

# Solicitation Amendment No. 01

Page 1 of 27

<b>To:</b>		<b>Date:</b>	
Prospective Bidder / Offeror:		November 21, 2016	
<b>Project Title:</b>		<b>Project No.:</b>	
General Legal Services Pool		RFQ 17-25	
<b>Description of Solicitation Amendment:</b>			
The Solicitation for <u>General Legal Services</u> (Project # RFQ 17-25) is hereby amended as set forth below:			
Section 4.14 Small Business Development Program (SBDP) is hereby deleted and replaced with the attached.			
HCC has updated the list of accepted small business certifications as posted on the HCC website and has included a referenced copy of the current procedure (dated November 14, 2016) with this amendment.			
<a href="#">Small Business Procurement Website</a>			
Except as provided herein, all items and conditions of the solicitation, as heretofore changed, remains unchanged and in full force and effect.			
<b>Acknowledgement of Amendment No. 01 by:</b>		<b>Date:</b>	
<b>Company Name (Bidder/Offerer):</b>			
<b>Signed by:</b>			
<b>Name (Type or Print):</b>		<b>Title:</b>	

November 21, 2016

RFQ 17-25 - General Legal Services Pool

**The following section of the referenced RFQ is hereby replaced in its entirety with the following:**

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**Section 4 – General Information**

**14. Small Business Development Program (SBDP):**

The Houston Community College System’s Small Business Development Program (“SBDP” or the “Program”) was created to provide business opportunities for local small businesses to participate in contracting and procurement at Houston Community College (HCC).

The SBDP is a goal-oriented program, requiring Contractors who receive Contracts from HCC to use Good Faith Efforts to utilize certified small businesses. The Program applies to all Contracts 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 HCC. The SBDP is a race and gender-neutral program, however HCC actively encourages the participation of minority and women-owned small businesses in the SBDP.

To participate, small businesses must be certified by an agency or organization whose certification is recognized by HCC. 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.

HCC recognizes certification by the following governmental and private agencies: Metropolitan Transit Authority of Harris County (METRO) SBE Certification, City of Houston SBE, MWPDDBE and DBE Certification, Texas Department of Transportation SBE Certification, City of Austin SBE Certification, South Central Texas Regional Certification Agency SBE Certification, Small Business Administration 8(a). HCC has the right to revoke acceptance of a business as a certified or qualifying small business and to conduct certification reviews

Good Faith Efforts: HCC will make a good faith effort to utilize small businesses in all contracts. The annual program goals may be met by contracting directly with small businesses or indirectly through subcontracting opportunities. Therefore, any business that contracts with HCC will be required to make a good faith effort to award subcontracts to small businesses. The subcontracting goal applies to all vendors regardless of their status. By implementing the following procedures, a contractor shall be presumed to have made a good faith effort:

- a. To the extent consistent with industry practices, divide the contract work into reasonable lots.
- b. Give notice to SBDP eligible firms of subcontract opportunities or post notices of such opportunities in newspapers and other circulars.
- c. Document reasons for rejecting a firm that bids on subcontracting opportunities.

Points shall be awarded in accordance with the Proposal Response based on the prime vendor’s certifications and/or commitment to small business subcontracting stated in the solicitation document and the published point distribution sliding scale.

- a. Certified small business prime contractor – automatically eligible for maximum available points. However, HCC reserves the right to deny the points, and look only to the prime contractor’s use of subcontractors, if HCC, in evaluating solicitation responses, makes a determination that the prime contractor will not have a legitimate and active role in the performance of the contract;
- b. Certified small business prime contractor with certified small business subcontractor – automatically eligible for maximum available points (small business prime contractor) plus eligible for one half (1/2) the available points proportionate to proposed subcontracting commitment (sliding scale) (small business subcontractor);
- c. Non-certified small business prime contractor with certified small business subcontractor – eligible for points proportionate to proposed subcontracting commitment (sliding scale);
- d. Non-small business prime contractor with non-small business subcontractor – no points; and
- e. Non-small business prime contractor self-performing work – no points.

Proposed SBE Subcontracting Commitment	Available Points
Less than 5%	0
5% - 9%	1
10% - 14%	2
15% - 19%	3
20% - 24%	4
25% & Higher	5



**HOUSTON COMMUNITY COLLEGE SYSTEM**  
**SMALL BUSINESS DEVELOPMENT PROGRAM**  
**PROCEDURES MANUAL**

November 14, 2016

**Houston Community College  
Small Business Development Program**

**NEW – Program Improvements**

The Procurement Operations Department is excited to report significant improvements have been made to the HCC Small Business Development Program (SBDP). These improvements will provide greater opportunity to certified small businesses that participate in the procurement process at HCC.

HCC expanded the list of currently accepted certifications to also include the City of Houston MBE (minority), WBE (women), PDBE (person with disabilities) and DBE (disadvantaged).

