurement specifications and the evaluation of contracts.
- Advertise forums in appropriate trade publications to target HUBs.
- Maintain sufficient documentation of marketing presentations by HUBs.

## Management's Response

### Ensure the HUB Coordinator is involved in the evaluation of contracts

*In terms of policy development, the HUB Coordinator is involved in the general policy development of procurement specifications, HUB subcontracting plans, and evaluation of contracts for compliance. The annual procurement utilization goals as specified in TAC 111.13 are agency goals in the procurement opportunities let through the agency purchasing division. The procurement goal of 30% for professional services contracts solicited in agency Requests for Proposals was set after consultation with the HUB Coordinator. This exceeds the 20% goal specified in the TAC. Additionally, the HUB Coordinator assists in the development of HUB subcontracting plans. The outcome of that guidance is the TEA policy that subcontracting opportunities are possible for all agency contracts that are competitively bid.*

*In terms of the policy execution, the HUB Coordinator is not involved in the "hands on" development of every individual procurement specification or the evaluation of every TEA contract for HUB compliance. However, it is incorrect to infer that such*

*compliance reviews do not occur. Every contract developed at TEA is evaluated for HUB compliance, either by the Contract Management Unit or the purchasing staff. As a matter of business practice, the purchasing staff conducts contract compliance reviews, inclusive of HUB requirement review, for offers let by the purchasing division. Proposals submitted in response to Requests for Proposals are reviewed for compliance, inclusive of the HUB requirement review, by the Contract Management Unit. Plans not developed in good faith or plans that were not submitted are rejected for material failure to comply with contract specifications. These procedures and policies were developed and implemented in coordination with the Contract Management Unit, the agency Purchasing Director, and the HUB Coordinator.*

*To better substantiate compliance with the TAC, the HUB Coordinator, Contracts Management Unit, and purchasing staff will document their particular involvement in the contract evaluation process.*

### **State Auditor's Follow-Up Comment**

**Ensure that the HUB coordinator is involved in the development of procurement specifications and the evaluation of contracts.**

The State Auditor's Office is not questioning whether the HUB coordinator is involved in "policy development" related to procurement and contracting. TAC 111.26 requires that the HUB coordinator assist with the development of procurement specifications, HUB subcontracting plans, and the evaluation of actual contracts for compliance with requirements. The Agency did not provide any evidence to show that the HUB coordinator was involved in these activities.

### **Management's Response**

#### *Advertise forums in appropriate trade publications to target HUBs*

*TEA did not advertise the June 2002 Economic Opportunity Forum in a trade publication. Instead, since the preponderance of agency expenditures occurs in the areas of services and commodities, the staff targeted over 150 HUB-certified services and commodities vendors registered on the Centralized Master Bidders List as potential business partners and mailed personal invitations to them. Also, the details of the forum were posted on the agency intranet, the Building and Procurement Commission's website, and announced at meetings of the state agency HUB Discussion Work Group and the Quarterly HUB Cooperative Committee. Thirty-eight HUB vendors attended the forum and gave presentations to 124 representatives from fourteen state, county, and university agencies.*

#### *Maintain documentation of marketing presentations by HUBs*

*The HUB Coordinator maintains a schedule of meetings and presentations with HUB vendors. Typically, the HUB Coordinator first meets one-on-one with the vendors and then coordinates follow-up presentations, if appropriate, with the purchasing and contracting staff. This aspect of the outreach program is quantified in the division's Balanced Scorecard, where the HUB Coordinator tracks as a key performance measure the number of contacts (meeting, email, phone, etc.) made with*

*HUB vendors each month. This performance measure is posted on the agency intranet for all staff to review. The HUB Coordinator also maintains a web page for the benefit of HUBs at <http://www.tea.state.tx.us/tea/hub/index.html>.*

## **State Auditor's Office Follow-Up Comment**

### **Maintain sufficient documentation of marketing presentations by HUBs.**

Although the Agency asserts that the HUB coordinator maintains a schedule of meetings and presentations, we were unable to verify that these presentations actually occurred. Government Auditing Standards require that we obtain "sufficient, competent, and relevant evidence" as the basis for a reasonable assessment. At the time of the audit, the Agency could not provide us with any support related to these meetings, such as attendance sheets, presentation materials, brochures or pamphlets describing the types of goods or services presented, and/or notes or documentation from those in attendance. While the Agency was unable to provide such documentation, other entities audited did maintain this level of support.

Chapter 2-C

## **Reporting**

The Agency did not fully comply with HUB reporting requirements in TAC and the Government Code. Specifically:

- The Agency was unable to provide supporting documentation for the number of contracts awarded and the number of bids submitted by HUBs that it reported to TBPC. As a result, we cannot ensure that decision makers have reliable information for evaluating the Agency's HUB program. TAC 111.16 and Government Code 2161.122 require entities to report complete and accurate information to TBPC.
- The Agency did not compile monthly internal HUB usage reports by division. TAC 111.16 and Government Code 2161.122 state that entities shall maintain, and compile monthly, information relating to the entity's and its operating divisions' use of HUBs, including information regarding subcontractors and suppliers. It is essential that decision makers receive these reports so that they may implement and monitor the HUB program.
- The Agency had approximately \$3.2 million in unreported subcontracting expenditures.

## **Recommendations**

To comply with TAC 111.16 and Government Code 2161.122, the Agency should:

- Ensure the completeness and accuracy of the number of contracts awarded and the number of bids received by maintaining supporting documentation.
- Compile monthly HUB usage reports by division.

- Ensure that accurate and complete HUB subcontracting expenditure information is collected and reported to TBPC.

### **Management's Response**

Ensure the completeness and accuracy of the number of contracts awarded and the number of bids received by maintaining supporting documentation.

*TEA is now in compliance since it implemented an automated Bid Tracking System in September 2002 to comply with TAC 111.16 and Government Code 2161.122 reporting requirements. Training of agency requisitioners on this new HUB bid tracking system was conducted by the purchasing staff and the HUB Coordinator in December 2002. At this same time, the Contract Management Unit began to monitor on a weekly basis contracts awarded in the agency and to coordinate with staff on the reporting required through the new Tracking System. Throughout the remainder of FY 03, staff contract development training will include special emphasis on HUB requirements. Fifty-four staff members are currently enrolled in classes to be conducted in February 2003. Additional classes will be scheduled through the remainder of the fiscal year.*

Compile monthly HUB usage reports by division.

*TEA will develop a method to collect this data through an electronic report of expense voucher information.*

Ensure that accurate and complete HUB subcontracting expenditure information is collected and reported to TBPC.

*On a monthly basis, the purchasing staff and Contracts Management Unit will identify for the HUB Coordinator all contracts awarded with an approved HUB Subcontracting Plan. With this information, the HUB Coordinator will be able to successfully monitor compliance with this requirement.*

*Implementation Dates:*

*HUB Bid Tracking System: Fully implemented in December 2002*

*Monthly HUB usage reports by division: April 2003*

*HUB subcontracting expenditure reports: April 2003*

*Responsible Persons: HUB Coordinator, Procurement Director/staff, Contract Management Unit*

Chapter 2-D

### **Subcontracting**

The Agency did not fully comply with HUB subcontracting requirements in Chapter 111.14 of TAC.

- The Agency did not state the probability of subcontracting opportunities in solicitation documents in 91 percent (10 of 11) of the contracts tested. Additionally when those opportunities were probable, the Agency did not require a HUB Subcontracting Plan for 27 percent (3 of 11) of the contracts tested. TAC 111.14 requires that if subcontracting opportunities are probable, each entity's invitation for bids or other purchase solicitation documents for construction, professional services, other services, and commodities for \$100,000 or more shall state that probability and require a HUB Subcontracting Plan.
- The Agency did not adhere to the criteria defined by TAC for use in determining whether subcontracting opportunities for HUBs are probable in 82 percent (9 of 11) of the contracts tested. According to TAC 111.14, when determining whether subcontracting opportunities are probable, state agencies shall use the HUB participation goals (relating to Annual Procurement Utilization Goals) and research the Centralized Master Bidders List, the HUB Directory, the Internet, and other directories identified by TBPC for HUBs that may be available to perform the contract work.
- Of eight contracts tested,<sup>1</sup> which totaled \$5.6 million, the Agency awarded five (approximately \$1.8 million) to vendors who did not perform one or more of the following tasks as required by TAC 111.14:
  - ◆ Divide the contract work into reasonable lots or portions
  - ◆ Provide evidence that the contractor notified three or more HUBs that the contractor intended to subcontract
  - ◆ Show that it gave the HUBs at least five days to respond to a bid for subcontracting
  - ◆ Advertise subcontracting opportunities in general media, trade associations, or minority-focused media
  - ◆ Encourage noncertified HUBs to become HUB-certified
- The Agency did not review and evaluate the subcontracting plans for three of eight contracts (approximately \$1.4 million) tested prior to awarding the contracts as required by TAC 111.14.

## Recommendations

To comply with TAC 111.14, the Agency should:

- State any identified probable subcontracting opportunities in invitations for bids and other purchase solicitation documents and require responding contractors to submit a HUB Subcontracting Plan.

