

REQUEST FOR PROPOSALS (RFP)



FOR THE  
TEXAS DEPARTMENT OF TRANSPORTATION

**ENTERPRISE RESOURCE PLANNING (ERP) SYSTEM  
INTEGRATION SERVICE SUPPORT CONSULTANT**

RFP 41-3XXPA003

ISSUED BY THE  
TEXAS DEPARTMENT OF TRANSPORTATION

Proposals must be submitted no later than:

**3:00 P.M. Central Daylight Time on Friday, March 1, 2013**

LATE PROPOSALS WILL BE REJECTED

Date Issued: February 15, 2013

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## 1. GENERAL INFORMATION

This procurement is made under Government Code, Chapter 2254, Subchapter B.

### 1.1 Introduction

The Texas Department of Transportation (“**TxDOT**”) is striving to improve its information systems and business practices to more effectively serve Texas. As part of this effort, TxDOT is deploying an enterprise resource planning (“**ERP**”) solution that will retire the legacy human resources (“**HR**”), procurement, and finance applications currently used and migrate those functions to the PeopleSoft finance and HR modules. Through another solicitation, TxDOT is procuring the services of a system integrator to work with TxDOT to design and implement new business processes that are enabled by the finance and HR PeopleSoft modules.

The objective of this solicitation is to engage a consultant to provide advice, assistance, and support related to TxDOT’s management of the ERP system integration project including risk identification and management; quality assurance; identification, management, and execution of organizational change management; internal and external public relations; and direct support for TxDOT personnel managing the project.

### 1.2 Background

TxDOT is responsible for safe, effective and efficient movement of people and goods across Texas. TxDOT has an annual appropriated budget of approximately \$10 billion, approximately 12,000 employees, and is comprised of 25 geographical districts that are supported by 4 regional service centers, as well as its administration, 23 divisions, and 18 offices located in Austin. TxDOT's workforce consists of engineers, administrators, financial experts, designers, architects, sign makers, accountants, purchasers, maintenance workers, travel counselors and many other professions.

TxDOT currently operates on multiple legacy applications developed as early as the 1980s. Over the last 20 years, business requirements at TxDOT have changed resulting in substantial custom development, and a proliferation of inflexible legacy applications to address additional business needs. With the implementation of ERP, TxDOT is looking to simplify and standardize the business processes along the lines of best practices supported by off the shelf ERP products to reduce the complexity of the application landscape.

TxDOT also has unique reporting requirements driven both by state law and internal business operations. Tracking and managing data across applications to compile all necessary reports is currently a very cumbersome task. The new system must meet the statutory reporting requirements.

In 2007, Chapter 2101 of the Texas Government Code was changed to assign the responsibility of managing state agencies' ERP solutions to the Comptroller of Public Accounts (“**CPA**”). In 2009, CPA initiated **ProjectOne** with the objective of creating the foundation of a single set of books for Texas state government. This initiative has led to the creation of the Centralized Accounting and Payroll/Personnel System (“**CAPPS**”),

which is a PeopleSoft-based ERP system that will enable agencies to have real-time access to financial information and provide enhanced reporting capabilities. However, TxDOT has unique business processes and reporting requirements due to its complex funding and project environment. Building these unique requirements into the baseline CAPPS solution applicable to all agencies would be a large undertaking for the state to operate and maintain. TxDOT has agreed to use the statewide CAPPS PeopleSoft baseline deployed by CPA, customize it further for TxDOT's own business needs, and deploy it as a separate instance to be used solely by TxDOT.

### 1.3 Quantity

TxDOT anticipates selecting one private firm to provide this service.

### 1.4 Regulations

All work must be performed in compliance with applicable federal and state regulations.

### 1.5 Consulting Contracts – Prohibition on Follow-On Contracts

No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

### 1.6 Procuring and Contracting Agency

- Point of Contact

TxDOT issues this Request-for-Proposal (“**RFP**”), and is the sole point of contact for the State of Texas during the selection process.

- Contract Administration

The Administration of TxDOT will administer the contract resulting from this RFP. The contract administrator will be:

Kellie Turner, ERP Program Manager  
Texas Department of Transportation - FIN  
125 East 11<sup>th</sup> Street, Austin, Texas 78701-2483  
Kellie.Turner@txdot.gov / (512) 486-5576 / fax (512) 416-2086

### 1.7 Definitions

For purposes of this RFP, the following definitions apply.

- **Administration** – TxDOT’s executive management team
- **CAPPS** – Centralized Accounting and Payroll/Personnel System
- **SM/D** – consultant Senior Manager or Director
- **consultant** – the firm selected from this RFP

- **CDT** – Central Daylight Time
- **CPA** – Comptroller of Public Accounts
- **D/D/O/R** – TxDOT administration, divisions, districts, offices, and regions
- **ERP** – enterprise resource planning
- **ERP PM** – TxDOT ERP Program Manager
- **ESBD** – Electronic State Business Daily
- **HUB** – historically underutilized business
- **PM** – consultant Project Manager
- **ProjectONE** – project initiated by CPA to build a statewide ERP system
- **proposer** – a firm submitting a proposal in response to this RFP
- **RFP** – request for proposal
- **TxDOT** – the Texas Department of Transportation

## 1.8 Clarification of the Specifications and Requirements

If additional information is necessary to assist the Proposer in interpreting these specifications, questions will be accepted by:

Janice Mullenix, Director of Contract Services  
 Email: Janice.Mullenix@txdot.gov  
 Subject: ERP Support Consultant RFP 41-3XXPA003

Questions must be received by email by February 20, 2013 by 5:00 p.m. CDT to receive a response. All responses to submitted questions will be posted in the *Electronic State Business Daily* (“**ESBD**”).

The timetable for the RFP process is:

<b>RFP Process Timetable</b>	
<b>Event</b>	<b>Date</b>
RFP issued	February 15, 2013
Deadline for submission of questions	February 20, 2013
Post questions and answers to ESBD	February 22, 2013
Deadline for submission of written proposals	3:00 PM CDT, March 1, 2013
Contract awarded (estimated)	April 1, 2013

## 1.9 Contract Term

Length of contract shall be approximately 24 months. The contract may be extended no more than 4 times for periods of 6 months each. Proposals may vary from these guidelines by no more than 30 percent.

## 1.10 Expenses

Covered expenses will be paid on a reimbursement basis in accordance with this RFP.

## 1.11 Insurance

Prior to beginning work, consultant shall complete and have on file with TxDOT's Contract Services, a TxDOT Certificate of Insurance, Form 1560-CSS, that covers worker's compensation, commercial general liability, and business auto.

Form 1560-CSS, with instructions for completing and filing, is available at:

[http://www.dot.state.tx.us/business/contractors\\_consultants/insurance.htm](http://www.dot.state.tx.us/business/contractors_consultants/insurance.htm).

## 2. CONSULTANT REQUIREMENTS AND QUALIFICATIONS

### 2.1 Consultant Requirements

The consultant shall provide advice, assistance, and support related to TxDOT's management of the ERP system integration. The activities the consultant will be required to perform include the following tasks.

- The consultant shall provide risk identification and management services including:
  - Identification of
    - Risks associated with the ERP system integration,
    - Sources (e.g., internal, external, environmental) of each risk identified, and
    - Methods to mitigate each risk; and
  - Communication of the identified risks, sources, and mitigation methods to the TxDOT ERP Program Manager (“**ERP PM**”) and other stakeholders (e.g., TxDOT administration) through a report or presentation, or both, that includes a strategy analysis of how to best address key risks.
- The consultant shall provide project quality assurance including:
  - Development of a project performance matrix, related measures of performance, and methodology for collecting measurement data;
  - Reports and presentations related to performance measurements data;
  - Monitoring of and adjustment to the project performance matrix, as needed for best fit during project; and
  - Communication and escalation of issues as they are identified.
- The consultant shall provide identification, management, and execution of organizational change management services including:
  - Identification of key change areas;
  - Determination of the best strategy to address each identified situation;
  - Preparation of an action plan for implementing each agreed upon strategy; and
  - Monitoring of change process, both during and afterwards, to ensure fit.
- The consultant shall provide strategic public relations services including:
  - Management of project image, both internally and externally;

- Communication of project strategy message; and
- Targeted communication for specific audiences.
- The consultant shall provide direct support, as needed, to the ERP PM and staff.

## 2.2 Consultant Qualifications

- The consultant shall be a company that has been engaged in the business of managing, or providing advice, assistance, and support related to managing, ERP system integration projects for a minimum of ten years. Experience gained managing, or providing advice, assistance, and support related to managing, ERP system integration projects at government agencies or in the transportation field is preferred.
- Be in good financial standing, not in any form of bankruptcy, current in payment of all taxes and fees, such as state franchise fees. TxDOT reserves the right to request a copy of the proposer’s audited or un-audited financial statement.
- At the State’s request, the Provide shall provide its audited or unaudited financial statements for the State’s to evaluate the sufficiency of the Provider’s financial resources and ability to perform the contract or provide the services required in the solicitation in accordance with Tex. Gov’t Code § 2156.007(d)(9). The State will be the sole judge in determining the sufficiency of the Provider’s financial resources and ability to perform the contract or provide the service. Factors to be reviewed include:
  - Balance sheets,
  - Net working capital,
  - Current asset ratio,
  - Liquidity ratio, and
  - Auditor notes.

## 2.3 Key Personnel Qualifications

Each key person must have earned and possess a degree from an accredited institution of higher education at or above the level of Bachelor’s degree. Key personnel must have experience related to the managing ERP system integration projects. Additionally, key personnel must have established experience and ability related to managing ERP system integration in one or more of the following areas: risk management; quality assurance; organizational change management; and strategic public relations services. The consultant shall provide the following key personnel.