This is in addition to the SBE certifications for the City of Houston, Metropolitan Transit Authority of Harris County (METRO), Texas Department of Transportation, City of Austin, South Central Texas Regional Certification Agency and Small Business Administration 8(a).

Given the number of currently certified firms with the City of Houston, we are looking forward to being able to include more local certified small businesses in the process and afford them the opportunity to earn points as part of the evaluation process.

We have also improved the evaluation process for qualified certified small businesses to maximize their opportunity to compete and win more business. The improved model is described below:

1. Certified small business prime – will automatically earn all available points (*this is a new improvement in the program*).
2. Certified small business prime and certified small business subcontractor – will earn all available points plus up to half available points based on sliding scale (*this is a new improvement in the program*).
3. Non-certified small business prime with certified small business subcontractor – will earn points based on proposed small business commitment (sliding scale concept).
4. Non-certified small business prime and non-certified subcontractor will earn no points.

*Example<sup>i</sup> – on a 10 point sliding scale with a 35% small business participation commitment:*

1. Certified small business prime = 10 points.
2. Certified small business prime and certified small business subcontractor = 10 points + up to 5 based on sliding scale (15 points max).
3. Non-certified small business prime with certified small business subcontractor = up to 10 based on sliding scale.
4. Non-certified small business prime and non-certified subcontractor = 0.

For more information on the HCC Procurement Department and the Small Business Development Program, please visit our website at <http://www.hccs.edu/procurement>.

A copy of the complete SBDP Procedures may be found on the [SBDP Website](#), including the program improvements noted above on pages 8 and 16-17 respectively (see attached).

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<sup>i</sup>

This example is for purposes of illustration only, final allocation of points subject to proposal response in accordance with the solicitation requirements.

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## **I. SUMMARY OF THE HOUSTON COMMUNITY COLLEGE SYSTEM'S SMALL BUSINESS DEVELOPMENT PROGRAM**

The Houston Community College System's Small Business Development Program ("SBDP" or the "Program") was created to provide business opportunities for local small businesses to participate in contracting and procurement at Houston Community College (HCC). By formalizing existing practices and implementing new procedures, the SBDP allows HCC to produce more effective small business participation and create opportunities relating to HCC contracting and procurement.

It is anticipated that through the growth of the SBDP, HCC will positively contribute in capacity building, increasing competition among small businesses and creating opportunity which will ensure best value to HCC.

Shown below are the key features of the Program.

1. The SBDP is a goal-oriented program, requiring Contractors who receive Contracts from HCC to use Good Faith Efforts to utilize certified small businesses. The Program applies to all Contracts 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 HCC. The SBDP is a race and gender-neutral program. However, HCC actively encourages the participation of minority and women-owned small businesses in the SBDP.
2. The SBDP shall also apply to purchases less than \$50,000 whereby HCC will maximize the use of certified small businesses by seeking quotes from certified firms to compete as prime vendors.
3. HCC will establish an annual goal for small business participation. The initial overall annual goal of the SBDP will be set at thirty-five (35%) percent of the dollar amount of all SBDP-Eligible Procurement Contracts. However, individual Contract goals will vary based on subcontracting opportunities, availability of small businesses, and price competitiveness. The annual goal may change from year to year based on all relevant factors considered by HCC.
4. To participate, small businesses must be certified by an agency or organization whose certification is recognized by HCC. 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.
5. The SBDP has clear guidelines for counting small business participation. Safeguards are applied to prevent abuse.

6. SBDP-Certified Small Businesses may be graduated from participation in SBDP based on growth or change in status.

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

7. Providing assistance to small businesses and Contractors by providing information and support.
8. Reducing the size of Contracts, when feasible, to allow small businesses a better opportunity to compete.
9. Assisting small businesses in obtaining insurance and surety bonds.
10. Requiring prospective Proposers to provide written assurance of small business participation in their proposals.
11. Providing workshops and training sessions on issues frequently encountered by small businesses during the proposal process and generally while performing work at HCC.
12. Maintaining an updated small business directory source list(s) to help identify qualified and available small businesses; providing information on the HCC website about opportunities to do business with HCC.
13. Providing information on the HCC website about the SBDP Procedures.

The SBDP incorporates several procedures to help implement the Program. These are designed to maximize the Program's success. These procedures include:

14. The SBDP requires Good Faith Efforts by Contractors to use small businesses in Contract performance. The SBDP has procedures in place to determine whether Contractors are meeting this requirement of Good Faith Efforts. Contractors are required to document efforts to obtain small business participation. A Contract award may be denied or an existing Contract may be terminated for the Contractor's failure to use Good Faith Efforts. HCC recognizes that availability, subcontracting capabilities, and price competitiveness are relevant factors in determining whether a Contractor has used Good Faith Efforts to subcontract with small businesses.
15. HCC maintains a policy of non-discrimination and harassment in its operations. The SBDP is implemented in a nondiscriminatory manner. Contractors and small businesses are prohibited from discriminating in the operations of the Program based on age, color, ethnic background, disability, family status, gender, national origin, race, religion, sex, sexual orientation, or veteran status. Any such discrimination by Contractors or small businesses in selecting or utilizing small businesses on the basis of age, color, ethnic background, disability, family status, gender, national origin, race, religion, sex, sexual orientation, or veteran status may subject the Contractor or small business to disqualification from future Contracts with HCC.



