

DECLARATION OF EMERGENCY

Office of the Governor
Division of Administration
Office of the Commissioner

Small Entrepreneurship (Hudson Initiative) —Procurement (LAC 19:VII.Chapters 11and 13)

The Division of Administration, Office the Commissioner of Administration, has exercised the emergency provisions of R.S. 49:953(B), the Administrative Procedure act, to adopt LAC 19:VIII, Subpart B, under the authority of R.S. 39:2007(F). This action is taken to ensure the welfare of the state by establishing rules governing procurements made as part of the Louisiana Initiative for Small Entrepreneurships (Hudson Initiative), R.S. 39:2001 through 2008 and R.S. 51:931. This Emergency Rule will allow for coordination of state procurement with the February 20, 2006, implementation of Small Entrepreneurship certification procedures by the Department of Economic Development pursuant to LAC 19:VIII, Subpart A.

Title 19 ECONOMIC DEVELOPMENT Part VII. Small Entrepreneurship (Hudson Initiative) Subpart B. Procurement Chapter 11. General Provisions

§1101. Purpose

A. The State of Louisiana's Small Entrepreneurship (Hudson Initiative) Program, hereinafter called SE (HI), was created to provide additional opportunities for Louisiana-based small entrepreneurships, hereinafter called SE's, to participate in contracting and procurement with the State of Louisiana. By formalizing existing practices and implementing new procedures, the SE (HI) will allow the State of Louisiana to target more effectively certified SE participation and create opportunities relating to the state's contracting and procurement. Shown below are the key features of the SE (HI).

B.1. The SE (HI) is a goal-oriented program, encouraging state agencies to contract with certified SE's as well as encouraging contractors who receive contracts from the state to use good faith efforts to utilize certified SE's. The SE (HI) is a race and gender-neutral program. SE (HI) participation is restricted to Louisiana-based certified SE's in accordance with rules promulgated by the Louisiana Department of Economic Development.

a. The state will establish annual goals for certified SE participation in state procurement and public contracts. Contract goals will vary based on contracting and subcontracting opportunities, availability of certified SE's, and price competitiveness.

b. To participate, SE's must be certified by the Louisiana Department of Economic Development. Certification is based on a firm's gross revenues, number of employees, and other criteria as specified by Act 440 of the 2005 legislative session.

c. The SE (HI) has guidelines for counting certified SE participation.

d. The SE (HI) incorporates several procedures to help implement the Initiative.

2. These procedures are designed to maximize the Initiative's success, including:

- a. assisting certified SE's and contractors by providing information, practical advice, and support;
- b. strongly encouraging joint ventures and/or alliances among certified SE's and larger firms;
- c. assisting in developing a mentoring program for certified SE's with appropriate private sector businesses and individuals;
- d. requiring bidders and proposers to provide written assurance of certified SE participation in their bids and proposals;
- e. providing workshops and training sessions to acquaint certified SE's with state procurement and public contract proposal and bidding practices, including problems frequently encountered by certified SE's during the proposal/bid process and generally while doing work for the state;
- f. maintaining an updated certified SE directory and source list(s) on the Internet to help identify qualified and available certified SE's; and
- g. making the state's central procurement website (LaPac) available for agencies to indicate that a particular procurement has been designated for SE participation.

3. For designated contracts, the SE (HI) requires good-faith efforts by contractors to use certified SE's in contract performance. The SE (HI) has procedures in place to determine whether contractors are meeting this requirement of good-faith efforts. Contractors are required to document their efforts to obtain certified SE participation. A contract award may be denied or an existing contract may be terminated if the state becomes aware that the contractor in fact failed to use good-faith efforts. The state recognizes that availability, subcontracting capabilities, and price competitiveness are relevant factors in determining whether a contractor has used good-faith efforts to subcontract with certified SE's.

4. The state may impose sanctions on a contractor who fails to make good-faith efforts or on an SE that was found to be guilty of deception relating to certification. Sanctions may include a suspension from doing business with the state for up to 3 years. Procedures are in place to provide an opportunity for due process for any contractor or SE prior to the suspension.

5. The SE (HI) is race and gender neutral. The SE (HI) shall not be used to discriminate against any person, company, or group of persons or companies. It is the policy of the state to prohibit discrimination based on race, gender, religion, national or ethnic origin, age, disability, or sexual orientation. Contractors and/or certified SE's that violate the state's non-discrimination mandate in the operations of the SE (HI) will be subject to sanctions.