- Senior Manager or Director (“SM/D”). Designate an SM/D who possesses a minimum of ten years of experience, gained as an SM/D while overseeing
  - management of government transportation agency ERP system integration projects or
  - management of projects providing advice, assistance, and support related to the management of government transportation agency ERP system integration projects.

- Project Manager (“PM”). Designate a PM who possesses a minimum of seven years of experience, gained as a PM managing
  - government agency ERP system integration projects or
  - projects providing advice, assistance, and support related to the management of government agency ERP system integration projects.
- HR Task Leader. Designate an HR Task Leader who possesses a minimum of five years of experience, gained managing or leading tasks related to the integration of human resources management applications and business processes on
  - government agency ERP system integration projects or
  - projects providing advice, assistance, and support related to the management of government agency ERP system integration projects.
- Finance Task Leader. Designate a Finance Task Leader who possesses a minimum of five years of experience, gained managing or leading tasks related to the integration of financial management applications and business processes on
  - government agency ERP system integration projects or
  - projects providing advice, assistance, and support related to the management of government agency ERP system integration projects.
- Business Analysts. Designate one or more business analysts. Each analyst must possess a minimum of three years of experience performing business analysis on ERP system integration projects. Transportation industry or government agency experience is preferred.
- Team Members. Designate one or more team members. Each member must have a minimum of two years of experience performing work that clearly demonstrates the member has the knowledge and ability necessary to perform the specific tasks assigned to that member, as indicated in the proposal. Transportation industry or government agency experience is preferred.

### **3. PREPARING AND SUBMITTING A PROPOSAL**

#### **3.1 Evaluation and Selection**

The evaluation and selection of a consultant will be based on the information submitted in the proposal, references, and interviews. Proposers should respond clearly and completely to all requirements. Failure to respond completely may be the basis for rejecting a proposal.

Elaborate proposals (e.g., expensive artwork) beyond that sufficient to present a complete and effective proposals are not necessary or desired.

#### **3.2 Incurring Costs**

TxDOT is not liable for any cost incurred by proposers in replying to this RFP.



### 3.3 Submitting the Proposal

The proposer must submit **one original** and **six copies** of the proposal to TxDOT. All proposals must be packaged, sealed, and have the following written information on the outside of the package:

1. Proposer's Name and Address;
2. "**PROPOSAL FOR ERP SUPPORT CONSULTANT**"; and
3. "Proposal Due Date: March 1, 2013".

The proposal packages must be delivered to:

#### **Via U.S. Postal Service:**

Janice Mullenix, Contract Services  
Texas Department of Transportation  
125 E. 11th Street  
Austin, TX 78701-2483

#### **Via Courier or Overnight Delivery:**

Janice Mullenix, Contract Services  
Texas Department of Transportation  
118 E. Riverside Drive  
Austin, TX 78704

TxDOT must receive all proposals **no later than 3:00 P.M. CDT on March 1, 2013**. Proposers mailing their proposals must allow sufficient time for delivery of their proposal by the time and date specified. Late proposals will not be accepted.

### 3.4 Proposal Organization and Format

The proposer shall submit:

- One original response, signed, dated and marked **ORIGINAL** and
- Six copies of the original response, marked **COPY**.

The original response and each copy must

- Include the sections as required and defined below under *Original Response* and *Copies*, respectively;
- Be legible;
- Include only the information specified;
- Be provided in separate loose-leaf, three-ring binders (spiral-bound and comb-bound proposals are not acceptable);
- Be printed single-sided on 8 ½ × 11-inch paper;
- Be printed using Arial font with a 12-pt minimum font size.
- Include tab-indexed dividers between sections; and
- Be a maximum of 40 pages (excluding the financial statements required below).

**Original Response:** The original response must include the following sections.

- SECTION 1 – EXECUTION OF PROPOSAL. Signed and dated original.
- SECTION 2 – COMPANY HISTORY. Include the following (limit the Company History to one page; the financial statements are not included in the page limit):
  - A brief description of the company, including the company name, address, phone number, legal status (e.g., corporation, partnership, etc.);
  - Number of years in business;
  - Staff size;
  - Name, phone number and email address of the person TxDOT should contact with any questions about the response submission;
  - Name and title of person signing the response; and
  - The most recent two years audited financial statements, or if audited financial statements are unavailable, unaudited financial statements shall be submitted and certified as true, correct and accurate by the chief financial officer or treasurer of the Provider's firm.
- SECTION 3 – PERSONNEL QUALIFICATIONS. Provide brief profiles of the individuals who will be part of the provider's personnel providing the service. The profile shall include
  - Each individual's name and title;
  - Senior Manager or Director Profile (limited to one page) – indicate the individual designated as SM/D for this project and submit a profile describing the individual's qualifications and experience on similar projects within the past 12 years;
  - Project Manager Profile (limited to one page) – indicate the individual designated as PM for this project and submit a profile describing the individual's qualifications and experience on similar projects within the past ten years;
  - HR Task Leader Profile (limited to one page) – indicate the individual designated as HR Task Leader for this project and submit a profile describing the individual's qualifications and experience on similar projects within the past seven years;
  - Finance Task Leader Profile (limited to one page) – indicate the individual designated as the Finance Task Leader for this project and submit a profile describing the individual's qualifications and experience on similar projects within the past seven years;
  - Business Analyst Profile (limited to one page per analyst) – indicate the individual or individuals designated as business analysts for this project and submit a profile for each analyst describing that individual's qualifications and experience on similar projects within the past five years; and
  - Team Member Profile (limited to five pages) – indicate all team members designated to this project and briefly
    - Describe each position needed to provide all services and complete all work described in this specification,

- Explain the need and the duties of each position on the proposed team and how each position will provide the best value for the State, and
  - Indicate each team member's qualifications and number of years of experience in performing duties similar to the described in this RFP.
- SECTION 4 – DEMONSTRATION OF CAPABILITY. Provide a description of the proposer's experience in providing the services described in this RFP by identifying and describing projects completed by the provider, key personnel, or subcontractor (if applicable) within the past seven years that are similar to and of the size and scope of the work required. For each identified project,
    - Identify the client organization;
    - Indicate the number of employees and organizational structure of the client organization;
    - Indicate the number of partner organizations involved in the project;
    - Describe the approach to establishing project objectives;
    - Describe the complexity of issues related to the organization of the project;
    - Describe the techniques and methodology used to identify and manage risks associated with the project;
    - Describe the techniques and methodology used to provide quality assurance for the project;
    - Describe the how key change areas were identified and the methodology used to manage changes associated with the project;
    - Describe the approach used to provide strategic public relations;
    - Include information on start and end dates of the project; and
    - Indicate whether a written report with recommendations was prepared for the client and, if a report was prepared, describe the report and what recommendations were implemented

Submit a preliminary project plan that defines this project, includes the proposed approach, and identifies major milestones and deliverables outlined in section 2, Consultant Requirements and Qualifications.

- SECTION 5 – PRICING.
  - Provide, in a spreadsheet format, itemized costs associated with providing the services required under this procurement including an estimate of the number of hours and corresponding hourly rate for each position needed to complete the project requirements and deliverables outlined in section 2, Consultant Requirements and Qualifications.
  - Payment will be based on successful delivery of the deliverables.
  - TxDOT will not reimburse for any travel, per diem costs or expenses. TxDOT may require the consultant to travel to a select number of the TxDOT district offices and regions at least once.

- SECTION 6 – CLIENT REFERENCES. Provide a minimum of three references that verify the qualifications and experience requirements for services that can substantiate seven years' experience in the last ten years (Attachment B – Reference Data Sheet). References must illustrate proposer's ability to provide the services outlined in the specification. References must include name, point of contact, telephone number, and dates services were performed. The response will be disqualified if TxDOT is unable to verify qualification and experience requirements from the proposer's references. The response may be disqualified if TxDOT receives negative reference responses. TxDOT will be the sole judge of references.
- SECTION 7 – HUB SUBCONTRACTING PLAN. Attachment H of the contract contains forms and instructions for filing a HUB subcontracting plan.

**Copies:** The five reproduced copies must include only the following sections from the original:

- Section 2 – Company History;
- Section 3 – Personnel Qualifications;
- Section 4 – Demonstration of Capability;
- Section 5 – Pricing; and
- Section 6 – Client References.

## **4. PROPOSAL SELECTION AND AWARD PROCESS**

### **4.1 Proposal Scoring and Selection**

A review panel composed of representatives from TxDOT staff will make the selection. The panel will review and rank all proposals received. Proposers that are reasonably apt to be awarded the contract, based on evaluation of the written proposals may be requested to interview with the review panel. Preference will be given, all other considerations being equal, to a proposer whose principal place of business is within the State of Texas or who will manage the contracted project entirely from its office within the State of Texas.

### **4.2 Interviews**

Interviews may be conducted with the top scoring proposers by the review panel to clarify and verify the written proposals. These interviews will be held subsequent to the initial receipt and scoring of the proposal to provide an opportunity for the proposer to clarify the proposal. TxDOT will schedule a time and location for each interview it requests. A proposer's refusal to honor a request for interview may result in rejection of its proposal.

### **4.3 Award and Final Offers**

The award will be granted based on the results of the interview and references.