16. HCC requires integrity in the operations of Contractors, Subcontractors, and small businesses participating in the SBDP. HCC SBDP Procedures Manual requires Good-Faith Efforts, proper contract performance, prompt payment, and cooperation by all participants. Pass-Thru Businesses are not permitted. Contractors, Subcontractors and small businesses that violate HCC's requirement of operational integrity of the Program will be subject to sanctions.
17. HCC utilizes various purchasing methods to acquire goods and services, including but not limited to Purchase Orders, Competitive Sealed Proposals, Requests for Proposals, Design-Build Contracts, Competitive Bidding, Catalog Purchases, Construction Manager Contracts, and Job Order Contracts. HCC determines which purchasing method to use based on the best value to HCC. Regardless of the purchase method utilized, all eligible procurements (unless otherwise exempt) shall have a SBDP goal.
18. HCC monitors the progress of the SBDP, reviewing participation reports, community input, recommendations, and operational efficiency. Quarterly reports are made to the HCC Board of Trustees addressing the number of Contracts awarded to small businesses, general categories of Contracts, and dollar value of Contracts.

Nothing in the SBDP should be construed to give a Proposer a property interest in a proposal or Contract prior to the HCC Board of Trustees' award of the Contract and compliance with all statutory and other legal requirements.

Capitalized terms used in this Procedures Manual shall have the meanings set forth in the sections titled "Definitions."

## **II. ORIGINATION OF THE SMALL BUSINESS DEVELOPMENT PROGRAM**

In accordance with Board Policy B.1.7.7, the Houston Community College Board of Trustees delegated authority to the Chancellor to adopt a Purchasing Procedure; which shall include the Small Business Development Program ("SBDP" or the "Program") Procedures Manual for the Houston Community College (HCC) System. As adopted, the SBDP is a goal-oriented program, requiring Contractors who receive Contracts from HCC to use Good Faith Efforts to utilize local SBDP-Certified Small Businesses. The HCC Board of Trustees' adoption of the SBDP is consistent with HCC's overall mission:

*Houston Community College is an open-admission, public institution of higher education offering a high-quality, affordable education for academic advancement, workforce training, career development, and lifelong learning to prepare individuals in our diverse communities for life and work in a global and technological society.*

Small businesses need an opportunity to obtain a fair proportion of the total purchases and Contracts for goods, services, and construction for HCC. Therefore, HCC has established the SBDP to ensure opportunities for small businesses to participate in HCC's contracting and procurement activities.

As a matter of policy, HCC recognizes and requires competitive pricing, qualifications, and demonstrated competencies in the selection of all Contractors. HCC policy requires all businesses (Contractors, Subcontractors and small businesses) to perform their duties with competency and cooperation. The SBDP is designed to create opportunities, while requiring competitiveness and quality of work. As such, it simply allows HCC to target more effectively and continuously improve small business participation in HCC contracting and procurement activities. In its operations, the SBDP is an asset to HCC in its pursuit of its overall mission of promoting academic advancement, workforce training, career and economic development, and lifelong learning.

### **III. HCC's NON-DISCRIMINATION AND HARASSMENT POLICY MANDATE**

The SBDP operates in a race and gender-neutral manner. The Program is open to all qualified small businesses. HCC's policy is to prohibit discrimination based on age, color, ethnic background, disability, family status, gender, national origin, race, religion, sex, sexual orientation, or veteran status in all operations at HCC. Therefore, the HCC Board of Trustees hereby adopts HCC's Non-Discrimination and Harassment Policy and requires that HCC's Small Business Development Program not be used to discriminate against any person or company or group of persons or companies on account of their age, color, ethnic background, disability, family status, gender, national origin, race, religion, sex, sexual orientation, or veteran status.

Contractors, Subcontractors and small businesses that violate HCC's Non-Discrimination and Harassment Policy are subject to sanctions. HCC will aggressively enforce this mandate to insure equal opportunity to participation to all.

### **IV. HCC'S REQUIREMENT FOR OPERATIONAL INTEGRITY**

The SBDP gives opportunities for local small businesses to provide goods and services to HCC. To be successful, the Program must maintain a high level of operational integrity. Therefore, all Contractors, Subcontractors and small businesses must meet and continue to meet the operational requirements of SBDP. HCC will not allow violations of policies or procedures that undercut the integrity of the Program. These types of violations include, but are not limited to, false or misleading representations about eligibility for SBDP certification, failure to make Good Faith Efforts, acts of impermissible discrimination, operating as a Pass-Thru Business, non-payment or continuous slow payment of Subcontractors, other failure to perform, etc. It is the policy of HCC to move swiftly and decisively to sanction such violations of the operational integrity of SBDP.