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<sup>1</sup> In our sample of 11 contracts, 3 of the contracts could not be reviewed for compliance with TAC 111.14 due to the submission of Statements of Intent (see Chapter 12).

- Adhere to the criteria defined by TAC for use in determining whether subcontracting opportunities for HUBs are available.
- Ensure that contracts are awarded to contractors who comply with TAC requirements.
- Ensure that contracts are being reviewed and evaluated prior to awarding the contracts.

### **Management's Response**

State any identified probable subcontracting opportunities in invitations for bids and other purchase solicitation documents, and require responding contractors to submit a HUB Subcontracting Plan

*The agency will continue to identify probable subcontracting opportunities in Requests for Proposals and require responding contractors to submit a HUB Subcontracting Plan. Proposals are reviewed for compliance, inclusive of the HUB requirement review, by the agency's Contract Management Unit as a matter of policy and established procedure.*

*TEA respectfully disagrees with the reported observation that*

*"The Agency did not state the probability of subcontracting opportunities in solicitation documents in 91 percent (10 of 11\*) of the contracts tested. Additionally, when those opportunities were probable, the Agency did not require a HUB Subcontracting Plan for 27 percent (3 of 11) of the contracts tested. TAC 111.14 requires that if subcontracting opportunities are probable, each entity's invitation for bids or other purchase solicitation documents for construction, professional services, other services, and commodities for \$100,000 or more shall state that probability and require a HUB Subcontracting Plan."*

*\*In our (SAO) sample of 11 contracts, 3 of these contracts could not be reviewed for compliance with TAC 111.14 due to the submission of Statements of Intent."*

*It is not valid to state that TEA's performance was at 27%. At present, the submission of an SOI is an acceptable HUB Subcontracting Plan response. If a vendor elects to perform all of the work, then this does not equate to the Agency having "not required a HUB Subcontracting Plan." HUB Subcontracting Plans are required for all contracts valued over \$100,000. In terms of performance in the 11 contracts that were sampled, 3 contractors submitted an SOI and 4 contractors submitted an approved HSP with a HUB identified. This puts TEA performance at 7 of 11, or 64%. Although this is still less than optimal results, the agency will continue to focus on performance improvement in this area.*

## State Auditor's Follow-Up Comment

**State any identified probable subcontracting opportunities in invitations for bids and other purchase solicitation documents, and require responding contractors to submit a HUB Subcontracting Plan.**

The Agency did not state the subcontracting opportunities in their invitations for bids for 91 percent (10 of the 11) contracts tested. These contracts represent approximately \$5.7 million of the \$5.8 million in contracts tested.

Nine of the 11 files tested contained no evidence that the Agency performed research to identify subcontracting opportunities as described in TAC. TAC requires the Agency to perform research on the HUB Directory, the Internet, and other sources.

We did not count the use of the Statement of Intent in our error calculation because the guidance in TAC differs from the Government Code (see Chapter 12). However, for 3 of 11 (27 percent) contracts tested, the contractor did not submit a HUB Subcontracting Plan or Statement of Intent even though the Agency identified subcontracting opportunities. These contracts account for approximately \$500,000 of the \$5.8 million in contracts tested.

## Management's Response

*Adhere to the criteria defined by TAC for use in determining whether subcontracting opportunities for HUBs are available.*

*TEA believes that there is a different interpretation of TAC 111.14(b)(1). A number of items are listed as evidence of good faith. However, TAC does not define how much evidence is sufficient for a finding of good faith, nor does it require that all items listed be demonstrated by a vendor responding to a solicitation.*

## State Auditor's Follow-Up Comment

**Adhere to the criteria defined by TAC for use in determining whether subcontracting opportunities for HUBs are available.**

TEA is noncompliant with TAC 111.14(b)(1). TAC clearly states that vendors "shall follow" procedures in (b)(1) when developing their subcontracting plans but that they are "not limited to" these procedures. The use of the phrase "not limited to" means that vendors can implement additional measures if they so choose. The statute does not indicate that vendors can choose between the procedures listed, because there is not an "or" after each item.

## Management's Response

Ensure that contracts are awarded to contractors who make a good-faith effort to subcontract.

*TEA will continue to reject plans not developed in good faith or plans that were not submitted are rejected for material failure to comply with contract specifications.*

## State Auditor's Follow-Up Comment

**Ensure that contracts are awarded to contractors who make a good-faith effort to subcontract.**

TEA should start rejecting contractors who do not demonstrate good-faith efforts in developing their subcontracting plans. Of the eight contracts tested, which totaled \$5.6 million, the Agency awarded five (approximately \$1.8 million) to contractors who did not develop their subcontracting plans in good faith.

## Management's Response

Ensure that contracts are being reviewed and evaluated prior to awarding the contracts.

*All contracts are reviewed prior to contract award. TEA will ensure that a purchasing representative is present at conferences held in connection with a Request for Offer or a Request for Proposal to clarify and further educate the vendor community on the requirements of the HUB Subcontracting Plan.*

## State Auditor's Follow-Up Comment

**Ensure that contracts are being reviewed and evaluated prior to awarding the contracts.**

There was no evidence that three contracts (approximately \$1.4 million) were reviewed for HUB compliance prior to awarding the contracts. While TEA's HUB Subcontracting Plan policy requires that contracts are reviewed prior to award, none of these contract files contained evidence of review such as a checklist that documents compliance with HUB criteria. Other TEA contract files did include this checklist. In addition, other agencies audited had evidence that their HUB coordinators conducted this review.

## Management's Response

*Implementation Date: Already implemented*

*Responsible Persons: HUB Coordinator, Procurement Director/staff, Contract Management Unit*

## **Summary of Strengths**

The Agency complied with HUB rules in the following areas:

- It adopted TBPC's HUB rules as its own.
- Its HUB coordinator communicated with the Commissioner in fiscal year 2002.
- It co-sponsored a HUB forum in fiscal year 2002.

For fiscal year 2002, Southwest Texas State University (University) had material noncompliance in all four HUB categories: planning, outreach, reporting, and subcontracting. Because the University had a 20 percent error rate in at least three of four categories, we determined that it did not make a good-faith effort (see Appendix 4 for a description of HUB categories).

As required by Government Code 2161.123, the State Auditor's Office assessed compliance based on the implementation of program procedures and did “. . . not consider the success or failure to contract with historically underutilized businesses in any specific quantity.” In fiscal year 2002, the University spent \$39.7 million within procurement categories that are eligible for HUB participation; it spent 7 percent (\$2.8 million) of that amount with HUBs (see Appendix 2).

Chapter 3-A

**Planning**

The University did not fully comply with planning requirements in Government Code 2161.003. Specifically, the University has not adopted the revised HUB rules as its own. The HUB rules were revised in fiscal year 1999 and became effective in fiscal year 2000. The statute requires that a state entity, including an institution of higher education, adopt TBPC's HUB rules. While the University has not adopted the revised HUB rules, the HUB rules were referenced in the Southwest Texas State University System's specified contracts.

The planning aspects of the HUB program should be the guiding factor in establishing and implementing a successful HUB program. Noncompliance with planning requirements could have contributed to the University's noncompliance with the other three areas of HUB requirements.

**Recommendation**

To comply with Government Code 2161.003, the University should adopt TBPC's revised HUB rules, which are found in TAC 111.

**Management's Response**

*Management concurs that formal approval by the Board of Regents of the 1999 revision to TAC 111 is needed; such approval will occur at the February 2003 Board meeting. However, it is important to emphasize that the provisions of the 1999 revised HUB rules were previously incorporated into contract requirements and enforced, as evidenced by bids which were rejected for failure to meet HUB requirements.*

## Outreach

The University did not fully comply with outreach requirements in TAC. Specifically:

- The HUB coordinator is not involved in the development of HUB Subcontracting Plans or evaluation of contracts for compliance as required by TAC 111.26. Without the HUB coordinator's involvement, there may be an increased risk that the University will not provide adequate contracting opportunities to HUBs.
- The University's HUB coordinator did not communicate with the president. TAC 111.26 states that the HUB coordinator should be in a position that reports to, communicates with, and provides information to the entity's executive director (president). This communication is important because it enables the HUB coordinator to advise the president about and assist with meeting HUB requirements.

## Recommendations

To comply with TAC, the University should:

- Involve the HUB coordinator in the development of HUB Subcontracting Plans and in the evaluation of contracts.
- Provide the HUB coordinator with opportunities to communicate with the president.

## Management's Response

*Management concurs that the HUB Coordinator should be more involved with HUB Subcontracting Plans and the evaluation of contracts for compliance with HUB requirements. Management also concurs that the HUB Coordinator should communicate with the President. Changes in procedures for both of these items will occur not later than February 10, 2003.*

## Reporting

The University did not fully comply with reporting requirements in TAC 111.16 and Government Code 2161.122. Specifically:

- The University did not report complete and accurate information to TBPC for fiscal year 2002 as detailed in TAC 111.16 and Government Code 2161.122. As a result, decision makers do not have reliable information for evaluating the University's HUB program. We found the following errors:
  - ♦ The University did not report any subcontracting expenditures in its fiscal year 2002 annual HUB report. It actually had subcontracting expenditures of \$1.25 million.