#### **4.4 Right to Reject Proposals and Negotiate Contract Terms**

TxDOT reserves the right to reject any and all proposals. TxDOT reserves the right to negotiate the terms of the contract, including the reimbursement rates, with the selected Proposer prior to entering into a contract. If contract negotiations cannot be concluded successfully with the highest scoring Proposer, TxDOT may negotiate a contract with the next highest scoring Proposer and so on until an agreement is reached.

### **5. INVOICING AND PAYMENT**

#### **5.1 General Instructions for Preparing an Invoice**

- The consultant shall provide a comprehensive and detailed invoice with reference to the basis for each item charged and attach original documentation that validates the charges.
- The original invoice shall be mailed to the address shown on the contract and shall include the following:
  - Contract number;
  - Date and time of service;
  - Location of service; and
  - List of activities or project plan tasks completed to date as shown in the monthly status report. Once tasks have been completed, they will be eligible for payment.
- Invoices shall be submitted on the 10<sup>th</sup> business day of the month with a copy of the monthly status report.
- Invoices that require correction shall be resubmitted with a new invoice date.
- Payments shall be based on completed deliverables and project plan tasks

#### **5.2 Withholding Payment**

- TxDOT will withhold ten percent of each payment made to the consultant until TxDOT has certified that the project is complete to TxDOT's satisfaction. At that time, the ten percent withheld over the life of the project will be paid to the consultant.
- Each invoice submitted shall reflect the total minus the ten percent withholding amount.
- A final invoice shall be submitted at the end of the project reflecting the cumulative withheld amount. Consultant will not receive interest on the withheld amount.

## **6. CONSULTANT RESPONSIBILITIES**

The consultant is responsible for Federal and State Unemployment Insurance coverage and Standard Workers Compensation Insurance coverage. Consultant shall comply with all Federal and State tax laws and withholding requirements.

## **7. PERSONNEL CONTINUITY AND REPLACEMENT**

- The consultant shall agree to ensure the continuity of the key personnel (i.e., SM/D, PM, HR Lead, Finance Lead, business analysts, and team members assigned to the project. The proposer represents and warrants that the PM shall be available for the entirety of the project and shall remain available through the term of the contract.
- TxDOT recognizes that events beyond the control of the consultant, such as the death, physical or mental incapacity, long-term illness, or the voluntary termination of employment of the SM/D, PM, HR Lead, Finance Lead, a business analysts, or a team members may require that the consultant propose a replacement. In the event that such a replacement is necessary, the consultant shall agree that no replacement person shall begin work on the project without prior written approval from TxDOT.
- If TxDOT determines that the PM, a key person, or other personnel are unable to perform in accordance with the service requirements or to communicate effectively, the consultant shall immediately remove that person.
- The proposer shall request in writing and obtain written approval from TxDOT to add or remove personnel.
- Replacement personnel shall meet minimum qualifications, have experience comparable to the person they are replacing and be provided at no additional cost to TxDOT. The proposer shall provide a profile and references for the replacement. TxDOT may reject the replacement if references or past working performance is questionable or unfavorable. TxDOT will be the sole judge of the qualifications of the proposed replacement personnel.

## **8. TXDOT RESPONSIBILITIES**

TxDOT will:

- Provide project oversight and evaluate all work performed by the consultant under section 2.1;
- Provide a designated TxDOT authorized representative point of contact;
- Provide access to appropriate personnel, information, records, and data systems;
- Approve any necessary plan formats, methods of delivery, and number of copies required by TxDOT; and
- Monitor performance of duties and compliance with contract requirements by a variety of methods including meetings with SM/D, PM, and designated team members as deemed appropriate.

## **9. WORK HOURS AND LOCATION**

- Services shall be provided during normal business hours unless otherwise approved and coordinated with TxDOT.
- Normal business hours are Monday through Friday from 8:00 am through 5:00 pm, excluding state holidays.
- The consultant may be required to work on weekends, evenings, and holidays. TxDOT will not pay an overtime rate for this service. All hours shall be billed at the hourly rate quoted.

## **10. STANDARD CONTRACT TERMS, CONDITIONS, AND REQUIREMENTS**

The successful proposer and TXDOT will enter into a contract for the services described in this RFP. Failure of the successful proposer to accept the obligations of a contractual agreement may result in a cancellation of the award.

## **11. REQUIRED FORMS**

The following forms must be completed and submitted with the proposal:

- Placed in Front Section before the RFP Document:
  - Submission letter signed by authorized member of the organization and
  - Proposer Data Sheet (Attachment A); and
- Placed in the Back Section after the RFP Document:
  - Reference Data Sheets (Attachment B) for a minimum of three references.

**ATTACHMENT A  
PROPOSER DATA SHEET**

**1. Proposing Company**

Name: \_\_\_\_\_

Location: City: \_\_\_\_\_ State: \_\_\_\_\_

Federal Employer Identification Number  
(or Social Security Number, if sole proprietorship): \_\_\_\_\_

Corporation?       Yes       No

**2. Proposal Contact Person**

(person that TxDOT should contact with questions concerning the proposal)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: ( \_\_\_\_ ) \_\_\_\_ - \_\_\_\_\_      Fax: ( \_\_\_\_ ) \_\_\_\_ - \_\_\_\_\_

e-mail: \_\_\_\_\_

**3. Billing Contact Person**

(person that TxDOT should contact with questions concerning billings and where reimbursement are to be mailed)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Location: City: \_\_\_\_\_ State: \_\_\_\_\_

Phone: ( \_\_\_\_ ) \_\_\_\_ - \_\_\_\_\_      Fax: ( \_\_\_\_ ) \_\_\_\_ - \_\_\_\_\_

e-mail: \_\_\_\_\_

**4\*. Is the firm submitting this proposal an individual?**

Yes – proceed to next question       No – stop here

**5\*. Has the individual been employed by a state agency at any time during the past two years?**

Yes – proceed to next question       No – stop here

**6\*. Attach a separate sheet to explain the:**

- A. Nature of the previous employment with the State;
- B. Date the employment was terminated; and
- C. Annual rate of compensation for the employment at the time of its termination.

\*Responses to questions 4, 5, and 6 will be used to determine compliance with Tex. Gov't Code § 2254.003.



**ATTACHMENT B  
REFERENCE DATA SHEET**

PROVIDE AT LEAST THREE REFERENCES  
(reproduce sheet as necessary)

Client's Name: \_\_\_\_\_

Client's Location: City: \_\_\_\_\_ State: \_\_\_\_\_

Contact Person: Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

e-mail: \_\_\_\_\_

Date of Project: Begin Date \_\_\_\_\_ End Date: \_\_\_\_\_

Services Provided:

(Be sure to describe your involvement in the project: principal firm, multi-firm collaboration, subconsultant.)

## APPENDIX A – CONTRACT TEMPLATE

THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

### CONTRACT FOR PRIVATE CONSULTANT SERVICES

**THIS CONTRACT** is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the STATE, and To Be Determined, hereinafter called the CONSULTANT.

**WHEREAS**, Government Code, Chapter 2254, Subchapter B, authorizes the STATE to enter into a contract with a CONSULTANT to provide consulting services consisting of studying or advising a STATE agency under a contract that does not involve the traditional relationship of employer and employee; and

**WHEREAS**, Government Code, Chapter 2254, Subchapter B, establishes notification, fact-finding, and reporting requirements for a major consulting services contract, which is defined as a contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000; and,

**WHEREAS**, the STATE desires to engage a consultant to provide advice, assistance, and support related to TxDOT's management of an enterprise resource planning (ERP) system integration project including: risk identification and mitigation; quality assurance; identification, management, and execution of organizational change management services; strategic public relations services; and direct support to the ERP program manager and staff. The work will involve (1) identifying risks related to the project, their specific sources and applicable mitigation methods; (2) providing a report or presentation regarding risk including, among other things, a strategy analysis addressing key risks; (3) providing project quality assurance (QA) including the developing, documenting, presenting, and adjusting project performance matrix, measures, and measurement methodology; (4) communicating and escalating QA issues; (5) managing organizational change by identifying key change areas, providing the best strategy and an action plan to address specific situations, and monitoring change during the process, and (6) providing public relations, both external and internal, by managing project image, communicating project strategy message, and providing target communications; and,

**WHEREAS**, the STATE published a public notice in the Texas Register dated To Be Determined advertising its intent to solicit proposals for the purpose of hiring a private consultant;

**NOW, THEREFORE**, in consideration of the promises, mutual covenants and agreements of the parties to be performed as hereinafter set forth, the STATE and the CONSULTANT do mutually agree as follows.

- I. STATEMENT OF SERVICES TO BE PERFORMED:** The Consultant will undertake and carry out services described in Attachment A, Scope of Services according to the work schedule described in Attachment B in accordance with Attachment D, General Provisions.
- II. CONTRACT PAYMENT:** The total amount of this contract shall not exceed \$TBD. See Attachment C, Budget, payments shall be billed monthly to the attention of TBD at TBD.
- III. TERM OF CONTRACT:** Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this

contract shall be terminated immediately with no liability to either party. This contract begins when fully executed by both parties and terminates on March 31, 2015.

**IV. INCORPORATION OF PROVISIONS:** Attachments A - D and attachment H are attached hereto and incorporated into this contract as if fully set forth herein.

**V. CONFLICT OF INTEREST:** The undersigned represents that its firm has no conflict of interest that would in any way interfere with its or its employees' performance of services for the department or which in any way conflicts with the interests of the department. The firm shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the department's interests.

**VI. CERTIFICATION OF STATUS:** The Consultant certifies that it is not a:

1. Person required to register as a lobbyist under Chapter 305, Government Code;
2. Public relations firm; or
3. Government consultant.