## **V. OPERATIONAL PROCEDURES**

The procedures herein are established to govern the program components of the SBDP, 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 HCC Departments, Prime Contractors and Subcontractors involved with SBDP Contracts, and all certified small businesses. These procedures apply to those SBDP-Eligible Contracts as defined herein (i.e., all Contracts valued at over \$50,000, excluding Contracts for sole-source items, federally funded Contracts, Contracts with other governmental entities, and those Contracts for which participation in the SBDP is otherwise prohibited by applicable law or exempted by HCC).

### **B. CERTIFICATION PROCEDURES**

Houston Community College's SBDP requires prior certification of a small business in order to count the participation of that small business toward program goals.

Procurements issued prior to adoption of the SBDP Procedure are eligible to submit certification and data for purposes of reporting and compliance with the SBDP goals as per the published solicitation document. Any such contract awards may include small business, minority, women or historically underutilized businesses and shall be monitored for SBDP compliance and shall be reported through the expiration of the contract.

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

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

- a. 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;
- b. Complete a SBDP application form for one of the HCC approved certifying agencies.

#### **2. Certification Process**

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

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

HCC recognizes certification by the following governmental and private agencies:

- Metropolitan Transit Authority of Harris County (METRO) SBE Certification;
- City of Houston SBE, MWPDBE and DBE Certifications;
- Texas Department of Transportation SBE Certification;
- City of Austin SBE Certification;
- South Central Texas Regional Certification Agency SBE Certification; and
- Small Business Administration 8(a).

HCC 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 HCC of such change.

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

### 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

HCC 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 HCC.

A business may be disqualified from participation in the SBDP if the business fails to provide evidence of certification to HCC. HCC may also revoke a previously approved application if it determines that the small business is operating as a Pass-Thru Business. If a question arises regarding certification, HCC will continue to count the previously certified small business as a SBDP-Certified Small Business until the business's small business certification expires or is officially revoked.

#### 5. Certification Reviews

HCC 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 SBDP-Certified Small Business under the terms of this Program. Certification reviews may be conducted for any business that HCC determines a certification review is warranted.

#### 6. Limitations

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

### **C. OVERALL ANNUAL SBDP GOAL AND INDIVIDUAL CONTRACT GOALS**

#### 1. Overall Annual Goal

An overall annual goal for small business participation at HCC will be set by HCC. The initial overall annual goal of the SBDP will be set at thirty-five (35%) percent of the dollar amount of all SBDP-Eligible Procurement Contracts. The annual goal may change from year to year based on all relevant factors considered by HCC.

The SBDP staff shall provide an annual report to the HCC Board of Trustees calculating small business utilization during the previous year. The annual goal for overall small business participation will be based on prior utilization, policy requirements, staff recommendations, and general input regarding capacity analysis, and HCC projected contracting opportunities.

HCC staff will also seek to track SBDP-Certified Small Business participation in non-SBDP Contracts, e.g., Contracts valued at \$50,000 or less, sole-source items, federally funded Contracts, Contracts with other governmental entities, and those Contracts for which participation in the SBDP is otherwise prohibited by applicable law or exempted by HCC. In evaluating performance in reaching its annual goal, HCC will count all small business participation resulting from both SBDP-Eligible Contracts and non-SBDP Contracts.

2. Individual Contract Goals

Each SBDP-Eligible Contract will have an individual Contract goal for small business participation. The following procedures should be utilized to set individual Contract goals. All SBDP-Eligible Contracts will be evaluated for SBDP goal potential. These individual Contract goals may be higher or lower than the annual goal. Individual Contract goals are set by the Procurement Department, in conjunction with the Small Business Development Program staff. The criteria used to set individual Contract goals shall include small business capacity, small business availability, nature of the Contract, HCC past experiences with small business participation with similar Contracts, available SBDP-certified companies, and subcontracting opportunities in the performance of the Contract. All individual Contract goals will be determined prior to the release of the solicitation. No quotas or set-asides will be used in implementing the SBDP.

The SBDP-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 HCC 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 HCC, would unduly delay acquisition of the labor, goods or services, or would otherwise not be in the best interest of HCC; or
- d. The possible small business participation level based on small business availability would produce negligible or no small business participation.

All SBDP exemptions must be approved by the Executive Director Procurement Operations Department.

