

Fort Bend Independent School District

Small Business Enterprise Program Procedures

Spring 2015

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## **I. SUMMARY OF FORT BEND INDEPENDENT SCHOOL DISTRICT'S SMALL BUSINESS ENTERPRISE PROGRAM**

Fort Bend Independent School District's Small Business Enterprise Program ("SBEP" or the "Program") was created to provide increased business opportunities for locally certified small businesses to participate in contracting and procurement at Fort Bend Independent School District (FBISD).

Shown below are the key features of the Program.

- The SBEP is a goal-oriented program, requiring contractors to whom FBISD awards prime contracts for construction services to use "Good Faith Efforts" to utilize certified small businesses.
- The Program applies only to SBEP Eligible contracts, defined as all contracts for construction services over \$50,000, except contracts for sole-source items, federally funded contracts, contracts with other governmental entities, and those contracts that are otherwise prohibited by applicable law or expressly exempted by FBISD. The SBEP shall not apply to contracts for professional services or contracts for goods and non-construction services.
- The SBEP is a race and gender-neutral program.
- FBISD has set an annual SBEP participation goal of twenty-five (25%) percent of the dollar amount of all SBEP-Eligible contracts. FBISD recognizes that individual actual participation may vary based on subcontracting opportunities, availability of small businesses, and price competitiveness. The participation goal may change from year to year based on all relevant factors considered by the FBISD Board of Trustees.
- To participate, small businesses must be certified by an agency or organization whose certification is recognized by FBISD. Certification is based on the firm's gross revenues or number of employees averaged over the past three years, inclusive of any affiliates as defined by 13 C.F.R. § 121.103, does not exceed the size standards as defined pursuant to Section 3 of the Small Business Act and 13 C.F.R. § 121.201.

The Small Business Enterprise Program provides benefits to the small business including:

- Providing assistance to small businesses and contractors by providing information and support.

- Reducing the size of contracts for construction services, when feasible, to allow small businesses a better opportunity to compete.
- Assisting small businesses by offering training and information regarding contractor insurance and surety bonding.
- Requiring prospective vendors to provide written assurance of small business participation in their proposals for SBEP Eligible contracts.
- Providing workshops and training sessions on issues frequently encountered by small businesses during the proposal process and generally while performing work at FBISD.
- Maintaining an updated small business directory and source list(s) to help identify qualified and available small businesses; providing information on the FBISD website about opportunities to do business with FBISD.
- Providing information on the FBISD website about SBEP Eligible procurements.

## **II. OPERATIONAL PROCEDURES**

The procedures herein are established to govern the program components of the SBEP, including, without limitation, program compliance, certification, specific implementation measures, small business status verification, and reporting of small business participation.

### **A. SCOPE**

These procedures apply to all FBISD Departments, prime contractors and subcontractors performing SBEP Eligible contracts, and all certified Small Business Enterprises. These procedures apply to those SBEP-Eligible contracts as defined herein.

### **B. OVERALL ANNUAL SBEP GOAL**

#### **1. Overall Annual Goal**

An overall annual goal for small business participation in construction services at FBISD is set at twenty-five (25%) percent of the dollar amount of all SBEP-Eligible contracts. The goal may change based on all relevant factors, as considered by the FBISD Board of Trustees.

FBISD staff shall provide an annual report to the FBISD Board of Trustees calculating small business utilization during the previous year. FBISD staff will also seek to track SBEP-Certified Small Business participation in non-SBEP Contracts.

2. An SBEP-Eligible contract may otherwise be exempt from a small business goal if it is determined that one or more of the following is present:
  - a. A public or administrative emergency exists that requires the goods or services to be provided with unusual immediacy; or
  - b. The goods or services requested are of such a specialized, technical, or unique nature as to require FBISD to be able to select its contractor without application of small business provisions; or
  - c. The application of small business provisions would impose an unwarranted economic burden or risk on FBISD, would unduly delay acquisition of the labor, goods or services, or would otherwise not be in the best interest of FBISD; or
  - d. The possible small business participation level based on small business availability would produce negligible or no small business participation.