- ♦ The University reported that it had awarded 7,466 contracts in its supplementary semi-annual (six-month) report because it included individual purchases. The University was unable to quantify the number of contracts. However, in its annual report, the University reported that it had awarded only 642 contracts.
- The University did not compile internal monthly HUB usage reports. TAC 111.16 and Government Code 2161.122 state that entities shall maintain, and compile monthly, information relating to the entity's and its operating divisions' use of HUBs, including information regarding subcontractors and suppliers.
- The University did not require prime contractors to submit expenditure reports for each month they made payments to subcontractors. TAC 111.16 states that on a monthly basis state entities shall require contractors/vendors to identify their HUB subcontractors and the amounts paid for purchases. These reports are designed to ensure that entities are able to monitor the use of HUBs as subcontractors.

## Recommendations

To comply with TAC, the University should:

- Ensure that it reports complete and accurate information to TBPC.
- Ensure that it compiles monthly internal HUB usage reports.
- Require contractors to submit expenditure reports for the months that payments to subcontractors are made.

## Management's Response

*Management concurs that additional review is needed to ensure that information submitted to TBPC is complete and accurate. Additional review steps will be added, effective with the February 28 mid-year report. To clarify one of the specific items listed above, sub-contracting data was submitted to TBPC in the appropriate format and within the specified deadlines. However, there was miscommunication as to how that information was to be added to the TBPC data base.*

*Management also concurs that monthly internal HUB usage reports are needed, as well as contractor expenditure reports for sub-contractors. These two reporting requirements will be implemented not later than February 28, 2003.*

Chapter 3-D

## **Subcontracting**

The University did not fully comply with subcontracting requirements in TAC 111.14.

Specifically, the University awarded all five contracts tested (totaling \$5.7 million) to vendors who did not provide evidence that they performed one or more of the following tasks as required by TAC 111.14:

- Notified three or more HUBs that the contractor intended to subcontract
- Advertised subcontracting opportunities in general media, trade associations, or minority-focused media
- Encouraged non-certified HUBs to become HUB-certified

## **Recommendation**

To comply with TAC 111.14, the University should ensure that contracts are awarded to contractors who comply with TAC requirements.

## **Management's Response**

*Management concurs that the university should ensure that contractors who receive awards do make a good-faith effort to subcontract with HUB's. Additional review steps will be implemented not later than February 28, 2003.*

Chapter 3-E

## **Information Technology**

College and University Financial System (CUFS) is the University's main information system, supporting the majority of expenditures we audited for fiscal year 2002. Detail testing of source documentation used by the end users as inputs in the information system did not reveal any errors in data integrity.

Chapter 3-F

## **Summary of Strengths**

The University has complied with HUB rules in the following areas:

- Its Legislative Appropriation Request contains the information required.
- It hosted a HUB forum in fiscal year 2002.
- It developed and implemented a mentor-protégé program.

## **Department of Protective and Regulatory Services**

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For fiscal year 2002, the Department of Protective and Regulatory Services (Department) had material noncompliance in three of the four HUB categories: outreach, reporting, and subcontracting. Because the Department exceeded a 20 percent error rate in at least three out of four categories, we determined that it did not make a good-faith effort (see Appendix 4 for a description of HUB categories).

As required by Government Code 2161.123, the State Auditor's Office assessed compliance based on the implementation of program procedures and did "... not consider the success or failure to contract with historically underutilized businesses in any specific quantity." In fiscal year 2002, the Department spent \$39.5 million within procurement categories that are eligible for HUB participation; it spent 5 percent (\$1.9 million) of that amount with HUBs (see Appendix 2).

### Chapter 4-A

#### **Outreach**

The Department did not fully comply with certain outreach requirements in TAC 111.26. Specifically:

- The Department's HUB coordinator did not communicate with the executive director. TAC 111.26 states that the HUB coordinator should be in a position that reports to, communicates with, and provides information to the executive director.
- The Department's HUB coordinator was not involved in the development of procurement specifications and HUB Subcontracting Plans or in the evaluation of contracts for compliance as required by TAC 111.26.

These requirements are important because they enable the HUB coordinator to advise the Department about and assist with meeting HUB requirements.

#### **Recommendations**

To comply with TAC 111.26, the Department should:

- Provide opportunities for the HUB coordinator to communicate with the executive director.
- Include the HUB coordinator in the development of procurement specifications and HUB Subcontracting Plans and in the evaluation of contracts.

#### **Management's Response**

*In August 2002 Texas Department of Protective and Regulatory Services (PRS) developed a corrective action plan that contained five strategies, each with specific actions and timeframes, to address Historically Underutilized Business (HUB)*

*program compliance and improve overall dollars spent with HUB. PRS completed the implementation of the referenced plan and will develop additional strategies, which we believe will yield efficiencies for the agency's HUB program as well as increase overall performance.*

*The agency's corrective action plan included regular meetings between the HUB Coordinator and the Executive Director, as well as the review of specifications and HUB subcontracting plans for contracting opportunities of \$100,000 or more.*

*Responsible Person:*

*The Executive Director schedules meetings with the HUB Coordinator and other management staff. The Director of Business Services and the HUB Coordinator are responsible for the development and implementation of agency HUB policies.*

*Implementation Date:*

*These policies and practices were implemented in August 2002 and are currently in effect.*

Chapter 4-B

## **Reporting**

The Department did not fully comply with reporting requirements found in TAC 111.16 and Government Code 2161.122. Specifically:

- The Department did not compile internal monthly HUB usage reports. TAC 111.16 and Government Code 2161.122 state that entities should maintain, and compile monthly, information relating to the entity's and its operating divisions' use of HUBs, including information regarding subcontractors and suppliers. It is essential that decision makers receive these reports so they can implement and monitor the HUB program.
- The Department did not obtain expenditure reports from prime contractors for each month they made payments to subcontractors. TAC 111.16 states that on a monthly basis, entities shall require contractors/vendors to identify their HUB subcontractors and the amounts paid for purchases. These reports are designed to ensure that entities are able to monitor the use of HUBs as subcontractors.

## **Recommendations**

To comply with TAC 111.16 and Government Code 2161.122, the Department should:

- Compile monthly internal HUB usage reports.
- Obtain expenditure reports from prime contractors for each month in which payments were made.

## Management's Response

*PRS has developed and is using specific tools to collect, compile, monitor and report on HUB subcontracting expenditures as required by the referenced statutes and rules. The agency requires contractors to report expenditures with HUB subcontractors to respective contracting business entities within the agency on a monthly basis. Each business entity is responsible for monitoring compliance with the respective HUB subcontracting plan and reporting expenditures to the agency's HUB Coordinator who will compile and submit a consolidated report for the agency to the Texas Building and Procurement Commission.*

*HUB and non-HUB expenditure reports for fiscal year 2002 and year-to-date have been distributed and will continue to be distributed as required by statute and rule.*

*Responsible Person:*

*The Director of Business Services and the HUB Coordinator are responsible for developing and implementing agency HUB policies. In addition, all management with contracting responsibility within the agency is expected to implement and adhere to the HUB policies.*

*Implementation Date:*

*Data collection tools were formally implemented in August 2002. Distribution of monthly reports began in October 2002.*

Chapter 4-C

## Subcontracting

The Department did not fully comply with subcontracting requirements found in TAC or the Government Code. Specifically:

- The Department did not review and evaluate the subcontracting plans for 75 percent (6 of 8) of the contracts tested prior to awarding the contracts as required by TAC 111.14.
- The Department awarded 80 percent (4 of 5<sup>2</sup>) of the contracts tested to vendors who did not perform one or more of the following tasks required by TAC 111.14:
  - ♦ Provide evidence that the contractor notified three or more HUBs that the contractor intended to subcontract
  - ♦ Advertise subcontracting opportunities in general media, trade associations, or minority-focused media

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<sup>2</sup> In our sample of 8 contracts, 3 of these contracts could not be reviewed for compliance with TAC 111.14, due to the submission of Statement of Intent. (See Chapter 12.)

## Recommendations

To comply with TAC 111.14 and Government Code 2161.252, the Department should:

- Evaluate and review HUB Subcontracting Plans prior to awarding the contracts.
- Ensure that contracts are awarded to contractors who comply with TAC requirements.

## Management's Response

*In August 2002, PRS' HUB Coordinator initiated the review of contract specifications and HUB subcontracting plans for all contract opportunities estimated at \$100,000 or more as required by referenced statutes, rules and the agency's HUB corrective action plan.*

*Responsible Person:*

*The Director of Business Services and the HUB Coordinator are responsible for implementing this requirement. In addition, all management with contracting responsibility within the agency is expected to implement and adhere to the HUB policies.*

*Implementation Date:*

*August 2002*

Chapter 4-D

## Summary of Strengths

The Department complied with HUB rules in the following areas:

- It developed and implemented a mentor-protégé program with three participants.
- It invited HUBs to make marketing presentations on the types of goods and services they provide.
- It attended HUB forums in fiscal year 2002.

