ATTACHMENT II
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Chapter 30. Administration

Subchapter B. State Board of Education: Purchasing and Contracts

§30.21. Historically Underutilized Business (HUB) Program.

In accordance with the Texas Government Code, §2161.003, the State Board of Education adopts by reference the rules of the Comptroller of Public Accounts, found at Title 34 Texas Administrative Code, §§20.11-20.28, concerning the Historically Underutilized Business (HUB) Program.

Statutory Authority: The provisions of this §30.21 issued under the Texas Government Code, §2161.003.

Source: The provisions of this §30.21 adopted to be effective December 5, 2004, 29 TexReg 11339; amended to be effective April 26, 2009, 34 TexReg 2532.

§30.22. Procedures for Protests, Dispute Resolution, and Appeals Relating to Purchasing and Contract Issues.

(a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract under the jurisdiction of the State Board of Education (SBOE) may formally protest to the director of the Texas Education Agency (TEA) division responsible for purchasing and contracts. Such protests must be in writing and received in the purchasing and contracts director's office within ten working days after such aggrieved person knows, or reasonably should have known, of the occurrence of the action which is protested, unless the director finds that good cause for delay is shown or determines that a protest or appeal raises issues significant to the TEA's procurement practices or procedures.

(b) Formal protests must conform to the requirements of this subsection and subsection (d) of this section, and shall be resolved in accordance with the procedure set forth in subsections (e)-(f) of this section. Copies of the protest must be mailed or delivered by the protesting party to the TEA and to the other interested parties. For the purposes of this section, "interested parties" means all respondents who have submitted bids, proposals, or offers for the contract involved. Names and addresses of all interested parties may be obtained by sending a written request for this information to the purchasing and contracts director.

(c) In the event of a timely protest or appeal under this section, the TEA shall not proceed further with the solicitation or with the award of the contract unless the commissioner of education or the commissioner's designee, in consultation with the purchasing and contracts director, makes a written determination that the expeditious award of contract is necessary to protect substantial interest of the state. A copy of this determination shall be mailed to the protesting party.

(d) A formal protest petition must be sworn and must contain:

(1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) an identification of the issue or issues to be resolved;

(5) argument and authorities in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to the TEA and other identifiable interested parties.

(e) The purchasing and contracts director shall have the authority to settle and resolve the dispute concerning the solicitation or award of a contract. The director may solicit written responses to the protest petition from

other interested parties, and if he or she makes such a request, the protesting party shall be given notice of the director's request and of any written responses to the request that the director receives. The director may consult with the TEA office of legal services concerning the dispute.

(f) If the protest is not resolved by mutual agreement, the purchasing and contracts director will issue a written determination on the protest.

(1) If the director determines that no violation of rules or statutes has occurred, he or she shall so inform the protesting party and other interested parties by a letter which sets forth the reasons for the determination.

(2) If the director determines that a violation of rules or statutes has occurred in a case where a contract has not been awarded, he or she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.

(3) If the director determines that a violation of rules or statutes has occurred in a case where a contract has been awarded, he or she shall so inform the protesting party and other interested parties by a letter which sets forth the reasons for the determination. In such a case, the director has the authority to declare the contract void. If he or she declares the contract void, this fact shall be included in the determination letter.

(g) The purchasing and contracts director's determination on a protest may be appealed by the protesting party to the commissioner of education or the commissioner's designee. An appeal of the director's determination must be in writing and must be received in the commissioner's office no later than ten working days after the date of the director's determination. An appeal of the determination shall be limited to those issues raised in the protest petition and the determination letter. Copies of the appeal must be mailed or delivered by the appealing party to the TEA and other interested parties and must contain a sworn statement that such copies have been provided.

(h) The commissioner or the commissioner's designee shall review the protest petition, the purchasing and contracts director's requests for written responses to the protest petition, any written responses received from other interested parties, the determination, and the appeal.

(i) The commissioner or the commissioner's designee may, in his or her discretion, issue a written decision on the protest or refer the matter to the SBOE for consideration at a regularly scheduled open meeting.

(j) A decision issued either by the SBOE in an open meeting or in writing by the commissioner or the commissioner's designee shall be the final administrative action of the TEA.

Statutory Authority: The provisions of this §30.22 issued under the Texas Government Code, §2155.076 and Chapter 2260.

Source: The provisions of this §30.22 adopted to be effective December 5, 2004, 29 TexReg 11339.