All SBEP exemptions must be approved by the Superintendent or designee.

### **C. PROGRAM ACTIVITIES AND RESPONSIBILITIES**

In an effort to maximize the Program's activities, the following procedures are in place to maximize opportunities for small business participation:

1. FBISD has designated a department head to serve as the Small Business Enterprise Program Director. This administrator is responsible for the direct operation and direct implementation of the SBEP.
2. FBISD may designate staff members to act as advisors and to work directly with small businesses and contractors to provide information, assistance, and support. FBISD's Small Business Enterprise Program Director and supporting staff will undertake various tasks to make the Program workable, including the following:
  - Coordinate workshops and training sessions for small businesses (at least twice yearly) on challenges frequently encountered by small businesses during the proposal process and generally when performing work for FBISD;

- Provide specifications and requests for proposals to the small business community in a timely manner, to allow small businesses adequate opportunity to develop responsible and responsive quotations and proposals;
  - Enhance the FBISD database to identify SBEP-Certified Small Businesses and assist Contractors in identifying SBEP-Certified Small Businesses with which to subcontract;
  - Participate in pre-proposal seminars to explain small business requirements, including explanation of the forms that must be submitted with a proposal;
  - Coordinate outreach activities for small businesses to ensure access and opportunity to compete;
  - Conduct internal information workshops to inform and acquaint FBISD staff with the goals and objectives of the SBEP and to sensitize them to the problems of small businesses;
  - Maintain lists of SBEP-Certified Small Businesses and coordinate with listings from other agencies, e.g., Port of Houston Authority SBE Certification, Metropolitan Transit Authority of Harris County (METRO) SBE Certification, City of Houston SBE Certification. These lists will be offered to contractors and FBISD staff to assist in program implementation;
  - Maintain records showing specific efforts to identify and award Contracts to small businesses and establish a monitoring system to ensure that all Contractors, Subcontractors, consultants, and vendors comply with Contract specifications related to small business enterprise utilization;
  - Maintain and update a special FBISD website on the SBEP proposals and on other opportunities to do business with FBISD; and
  - Inform small businesses of proposal notices and specifications related to their capabilities by placing proposal notices in the appropriate trade bulletins, local newspapers, and other periodicals and informing local trade associations, technical assistance agencies, economic development groups, and small businesses with capabilities relevant to the proposal.
3. FBISD shall develop a website to assist small businesses and Contractors. The website will contain the following:

- Procedures outlining specific steps regarding how to submit a proposal;
  - Prerequisites for submitting proposals on contracts;
  - Information regarding how plans and specifications can be obtained;
  - Names of persons to contact concerning questions on proposal documents;
  - Names of procurement officers and office hours; and
  - Explanations of standard contract implementation procedures and requirements concerning such matters as timely performance of work, contract changes, and payment schedules.
4. FBISD will maintain and have available an updated small business directory and source list(s) per proposal solicitation to facilitate identifying small businesses with capabilities relevant to general contracting requirements and to particular solicitations. FBISD will make the directory and source list(s) available to contractors to assist their efforts to meet the small business requirements.

#### **D. PURCHASING METHODS**

Purchasing methods used by FBISD for construction services include Competitive Sealed Bidding, Competitive Sealed Proposals, Design-Build, Construction Manager-at-Risk, Construction Manager-Agent and Job Order Contracting. In deciding which purchasing method to utilize, FBISD will determine which purchasing method provides the best value to FBISD, in accordance with law and Board Policy.

If Competitive Sealed Bidding (lowest responsible bidder) is utilized as the purchasing method, FBISD may set forth its small business participation goal as part of the bid specifications and require evidence of small business participation in the bid submission. Contractors who tender a bid without a demonstration of Good Faith Efforts to meet the individual goal for small business participation may be deemed a non-responsible bidder.

If a purchasing method requiring use of a Request for Qualifications is utilized, the Request for Qualifications may question the offeror's ability to fulfill the goals of the Small Business Enterprise Program as part of the proposal qualifications. Offeror's who tender a Statement of Qualifications response without evidence of such ability to fulfill the goals of the Small Business Enterprise Program may be given a lesser evaluation for such qualification criterion.