**D. 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. HCC has created the position of Small Business Development Program Manager. This administrator is responsible for the direct operation and direct implementation of the SBDP.
2. HCC may designate staff members to act as advisors and to work directly with small businesses and Contractors to provide information, assistance, and support. HCC's Small Business Development Program Manager and supporting staff will undertake various tasks to make the Program workable, including the following:
  - a. Provide information on HCC's organization and contractual needs and offer instructions on proposal specifications, procurement policy, procedures, and general proposal requirements;
  - b. Provide 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 HCC;
  - c. 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;
  - d. Enhance the HCC database on SBDP-Certified Small Businesses and assist Contractors in identifying SBDP-Certified Small Businesses with which to subcontract;
  - e. Hold pre-proposal seminars to explain small business requirements, including explanation of the forms that must be submitted with a proposal;
  - f. Conduct outreach activities for small businesses to ensure access and opportunity to compete;
  - g. Conduct internal information workshops to inform and acquaint HCC staff with the goals and objectives of HCC's SBDP and to sensitize them to the problems of small businesses;
  - h. Maintain lists of SBDP-Certified Small Businesses and coordinate with listings from other agencies. These lists will be offered to Contractors and HCC staff to assist in program implementation;
  - i. 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;
  - j. 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 notice; and

- k. Maintain and update a special HCC website on the SBDP proposals and on other opportunities to do business with HCC.
  - l. The Executive Director Procurement Operations Department or designee is authorized to amend these procedures and any of the attached Exhibits.
3. When feasible, HCC may reduce the size of its Contracts to allow small businesses a better opportunity to compete. When it will be effective, feasible, and without undue interference with Contract needs, HCC may attempt to divide Contracts into separate components to provide opportunities for qualified small businesses to compete for the separated Contract services as deemed by HCC in its own best interest.
  4. HCC's Chancellor is authorized to develop and issue a Prompt Payment Directive. The Prompt Payment Directive will provide guidelines and mandates to Contractors and Subcontractors on the timing of payments to SBDP-Certified Small Business following receipt of payment from HCC. This Prompt Payment Directive may be enforced by contract and by sanctions under the SBDP.
  5. HCC will assist private sector businesses and individuals to help develop a mentoring program to bring small business owners together with private sector business owners, to share information and experiences.
  6. HCC solicitations for SBDP-Eligible Contracts with SBDP-eligible goals shall require all Proposers to submit a written assurance of meeting the Contract goal for small business participation in their proposals. Proposals must also include a proposed schedule of small business participation that lists the names of small business Subcontractors, a description of the work each is to perform, and the dollar value of each proposed small business subcontract. If the small business participation does not meet the small business Contract goals, the Proposers must submit sufficient information and evidence demonstrating that the Proposer made Good Faith Efforts to meet the goals.
  7. HCC requires that all Proposers be required to submit information on small business Subcontractors and on the Proposers at the time of proposal review. 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.
  8. HCC shall develop a website to assist small businesses and Contractors. The website will contain the following:
    - a. Procedures outlining specific steps regarding how to submit a proposal;
    - b. Prerequisites for submitting proposals on Contracts;



- c. Information regarding how plans and specifications can be obtained;
  - d. Names of persons to contact concerning questions on proposal documents;
  - e. Names of procurement officers and office hours;
  - f. Types of supplies and services purchased; and
  - g. Explanations of standard Contract implementation procedures and requirements concerning such matters as timely performance of work, Contract changes, and payment schedules.
9. HCC 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. HCC will make the directory and source list(s) available to Proposers to assist their efforts to meet the small business requirements.
10. HCC will coordinate small businesses with educational opportunities available throughout HCC that may serve to develop small businesses.
11. HCC will coordinate small businesses with training and development opportunities through the HCC Economic Development & Entrepreneurial Initiatives Office.
12. HCC will seek to use the business schools of local colleges and universities to reach out to small businesses and engage in other cooperative efforts that may enhance the success of the SBDP.

#### **E. PURCHASING METHODS**

HCC utilizes various purchasing methods to acquire goods and services.

Regardless of which purchasing method HCC chooses to use, an individual Contract goal will be placed on all SBDP-Eligible Contracts. Purchasing methods used by HCC include but are not limited to Purchase orders, Competitive Sealed Proposals, Requests For Proposals, Design-Build Contracts, Competitive Bidding, Catalog Purchases, Construction Manager Contracts, and Job Order Contracts. Note that not all purchasing methods used by HCC are SBDP eligible. In deciding which purchasing method to utilize, HCC will determine which purchasing method provides the best value to HCC.

If Competitive Bidding (lowest qualified bid) is utilized as the purchasing method, HCC 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. Bidders 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-responsive bidder.

If a Request for Qualifications is utilized as the purchasing method, the Request for Qualifications may set forth the demonstrated ability to fulfill the goals of the Small

Business Development Program as part of the proposal qualifications and require evidence of such ability in the Statement of Qualifications Proposal Response. Proposers who tender a Statement of Qualifications Proposal Response without evidence of such ability to fulfill the goals of the Small Business Development Program may be given a lesser evaluation for such qualification criterion.

The HCC Board of Trustees shall make the final determination to award a SBDP-Eligible Contract in accordance with the current Procurement Policy and Procedures Manual. SBDP-Eligible Contracts will be awarded consistent with the statutory requirements for certain professional services contained in Section 2254 of the Texas Government Code.

Nothing in the SBDP should be construed to give a Proposer a property interest in a proposal or Contract prior to the HCC Board of Trustees' award of the Contract and compliance with all statutory and other legal requirements.