**VII. AUDIT:** The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

**VIII. SIGNATORY WARRANTY:** The signatories to this contract warrant that each has the authority to enter into this contract on behalf of the party represented.

**THE CONSULTANT**

\_\_\_\_\_  
(signature)  
\_\_\_\_\_  
(printed name)  
\_\_\_\_\_  
(title)  
\_\_\_\_\_  
(date)

**THE STATE OF TEXAS**

\_\_\_\_\_  
(signature)  
\_\_\_\_\_  
(printed name)  
\_\_\_\_\_  
(title)  
\_\_\_\_\_  
(date)

## APPENDIX A – CONTRACT TEMPLATE

### LIST OF ATTACHMENTS

Attachment	Title
A	Scope of Services
B	Work Schedule
C	Budget
D	General Provisions
E	Not applicable
F	Not applicable
G	Not Applicable
H-FG	Disadvantaged Business Enterprise (DBE) for Federal Funded Professional or Technical Services Contracts – See Attachment H Instructions
H – FN	Disadvantaged Business Enterprise (DBE) for Race-Neutral Professional or Technical Services Contracts – See Attachment H Instructions
H – SG	Historically Underutilized Business (HUB) Requirements for State Funded Professional or Technical Services Contracts – State of Texas HUB. Subcontracting plan required – See Attachment H Instructions
H – SN	Historically Underutilized Business (HUB) Requirements for State Funded Professional or Technical Services Contracts – No State of Texas HUB
Exhibits	Title
H – 1	Subprovider Monitoring System Commitment Worksheet
H – 2	Subprovider Monitoring System Commitment Agreement
H – 3	Monthly Progress Assessment Report
H - 4	Subprovider Monitoring System Final Report
H - 5	Federal Subproviders and Supplier Information
H - 6	HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report

**APPENDIX A – CONTRACT TEMPLATE**

**ATTACHMENT A  
SCOPE OF SERVICES**

(TO BE DETERMINED)

**APPENDIX A – CONTRACT TEMPLATE**

**ATTACHMENT B  
WORK SCHEDULE**

(TO BE DETERMINED)

**APPENDIX A – CONTRACT TEMPLATE**

**ATTACHMENT C  
BUDGET**

(TO BE DETERMINED)

# APPENDIX A – CONTRACT TEMPLATE

## ATTACHMENT D GENERAL PROVISIONS

### INDEX TO GENERAL PROVISIONS

Article	Title
1	Work Schedule
2	Progress
3	Unsatisfactory Performance
4	Amendments
5	Ownership of Data
6	Public Information
7	Personnel, Equipment and Material
8	Debt to the State
9	Subcontracting
10	Inspection of Work
11	Submission of Reports
12	Violation of Contract Terms
13	Termination
14	Compliance with Laws
15	Indemnification
16	Noncollusion
17	Insurance
18	Gratuities
19	Disadvantaged Business Enterprise or Historically Underutilized Business Requirements
20	Maintenance, Retention and Audit of Records
21	Nepotism Disclosure
22	Lobbying Certification
23	Civil Rights Compliance
24	Child Support Certification
25	Debarment Certification
26	Disputes
27	Successors and Assigns
28	Severability
29	Prior Contracts Superseded
30	Office of Management and Budget Audit Requirements



## APPENDIX A – CONTRACT TEMPLATE

### ATTACHMENT D GENERAL PROVISIONS

#### ARTICLE 1. WORK SCHEDULE

**A. Changes to Work Schedule.** If at any time during the contract period the Consultant determines that the authorized services cannot be completed before the end of the contract period, the Consultant shall immediately notify the State. The State at its sole discretion may extend the contract period by written amendment. If the State determines that the contract period will not be extended, the Consultant must complete the work within the original contract period.

#### ARTICLE 2. PROGRESS

**A. Progress meetings.** The Consultant shall from time to time during the progress of the work confer with the State. The Consultant shall prepare and present such information as may be pertinent and necessary or as may be requested by the State in order to evaluate features of the work.

**B. Conferences.** At the request of the State or the Consultant, conferences shall be provided at the Consultant's office, the office of the State, or at other locations designated by the State. These conferences shall also include evaluation of the Consultant's services and work when requested by the State.

**C. Inspections.** If federal funds are used to reimburse costs incurred under this contract, the work and all reimbursements will be subject to periodic review by the U. S. Department of Transportation.

**D. Corrective Action.** Should the State determine that the progress of work does not satisfy the milestone schedule, the State shall review the work schedule with the Consultant to determine the nature of corrective action needed.

#### ARTICLE 3. UNSATISFACTORY PERFORMANCE

If the Consultant submits work that does not comply with the terms of this contract, the State shall instruct the Consultant to make such revisions as are necessary to bring the work into compliance with the contract. No additional compensation shall be paid for this work.

#### ARTICLE 4. AMENDMENTS

**A. Need.** The terms of this contract may be modified if the State determines that there has been a significant increase or decrease in the duration, scope, cost, complexity or character of the services to be performed. An amendment will be executed to authorize such significant increases or decreases. Significant is defined to mean a cost increase of any amount and a cost decrease of twenty percent (20%) or more of the original estimated project cost.

**B. Compensation.** Additional compensation, if appropriate, shall be calculated as set forth in the contract. Significant changes affecting the cost or maximum amount payable shall be defined to include but not be limited to new work not previously authorized or previously authorized services that will not be performed.

**C. When to Execute.** Both parties must execute an amendment within the contract period.

**D. Limitation of Liability.** The State shall not be responsible for actions by the Consultant or any

costs incurred by the Consultant relating to additional work not directly associated with or prior to the execution of an amendment.

#### **ARTICLE 5. OWNERSHIP OF DATA**

**A. Work for Hire.** All services provided under this contract are considered work for hire and as such all data, basic sketches, charts, calculations, plans, specifications, and other documents created or collected under the terms of this contract are the property of the State.

**B. Disposition of Documents.** All documents prepared by the Consultant and all documents furnished to the Consultant by the State shall be delivered to the State upon request by the State. The Consultant, at its own expense, may retain copies of such documents or any other data which it has furnished the State under this contract, but further use of the data is subject to permission by the State.

#### **ARTICLE 6. PUBLIC INFORMATION AND CONFIDENTIALITY**

**A. Public Information.** The State will comply with Government Code, Chapter 552, the Public Information Act and 43 Texas Administrative Code §3.10 et seq. in the release of information produced under this contract.

**B. Confidentiality.** The Consultant shall not disclose information obtained from the State under this contract without the express written consent of the State.

#### **ARTICLE 7. PERSONNEL, EQUIPMENT AND MATERIAL**

**A. Consultant Resources.** The Consultant shall furnish and maintain quarters for the performance of all services, and adequate and sufficient personnel and equipment to perform the services required under the contract. The Consultant certifies that it presently has adequate qualified personnel in its employment for performance of the services required under this contract, or it will be able to obtain such personnel from sources other than the State.

**B. Removal of Contractor Employee.** All employees of the Consultant assigned to this contract shall have such knowledge and experience as will enable them to perform the duties assigned to them. The State may instruct the Consultant to remove any employee from association with work authorized in this contract if in the sole opinion of the State the work of that employee does not comply with the terms of this contract or if the conduct of that employee becomes detrimental to the work.

**C. Removal of Key Personnel.** The Consultant must notify the State in writing as soon as possible but no later than three business days after a project manager or other key personnel is removed from association with this contract, giving the reason for removal.

**D. State Approval of Replacement Personnel.** The Consultant may not replace the project manager or key personnel without prior consent of the State. The State must be satisfied that the new project manager or other key personnel is qualified to provide the authorized services. If the State determines that the new project manager or key personnel is not acceptable, the Consultant may not use that person in that capacity and shall replace him or her with one satisfactory to the State.

**E. Ownership of Acquired Property.** Except to the extent that a specific provision of this contract states to the contrary, the State shall own all intellectual property acquired or developed under this contract and all equipment purchased by the Consultant or its subcontractors under this contract. All

intellectual property and equipment owned by the State shall be delivered to the State when the contract terminates, or when it is no longer needed for work performed under this contract, whichever occurs first.

#### **ARTICLE 8. DEBT TO THE STATE**

If the State Comptroller of Public Accounts is prohibited from issuing a warrant or initiating an electronic funds transfer to the Consultant because of a debt owed to the State, the State shall apply all payment due the Consultant to the debt or delinquent tax until the debt or delinquent tax is paid in full.

#### **ARTICLE 9. SUBCONTRACTING**

**A. Prior Approval.** The Consultant shall not assign, subcontract, or transfer any portion of professional services related to the work under this contract without prior written approval from the State.

**B. DBE/HUB Compliance.** The Consultant's subcontracting program shall comply with the requirements of Attachment H of the contract (DBE/HUB Requirements).

**C. Required Provisions.** All subcontracts for professional services shall include this attachment and Federal and State requirements. The Consultant is authorized to pay subconsultants in accordance with the terms of the subcontract, and the basis of payment may differ from the basis of payment by the State to the Consultant.

**D. Prior Review.** Subcontracts for professional services in excess of \$25,000 may be reviewed by the State prior to performance of work thereunder.

**E. Consultant Responsibilities.** No subcontract relieves the Consultant of any responsibilities under this contract.

#### **ARTICLE 10. INSPECTION OF WORK**

**A. Review Rights.** The State and the U. S. Department of Transportation, when federal funds are involved, and any of their authorized representatives shall have the right at all reasonable times to review or otherwise evaluate the work performed hereunder and the premises in which it is being performed.