For fiscal year 2002, Prairie View A&M University (University) did not fully comply with certain requirements in three of the four areas of HUB categories: outreach, reporting, and subcontracting. Because the University did not have material noncompliance (20 percent or greater error rate) in three out of the four categories, we determined that it made a good-faith effort (see Appendix 4 for a description of HUB categories).

As required by Government Code 2161.123, the State Auditor's Office assessed compliance based on the implementation of program procedures and did "... not consider the success or failure to contract with historically underutilized businesses in any specific quantity." In fiscal year 2002, the University spent \$20.6 million within procurement categories that are eligible for HUB participation; it spent 6 percent (\$1.3 million) of that amount with HUBs (see Appendix 2).

#### Chapter 5-A

### **Outreach**

The University did not fully comply with outreach requirements in TAC. Specifically, the University's HUB coordinator is not involved in the development of procurement specifications and HUB Subcontracting Plans or in the evaluation of contracts for compliance as required by TAC 111.26. Without the HUB coordinator's involvement, there may be an increased risk that the University will not provide adequate contracting opportunities to HUBs.

### **Recommendation**

To comply with TAC 111.26, the University should involve the HUB coordinator in the development of procurement specifications and HUB Subcontracting Plans and in the evaluation of contracts.

### **Management's Response**

*As far as this finding relates to construction contracts, the university agrees that the HUB Coordinator was not involved in the development of procurement specifications and HUB subcontracting plans (HSP), or in the evaluation of contracts for compliance. Measures have already begun to ensure compliance in this area, as required by TAC 111.26. The HUB Coordinator or Assistant HUB Coordinator will be involved in development of specifications and HSPs, and in evaluation of **all** contracts for compliance. The Construction and Planning Office will notify the HUB Coordinator of upcoming projects and the two offices will work very closely from the development of specifications throughout to completion of each project.*

## Reporting

The University did not fully comply with reporting requirements found in TAC 111.16 and Government Code 2161.122. It is essential that decision makers receive accurate reports so that they may implement and monitor the HUB program. Specifically:

- The University did not compile internal monthly HUB usage reports by division. TAC 111.16 and Government Code 2161.122 state that entities shall maintain, and compile monthly, information relating to the entity's and its operating division's use of HUBs, including information regarding subcontractors and suppliers.
- The University did not report on purchases made through the group-purchasing program on the supplemental HUB report. TAC 111.16 and Government Code 2161.122 state that entities that participate in a group purchasing program shall report to TBPC the dollar amount of each purchase that is allocated to the reporting entity.

## Recommendations

To comply with TAC 111.16 and Government Code 2161.122, the University should:

- Compile monthly internal HUB usage reports by division.
- Report to TBPC the purchases made through the group-purchasing program on the supplemental HUB report.

## Management's Response

- *The university agrees that internal monthly HUB usage reports by division were not compiled in fiscal year 2002. We have requested and received these reports by division for each month, beginning September 2002. Currently, we are in the process of reviewing these reports for departmental distribution and reporting to the CFO. Completion of reporting prior month's HUB activity is expected to be complete by March 31, 2003. After which, the HUB Coordinator's reporting will occur on a monthly basis.*
- *While group purchasing expenditures were reported to TBPC in the overall expenditure report, the university agrees that it did not report these purchases on the Supplemental Report, as required by TAC 111.16. On an interim basis, the group purchasing expenditures will be manually compiled on a spreadsheet and reported in the Supplemental Report by the HUB Coordinator, beginning with the March 15, 2003 HUB Report. Meanwhile, our information technology division is seeking a means of capturing the required data in the Financial Accounting Management Information System (FAMIS), for automated reporting of group purchasing expenditures.*

## Subcontracting

The University did not fully comply with subcontracting requirements in TAC and the Government Code. Specifically:

- The University did not state the probability of subcontracting opportunities in the solicitation documents for any of the three contracts tested. These three contracts totaled \$512,858. Additionally, the University did not require a HUB Subcontracting Plan when those opportunities were probable in 66 percent (2 of 3) of the contracts tested. These two contracts account for \$402,358 out of \$512,858 in contracts tested. TAC 111.14 requires that if subcontracting opportunities are probable, each entity's invitation for bids or other purchase solicitation documents for construction, professional services, other services, and commodities for \$100,000 or more shall state that probability and require a HUB Subcontracting Plan.
- The University did not review HUB Subcontracting Plans for "good faith" prior to awarding the contracts as required by TAC for any of the three contracts tested. Additionally, the University awarded two of the three contracts tested to vendors who did not perform one or more of the following tasks required by TAC 111.14:
  - ♦ Divide the contract work into reasonable lots or portions
  - ♦ Provide evidence that the contractor notified three or more HUBs that the contractor intended to subcontract
  - ♦ Show that it gave the HUBs at least five days to respond to a bid for subcontracting
  - ♦ Advertise subcontracting opportunities in general media, trade associations, or minority-focused media
  - ♦ Encourage noncertified HUBs to become HUB-certified

## Recommendations

To comply with TAC 111.14 and Government Code 2161.252, the University should:

- Ensure that subcontracting probabilities are stated on solicitation documents and require a HUB Subcontracting Plan.
- Ensure that HUB Subcontracting Plans are reviewed prior to awarding the contracts.
- Ensure that contracts are awarded to contractors who comply with TAC requirements.

## **Management's Response**

*The university fully agrees with the findings in this area. As stated in the management response for 'Outreach', measures are presently being taken to ensure the HUB Coordinator's direct involvement in the development of specifications and HSPs. In doing so, the HUB Coordinator will implement the recommendations made by the State Auditor's Office. We expect these recommendations to be fully implemented in contracts, beginning after February 10, 2003.*

### Chapter 5-D

## **Information Technology**

Financial Accounting Management Information System (FAMIS) is the University's main information system, supporting the majority of expenditures we tested. Detail testing of source documentation used by the end users as inputs in the information system did not reveal any errors in data integrity.

### Chapter 5-E

## **Summary of Strengths**

The University complied with HUB rules in the following areas:

- It invited HUBs to make marketing presentations on the types of goods and services they provide.
- It co-sponsored HUB forums for fiscal year 2002.
- Its Legislative Appropriation Request contains the information required

## **Parks and Wildlife Department**

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For fiscal year 2002, the Parks and Wildlife Department (Department) did not fully comply with certain requirements in three of the four areas of HUB categories: outreach, reporting, and subcontracting. Because the Department did not have material noncompliance (20 percent or greater error rate) in three out of the four categories, we determined that it made a good-faith effort (see Appendix 4 for a description of HUB categories).

As required by Government Code 2161.123, the State Auditor's Office assessed compliance based on the implementation of program procedures and did "... not consider the success or failure to contract with historically underutilized businesses in any specific quantity." In fiscal year 2002, the Department spent \$50.4 million within procurement categories that are eligible for HUB participation; it spent 12 percent (\$6 million) of that amount with HUBs (see Appendix 2).

### Chapter 6-A

#### **Outreach**

The Department did not fully comply with outreach requirements in TAC. Specifically, the Department's HUB coordinator is not involved in the evaluation of contracts for compliance as required by TAC 111.26. Without the HUB coordinator's involvement, there may be an increased risk that the Department will not provide adequate contracting opportunities to HUBs.

#### **Recommendation**

To comply with TAC 111.26, the Department should involve the HUB coordinator in the evaluation of contracts.

#### **Management's Response**

*We are in the process of developing procedures to include the HUB coordinator in the acquisition, planning and development of procurement specifications as well as the evaluation and review of contracts.*

### Chapter 6-B

#### **Reporting**

The Department did not fully comply with reporting requirements in TAC. Specifically:

- The Department did not report complete and accurate information to TBPC as detailed in TAC 111.16 and Government Code 2161.122 for fiscal year 2002. As a result, decision makers do not have reliable information to evaluate the Department's HUB program. While the Department correctly reported the total

number of bids received, the totals for bids received by gender and ethnicity categories were incorrect.

- The Department did not require prime contractors to submit expenditure reports for each month they made payments to subcontractors. TAC 111.16 states that on a monthly basis state entities shall require contractors/vendors to identify their HUB subcontractors and the amounts paid for purchases. These reports are designed to ensure that entities are able to monitor the use of HUBs as subcontractors.
- The Department did not include subcontracting information in monthly internal HUB usage reports. TAC 111.16 states that state entities shall maintain, and compile monthly, information relating to the entity's and each of its operating division's use of HUBs, including information regarding subcontractors and suppliers. This information is needed to appropriately track the progress of the Department's subcontractors.

## Recommendations

To comply with TAC, the Department should:

- Ensure that the totals reported for the number of bids received for the gender and ethnicity categories are correct.
- Require contractors to submit status reports for each month that a subcontractor payment is made.
- Include subcontracting information in the monthly internal HUB usage reports.