The FBISD Board of Trustees shall make the final determination to award the SBEP-Eligible Contract, in accordance with law and Board Policy.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO CONTRACTOR OR ANY OTHER PERSON OR FIRM IS INTENDED TO OR SHALL DERIVE ANY LEGAL OR EQUITABLE RIGHTS, DIRECTLY OR AS A THIRD-PARTY BENEFICIARY, FROM FBISD'S SBEP.

NOTHING IN THE SBEP SHOULD BE CONSTRUED TO GIVE A CONTRACTOR OR SUBCONTRACTOR A PROPERTY INTEREST IN A BID, PROPOSAL OR CONTRACT PRIOR TO THE FBISD BOARD OF TRUSTEES' AWARD OF THE CONTRACT AND COMPLIANCE WITH ALL STATUTORY AND OTHER LEGAL REQUIREMENTS.

## **E. CERTIFICATION PROCEDURES**

Fort Bend Independent School District's SBEP requires prior certification of a small business in order to count the participation of that small business toward program goals.

### **1. Eligibility Requirements for Certification**

To be eligible for certification as a small business, each applicant must do the following:

Demonstrate that the firm's gross revenues or number of employees averaged over the past three years, inclusive of any affiliates as defined by 13 C.F.R. § 121.103, does not exceed the size standards as defined pursuant to Section 3 of the Small Business Act and 13 C.F.R. § 121.201;

Complete a SBEP application form for one of the FBISD approved certifying agencies.

### **2. Certification Process**

- a. To be eligible to participate in the SBEP, a small business must have certification of its small business status. Certifications may be obtained from public and private agencies that certify small businesses.



FBISD does not represent that any particular agency employs the same definition of “small business” as that used by FBISD. It is the responsibility of the applicant to choose an agency for certification that uses FBISD’s definitional criteria for small business.

FBISD recognizes certification by the following agencies:

- Port of Houston Authority SBE Certification;
- Metropolitan Transit Authority of Harris County (METRO) SBE Certification;
- City of Houston SBE Certification; and
- Any other certification agency specified by FBISD in the procurement solicitation, as may be appropriate for the particular procurement.

FBISD has the right to revoke acceptance of a business as a certified or qualifying small business and to conduct certification reviews in accordance with these Procedures.

If a small business experiences any change in its certification status with its certifying agency (i.e. amendments, decertification, termination, graduation), the small business shall immediately notify FBISD of such change.

If a certifying agency decertifies or removes certification from an SBEP-Certified Small Business participant in the SBEP, that business shall be delisted from the Program, until recertified or certified by another SBEP-approved agency. Delisting will automatically occur ninety (90) days after the certifying agency decertifies or removes its certification.

The FBISD Superintendent or designee is authorized to amend these procedures.

### 3. Recertification Requirement

A small business application is valid through the certification date provided by the certifying agency. To reapply, a business must submit a renewal application and evidence of continuing eligibility and certification.

#### 4. Revocation

FBISD may revoke a previously approved application if it determines that the business does not meet the definition of a small business, or if the business fails to provide requested information in connection with an application review conducted by FBISD. A business may be disqualified from participation in the SBEP if the business fails to provide evidence of certification to FBISD. FBISD may also revoke a previously approved application if it determines that the small business is operating as a pass-through business or a non-small business affiliate. If a question arises regarding certification, FBISD will continue to count the previously certified small business as a SBEP-Certified Small Business until the business's small business certification expires or is officially revoked.

#### 5. Certification Reviews

FBISD may conduct random certification reviews of certified businesses by auditing them to verify that the information submitted by the business is accurate and that the business remains eligible after certification has been granted. An application approval is subject to revocation if it is determined that a business does not qualify as a SBEP-Certified Small Business under the terms of this Program. Certification reviews may be conducted for any business that FBISD determines a certification review is warranted.

#### 6. Limitations

Notwithstanding any other provision of this Program, except upon a finding of good cause by FBISD, a firm shall be eligible to participate in the program until it can no longer qualify for reasons of growth or change in status.