**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 HCC'S SBDP.**

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

1. Each Bidder or Proposer must acknowledge HCC's Non-Discrimination and Harassment Policy which will be published in all solicitation documents. Said acknowledgment must include a statement evidencing the Bidder or Proposer's awareness of HCC's policy of nondiscrimination and affirmatively state that the Bidder or 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 SBDP.
2. The Bidder or Proposer must submit a Contractor's Small Business Plan (the "Plan") setting out how the SBDP 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 HCC 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 SBDP-Eligible Contract. The Plan must include a list of SBDP-Certified Small Businesses proposed as Subcontractors and suppliers. All small businesses listed must be approved as SBDP-Certified Small Businesses by HCC 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.

3. The Proposer shall adhere to the Plan submitted unless a waiver is received from the Small Business Development Program Manager of HCC.
4. If the Bidder or Proposer is unable to meet the SBDP goal, the Bidder or Proposer must submit documentation of Good Faith Efforts to meet the small business participation goal. Such documentation shall be presented to the Small Business Development Program Manager for review.
5. HCC 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 SBDP-Certified Small Business.
6. Prior to being issued a Notice to Proceed or other notification to begin the work, the successful Bidder or Proposer shall execute written Contracts with all of its small business Subcontractors, and shall assure that all such Contracts contain the terms set out in all required SBDP provisions.
7. Prior to award, the Contractor shall designate a SBDP contact person who will administer the Contractor's SBDP commitments and who shall be responsible for maintenance of records of Good Faith Efforts to subcontract with SBDP-Certified Small Businesses.
8. After award, the Contractor shall (1) submit HCC Small Business Development Program Utilization Reports to the SBDP office; and (2) make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of the Contract.
  - a. In the event a SBDP-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 SBDP-Certified Small Business.
  - b. Non-discrimination and Legal Compliance. The SBDP adheres to the HCC's Non-Discrimination and Harassment Policy. A Contractor or SBDP-Certified Small Business may be found to have failed to satisfy the Good Faith Efforts of the SBDP if the Contractor or SBDP-Certified Small Business violates HCC'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 SBDP.

**G. PROCEDURES FOR EVALUATING AND REPORTING SMALL BUSINESS PARTICIPATION**

Prior to any consideration of a bid or proposal by the HCC Board of Trustees for Contract award, HCC staff shall review submitted bids and proposals for verification of SBDP 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. If the procurement solicitation does not have a small business participation goal, but the Executive Director Procurement Operations Department concludes that small business contractors may be available to perform the work, the point system may include a designated number of points set aside for small business participation.

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 HCC staff, the Proposal 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. HCC reserves the right to adjust the sliding scale values published in a given solicitation, as deemed in the best interest of HCC for that particular solicitation.

Proposed SBE Subcontracting Commitment	Available Points
Less than 5%	0%
5% - 12%	2%
13% - 20%	4%
21% - 28%	6%
29% - 34%	8%
35% & Higher	10%

1. Points shall be awarded in accordance with the Proposal Response based on the prime vendor’s certifications and/or commitment to small business subcontracting

stated in the solicitation document and the published point distribution sliding scale.

- a. Certified small business prime contractor – automatically eligible for maximum available points. However, HCC reserves the right to deny the points, and look only to the prime contractor’s use of subcontractors, if HCC, in evaluating solicitation responses, makes a determination that the prime contractor will not have a legitimate and active role in the performance of the contract;
- b. Certified small business prime contractor with certified small business subcontractor – automatically eligible for maximum available points (small business prime contractor) plus eligible for one half (1/2) the available points proportionate to proposed subcontracting commitment (sliding scale) (small business subcontractor);
- c. Non-certified small business prime contractor with certified small business subcontractor – eligible for points proportionate to proposed subcontracting commitment (sliding scale);
- d. Non-small business prime contractor with non-small business subcontractor – no points; and
- e. Non-small business prime contractor self-performing work – no points.

The ultimate decision to award Contracts will be made by the HCC Board of Trustees based on its determination of best value to HCC or otherwise in accordance with the solicitation’s method of procurement.

## 2. Internal Reporting and Calculation of Small Business Participation

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 small business goals.

If the small business is a Prime or Subcontractor, HCC will count toward applicable small business goals the portion of the total dollar value of a Contract that is paid to the small business.

If the small business is a part of a Joint Venture, HCC will count toward applicable small business goals a portion of the total dollar value of a Contract with an SBDP-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.

If the solicitation contemplates the use of Subcontractors and a small business is the Prime Contractor, HCC still expects the Prime Contractor small business to utilize other small businesses as Subcontractors to the maximum extent practicable.

HCC 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 Vendor and without additional small business subcontracting.

HCC 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.

HCC will count toward applicable small business goals the following expenditures to small business firms that are not manufacturers or distributors:

- a. 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 HCC to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- b. 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 HCC to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- c. 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 HCC to be reasonable and not excessive as compared with fees customarily allowed for similar services.