## Management's Responses

*We recognize there was an inaccuracy in the totals for bids received by ethnicity categories. This error was solely due to the lack of automation for tracking and our resulting reliance on manual tracking. We are currently developing internal automation capable of totaling the total number of bids received for a complete Bid Proposal Report. We will ensure that the totals reported are correct. In further strengthening of the internal reporting procedures, subcontracting information will be included in the monthly internal HUB usage reports. Contractors will be required to submit monthly status reports.*

Chapter 6-C

## Subcontracting

The Department did not fully comply with subcontracting requirements in TAC and the Government Code. Specifically:

- For the five contracts tested, which totaled at least \$1 million, the Department did not review and evaluate any HUB Subcontracting Plans prior to awarding the contracts as required by TAC 111.14.

- For the five contracts tested, the Department awarded three contracts totaling at least \$354,943 to vendors who did not perform one or more of the following tasks as required by TAC 111.14:
  - ♦ Provide evidence that the contractor notified three or more HUBs that the contractor intended to subcontract
  - ♦ Show that it gave the HUBs at least five days to respond to a bid for subcontracting
  - ♦ Advertise subcontracting opportunities in general media, trade associations, or minority-focused media
  - ♦ Encourage noncertified HUBs to become HUB-certified

### **Recommendations**

To comply with TAC and the Government Code, the Department should:

- Evaluate and review HUB Subcontracting Plans prior to awarding contracts.
- Ensure that contracts are awarded to vendors who comply with TAC requirements.

### **Management's Response**

*We are currently in the process of developing procedures to include the HUB coordinator in the evaluation of contracts prior to award as required by TAC, Chapter 111.14.*

*Such procedures will include the clarification and review of the evidence of good faith effort in developing HUB subcontracting plans. The following tasks will be included to define our contractors' good-faith effort:*

- *Provide evidence that the contractor notified HUBs that the contractor intends to subcontract.*
- *Show that it gave the HUBs at least five days to respond to a bid for subcontracting.*
- *Provide written justification if a non-HUB was selected through a means other than a competitive bid process.*
- *Advertise subcontracting opportunities in general media, trade associations, or minority-focused media.*
- *Encourage noncertified HUBs to become HUB certified.*

*Primary Responsibility for Implementing Corrective Actions:*  
*HUB Coordinator/Director Purchasing, Payments, & Property*  
*Expected Completion Date: September 1, 2003*

Chapter 6-D

### **Summary of Strengths**

The Department complied with HUB rules in the following areas:

- It invited HUBs to make marketing presentations.
- It developed and implemented a mentor-protégé program.
- It co-sponsored a HUB forum in fiscal year 2002.

## **Health and Human Services Commission—Follow-Up Agency**

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In August 2001, the State Auditor's Office reported that the Health and Human Services Commission (Commission) did not make a good-faith effort to comply with the HUB requirements, as evidenced by noncompliance in three of the four basic HUB areas (see *An Audit Report on 19 Agencies' Compliance with Historically Underutilized Business Requirements*, SAO Report No. 01-035, August 2001).

Follow-up work found that while the Commission did implement most of the prior audit recommendations, it did not fully comply with certain requirements in three of the four areas of HUB categories in fiscal year 2002: outreach, reporting, and subcontracting. Because the Commission did not have material noncompliance (20 percent or greater error rate) in three out of four categories, we determined that it made a good-faith effort (see Appendix 4 for a description of HUB categories).

As required by Government Code 2161.123, the State Auditor's Office assessed compliance based on the implementation of program procedures and did "... not consider the success or failure to contract with historically underutilized businesses in any specific quantity." In fiscal year 2002, the Commission spent \$45.7 million within procurement categories that are eligible for HUB participation; it spent 10 percent (\$4.6 million) of that amount with HUBs (see Appendix 2).

### Chapter 7-A

#### **Outreach**

The Commission did not fully comply with the HUB outreach requirements in TAC. The Commission's HUB coordinator is not involved in the development of procurement specifications or in the evaluation of contracts for compliance as required by TAC 111.26. Without the HUB coordinator's involvement in the contracting process, there may be an increased risk that the Commission will not provide adequate contracting opportunities to HUBs.

#### **Recommendation**

To comply with TAC 111.26, the Commission should involve the HUB coordinator in the development of procurement specifications and subcontracting plans and in the evaluation of contracts.

#### **Management's Response**

*We agree with the finding. However, HHSC believes that Texas Building and Procurement Commission (TBPC) should revise 1 TAC § 111.26 to clarify: what activities constitute Outreach; and what constitutes appropriate involvement of the HUB coordinator, while maximizing their effectiveness and use of expertise in developing procurement specifications.*

**Corrective Actions:**

*By February 15, 2003 -- Develop and adopt a checklist for the HUB coordinator to use in evaluating contracts for compliance with HUB requirements to demonstrate good faith effort. (HUB Coordinator, HUB liaison, General Counsel, Commissioner)*

*By April 30, 2003 -- Develop and implement procedures to involve the HUB coordinator in the development of procurement specifications. (HHSC HUB liaison, General Counsel, HUB Coordinator, Director of Contract Administration)*

Chapter 7-B

**Reporting**

The Commission did not fully comply with the HUB reporting requirements in TAC or Government Code. Specifically:

- The Commission did not require prime contractors to submit expenditure reports for each month they made payments to subcontractors. TAC 111.16 states that on a monthly basis state entities shall require contractors/vendors to identify their HUB subcontractors and the amounts paid for purchases. These reports are designed to ensure that entities are able to monitor the use of HUBs as subcontractors.
- The Commission did not include subcontracting information in monthly internal HUB usage reports. TAC 111.16 and Government Code 2161.122 state that entities shall maintain, and compile monthly, information relating to the entity's and its operating divisions' use of HUBs, including information regarding subcontractors and suppliers. This information is needed to appropriately track the progress of the Commission's subcontractors.

**Recommendations**

To comply with TAC 111.16 and Government Code 2161.122, the Commission should:

- Require contractors to submit expenditure reports for each month they made payments to subcontractors.
- Include subcontracting information in monthly internal HUB usage reports.

**Management's Response**

*We agree with the finding. HHSC reported quarterly instead of monthly because we used the model reporting format issued by the Texas Building and Procurement Commission (TBPC).*

*To comply with this recommendation, HHSC will notify its vendors of this requirement and, if and where necessary, amend contracts to reflect the requirement.*

**Corrective Actions:**

*By February 15, 2003 -- Notify prime contractors with contracts over \$100,000 that they will be required to begin reporting monthly on subcontracting expenditures. (HHSC HUB liaison, HUB Coordinator, General Counsel)*

*By July 31, 2003 -- Begin phasing in inclusion of subcontracting information in monthly internal HUB usage reports. (Director for Contract Administration, HUB liaison, HUB Coordinator)*

*By October 31, 2003 -- Complete transition to monthly reporting. (Director for Contract Administration, HUB liaison, HUB Coordinator)*

Chapter 7-C

**Subcontracting**

The Commission did not fully comply with the HUB subcontracting requirements in TAC 111.14. Specifically:

- For 14 percent (one of the seven) of the contracts tested, the Commission did not state subcontracting probabilities in the invitation for bids or other purchase solicitation documents.
- The Commission awarded all three of the contracts tested,<sup>3</sup> which totaled \$10.2 million, to vendors who did not perform one or more of the following tasks as required by TAC 111.14:
  - ♦ Provide evidence that the contractor notified at least three or more HUBs that the contractor intended to subcontract
  - ♦ Show that it gave the HUBs at least five days to respond to a bid for subcontracting
  - ♦ Provide written justification if a non-HUB was selected through a means other than a competitive bid process
  - ♦ Advertise subcontracting opportunities in general media, trade associations, or minority-focused media
  - ♦ Encourage noncertified HUBs to become HUB-certified

**Recommendations**

To comply with TAC 111.14, the Commission should:

- State any identified opportunities for HUBs in the invitation for bids.

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<sup>3</sup> In our sample of seven contracts, four could not be reviewed for compliance with TAC 111.14 due to the submission of Statements of Intent (see Chapter 12).

- Ensure that contracts are awarded to contractors who comply with TAC requirements.

### **Management's Response**

*We agree with these findings.*

*Concerning notice of HUB opportunities, we will standardize our notice and procedures to ensure that potential vendors apprehend this requirement and fully appreciate its significance.*

*Concerning tasks required to demonstrate a "good faith effort," we will request that TBPC revise 1 TAC §111.14 to clarify what constitutes the mandatory scope of the "good faith effort." As currently written, the rule can reasonably be interpreted to mean that the five activities listed above are merely illustrative, and neither mandatory nor exclusive elements of good faith effort.*

#### **Corrective Actions:**

*By February 15, 2003 -- Develop and adopt a checklist for the HUB coordinator to use in evaluating contracts for compliance with HUB requirements to demonstrate good faith effort. (HUB Coordinator, HUB liaison, General Counsel, Commissioner)*

*By April 30, 2003 -- Develop and implement procedures to involve HUB coordinator, as may be appropriate, in the development of procurement specifications. (HHSC HUB liaison, HUB Coordinator, General Counsel, Director of Contract Administration)*

Chapter 7-D

### **Summary of Strengths**

The Commission complied with the HUB rules in the following areas:

- It adopted TBPC's HUB rules as its own.
- Its strategic plan includes specific programs to be conducted by the Commission to meet the goals stated in the plan.
- Its HUB coordinator communicated with the Commissioner in fiscal year 2002.