### **F. PROCEDURES FOR DETERMINING SATISFACTION OF GOOD FAITH EFFORTS REQUIREMENT**

1. Each bidder, proposer, or respondent to a Request for Qualifications (hereinafter collectively referred to as "Proposer") must acknowledge FBISD's Non-Discrimination and Harassment Policy, which will be published in all solicitation documents. Said acknowledgment must include a statement evidencing the Proposer's awareness of FBISD's policy of nondiscrimination and affirmatively state that the Proposer has not and will not discriminate against any person or company on the basis of age, color, ethnic background, disability, family status, gender, national origin, race, religion, sex, sexual orientation, or veteran status in its participation in any aspect of the SBEP.

2. The Proposer must submit a Contractor's Small Business Plan (the "Plan") setting out how the SBEP goal for the proposed project is to be met. The Plan is to be submitted with the proposal response or within a period designated within the solicitation document, or upon notification of finalist or successful Proposer status. Failure to respond within the designated period could result in a determination by FBISD that a Bidder or Proposer is nonresponsive and thereby removed from consideration for an award. The Plan should be a simple, short statement of small business participation in the SBEP-Eligible Contract. The Plan must include a list of SBEP-Certified Small Businesses proposed as Subcontractors and suppliers. All small businesses listed must be approved as SBEP-Certified Small Businesses by FBISD prior to submitting the proposal or bid is submitted.

The Plan must also include executed subcontract(s) or letter(s) of intent for each listed small business, including the name of the small business, description of the scope of work to be performed, and the dollar value and percentage amount for each small business Contract.

Agreements between a Proposer and a small business in which the small business promises not to provide subcontracting quotations to other Proposers shall be prohibited.

3. The Proposer shall adhere to the Plan submitted unless a waiver is received from the Small Business Enterprise Program Director of FBISD.
4. If the Proposer is unable to meet the SBEP goal, the Proposer must submit documentation of Good Faith Efforts to meet the small business participation goal. Such documentation shall be presented to the Small Business Enterprise Program Director for review.
5. FBISD may consider, in future procurements, whether any contractor that has failed to make Good Faith Efforts to meet a contract small business participation goal, and may consider in future procurements any small business has failed to make Good Faith Efforts to meet all requirements necessary for participation as a SBEP-Certified Small Business.

#### **G. PROCEDURES FOR EVALUATING SMALL BUSINESS PARTICIPATION**

Prior to any consideration of a bid or proposal by the FBISD Board of Trustees for contract award, FBISD staff shall review submitted bids and proposals for verification of SBEP participation.

The staff evaluation process may utilize a point system based on evaluation criteria set forth in the procurement methods. A designated number of points will be set aside for small business participation, if applicable. Proposers may receive none, some, or all of the designated small business participation points, based on the Proposer’s plan to satisfy small business participation goals. If, in the opinion of FBISD staff, the Proposer’s response completely meets the stated small business participation goals, the total amount of eligible points will be awarded for small business participation.

The following is a sample point distribution sliding scale to be included in solicitation documents. FBISD reserves the right to adjust the sliding scale values published in a given solicitation, as deemed in the best interest of FBISD for that particular solicitation.

Proposed SBE Subcontracting Goal	Available Points
Less than 5%	0
5% - 9%	1
10% - 14%	2
15% - 19%	3
20% - 24%	4
25% or more	5

Points shall be awarded in accordance with the Proposer’s response based on the prime contractor’s commitment to small business subcontracting stated in the solicitation document and the published point distribution sliding scale.

If the Proposer itself is a Certified Small Business who plans to self-perform work, the value of such self-performed work shall be included in calculating the eligible points for small business participation to the Certified Small Business Proposer, in addition to the value of work subcontracted to another small business.

If the Proposer itself is a not a Certified Small Business, but has join-ventured with another Certified Small Business, only the value of work to be self-performed by the Certified Small Business prime contractor will be included in calculating the eligible points for small business participation to the Small Business

Proposer/joint venture, in addition to the value of work subcontracted to another small business.