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## **Exhibit 1 - Definitions**

1. **Bidder** – any person or entity that submits a bid to provide labor, goods, or services to HCC by Contract in response to a solicitation by HCC based on Competitive Bidding.
2. **Certification** – the process by which an applicant is determined to be a SBDP-Certified Small Business and to be eligible for participation in the HCC SBDP.
3. **Chancellor** – HCC top administrative executive.
4. **Commercially Acceptable Function** – a discrete task or group of tasks, the responsibility for performance of which shall be performed by the small business by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the small business is responsible. A small business will not be considered to be performing a commercially acceptable function if it subcontracts to non-small businesses or to other small businesses more than fifty percent (50%) of a Contract being counted toward the applicable participation goal. HCC may waive this requirement upon demonstration that the industry standard for the type of work involved is to subcontract over fifty percent (50%) of the work.
5. **Competitive Bidding or Competitive Sealed Bids or CSB** – the process used by HCC to request and receive sealed bids for goods and services wherein the selected Bidder presents the best value proposal.
6. **Competitive Sealed Proposal or CSP** – the process used by HCC to request and receive sealed proposals wherein the selected proposer presents goods and services that provide best value to HCC considering price and other evaluation factors.
7. **Contract** – a mutually binding legal document under which an entity provides labor, goods, and/or services to HCC.
8. **Contractor** – any person or entity that shall enter into a Contract with HCC, including all partners and joint ventures of such person or entity.
9. **Contractor’s Small Business Plan** – the plan submitted by a Proposer (and maintained by a Contractor) that demonstrates the proposed and/or actual small business participation and utilization in a SBDP-Eligible Contract.
10. **Design-Build Contract** – a single Contract with a design-build firm for the design and construction of a facility.
11. **Design-Build Firm** – a partnership, corporation, or other entity or team that includes an engineer or architect and builder qualified to engage in building construction.

12. **Design-Build Proposal** – a written proposal to HCC by a prospective Contractor to provide both design and construction services for designated projects identified and requested by HCC. Design-Build Proposals include the requisite professional and technical services required to complete the project.
13. **Eligible Procurement** – solicitation that is deemed to require a published SBDP goal to require small business subcontracting.
14. **Executive Director** – the Executive Director of HCC Procurement Operations Department.
15. **Facility** – real property, including buildings and associated structures and improved and unimproved land, which is the subject of SBDP-Eligible Contract.
16. **First-Tier Subcontractor** – a Subcontractor who contracts directly with the Prime Contractor.
17. **Goal** – a numerically expressed objective that HCC or Contractors are encouraged to make a Good Faith Effort to achieve. A goal is identified for each individual SBDP-Eligible Contract. Individual Contract goals are set by the Procurement Department, in conjunction with the Small Business Development Program Manager. In determining small business capacity, HCC may use HCC past practices and experiences, available SBDP certifications, recognized industry make-up, and available small business listings from other governmental entities.
18. **Good Faith Efforts** – documented steps that describe attempts to include small businesses in procurement and contracting opportunities. HCC requires all Contractors to make Good Faith Efforts to utilize small businesses in the performance of an SBDP-Eligible Contract. Good Faith Efforts for non-small businesses shall mean at a minimum the following:
  - a. Delivery of written notice of subcontracting opportunities on SBDP-Eligible Contracts to the appropriate and industry-specific small businesses identified in the HCC small business directory;
  - b. Utilization of certified small businesses for notice purposes regarding subcontracting opportunities;
  - c. Delivery of written notice to all small businesses that request information on the SBDP-Eligible Contract;
  - d. The written notices will contain the following:



1. Adequate information about the plans, specifications, and relevant terms and conditions of the Contract and about the work to be subcontracted to, or the goods to be obtained from, Subcontractors and suppliers;
2. A contact person with the Proposer's office to answer questions;
3. Information regarding the Proposer's bonding requirements, the procedure for obtaining any needed bond, and the name and telephone number of one or more acceptable surety companies to contact; and
4. The last date for receipt by the Proposer of small business price quotations;
5. Attendance at any special pre-proposal meeting called to inform businesses of subcontracting or supply opportunities, if set forth in the proposal documents;
6. Division of the SBDP-Eligible Contract, when recommended by the Procurement Operations Department and in accordance with normal industry practice, into small, economically feasible segments that could be performed by small businesses;
7. Adhering to HCC's Nondiscrimination and Harassment Policy in the procurement and discharge of an SBDP-Eligible Contract and the performance of the SBDP requirements.

Good Faith Efforts for small businesses shall mean at a minimum the following:

- e. Furnishing prompt written responses to any written inquiry from HCC regarding the small business's participation in the SBDP, the small business's performance, or the small business's status;
- f. Ensuring at all times during the performance of any SBDP-Eligible Contract or subcontract that the small business is engaging in a commercially acceptable function as that term is defined herein;
- g. Ensuring that no application, response to a request for information, or other factual material submitted to HCC contains any material misrepresentation; and
- h. Adhering to HCC's Nondiscrimination and Harassment Policy in the procurement and discharge of an SBDP-Eligible Contract and the performance of the SBDP requirements.