For fiscal year 2002, Texas Tech University (University) did not fully comply with certain requirements in three of the four areas of HUB categories: outreach, reporting, and subcontracting. Because the University did not have material noncompliance (20 percent or greater error rate) in three out of the four categories, we determined that it made a good-faith effort (see Appendix 4 for a description of HUB categories).

As required by Government Code 2161.123, the State Auditor's Office assessed compliance based on the implementation of program procedures and did "... not consider the success or failure to contract with historically underutilized businesses in any specific quantity." In fiscal year 2002, the University spent \$150.9 million within procurement categories that are eligible for HUB participation; it spent 6 percent (\$9.3 million) of that amount with HUBs (see Appendix 2).

#### Chapter 8-A

### **Outreach**

The University did not fully comply with outreach requirements in TAC. According to TAC 111.28, each state entity with a biennial appropriation that exceeds \$10 million shall implement a mentor-protégé program to provide professional guidance and support to facilitate protégés' development and growth as HUBs.

The University did not comply with specific provisions in TAC 111.28 that require each state entity's mentor-protégé program to include mentor and protégé eligibility and selection criteria. Further, if the entity has participants in its mentor-protégé program, written notification that participation in the program is voluntary must be provided to the participants. In addition, this notification must include that participation in the program is neither a guarantee for a contract opportunity nor a promise of business.

### **Recommendation**

To comply with TAC 111.28, the University should develop the required elements of its mentor-protégé program.

### **Management's Response**

*Texas Tech agrees. The University has now revised its mentor-protégé program to fully comply with TAC 111.28. The University's HUB policies now include written documentation related to mentor and protégé eligibility and selection criteria. Further, the information provided to vendors who are interested in participating in the mentor-protégé program has been expanded to include written notification that the program is voluntary and that participation in the program is neither a guarantee for a contract opportunity nor a promise of business.*

## Reporting

The University did not compile internal monthly HUB usage reports relating to the University's and each of its operating division's use of HUBs throughout fiscal year 2002. While the University compiled monthly subcontracting expenditure reports and quarterly HUB expenditure reports, it did not compile HUB expenditure data by division on a monthly basis as required by TAC 111.16 and Government Code 2161.122.

## Recommendation

To comply with TAC 111.16 and Government Code 2161.122, the University should ensure that it compiles internal monthly HUB usage reports as described in the requirements.

## Management's Response

*Texas Tech agrees. The University has reinstated production of monthly reports showing HUB expenditure data by division.*

## Subcontracting

The University did not fully comply with subcontracting requirements in TAC 111.14 and Government Code 2161.252.

Of the 16 contracts tested, which totaled approximately \$6.7 million, the University awarded contracts totaling approximately \$2.4 million to five contractors (31 percent) who did not perform one or more of the following tasks as required by TAC 111.14:

- One of the five contractors did not notify three or more HUBs of its intent to subcontract.
- One of the five contractors did not advertise subcontracting opportunities in general media, trade associations, or minority-focused media.
- Four of the five contractors did not encourage noncertified HUBs to become HUB-certified.

The five contractors completed and submitted checklists to the University indicating that they did not perform these required steps.

## Recommendation

To comply with TAC and the Government Code, the University should ensure that contracts are awarded to contractors who comply with TAC requirements.

## Management's Response

*Texas Tech agrees. The University has revised the specific language contained in the formal HSP currently in use to ensure that all future contractors will indeed contact a minimum of three or more HUB vendors concerning potential subcontracting opportunities on all University projects. Further, Texas Tech will continue to require contractors to advertise subcontracting opportunities in general media, trade associations, or minority-focused media. Finally, Texas Tech will require all contractors to include a statement in the contractor's solicitation documents referring any party interested in becoming HUB-certified to contact the Texas Building and Procurement Commission (TBPC) via the official TBPC certification website and/or by telephone.*

### Chapter 8-D

## Information Technology

Tech Financial Information Management system (TechFIM) is the University's main information system, supporting the majority of expenditures we audited for fiscal year 2002. Detail testing of source documentation used by the end users as inputs in the information system did not reveal any errors in data integrity.

### Chapter 8-E

## Summary of Strengths

The University complied with HUB rules in the following areas:

- It attended HUB forums in fiscal year 2002.
- Its Legislative Appropriation Request contains the information required.
- It co-sponsored a HUB forum in fiscal year 2002.

For fiscal year 2002, the Public Utility Commission (Commission) did not fully comply with certain requirements in two of the four areas of HUB categories: outreach and reporting. Because the Commission did not have material noncompliance (20 percent or greater error rate) in three of the four categories, we determined that it made a good-faith effort (see Appendix 4 for a description of HUB categories).

As required by Government Code 2161.123, the State Auditor's Office assessed compliance based on the implementation of program procedures and did "... not consider the success or failure to contract with historically underutilized businesses in any specific quantity." In fiscal year 2002, the Commission spent \$10.9 million within procurement categories that are eligible for HUB participation; it spent 14 percent (\$1.5 million) of that amount with HUBs (see Appendix 2).

Chapter 9-A

**Outreach**

The Commission did not fully comply with the outreach requirements in TAC 111.26 and 111.27. Specifically:

- The Commission's HUB coordinator is not involved in the evaluation of contracts for compliance as required by TAC 111.26. Without the HUB coordinator's involvement, there may be an increased risk that the Commission will not provide adequate contracting opportunities to HUBs.
- The Commission did not advertise its forums in appropriate trade publications to target HUBs as required by TAC 111.27.

**Recommendations**

To comply with TAC 111.26 and 111.27, the Commission should:

- Involve the HUB coordinator in the evaluation of contracts for HUB compliance.
- Advertise forums in appropriate trade publications to target HUBs.

**Management's Response**

*The HUB Program is a Commission priority. During the period addressed by the audit, the Commission's General Counsel was responsible for overseeing HUB subcontracting plans and evaluation of contracts for compliance with TAC 111.26. HUB Subcontracting Plan forms are included in every Commission request for proposals, not just those required by program rules for contracts greater than \$100,000. The agency's lead purchaser, who also serves as the HUB coordinator, was responsible for developing procurement specifications exclusive of contracts. The agency believes that it complied with the law in this area during the audit*

*period; however, the Commission has implemented a change requiring the HUB coordinator to participate in the evaluation of contracts.*

*As a small agency, the nature of the Commission's HUB forums typically involve a single HUB vendor presenting their business descriptions before relevant Commission staff, including senior management staff, to build awareness throughout the agency for potential procurement opportunities. While trade publication ads are not always cost effective for this approach, the agency is reviewing options to maximize advertising benefit. The agency also collaborates with other agencies once annually to host a major event that would be appropriate for such advertising.*

#### Chapter 9-B **Reporting**

The Commission did not fully comply with HUB reporting requirements found in TAC 111.16 and Government Code 2161.122. The Commission did not compile internal monthly HUB usage reports as required by TAC and the Government Code. TAC 111.16 and Government Code 2161.122 state that entities should maintain, and compile monthly, information relating to the entity's and its operating divisions' use of HUBs, including information regarding subcontractors and suppliers. It is essential that decision makers receive these reports so that they may implement and monitor the HUB program.

#### **Recommendations**

To comply with TAC 111.16 and Government Code 2161.122, the Commission should compile monthly internal HUB usage reports.

#### **Management's Response**

*Internal monthly HUB usage reports are now distributed throughout the agency reflecting operating division use of HUBs. The information is of limited use to division managers due to the small size of the agency and centralization of the agency's procurement process. Division staff is responsible only for submitting purchase requisitions or requests for proposals in draft form to central administration staff, which includes the agency's two purchasers. The purchasers, not division staff, are responsible for vendor selection. The purchasers, including the HUB Coordinator and along with the Executive Director, Director of Administration, Director of Fiscal Services, and General Counsel, monitor agency performance compared to HUB goals. Additionally, HUB usage by the Commission almost always relates to agency-wide needs, rather than to the needs of a single division.*

#### Chapter 9-C **Summary of Strengths**

The Commission complied with HUB rules in the following areas:

- Its strategic plan and Legislative Appropriation Request contain the information required.

- It co-sponsored a HUB forum in fiscal year 2002.
- It developed and implemented a mentor-protégé program.

## Department of Public Safety

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For fiscal year 2002, the Department of Public Safety (Department) did not fully comply with certain requirements in one of the four HUB categories: reporting. Because the Department did not have material noncompliance (20 percent or greater error rate) in three out of the four categories, we determined that it made a good-faith effort (see Appendix 4 for a description of HUB categories).

As required by Government Code 2161.123, the State Auditor's Office assessed compliance based on the implementation of program procedures and did “. . . not consider the success or failure to contract with historically underutilized businesses in any specific quantity.” In fiscal year 2002, the Department spent \$97.6 million within procurement categories that are eligible for HUB participation; it spent 15 percent (\$14.6 million) of that amount with HUBs (see Appendix 2).