**B. Reasonable Access.** If any review or evaluation is made on the premises of the Consultant or a subconsultant, the Consultant shall provide and require its subconsultants to provide all reasonable facilities and assistance for the safety and convenience of the state or federal representatives in the performance of their duties.

#### **ARTICLE 11. SUBMISSION OF REPORTS**

All applicable study reports shall be submitted in preliminary form for approval by the State before a final report is issued. The State's comments on the Consultant's preliminary report must be addressed in the final report.

#### **ARTICLE 12. VIOLATION OF CONTRACT TERMS**

**A. Increased Costs.** Violation of contract terms, breach of contract, or default by the Consultant shall be grounds for termination of the contract, and any increased or additional cost incurred by the State arising from the Consultant's default, breach of contract or violation of contract terms shall be paid by the Consultant.

**B. Remedies.** This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

### **ARTICLE 13. TERMINATION**

**A. Causes.** The contract may be terminated before the stated completion date by any of the following conditions by:

- (1) mutual agreement and consent, in writing from both parties; or
- (2) the State by notice in writing to the Consultant as a consequence of: failure by the Consultant to perform the services set forth herein in a satisfactory manner, or a violation of a contract provision; or
- (3) either party, upon the failure of the other party to fulfill its obligations as set forth herein; or
- (4) the State for reasons of its own and not subject to the mutual consent of the Consultant by giving thirty days notice of termination in writing to the Consultant; or
- (5) satisfactory completion of all services and obligations described herein.

**B. Determination of Funds Due.** Should the State terminate this contract as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to the Consultant. In determining the value of the work performed by the Consultant prior to termination, the State shall be the sole judge. Compensation for work at termination will be based on a percentage of the work completed at that time. Should the State terminate this contract, the Consultant shall not incur costs during the thirty-day notice period in excess of the amount incurred during the preceding thirty days.

**C. Value of Completed Work.** If the Consultant defaults in the performance of this contract or if the State terminates this contract for fault on the part of the Consultant, the State will give consideration to the following when calculating the value of the completed work:

- (1) the amount of work required which was satisfactorily completed;
- (2) the value of the work which is usable;
- (3) the cost to the State of employing another firm to complete the work;
- (4) the time required to employ another firm to complete the work; and
- (5) other factors which affect the value to the State of the work performed.

**D. Surviving Requirements.** The termination of this contract and payment of an amount in settlement as prescribed above shall extinguish the rights, duties, and obligations of the State and the Consultant under this contract, except for those provisions that establish responsibilities that extend beyond the contract period.

**E. Payment of Additional Costs.** If termination of this contract is due to the failure of the Consultant to fulfill its contract obligations, the State may take over the project and prosecute the work to completion, and the Consultant shall be liable to the State for any additional cost to the State.

### **ARTICLE 14. COMPLIANCE WITH LAWS**

The Consultant shall comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this contract, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination, and licensing laws and regulations. When required, the Consultant shall furnish the State with satisfactory proof of its compliance therewith.

## **ARTICLE 15. INDEMNIFICATION**

**A. Errors, Omissions, Negligent Acts.** The Consultant shall indemnify and save harmless the State and its officers and employees from all claims and liability due to activities of itself, its agents, or employees, performed under this contract and which are caused by or result from error, omission, or act of the Consultant, its agent, or of any person employed by the Consultant.

**B. Attorney Fees.** The Consultant shall also indemnify and save harmless the State from any and all expense, including, but not limited to, attorney fees which may be incurred by the State in litigation or otherwise resisting said claim or liabilities which may be imposed on the State as a result of such activities by the Consultant, its agents, or employees.

## **ARTICLE 16. NONCOLLUSION**

**A. Warranty.** The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract and that it has not paid or agreed to pay any company or Consultant any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract.

**B. Liability.** For breach or violation of this warranty, the State shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or compensation, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

## **ARTICLE 17. INSURANCE**

**A. Requirement.** The Consultant certifies that it has insurance on file with the Contract Services of the Texas Department of Transportation in the amount specified on Texas Department of Transportation Form 1560, Certificate of Insurance, as required by the State. No other proof of insurance is acceptable to the State. The Consultant certifies that it will keep current insurance on file with that office for the duration of the contract period. If insurance lapses during the contract period, the Consultant must stop work until a new certificate of insurance is provided.

## **ARTICLE 18. GRATUITIES**

**A. Employees Not to Benefit.** Texas Transportation Commission policy mandates that employees of the Texas Department of Transportation shall not accept any benefit, gift or favor from any person doing business with or who reasonably speaking may do business with the State under this contract. The only exceptions allowed are ordinary business lunches and items that have received the advance written approval of the Executive Director of the Texas Department of Transportation.

**B. Liability.** Any person doing business with or who reasonably speaking may do business with the State under this contract may not make any offer of benefits, gifts or favors to department employees, except as mentioned above. Failure on the part of the Consultant to adhere to this policy may result in the termination of this contract.

## **ARTICLE 19. DISADVANTAGED BUSINESS ENTERPRISE OR HISTORICALLY UNDERUTILIZED BUSINESS REQUIREMENTS**

The Consultant agrees to comply with the requirements set forth in Exhibit 3, Disadvantaged Business Enterprise or Historically Underutilized Business Subcontracting Plan with an assigned goal or a zero goal, as determined by the State.

## **ARTICLE 20. MAINTENANCE, RETENTION AND AUDIT OF RECORDS**

**A. Retention Period.** The Consultant shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and services provided. The Consultant shall make the records available at its office during the contract period and for four years from the date of final payment under this contract, until completion of all audits, or until pending litigation has been completely and fully resolved, whichever occurs last.

**B. Availability.** The State or any of its duly authorized representatives, the Federal Highway Administration, the United States Department of Transportation, Office of Inspector General, and the Comptroller General shall have access to the Consultant's Records which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts and transcriptions.

## **ARTICLE 21. NEPOTISM DISCLOSURE**

**A.** In this section the term "relative" means:

- (1) a person's great grandparent, grandparent, parent, aunt or uncle, sibling, niece or nephew, spouse, child, grandchild, or great grandchild, or
- (2) the grandparent, parent, sibling, child, or grandchild of the person's spouse.

**B.** A notification required by this section shall be submitted in writing to the person designated to receive official notices under this contract and by first-class mail addressed to Contract Services Section, General Services Division, Texas Department of Transportation, 125 East 11th Street, Austin Texas 78701. The notice shall specify the Consultant's firm name, the name of the person who submitted the notification, the contract number, the district, division, or office of TxDOT that is principally responsible for the contract, the name of the relevant Consultant employee, the expected role of the Consultant employee on the project, the name of the TxDOT employee who is a relative of the Consultant employee, the title of the TxDOT employee, the work location of the TxDOT employee, and the nature of the relationship.

**C.** By executing this contract, the Consultant is certifying that the Consultant does not have any knowledge that any of its employees or of any employees of a subcontractor who are expected to work under this contract have a relative that is employed by TxDOT unless the Consultant has notified TxDOT of each instance as required by subsection (b).

**D.** If the Consultant learns at any time that any of its employees or that any of the employees of a subcontractor who are performing work under this contract have a relative who is employed by TxDOT, the Consultant shall notify TxDOT under subsection (b) of each instance within thirty days of obtaining that knowledge.

**E.** If the Consultant violates this section, TxDOT may terminate the contract immediately for cause, may impose any sanction permitted by law, and may pursue any other remedy permitted by law.

## **ARTICLE 22. LOBBYING CERTIFICATION/DISCLOSURE**

The undersigned certifies to the best of his or her knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- (2) If any funds other than federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### **ARTICLE 23. CIVIL RIGHTS COMPLIANCE**

- (1) **Compliance with Regulations:** The Consultant shall comply with the regulations of the Department of Transportation, Title 49, Code of Federal Regulations, Parts 21, 25, 27 and 28 as they relate to nondiscrimination; also Executive Order 11246 titled Equal Employment Opportunity as amended by Executive Order 11375.
- (2) **Nondiscrimination:** The Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
- (3) **Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
- (4) **Information and Reports:** The Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the Texas Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Texas Department of Transportation or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Texas Department of Transportation shall

impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the Consultant under the contract until the Consultant complies and/or
- (b) cancellation, termination, or suspension of the contract, in whole or in part.

**(6) Incorporation of Provisions:** The Consultant shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the Texas Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event an Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the Texas Department of Transportation to enter into such litigation to protect the interests of the State; and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

#### **ARTICLE 24. CHILD SUPPORT CERTIFICATION**

Under Section 231.006, Texas Family Code, the Consultant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. If the above certification is shown to be false, the Consultant is liable to the state for attorney's fees, the cost necessary to complete the contract, including the cost of advertising and awarding a second contract, and any other damages provided by law or the contract. A child support obligor or business entity ineligible to receive payments because of a payment delinquency of more than thirty (30) days remains ineligible until: all arrearages have been paid; the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency; or the court of continuing jurisdiction over the child support order has granted the obligor an exemption from Subsection (a) of Section 231.006, Texas Family Code, as part of a court-supervised effort to improve earnings and child support payments.

#### **ARTICLE 25. DEBARMENT CERTIFICATIONS**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Consultant certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

#### **ARTICLE 26. DISPUTES**

**Disputes Not Related to Contract Services.** The Consultant shall be responsible for the settlement of all contractual and administrative issues arising out of any procurement made by the Consultant in support of the services authorized herein.

#### **ARTICLE 27. SUCCESSORS AND ASSIGNS**

The Consultant and the State do each hereby bind themselves, their successors, executors, administrators and assigns to each other party of this agreement and to the successors, executors,



administrators and assigns of such other party in respect to all covenants of this contract. The Consultant shall not assign, subcontract or transfer its interest in this contract without the prior written consent of the State.