19. **HCC – Approved Small Business or HCC-Certified Small Business** – a small business whose application to participate in the SBDP has been received and approved and is eligible for SBDP participation.
20. **HCC Nondiscrimination and Harassment Policy** – the policy of HCC to prohibit discrimination based on age, color, ethnic background, disability, family status, gender, national origin, race, religion, sex, sexual orientation, or veteran status. Any such discrimination by Contractors or small businesses in selecting or utilizing small businesses on the basis of age, color, ethnic background, disability, family status, gender, national origin, race, religion, sex, sexual orientation, or veteran status may subject the Contractor or small business to disqualification from future Contracts with HCC. Discriminatory conduct by Contractors or SBDP-Certified Small Businesses in the operation of the SBDP violates this mandate and subjects violators to sanctions.
21. **HCC Small Business Development Program or Small Business Development** – the small business enterprise goal-oriented program in accordance with Board Policy B.1.7.7, where the Houston Community College Board of Trustees delegated the Chancellor adopt a Purchasing Procedure; which shall include the Small Business Development Program (“SBDP” or the “Program”) Procedures Manual for the Houston Community College (HCC) System, requiring Contractors who receive Contracts from HCC to use Good Faith Efforts to utilize SBDP-Certified Small Businesses.
22. **Pass-Thru Business** – a small business that is not performing a Commercially Acceptable Function, and that operates as a conduit or intermediary while allowing other Contractors and Subcontractors to actually do the work at HCC. For example, a Pass-Thru Business may purport to act as a supplier, while actually obtaining wholesale goods or services from another party conducting such business and reselling them in order to take part in the SBDP.
23. **Prime Contractor** – a Contractor who receives a Contract from HCC for goods or services and has the primary responsibility for execution of the Contract. The Prime Contractor may subcontract portions of the work required to Subcontractors.
24. **Prime Contractor Small Business** – a small business that is awarded a Prime Contractor Contract by HCC.
25. **Procedures Manual** – operating instruction on the mission, purpose and general workings of the SBDP.
26. **Program** – the Small Business Development Program of Houston Community College System located in Houston, Texas.

27. **Prompt Payment Directive** – the directive authorized by the SBDP Policy & Procedures and issued by HCC’s Chancellor that requires prompt payment to small businesses by Contractors and Subcontractors, following receipt of payment from HCC.
28. **Proposal Request** – any written request by HCC for submittal of proposals to provide labor, goods, or services to HCC by Contract. A Proposal Request may be in the form of a Request for Proposals, Request for Qualifications, or Request for Competitive Sealed Proposals.
29. **Proposal Response** – the response submitted to HCC by a prospective Contractor to a request for proposals or other written invitation from HCC to make a proposal to provide labor, goods, or services to HCC as requested.
30. **Proposer** – any person or entity that submits a proposal to provide labor, goods, and/or services to HCC by Contract in response to a Request for Proposals, Request for Qualifications or Request for Competitive Sealed Proposals.
31. **Purchase Order** – method of procurement using single form document with published terms and conditions.
32. **Request for Proposals or RFP** –A written solicitation requesting proposals to provide goods or services to HCC.
33. **Request for Qualifications or RFQ** –A written solicitation to persons or entities to submit qualifications for providing certain professional services.
34. **SBDP** – the Small Business Development Program of Houston Community College System located in Houston, Texas.
35. **SBDP Business Advisor** – Any HCC Small Business Development Department staff person responsible for the operation and implementation of the SBDP.
36. **SBDP-Certified Small Business** – a small business whose application to participate in the SBDP has been received and approved and is eligible for SBDP participation.
37. **SBDP-Eligible Contract** – a Contract awarded by HCC that is awarded with SBDP goals and for which Good Faith Efforts to utilize small businesses are required. Specifically, SBDP-Eligible Contracts are all Contracts valued at over \$50,000, excluding Contracts for sole-source items, federally funded Contracts, Contracts with other governmental entities, and those Contracts for which participation in the SBDP is otherwise prohibited by applicable law or exempted by HCC. Professional service Contracts are SBDP-Eligible Contracts, to the extent permitted by law. HCC may also deem contracts less than \$50,000 eligible for SBDP small business prime contract award participation.

38. **Size Standards** – the limitations on the size of a small business relating to 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.
39. **Small Business** – a firm for which 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
40. **Small Business Development Program Manager** – the HCC administrator responsible for the direct operation and direct implementation of the SBDP.
41. **Small Business Proposer** – a SBDP Certified Small Business that submits a proposal to provide labor, goods, or services to HCC in response to a Request for Proposals, Request for Qualifications or Request for Competitive Sealed Proposals.
42. **Subcontractor** – any business providing goods, labor, or services to a Contractor if such goods, labor, or services are procured or used in fulfillment of the Contractor’s obligations arising from a Contract with HCC.

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