C. The state utilizes various purchasing methods to acquire goods and services, including requests for proposals (RFP), invitations to bid (ITB), and purchase orders. The state determines which purchasing method to use based upon statutes and regulations applicable to the nature of the procurement.

1. The state will monitor the progress of the SE (HI), reviewing participation reports, community input, recommendations, and operational efficiency. Annual reports will be made to the House Committee on Appropriations and the Senate Committee on Finance addressing the number of contracts awarded to certified SE's, the number of contracts that included a good faith SE subcontracting plan, and the dollar value of SE contracts.

2. Nothing in the SE (HI) should be construed to give a proposer/bidder a property interest in an ITB, RFP, or contract prior to the state's award of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1103. Mission and Policy Statement

A. Act 440 of the 2005 legislative session enacted R.S. 39:2001, et seq. and R.S. 51:931, creating the Small Entrepreneurship (Hudson Initiative) Program for the State of Louisiana. As enacted, the SE (HI) is a goal-oriented program, encouraging the state to contract with certified SE's as well as encouraging the state's contractors to use good-faith efforts to utilize Louisiana-based certified SE's as subcontractors.

B. It is the mission of the state to promote trade and economic development. It is the state's policy to promote economic development and business opportunities for all sectors of our community. Certified SE's need to be given an opportunity to participate in a fair portion of the total purchases and contracts for property, services, and construction for the state. Therefore, the state establishes the SE (HI) to ensure opportunities for certified SE's to participate in the state's contracting and procurement opportunities and ultimately to enhance the stability of Louisiana's economy.

C. As a matter of policy, the state recognizes and requires competitive pricing, qualifications, and demonstrated competencies in the selection of contractors. The SE (HI) is designed to create opportunities, while requiring competitiveness and quality of work. As such, it allows the state to target more effectively and strive to increase certified SE participation in the state's contracting and procurement activities. In its operations, the SE (HI) will assist the state in its mission of promoting economic development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1105. Scope

A. These procedures apply to all state departments, prime contractors, subcontractors, and certified SE's involved with SE (HI) contracts. These procedures do not apply to agency expenditures for amortization of debt, debt service, depreciation, employee benefits, per diem, relocation expenses, salaries, postage, and transfer of charges. These procedures do not apply to contracts for sole source items, contracts with other governmental entities, and those contracts that are prohibited by federal law from inclusion in these procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

Chapter 13. Procedures

§1301. Operational Procedures

A. The procedures herein are established to govern the program components of the SE (HI) including, without limitation, program compliance, specific implementation measures, purchasing methods, reporting of certified SE participation, imposition of sanctions, and dispute resolution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the

§1303. Objectives

A. The overall objectives for this program are:

1. to implement the policy of the SE (HI) to promote economic development and business opportunities for all sectors throughout the state;
2. to ensure opportunities for certified SE's to participate in all phases of the state's contracting activities;
3. to stimulate participation of Louisiana-based certified SE's with the state and create opportunities through the state's contracting and procurement;
4. to encourage certified SE's to seek work from prime contractors when qualified and work is available;
5. to formalize existing procurement and contracting practices and implement new procurement and contracting procedures to assist more effectively certified SE participation;
6. to carry out the mandate of the state as enacted by Act 440 of the 2005 Legislative Session;
7. to ensure nondiscriminatory practices in the use of certified SE's for state contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1307. Reserved.

§1309. Overall Annual SE (HI) Goals and Agency Participation Levels

A. Overall Annual Goals. Overall annual goals for SE (HI) participation for the state will be set each year by the Commissioner of Administration as a percentage increase based on prior year activity.

B. Individual Agency Participation Levels. The Commissioner of Administration will provide guidance on how agencies will determine participation levels. The criteria used to set individual agency participation levels may include but not be limited to certified SE capacity, certified SE availability, nature of the contract, past experiences with SE (HI) participation, recognized industry composition, and subcontracting opportunities. No quotas or set-asides will be used in implementing the SE (HI).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1311. Purchasing Methods

A. The state utilizes various purchasing methods to acquire goods, services, major repairs and public works including requests for proposals (RFP), invitations to bid (ITB), and purchase orders. The procurement method to be used is based upon statutes and regulations applicable to the nature of the procurement.

B. Nothing in the SE (HI) should be construed to give a proposer/bidder a property interest in an ITB, RFP, or contract prior to the state's award of the contract.