**ARTICLE 28. SEVERABILITY**

In the event any one or more of the provisions contained in this contract shall for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**ARTICLE 29. PRIOR CONTRACTS SUPERSEDED**

This contract constitutes the sole agreement of the parties hereto for the services authorized herein and supersedes any prior understandings or written or oral contracts between the parties respecting the subject matter defined herein.

**ARTICLE 30. OFFICE OF MANAGEMENT AND BUDGET AUDIT REQUIREMENTS**

The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

## APPENDIX A – CONTRACT TEMPLATE

### ATTACHMENT H INSTRUCTIONS

The following pages contain six (6) different Exhibits to Attachment H covering participation of HUB and DBE providers and subproviders. The correct form to use is determined by whether the contract is funded in whole or part by federal funds or state funds, and whether or not a HUB/DBE goal has been set for the contract. The following pages contain separate reporting forms for federally funded DBE participation and state funded HUB participation. **Select the forms that are appropriate for your contract and delete the rest along with these instructions from the final contract.**

<b>Federally Funded Contracts</b>
<p><b>Attachment H-FG, Disadvantaged Business Enterprise (DBE) for Federal Funded Professional or Technical Services Contracts</b></p> <ul style="list-style-type: none"><li>◆ This provision is applicable to federally funded contracts with assigned DBE goals.</li><li>◆ The appropriate forms for this provision are Exhibits H-1, H-2, H-3 and H-4 and H-5. A copy of each form is required in the contract.</li><li>◆ Note: if the contract requires work authorizations, a completed Exhibit H-2 will be required with each Work Authorization, if a DBE will be performing work. If a non-DBE subprovider is used, insert N/A (not applicable) on the line provided on the H-2 form.</li><li>◆ Exhibit H-3 must be submitted monthly to the Business Opportunity Programs Office at (512) 486-5519 (fax number) even if there is no invoice being submitted or subcontracting to report.</li><li>◆ Exhibit H-3 must be submitted with each invoice to the appropriate agency contact for payment.</li></ul>
<p><b>Attachment H-FN, Disadvantaged Business Enterprise (DBE) for Race Neutral Professional or Technical Services Contracts</b></p> <ul style="list-style-type: none"><li>◆ This provision is applicable to federally funded contracts with no DBE goal assigned.</li><li>◆ If no subcontractors will be used, the appropriate forms for this provision are Exhibits H-3 and H-5. A copy of each form is required in the contract.</li><li>◆ Note: If subcontractors are used, the required forms would be Exhibits H-1, H-2, H-3, H-4 and H-5. A copy of each form is required in the contract.</li><li>◆ Exhibit H-3 must be submitted monthly to the Business Opportunity Programs Office at (512) 486-5519 (fax number) even if there is no invoice being submitted or subcontracting to report.</li><li>◆ Exhibit H-3 must be submitted with each invoice to the appropriate agency contact for payment.</li></ul>
<p><b>Exhibit H-3, Texas Department of Transportation Subprovider Monitoring System for Federally Funded Contracts. This is a Monthly Progress Assessment Report.</b></p> <ul style="list-style-type: none"><li>◆ Required for all federally funded contracts.</li><li>◆ This form is required monthly and must be submitted to the Business Opportunity Programs Office at (512) 486-5519 (fax number) even if there is no invoice being submitted or subcontracting to report.</li><li>◆ This form must be submitted with each invoice to the appropriate agency contact for payment.</li></ul>
<p><b>Exhibit H-5, Federal Subprovider and Supplier Information</b> Required for all federally funded contracts.</p>

## **State Funded Contracts**

### **Attachment H-SG, Historically Underutilized Business (HUB) for State Funded Professional or Technical Services Contracts, State of Texas HUB Subcontracting Plan Required**

- ◆ This provision is applicable to state funded contracts with a HUB goal assigned.
- ◆ The appropriate reporting forms for this provision are Exhibits H-1, H-2, H-4, and H-6 (Texas Building and Procurement Commission [TBPC] State of Texas HUB Subcontracting Plan (HSP), Prime Contractor Assessment Report). A copy of each form is required in the contract.
- ◆ Note: if the contract requires work authorizations, a completed Exhibit H-2 will be required with each Work Authorization, if a HUB will be performing work. If a non-HUB subprovider is used, insert N/A (not applicable) on the line provided on the H-2 form.
- ◆ Exhibit H-6 will be required monthly and must be submitted to the Business Opportunity Programs Office at (512) 486-5519 (fax number) even if there is no invoice being submitted or subcontracting to report.
- ◆ Exhibit H-6 must be submitted with each invoice to the appropriate agency contact for payment.

### **Attachment H-SN, Historically Underutilized Business (HUB) Participation for State Funded Professional or Technical Services Contracts, No State of Texas HUB Subcontracting Plan Required**

- ◆ This provision is applicable to state funded contracts with no HUB subcontracting plan required and no HUB goal assigned. If no subcontractors are used, the appropriate forms for this provision are Exhibits H-1 and H-6.
- ◆ Note: If subcontractors are used, the required forms would be Exhibits H-1, H-2, H-4 and H-6. A copy of each form is required in the contract.
- ◆ Exhibit H-6 must be submitted monthly to the Business Opportunity Programs Office at (512) 486-5519 (fax number) even though there is no invoice being submitted or subcontracting to report.
- ◆ Exhibit H-6 must be submitted with each invoice to the appropriate agency contact for payment.

### **Exhibit H-6, HUB Subcontracting Plan (HSP) Prime Contractor Professional Assessment Report. This is a Monthly Progress Assessment Report. This is a Texas Building and Procurement Commission (TBPC) form and cannot be altered.**

- ◆ Required for all State funded contracts.
- ◆ Exhibit H-6 is required monthly and should be submitted to the Business Opportunity Programs Office through a fax to (512) 486-5519. This is a requirement even though there is no invoice being submitted or subcontracting to report.
- ◆ A copy of Exhibit H-6 must be submitted when supplying an invoice to the appropriate agency contact for payment.
- ◆ The "Object Code" section(s) on this form should remain blank.

## APPENDIX A – CONTRACT TEMPLATE

### ATTACHMENT H-FG

#### **Disadvantaged Business Enterprise (DBE) for Federal-Aid Professional or Technical Services Contracts**

- 1) **PURPOSE.** The purpose of this attachment is to carry out the U.S. Department of Transportation’s (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by minority or socially and economically disadvantaged individuals can compete fairly for DOT assisted contracts.
- 2) **POLICY.** It is the policy of the DOT and the Texas Department of Transportation (henceforth the “Department”) that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26, Subpart A and the Department’s Disadvantaged Business Enterprise Program, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the Disadvantaged Business Enterprise requirements of 49 CFR Part 26, and the Department’s Disadvantaged Business Enterprise Program, apply to this contract as follows.
  - a. The Provider will offer Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, Subpart A and the Department’s Disadvantaged Business Enterprise Program, the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds. In this regard, the Provider shall make a good faith effort to meet the Disadvantaged Business Enterprise goal for this contract.
  - b. The Provider and any subprovider(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Provider shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. The requirements of this Special Provision shall be physically included in any subcontract.
  - c. When submitting the contract for execution by the Department, the Provider must complete and furnish Exhibit H-1 which lists the commitments made to certified DBE subprovider(s) that are to meet the contract goal and Exhibit H-2 which is a commitment agreement(s) containing the original signatures of the Provider and the proposed DBE(s). For Work Authorization Contracts, Exhibit H-1 is required at the time of submitting the contract for execution by the Department. Exhibit H-2 will be required to be completed and attached with each work authorization number that is submitted for execution, if the DBE will be performing work. Any substitutions or changes to the DBE subcontract amount shall be subject to prior written approval by the Department. If non-DBE subprovider is performing work, insert N/A (not applicable) on the line provided.
  - d. Failure to carry out the requirements set forth above shall constitute a material breach of this contract and may result; in termination of the contract by the Department; in a deduction of the amount of DBE goal not accomplished by DBEs from the money due or to become due to the Provider, not as a penalty but as liquidated damages to the Department; or such other remedy or remedies as the Department deems appropriate.
- 3) **DEFINITIONS.**
  - a. “Department” means the Texas Department of Transportation (TxDOT).
  - b. “Federal-Aid Contract” is any contract between the Texas Department of Transportation and a Provider which is paid for in whole or in part with U. S. Department of Transportation (DOT) financial assistance.
  - c. “Provider” is any individual or company that provides professional or technical services.
  - d. “DBE Joint Venture” means an association a DBE firm and one (1) or more other firm(s) to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture are commensurate with its ownership interest.
  - e. “Disadvantaged Business Enterprise (DBE)” means a firm certified as such by the Department in accordance with 49 CFR Part 26.
  - f. “Good Faith Effort” means efforts to achieve a DBE goal or other requirement of this Special Provision which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

- g. "Race-neutral DBE Participation" means any participation by a DBE through customary competitive procurement procedures.
- 4) **PERCENTAGE GOAL.** The goal for Disadvantaged Business Enterprise (DBE) participation in the work to be performed under this contract is \_\_\_\_\_% of the contract amount.
- 5) **PROVIDER'S RESPONSIBILITIES.** A DBE prime may receive credit toward the DBE goal for work performed by his-her own forces and work subcontracted to DBEs. A DBE prime must make a good faith effort to meet the goals. In the event a DBE prime subcontracts to a non-DBE, that information must be reported to the Department.
- a. A Provider who cannot meet the contract goal, in whole or in part, shall document the "Good Faith Efforts" taken to obtain DBE participation. The following is a list of the types of actions that may be considered as good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
- (1) Soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the work of the contract. The solicitation must be done within sufficient time to allow the DBEs to respond to it. Appropriate steps must be taken to follow up initial solicitations to determine, with certainty, if the DBEs are interested.
  - (2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Provider might otherwise prefer to perform the work items with its own forces.
  - (3) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
  - (4) Negotiating in good faith with interested DBEs by making a portion of the work available to DBE subproviders and suppliers and selecting those portions of the work or material needs consistent with the available DBE subproviders and suppliers.
  - (5) The ability or desire of the Provider to perform the work of a contract with its own organization does not relieve the Provider's responsibility to make a good faith effort. Additional costs involved in finding and using DBEs is not in itself sufficient reason for a Provider's failure to meet the contract DBE goal, as long as such costs are reasonable. Providers are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
  - (6) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
  - (7) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Provider.
  - (8) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
  - (9) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
  - (10) If the Department's Director of the Business Opportunity Programs Office determines that the Provider has failed to meet the good faith effort requirements, the Provider will be given an opportunity for reconsideration by the Director of the appropriate Division.