## **H. PROCEDURES FOR REPORTING SMALL BUSINESS PARTICIPATION**

1. Once the contract is awarded, the following guidelines should be utilized to report small business participation in the awarded contract, as the measure of its progress in meeting SBEP goals:
  - a. If the small business is a subcontractor, FBISD will count toward applicable small business goals the portion of the total dollar value of a contract that is subcontracted to the small business.
  - b. If the small business subcontractor is a part of a joint venture, FBISD will count toward applicable small business goals a portion of the total dollar value of a contract with an SBEP-eligible joint venture equal to the percentage of the ownership of the small business partner in the joint venture, or the participation of the small business partner in the contract.
  - c. If the solicitation contemplates the use of small business subcontractors and a small business is the prime contractor, FBISD may require the prime contractor small business to utilize other small businesses as subcontractors, and count toward applicable small business goals as provided below.
  - d. If the solicitation contemplates the use of small business subcontractors and a small business is the prime contractor, FBISD will count small business participation in two separate ways (depending on the utilization of a small business subcontractor).
    - i. FBISD will count the total dollar value of the contract awarded to the SBEP-eligible prime contractor small business toward applicable small business goals if the prime contractor small business performs 100% of the work itself or subcontracts with other SBEP-Certified Small Businesses to complete 100% of the work. However, if the prime contractor small business utilizes a non-small business subcontractor, FBISD will count the total dollar value of the awarded contract to the prime contractor small business, minus the dollar amount subcontracted to non-small businesses. FBISD will count toward applicable small business goals contract awards where good or services are procured from a small business in the form of a prime contractor and without additional small business subcontracting.

- ii. FBISD will count toward applicable small business goals only expenditures to small businesses that perform a commercially acceptable function in the work of a contract. FBISD will count toward the applicable small business goals only expenditures to SBEP-Certified prime contractors or SBEP-Certified first-tier subcontractors. Expenditures to subcontractors below the first-tier subcontract level will not be counted toward an applicable small business goal.
  - e. FBISD will count toward applicable small business goals contract expenditures for materials and supplies obtained from small business distributors and small business manufacturers, provided that these businesses assume the actual and contractual responsibility for the provision of the materials and supplies, and are a first-tier subcontractor/supplier.
  - f. FBISD will count toward applicable small business goals the following expenditures to small business firms that are not manufacturers or distributors:
    - i. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant, or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the contract, provided that the fee or commission is determined by FBISD to be reasonable and not excessive as compared with fees customarily allowed for similar services.
    - ii. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the materials and supplies, provided that the fee is determined by FBISD to be reasonable and not excessive as compared with fees customarily allowed for similar services.
    - iii. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by FBISD to be reasonable and not excessive as compared with fees customarily allowed for similar services.
2. Prior to being issued a Notice to Proceed or other notification to begin the work, the successful Proposer shall execute written contracts with all of its

SBEP-Certified Small Business subcontractors, and shall assure that all such contracts contain the terms set out in all required SBEP provisions.

3. Prior to award, the Contractor shall designate a SBEP contact person who will administer the contractor's SBEP commitments and who shall be responsible for maintenance of records of Good Faith Efforts to subcontract with SBEP-Certified Small Businesses.
4. After award, the contractor shall (1) submit FBISD Small Business Enterprise Program Utilization Reports to the SBEP office; and (2) make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of the contract.
5. In the event a SBEP-Certified Small Business is suspended or removed for any reason, the contractor shall make a Good Faith Effort to replace the small business with another SBEP-Certified Small Business.
6. Non-discrimination and Legal Compliance. The SBEP adheres to the FBISD's Non-Discrimination and Harassment Policy. A contractor or SBEP-Certified Small Business may be found to have failed to satisfy the Good Faith Efforts of the SBEP if the contractor or SBEP-Certified Small Business violates FBISD's Non-Discrimination and Harassment Policy. Furthermore, violations of federal or state law or significant ordinances or regulations of any governmental unit may be deemed to be a failure to satisfy the Good Faith Efforts of the SBEP.

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