C. Agencies will participate in the program by using any or all of the following procurement methods:

1. purchasing directly from a certified SE within the agency's discretionary procurement authority for goods, operating services, major repairs, construction and personal, professional and consulting services;
2. issuing an order to a certified SE (prime contractor or distributor) on statewide contract;
3. using an ITB process to award a contract either to a certified SE or to a bidder who can demonstrate a good faith plan to use certified SE's as subcontractors in performing the prime contract. To be responsive to the ITB the bidder must be either a certified SE or be able to demonstrate its good faith subcontracting plan.

a. Good Faith Subcontracting Plans in an Invitation to Bid

i. The ITB will require the bidder to certify that the bidder is either a certified SE or that the bidder has a good faith subcontracting plan.

ii. The following describes the process a non-certified SE bidder shall follow in order to comply with the requirement for a good faith subcontracting plan.

(a). The bidder has or will use the SE (HI) certification list maintained by the Department of Economic Development to provide notice of the potential subcontracting opportunities to three or more certified SE's capable of performing the subcontract. Notification must be provided to the certified SEs no less than five working days prior to the date of bid opening.

(b). Written notification is the preferred method to inform certified SE's. This written notification may be transmitted via fax and/or e-mail.

(c). Written notification must include:

(i). the scope of work;

(ii). information regarding the location to review plans and specifications (if applicable);

(iii). information about required qualifications and specifications;

(iv). bonding and insurance information and/or requirements (if applicable);

(v). contact person.

(d). The successful bidder must be able to provide written justification of the selection process if a certified SE was not selected.

b. Post audits may be conducted. In the event that there is a question as to whether the low bidder's good faith subcontracting plan was complied with, the prime contractor must be able to provide supporting documentation to demonstrate its good faith subcontracting plan was actually followed (i.e., phone logs, fax

transmittals, letters, e-mails). If it is at any time determined that the contractor did not in fact perform its good faith subcontracting plan, the contract award or the existing contract may be terminated.

4. using a request for proposals (RFP) process to award a contract to a certified SE or to a proposer demonstrating a good faith effort to use certified SE's as subcontractors;

a. If an agency decides to issue an RFP to satisfy its SE (HI) goal, the procurement process will include either of the following:

i. require that each proposer either be a certified SE, or have made a good faith subcontracting effort in order to be responsive; or

ii. reserve ten percent of the total RFP evaluation points for otherwise responsive proposers who are themselves a certified SE or who have made a good faith effort to use one or more SEs in subcontracting.

b. In evaluating proposals, the evaluation committee will follow the scoring criteria set forth in the RFP. In its evaluation process, the evaluation committee will not give additional points for SE participation beyond the designated amount set forth in the RFP.

c. Good Faith Subcontracting in a Request for Proposal

i. Proposers alleging to have made a good faith subcontracting effort may be required in the RFP to verify their good faith subcontracting plan. A good faith effort can be evidenced by many things including those listed below.

(a). The proposer divided the contract work into reasonable lots or portions.

(b). The proposer used the SE (HI) certification list maintained by the Department of Economic Development to provide notice to three or more certified SE's of the potential subcontracting opportunities available in performance of the prime subcontract. Notification must have been provided to the certified SE's no less than five working days prior to the submission of the proposal.

(c). The notification from the proposer was in writing. This written notification may have been transmitted via fax and/or e-mail.

(d). The written notification gave the SEs complete information regarding the potential subcontract including such things as:

(i). the scope of work;

(ii). information regarding the location to review plans and specifications (if applicable);

(iii). information about required qualifications and specifications;

(iv). bonding and insurance information and/or requirements (if applicable);

(v). contact person.

ii. An RFP under 4(a)(i) shall require all proposers who are not certified SE's to certify they made a good faith subcontracting effort in their proposals.

iii. An RFP under 4(a)(ii) may require that proposals include a proposed schedule of certified SE participation that lists the names of potential certified SE subcontractors, a description of the work each would perform, and the dollar value of each proposed certified SE subcontract.

iv. An RFP under 4(a)(ii) may require that proposers provide documentation to demonstrate their good faith subcontracting effort (i.e.: phone logs, fax transmittal logs, letters, e-mails) in order to receive any reserved points.

v. Proposers responding to RFP's under either 4(a)(i) or 4(a)(ii) may be asked to provide written justification of the subcontractor selection process if a certified SE is not used as a subcontractor.

d. If at any time the state determines that the contractor did not in fact make a good faith effort, the contract award or the existing contract may be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1313. Procedures for Counting Small Entrepreneurship Participation

A. The state may count towards its SE (HI) goals the total dollar value of the contract awarded to the certified SE, if the certified SE is the prime contractor.