NOTE: The Provider must not cause or allow subproviders to bid their services.

- b. The preceding information shall be submitted directly to the Chair of the Consultant Selection Team responsible for the project.
- c. The Provider shall make all reasonable efforts to honor commitments to DBE subproviders named in the commitment submitted under Section 2.c. of this attachment. Where the Provider terminates or removes a DBE subprovider named in the initial commitment, the Provider must demonstrate on a case-by-case basis to the satisfaction of the department that the originally designated DBE was not able or willing to perform.
- d. The Provider shall make a good faith effort to replace a DBE subprovider that is unable or unwilling to perform successfully with another DBE, to the extent needed to meet the contract goal. The Provider shall

submit a completed Exhibit H-2 Form for the substitute firm(s). Any substitution of DBEs shall be subject to prior written approval by the Department. The Department may request a statement from the firm being replaced concerning its replacement prior to approving the substitution.

- e. The Provider shall designate a DBE liaison officer who will administer the DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs.
- f. Providers are encouraged to investigate the services offered by banks owned and controlled by disadvantaged individuals and to make use of these banks where feasible.

6) **ELIGIBILITY OF DBEs.**

- a. The Department certifies the eligibility of DBEs, DBE joint ventures and DBE truck-owner operators to perform DBE subcontract work on DOT financially assisted contracts.
- b. This certification will be accomplished through the use of the appropriate certification schedule contained in this Department's DBE program.
- c. The Department publishes a Directory of Disadvantaged Business Enterprises containing the names of firms that have been certified to be eligible to participate as DBEs on DOT financially assisted contracts. The directory is available from the Department's Business Opportunity Programs Office. The Texas Unified Certification Program DBE Directory can be found on the Internet at:  
[http://www.dot.state.tx.us/services/business\\_opportunity\\_programs/tucp\\_dbe\\_directory.htm](http://www.dot.state.tx.us/services/business_opportunity_programs/tucp_dbe_directory.htm) .
- d. Only DBE firms certified at the time the contract is signed or at the time the commitments are submitted are eligible to be used in the information furnished by the Provider as required under Section 2.c. and 5.d. above. For purposes of the DBE goal on this contract, DBEs will only be allowed to perform work in the categories of work for which they were certified.

7) **DETERMINATION OF DBE PARTICIPATION.**

A firm must be an eligible DBE and perform a professional or technical function relating to the project. Once a firm is determined to be an eligible DBE, the total amount paid to the DBE for work performed with his/her own forces is counted toward the DBE goal. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the subprovider is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

A DBE subprovider may subcontract no more than 70% of a federal aid contract. The DBE subprovider shall perform not less than 30% of the value of the contract work with assistance of employees employed and paid directly by the DBE; and equipment owned or rented directly by the DBE. DBE subproviders must perform a commercially useful function required in the contract in order for payments to be credited toward meeting the contract goal. A DBE performs a commercially useful function when it is responsible for executing the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself . When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption.

A Provider may count toward its DBE goal a portion of the total value of the contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the DBE.

Proof of payment, such as copies of canceled checks, properly identifying the Department's contract number or project number may be required to substantiate the payment, as deemed necessary by the Department.

8) **RECORDS AND REPORTS.**

- a. After submission of the initial commitment reported (Exhibit H-1), required by Section 2.c. of this attachment, the Provider shall submit Monthly Progress Assessment Reports (Exhibit H-3), after contract work begins, on DBE involvement to meet the goal and for race-neutral participation. One copy of each report is to be sent to the Department's Business Opportunity Programs Office monthly, in addition one copy is to be submitted with the Provider's invoice. **Only actual payments made to subproviders are to be reported.** These reports will be required until all subprovider activity is completed. The Department may

verify the amounts being reported as paid to DBEs by requesting copies of canceled checks paid to DBEs on a random basis.

- b. DBE subproviders should be identified on the report by name, type of work being performed, the amount of actual payment made to each during the billing period, cumulative payment amount and percentage of the total contract amount. These reports will be due within fifteen (15) days after the end of a calendar month. Reports are required even when no DBE activity has occurred in a billing period.
  - c. All such records must be retained for a period of four (4) years following final payment or until any investigation, audit, examination, or other review undertaken during the four (4) years is completed, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT.
  - d. Prior to receiving final payment, the Provider shall submit a Final Report (Exhibit H-4), detailing the DBE payments. The Final Report is to be sent to the Department's Business Opportunity Programs Office and one (1) copy to be submitted with the Provider's final invoice. If the DBE goal requirement is not met, documentation of the good faith efforts made to meet the goal must be submitted with the Final Report.
- 9) **COMPLIANCE OF PROVIDER.** To ensure that DBE requirements of this DOT-assisted contract are complied with, the Department will monitor the Provider's efforts to involve DBEs during the performance of this contract. This will be accomplished by a review of Monthly Progress Assessment Reports (Exhibit H-3), submitted to the Department's Business Opportunity Programs Office by the Provider indicating his progress in achieving the DBE contract goal, and by compliance reviews conducted by the Department. The Monthly Progress Assessment Report (Exhibit H-3) must be submitted at a minimum monthly to the Business Opportunity Programs Office, in addition to with each invoice to the appropriate agency contact.

The Provider shall receive credit toward the DBE goal based on actual payments to the DBE subproviders with the following exceptions and only if the arrangement is consistent with standard industry practice. The Provider shall contact the Department if he/she withholds or reduces payment to any DBE subprovider.

- (1) A DBE firm is paid but does not assume contractual responsibility for performing the service;
- (2) A DBE firm does not perform a commercially useful function;
- (3) Payment is made to a DBE that cannot be linked by an invoice or canceled check to the contract under which credit is claimed;
- (4) Payment is made to a broker or a firm with a brokering-type operation;
- (5) Partial credit is allowed, in the amount of the fee or commission provided the fee or commission does not exceed that customarily allowed for similar services, for 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.

A Provider's failure to comply with the requirements of this Special Provision shall constitute a material breach of this contract. In such a case, the Department reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Provider, not as a penalty but as liquidated damages to the Department; or such other remedy or remedies as the Department deems appropriate.

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## APPENDIX A – CONTRACT TEMPLATE

### ATTACHMENT H-FN

#### **Disadvantaged Business Enterprise (DBE) for Race-Neutral Professional or Technical Services Contracts**

It is the policy of the U. S. Department of Transportation (DOT) that DBEs as defined in 49 CFR Part 26, Subpart A, be given the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds and that a maximum feasible portion of the Department's overall DBE goal be met using race-neutral means. Consequently, if there is no DBE goal, the DBE requirements of 49 CFR Part 26, apply to this contract as follows:

The Provider will offer DBEs as defined in 49 CFR Part 26, Subpart A, the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with federal funds. Race-Neutral DBE participation on projects with no DBE goal should be reported on the Exhibit H-3 Form. Payments to DBEs reported on Exhibit H-3 are subject to the following requirements:

#### **DETERMINATION OF DBE PARTICIPATION.**

A firm must be an eligible DBE and perform a professional or technical function relating to the project. Once a firm is determined to be an eligible DBE, the total amount paid to the DBE for work performed with his/her own forces must be reported as race-neutral DBE participation. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work should not be reported unless the subcontractor is itself a DBE.

A DBE subprovider may subcontract no more than 70% of a federal aid contract. The DBE subprovider shall perform not less than 30% of the value of the contract work with assistance of employees employed and paid directly by the DBE; and equipment owned or rented directly by the DBE. DBE subproviders must perform a commercially useful function required in the contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption.

A Provider must report a portion of the total value of the contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the DBE.

Proof of payment, such as copies of canceled checks, properly identifying the Department's contract number or project number may be required to substantiate the payment, as deemed necessary by the Department.

The Provider and any subprovider shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts. These requirements shall be physically included in any subcontract.

Failure to carry out the requirements set forth above shall constitute a material breach of this contract and, may result in termination of the contract by the Department or other such remedy as the Department deems appropriate.