### Chapter 10-A

#### Reporting

The Department did not report accurate HUB information as detailed in TAC 111.16 and Government Code 2161.122 to TBPC for fiscal year 2002. The Department overstated the number of contracts it awarded to HUBs because it counted individual purchases rather than contracts awarded that were competitively bid. The Department was unable to quantify the overstated number of contracts. As a result, TBPC does not have reliable information to include in the annual statewide HUB report to evaluate the reporting results of the Department's HUB program.

#### Recommendation

To comply with TAC 111.16 and Government Code 2161.122, the Department should not include individual purchases in the number of contracts awarded unless they have gone through a competitive bidding process.

#### Management's Response

*The definition change of “number of contracts awarded” in TBPC’s supplemental reporting instructions dated August 12, 2002 required a manual review of approximately 18,000 purchase orders. It was not feasible to go back to the beginning of the fiscal year to extract this data. DPS began the fiscal year reporting in a manner defined in Gov. Code 2161.122, and TAC §111.16; requiring (a) number of contracts awarded, and (b) number of agency contracts awarded (HUB and Non-HUB). The definition of “number of contracts awarded” to HUB’s is not clearly and consistently defined throughout statute, rule or instructions. The lack of clear and timely instruction on supplemental reporting requirements continues to result in assorted statistical data from many state agencies.*

*The department will implement your recommendation. We have identified an internal remedy using the procurement category code (PCC). This code identifies various types of contracts and is part of the procurement and accounts payable*

*process. DPS' HUB Coordinator will utilize this reporting tool to monitor, and analyze data for compliance with HUB supplemental reporting requirements.*

Chapter 10-B

## **Summary of Strengths**

The Department complied with the HUB rules in the following areas:

- Its strategic plan and Legislative Appropriation Request contain the information required.
- It has a mentor-protégé program.
- It sponsored and co-sponsored HUB forums.

## Department of Insurance

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For fiscal year 2002, the Department of Insurance (Department) did not fully comply with certain requirements in one of the four HUB categories: subcontracting. Because the Department did not have material noncompliance (20 percent or greater error rate) in three out of the four categories, we determined that it made a good-faith effort (see Appendix 4 for description of HUB categories).

As required by Government Code 2161.123, the State Auditor's Office assessed compliance based on the implementation of program procedures and did “. . . not consider the success or failure to contract with historically underutilized businesses in any specific quantity.” In fiscal year 2002, the Department spent \$6.2 million within procurement categories that are eligible for HUB participation; it spent 30 percent (\$1.9 million) of that amount with HUBs.

### Chapter 11-A

#### Subcontracting

The Department did not fully comply with HUB subcontracting requirements in TAC and the Government Code. The Department did not adhere to the criteria defined by TAC for use in determining whether subcontracting opportunities for HUBs were probable for any of the four Special Deputy Receiver contracts tested. These contracts account for all of the \$1 million in contracts tested for fiscal year 2002. According to TAC 111.14, when determining whether subcontracting opportunities are probable, state entities should use the HUB participation goals (relating to Annual Procurement Utilization Goals) and research the Centralized Master Bidders List, the HUB Directory, the Internet, and other directories identified by TBPC for HUBs that may be available to perform the contract work.

#### Recommendation

To comply with TAC 111.14 and Government Code 2161.252, the Department should adhere to the criteria described in the rules to determine whether subcontracting opportunities are available.

#### Management's Response

*TDI agrees that it was not in full compliance with HUB subcontracting requirements, however, as detailed below, other Special Deputy Receiver (SDR) contracting requirements prevent full compliance. To compensate for these conflicting requirements, TDI has put alternate HUB contracting recruitment practices in place for the SDR contracting process.*

*The audit included a finding that the agency did not fully comply with HUB subcontracting requirements but nonetheless concluded that the agency made a good faith effort at compliance. This finding was based on a review of subcontracting practices within the agency SDR program which is funded by non-appropriated funds. Let me begin by saying TDI is committed to complying with all aspects of the*

*HUB program and has established a HUB program that strives to adhere to the established statutes and provisions and the overall purpose of the HUB program—greater opportunities and inclusion of HUB eligible vendors. In FY 2002, TDI awarded 30.2% (\$1,878,121 of \$6,204,156) of its contract expenditures with HUB vendors and ranked 2<sup>nd</sup> among the top twenty-five (25) agencies spending more than \$5 million dollars. TDI submits this response to clarify the agency’s HUB subcontracting efforts and show that the agency is in compliance with the intent of the HUB subcontracting requirements in its SDR program. The Commissioner of Insurance appoints SDRs pursuant to Article 21.28 of the Texas Insurance Code.*

*TDI pre-qualifies HUB vendors for SDR participation by hosting annual HUB forums specifically seeking HUB vendors that could become certified to bid or become subcontractors for SDR contracts. TDI targets and solicits vendors from Texas Building and Procurements Commission’s (TBPC’s) Centralized Master Bid List (CMBL) for participation in these forums in advance of the normal CMBL process. The subcontracting language is not included in SDR bid or proposal documents because the contractors on TBPC’s CMBL list would not be eligible to respond to SDR subcontracting opportunities, unless already pre-certified through the SDR HUB forum. TDI has in place a program to provide HUB vendors with access to the SDR process with resulting awards of contracts to HUB vendors.*

*In summary, TDI is making every effort to comply with the spirit of the HUB subcontracting provisions through its annual HUB vendor SDR forum. Also, in reviewing appointments for SDR positions, this department complies with Article 21.28(12)(b) which requires that the Insurance Commissioner’s appointment of SDRs reflect the ethnic, racial, and geographic diversity of the state.*

Chapter 11-B

## **Summary of Strengths**

The Department complied with HUB rules in the following areas:

- It developed a mentor-protégé program and has active participants.
- It sponsored a HUB forum in fiscal year 2002.
- It has a database that was designed in-house in which it collects data for the supplemental HUB reports.

## ***Inconsistencies Exist in HUB Requirements and Guidelines***

TBPC's HUB requirements and guidelines are not consistent with the Government Code because of a misinterpretation of the code. Rules should implement statute and cannot eliminate or change statutory requirements. TBPC has taken action by proposing rule changes to its board. TBPC is currently evaluating public comment regarding those changes. The inconsistencies that result from a misinterpretation of the code lead to a lack of clear guidance for agencies on how to comply with the rules. The inconsistencies are as follows:

- The Government Code requires a HUB Subcontracting Plan if an entity, such as an agency or university, identifies subcontracting opportunities. However, TAC, Part 5, Section 111.14, Subchapter B, which was adopted in April 2000 and set forth by the former General Services Commission, allows entities to accept from prime contractors Statements of Intent to complete all of the identified subcontracting opportunities.

Statements of Intent allow contractors to perform all the identified subcontracting work themselves instead of making an effort to subcontract with HUBs.

In fiscal year 2002, 6 of the 10 audited entities identified \$60.8 million in subcontracting opportunities. Of that amount, approximately \$19 million was not considered for subcontracting due to the acceptance of Statements of Intent (see text box).

### **Effects of Statements of Intent on Subcontracting Opportunities for Fiscal Year 2002**

\$60.8 million	Dollar amount of contracts for which subcontracting opportunities were identified
-\$19.0 million	Dollar amount of contracts for which Statements of Intent were accepted
<hr/>	
\$41.8 million	Dollar amount of contracts for which subcontracting opportunities were identified and the contractors did not elect to perform the work themselves

Of the \$41.8 million, entities reported approximately \$4.5 million in subcontracting expenditures paid to HUBs for fiscal year 2002.

While the entities complied with TAC rules related to HUB Subcontracting Plans, these rules do not align with the statutes governing HUB Subcontracting Plans:

- TAC, Section 111.16(c), requires the prime contractor to submit monthly reports detailing the amount paid to each HUB to whom the contractor has awarded a subcontract, provided that payment was made to a HUB in the month to be reported. However, the Prime Contractor Attachment I Progress Assessment Report indicates that the reports can be made monthly or quarterly. TBPC developed this attachment as a template for the entities to use when collecting subcontractor expenditure information from the prime contractor. Many contractors submit their expenditure reports quarterly instead of monthly.

## **Recommendation**

TBPC should ensure that TAC 111.14(b) (6) is consistent with the requirements and intent of the Government Code, Chapter 2161.

## **Management's Response**

*TBPC agrees with the audit recommendation and has initiated corrective action to ensure that TAC Section 111.14(b) (6) is consistent with the requirements and intent of Texas Government Code Chapter 2161.*

*Proposed rule amendments to TAC Section 111.14(b) (6), which address the inconsistency noted in the audit report, were approved by the Commission and published in the Texas Register for public comment in October 2002. The TBPC is currently evaluating and resolving the issues raised in the public comment received regarding the proposed rule amendments.*

*TBPC plans to propose additional action on the rule amendments to TAC Section 111.14(b) (6) at its March 19, 2003 Commission meeting.*

## **Recommendation**

TBPC should ensure that its Prime Contractor Attachment I – Progress Assessment Report is consistent with TAC.