B. The state may count the total dollar value of a contract that is subcontracted to a certified SE.

C. The state may count towards its SE (HI) goals the total dollar value of a contract awarded to a joint venture, of which a certified SE is a part. The joint venture must provide an affidavit stating the amount of work actually performed by the certified SE.

D. The state may count toward its SE (HI) goals the total dollar value of the contract if the RFP contemplated awarding ten percent of the total evaluation points to a proposer who demonstrated good faith efforts to use certified SE's as subcontractors, but was unsuccessful in doing so.

E. The state may count toward its SE (HI) goals the total dollar value of those contracts in which the contractor has provided a good faith subcontracting plan as part of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1315. Certification Procedures

A. Certification procedures are in accordance with rules and regulations promulgated by the Louisiana Department of Economic Development. (LAC 19:VII.Subpart A)

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1317. Implementation Procedures

A. In an effort to maximize the SE (HI)'s success, the following procedures will be implemented to maximize opportunities for certified SE participation.

1. The Division of Administration and state departments/agencies are responsible for the direct operation and direct implementation of the SE (HI).

2. Each Department/Agency of the state shall choose an initiative coordinator. The person chosen to be initiative coordinator shall be the person serving as the undersecretary of the department or the business manager for an agency. The initiative coordinator or his designee shall be responsible for acting as a business advisor to work directly with certified SE's and contractors to provide information, assistance, and support. The Division of Administration and state departments/agencies will undertake various tasks to make the program workable, including the following:

a. provide information to certified SE's on the state's organization and contractual needs and offer instructions on procurement policy, procedures, and general RFP/ITB requirements;

b. provide workshops and training sessions at least twice each year for certified SE's on challenges frequently encountered by certified SE's during bid/proposal process and generally when doing work for the state;

c. enhance the existing state's procurement and financial database to identify certified SE's for historical and reporting purposes;

d. hold pre-bid and pre-proposal seminars to explain bid and proposal requirements, including an explanation of the forms that must be submitted with the response or proposal;

e. conduct outreach activities;

f. conduct internal information workshops to inform and acquaint the state employees responsible for state procurement and public contracts with the goals and objective of the state's SE (HI) initiative and to sensitize them to the problems of SE's;

g. inform certified SE's of ITB's and RFP's related to their capabilities by placing notices on the state's central procurement website, LaPac.

3. The state will encourage the formation of joint ventures/alliances among certified SE's and larger firms to provide opportunities for certified SE's to gain experience.

4. The state will encourage a mentoring program between large businesses and certified SE's to share information and experiences.

5. In RFP's requiring the compliance of a good faith subcontracting plan the state may require proposers to submit information on their business relationships and arrangements with certified SE subcontractors at the time of proposal review. Agreements between a proposer

and a certified SE subcontractor in which the certified SE subcontractor promises not to provide subcontracting quotations to other proposers shall be prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1319. Legal Remedies

A. Legal remedies will be in accordance with applicable procurement statutes including contract controversies, suspension and/or debarment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1321. Reporting Procedures

A. The Commissioner of Administration is charged with the preparation of an annual report on the progress of the SE (HI) in the most recently ended fiscal year. The commissioner must present the report to the House Committee on Appropriations and the Senate Committee on Finance by the fifteenth day of January each year. Therefore, information for the commissioner's report regarding an agency's achievement of SE (HI) goals must be submitted to the commissioner no later than the first day of October each year. Each agency is required to report for the preceding fiscal year:

1. total number and dollar value of all contracts awarded in whole or in part to certified SE's;
2. number of contracts and the value of the contracts that included a good faith certified SE subcontracting plan;
3. number of actual agency staff that attended Division of Administration training for SE (HI) and the number of certified SE's that attended workshops and training sessions.

B. On-line forms for consistency in reporting will be provided on the commissioner's home page. A new "activity code" will be established in ISIS to track expenditures related to SE (HI). Agencies that do not use ISIS must develop their own mechanism to capture SE (HI) expenditures in order to provide reporting information to the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

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