## **Management's Response**

*TBPC agrees with the audit recommendation and has taken the appropriate actions to ensure that the Prime Contractor Attachment I – Progress Assessment Report is consistent with TAC requirements. The Progress Assessment Report form was updated in October of 2002 to reflect the monthly reporting requirement as defined in TAC.*

# Appendices

Appendix 1

## **Objectives, Scope, and Methodology**

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### **Objectives**

The objectives of this audit were to determine whether the selected entities:

- Complied with HUB statutory requirements.
- Made “good-faith efforts” to comply with HUB statutory requirements.
- Reported complete and accurate data to the Texas Building and Procurement Commission (TBPC).

### **Scope**

The State Auditor’s Office audited 10 entities’ fiscal year 2002 HUB activities in four compliance areas: planning, outreach, reporting, and subcontracting. We performed follow-up procedures at the two agencies audited in fiscal year 2001 that did not make good-faith efforts to comply with HUB statutory requirements. Entities were audited based on the Texas Administrative Code, Chapter 111, and Texas Government Code, Chapter 2161.

We audited the following agencies:

- Department of Public Safety
- Department of Insurance
- Public Utility Commission
- Department of Protective and Regulatory Services
- State Board for Educator Certification
- Prairie View A&M University
- Texas Tech University
- Southwest Texas State University
- Parks and Wildlife Department
- Preservation Board

We performed follow-up procedures at the following agencies:

- Health and Human Services Commission

- Texas Education Agency

## Methodology

Based on a risk assessment, the State Auditor's Office asked 12 entities to complete a survey that included specific information technology (IT) questions as well as HUB compliance.

For the 12 entities, we performed the following tests to determine compliance with Texas Administrative Code, Chapter 111, and Texas Government Code, Chapter 2161. The following information is based on the audit programs and audit work performed:

- We reviewed strategic plans and Legislative Appropriation Requests to ensure that the required information was included.
- We reviewed documentation and conducted interviews to determine:
  - ♦ Whether the agencies had adopted appropriate policies and procedures.
  - ♦ Whether the agencies were performing the necessary HUB outreach activities and whether they had developed mentor-protégé programs.
  - ♦ Whether the HUB coordinator position was operating as statute requires and whether the HUB coordinator had appropriate resources and access to conduct the HUB program successfully.
- We reviewed and tested reports submitted to TBPC to determine the accuracy of the reports. We also used Benford's Law to extract for testing expenditure amounts that supported the reports.
- We reviewed all applicable contracts and subcontracts to determine compliance with HUB statutes.
- We created process maps for each entity to depict and isolate critical control points in both manual and automated reporting processes.
- We wrote findings on the entities that did not comply with HUB requirements within +/-5 percent of a tolerable error rate.
- We determined that an entity did not make a good-faith effort if it had material noncompliance in at least three of the four areas of HUB requirements. We determined that material noncompliance existed if an entity had a 20 percent or greater error rate in three out of the four HUB categories.

## Project Information

We conducted our audit in accordance with generally accepted government auditing standards. Fieldwork was conducted from October 2002 through January 2003.

The following members of the State Auditor's staff performed this audit:

- Courtney Ambres-Wade (Project Manager)

- Jennifer Wiederhold (Assistant Project Manager)
- David Dowden
- Sonya Etheridge, CIA, CISA
- Lori Field
- Joe Fralin, MBA
- Anthony T. Patrick, MBA (Quality Control Reviewer)
- Valerie Hill, MBA (Audit Manager)
- Frank Vito, CPA (Audit Director)

## Statistical Information (unaudited)

The following table shows the HUB goals achieved and the funds available and spent by the agencies reviewed in this audit for fiscal year 2002.

Table 2

HUB Goals, HUB Funds Available, and HUB Funds Spent in Fiscal Year 2002								
	Heavy Construction	Building Construction	Special Trade Construction	Professional Services	Other Services	Commodity Purchases	Funds Eligible to Be Spent with HUB Vendors <sup>a</sup>	Funds Spent with HUB Vendors
<b>State Goal</b>	<b>11.90%</b>	<b>26.10%</b>	<b>57.20%</b>	<b>20.00%</b>	<b>33.00%</b>	<b>12.60%</b>	-	-
<b>Statewide Actual</b>	<b>10.20%</b>	<b>9.92%</b>	<b>14.70%</b>	<b>14.50%</b>	<b>12.30%</b>	<b>11.40%</b>	-	-
State Board for Educator Certification	0.00%	0.00%	0.00%	0.00%	9.03%	14.40%	\$11,872,488	\$1,078,646
Texas Education Agency	0.00%	0.00%	87.90%	0.00%	11.20%	17.70%	\$133,020,409	\$15,294,446
Southwest Texas State University	36.90%	0.73%	12.80%	11.30%	3.05%	7.19%	\$39,659,357	\$2,772,971
Department of Protective and Regulatory Services	0.00%	0.00%	3.89%	0.00%	3.21%	10.00%	\$39,472,330	\$1,965,907
Prairie View A&M University	0.00%	9.94%	5.51%	0.00%	2.52%	9.26%	\$20,630,354	\$1,298,678
Parks and Wildlife Department	0.31%	18.00%	6.37%	0.00%	8.04%	15.90%	\$50,382,059	\$6,041,011
Health and Human Services Commission	0.00%	0.00%	7.59%	3.74%	10.00%	16.90%	\$45,677,793	\$4,557,932
Texas Tech University	0.00%	4.73%	2.58%	1.35%	5.37%	10.20%	\$150,862,379	\$9,299,837
Public Utility Commission	0.00%	0.00%	0.00%	0.00%	11.20%	57.20%	\$10,940,515	\$1,515,184
Department of Public Safety	0.00%	35.90%	32.60%	23.40%	14.80%	13.70%	\$97,583,589	\$14,623,428
Department of Insurance	0.00%	0.00%	0.00%	0.00%	6.07%	74.5%	\$6,204,156	\$1,878,121
Preservation Board	0.00%	0.34%	15.60%	3.04%	2.81%	6.98%	\$12,116,193	\$506,544
<sup>a</sup> Funds eligible are those funds spent in general procurement categories identified by the Texas Building and Procurement Commission. Note: Where 0 percent is noted, the category is, in most cases, not applicable to the entity.								

Source: The Texas Building and Procurement Commission's fiscal year 2002 HUB report (unaudited data)

## **Key HUB-Related Statutes**

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In addition to the Texas Building and Procurement Commission (commission), other entities have statutory responsibilities related to HUB. Specifically, the State Auditor's Office (state auditor) and Legislative Budget Board (budget board) have the following requirements.

### **Government Code 2161.123. Strategic Planning**

The commission and the state auditor shall cooperate to develop procedures to periodically monitor state agency compliance with this section. The state auditor shall report to the commission a state agency that is not complying with this section.

### **Government Code 2161.005. Transfer of Funds for Purchasing**

If the state auditor reports to the commission under Section 2161.123(d) that a state agency is not complying with Section 2161.123, the commission shall report that fact to the Legislative Budget Board. If the Legislative Budget Board determines that, one year after the date of the state auditor's report to the commission, the agency is still not complying with Section 2161.123, the budget board may, under Section 69, Article XVI, Texas Constitution, direct the emergency transfer of the agency's appropriated funds for making purchases under purchasing authority delegated under Section 2155.131 or 2155.133 to the appropriate state agency. The amount transferred from the agency's funds to the appropriate agency shall be an amount determined by the Legislative Budget Board.

## Summary of HUB Requirements

Summary of HUB Requirements	
<b>Planning</b>	
Compliance with Legislative Appropriations Request (LAR) requirements	
Compliance with HUB policies and procedures	
Compliance with strategic plan requirements	
<b>Outreach</b>	
Compliance with mentor-protégé program requirements	
HUB coordinator level related to the Procurement Director	
HUB coordinator communication with Executive Director	
HUB coordinator's involvement in development of procurement specifications and HUB Subcontracting Plans and evaluation of contracts	
HUB coordinator's job responsibilities include facilitating compliance, reporting, contract administration, marketing, and outreach	
HUB forum participation	
Appropriate advertisement of HUB forums	
In-house marketing presentations by HUBs	
<b>Reporting</b>	
Reporting of accurate HUB information	
Compliance with monthly internal HUB usage reports requirements	
Compliance with Progress Assessment Reports requirements	
Compliance with HUB Supplemental Reports requirements	
Compliance with Group Purchasing Reports requirements	
<b>Subcontracting</b>	
Statement of subcontracting opportunities	
Determination on whether subcontracting opportunities are probable	
Identification of certified HUBs	
Evidence of good-faith effort in development of HUB Subcontracting Plans	
Review and evaluation of HUB Subcontracting Plan prior to contract award	

Source: Texas Administrative Code Chapter 111 and Government Code 2161

Institutions of higher education are exempt from HUB strategic planning requirements (Government Code 2161.123) as referenced in Government Code 2056. However, institutions are subject to other HUB planning requirements.

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