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## APPENDIX A – CONTRACT TEMPLATE

### ATTACHMENT H-SG

#### Historically Underutilized Business for State Funded Professional or Technical Services Contracts HUB Goal Assigned-State of Texas Subcontracting Plan Required

- 1) **POLICY.** It is the policy of the Department to ensure that HUBs shall have an equal opportunity to participate in the performance of contracts; to create a level playing field on which HUBs can compete fairly for contracts and subcontracts; to ensure nondiscrimination on the basis of race, color, national origin, or gender in the award and administration of contracts; to help remove barriers to the participation of HUBs in department contracts; and, to assist in the development of firms that can compete successfully in the market place outside the HUB program. Consequently, the HUB requirements of the Department’s HUB Program apply to this contract as follows:
- (1) The Provider agrees to insure that they shall take all necessary and reasonable steps to meet the HUB goal for this contract.
- The Provider and any subprovider(s) shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts.
  - When submitting the contract for execution by the Department, the Provider must complete and furnish Exhibit H-1 which lists the commitments made to all subproviders, including certified HUB subprovider(s) that are to meet the contract goal, and Exhibit H-2 which is a commitment agreement(s) containing the original signatures of the Provider and HUB(s) that were indicated in the original submitted State of Texas HUB Subcontracting Plan (HSP) in Section 8. For Work Authorization Contracts, Exhibit H-1 is required at the time of submitting the contract for execution by the Department. Exhibit H-2 will be required to be completed and attach with each work authorization number that is submitted for execution, if the HUB will be performing work. If non-HUB subprovider is performing work, insert N/A (not applicable) on the line provided. A prime must allow a HUB maximum opportunity to perform the work by not creating unnecessary barriers or artificial requirements for the purpose of hindering a HUB’s performance under the contract. Any substitutions or changes to the HSP, in addition to any changes to the original contract award, shall be subject to prior written approval by the Department. If there are any changes to the subproviders during the contract term, the Provider must furnish a Revised Exhibit H-1 showing the revised commitment of all subproviders.
  - Failure to carry out the requirements set forth above shall constitute a breach of contract and may result in a letter of reprimand; in termination of the contract by the Department; in a deduction from money due or to become due to the Provider, not as a penalty but as damages to the Department’s HUB Program; or such other remedy or remedies as the Department deems appropriate.
- 2) **DEFINITIONS.**
- “Department” means the Texas Department of Transportation (TxDOT).
  - “Contract” is the agreement between the Texas Department of Transportation and a Provider.
  - “Provider” is any individual or company that provides professional or technical services.
  - “Joint Venture” means an association of two or more businesses to carry out a single business enterprise for profit which combines their property, capital, efforts, skills and knowledge.
  - “Historically Underutilized Business (HUB)” means any business so certified by the Texas Building and Procurement Commission.
- 3) **PERCENTAGE GOAL.** The goal for Historically Underutilized Business (HUB) participation in the work to be performed under this contract is \_\_\_\_\_% of the contract amount.
- 4) **PROVIDER’S RESPONSIBILITIES.** A Provider (HUB or non-HUB) must perform a minimum of 30% of the contract with its employees (as defined by the Internal Revenue Service). The contract is subject to the HSP Good Faith Effort Requirements.
- A Provider who cannot meet the contract goal, in whole or in part, should have documented any of the following and other efforts made as a “Good Faith Effort” to obtain HUB participation.
    - Whether the prime advertised in general circulation, trade association, and/or minority/women focus media concerning subcontracting opportunities.

- (2) Whether the prime provided written notice to at least three (3) qualified HUBs allowing sufficient time for HUBs to participate effectively.
- (3) Whether the prime documented reasons for rejection or met with the rejected HUB to discuss the rejection.
- (4) Whether the prime provided qualified HUBs with adequate information about bonding, insurance, the plans, the specifications, scope of work and requirements of the contract.
- (5) Whether the prime negotiated in good faith with qualified HUBs, not rejecting qualified HUBs who are also the lowest responsive bidder.
- (6) Whether the prime used the services of available minority and women community organizations, contractor's groups, local, state, and federal business assistance offices, and other organizations that provide support services to HUBs.

NOTE: The Provider must not cause or allow subproviders to bid their services.

- b. The preceding information shall be submitted directly to the Chair of the Consultant Selection Team responsible for the contract.
- c. The Provider shall make all reasonable efforts to honor commitments to HUB subproviders named in the original HSP in Section 8. Where the Provider terminates or removes a HUB subprovider named in the initial commitment, the Provider must demonstrate on a case-by-case basis to the satisfaction of the Department that the originally designated HUB was not able or willing to perform. The term "unable" includes, but is not limited to, a firm that does not have the resources and expertise to finish the work and/or a firm that substantially increases the time to complete the project.
- d. The Provider shall make all reasonable efforts to replace a HUB subprovider that is unable or unwilling to perform successfully with another HUB and must meet the HSP Good Faith Effort Requirements. Any substitution of HUBs shall be subject to prior written approval by the Department. The Department will request a statement from the firm being replaced concerning its replacement prior to approving the substitution. If there are any changes to the subproviders during the contract term, the Provider must furnish a Revised Exhibit H-1 showing the revised commitment of all subproviders.
- e. The Provider shall designate a HUB liaison officer who will administer the Provider's HUB program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with HUBs.

5) **ELIGIBILITY OF HUBs.**

- a. The Texas Building and Procurement Commission (TBPC) certifies the eligibility of HUBs.
- b. The TBPC maintains a directory of certified HUBs. The HUB Directory is available through the Department's Business Opportunity Programs Office and through the Internet at the TBPC's Website (<http://www2.tbpc.state.tx.us/cmbl/hubonly.html> ).
- c. Only HUB firms certified and identified in specific categories and classes at the time the contract is signed or at the time the commitments are submitted are eligible to be used in the information furnished by the Provider as required under Section 2.c. above.
- d. If during the course of the contract it becomes necessary to substitute another HUB firm for a firm named in the information submitted by the Provider as required by Section 2.c. above, then only certified HUBs will be considered eligible as a substituted firm. The Provider's written request for substitutions of HUB subproviders shall be accompanied by a detailed explanation, which should substantiate the need for a substitution. The Department will verify the explanation with the HUB firm being replaced before giving approval of the substitution. If there are any changes to the subproviders during the contract term, the Provider must furnish a Revised Exhibit H-1 showing the revised commitment of all subproviders.
- e. The 73rd Legislature passed Texas Civil Statutes, Article 601i, relative to contracts between governmental entities and certain disadvantaged businesses. The Statute provides for civil penalties for persons who falsely claim disadvantaged business status and for the general contractor who knowingly contracts with a person claiming to be a disadvantaged business.

6) **DETERMINATION OF HUB PARTICIPATION.**

A firm must be an eligible HUB and perform a professional or technical function relating to the project. Proof of payment, such as copies of canceled checks, properly identifying the Department's contract number or project number may be required to substantiate the payment, as deemed necessary by the Department. A HUB subprovider, with prior written approval from the Department, may subcontract 70% of a contract as long as the

HUB subprovider performs a commercially useful function. All subcontracts shall include the provisions required in the subcontract and shall be approved as to form, in writing, by the Department prior to work being performed under the subcontract. A HUB performs a commercially useful function when it is responsible for a distinct element of the work of a contract; and actually manages, supervises, and controls the materials, equipment, employees, and all other business obligations attendant to the satisfactory completion of contracted work. If the subcontractor uses an employee leasing firm for the purpose of providing salary and benefit administration, the employees must in all other respects be supervised and perform on the job as if they were employees of the subcontractor.

7) **COMPLIANCE OF PROVIDER.**

- 8) To ensure that HUB requirements of this contract are complied with, the Department will monitor the Provider's efforts to involve HUBs during the performance of this contract. This will be accomplished by a review of the monthly State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report (Exhibit H-6) submitted to the Business Opportunity Programs Office by the Provider indicating his/her progress in achieving the HUB contract goal, and by compliance reviews conducted by the Department. The State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report (Exhibit H-6) must be submitted at a minimum monthly to the Business Opportunity Programs Office, in addition to with each invoice to the appropriate agency contact.

The Provider shall receive credit toward the HUB goal based on actual payments to the HUB subproviders with the following exceptions and only if the arrangement is consistent with standard industry practice.

- (1) Payments to brokers or firms with a brokering type operation will be credited only for the amount of the commission;
- (2) Payments to a joint venture will not be credited unless all partners in the joint venture are HUBs;
- (3) Payments to a HUB subprovider who has subcontracted a portion of the work required under the subcontract will not be credited unless the HUB performs a commercially useful function;
- (4) Payments to a HUB will not be credited if the firm does not provide the goods or perform the services paid for;
- (5) Payments made to a HUB that cannot be linked by an invoice or canceled check to the contract under which credit is claimed will not be credited.

A Provider must not withhold or reduce payments to any HUB without a reason that is accepted as standard industry practice. A HUB prime or subprovider must comply with the terms of the contract or subcontract. Work products, services, and commodities must meet contract specifications whether performed by a prime or subprovider.

A Provider's failure to meet the HUB goal and failure to demonstrate to the Department's satisfaction sufficient "Good Faith Effort" on his/her part to obtain HUB participation shall constitute a breach of contract. In such a case, the Department reserves the right to issue a letter of reprimand; to deduct the amount of HUB goal not accomplished by HUBs from the money due or to become due the Provider, not as a penalty but as damages to the Department's HUB program; or such other remedy or remedies as the Department deems appropriate.

9) **RECORDS AND REPORTS.**

- a. After submission of the initial commitment (Exhibit H-1), required by Section 2.c. of this attachment, the Provider shall submit State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report (Exhibit H-6) at a minimum monthly, after contract work begins, on subcontracting involvement. One copy of the State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report (Exhibit H-6) is to be sent to the Business Opportunity Programs Office of the Department monthly. In addition, the State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report (Exhibit H-6) must be submitted with the Provider's invoice. All payments made to subproviders are to be reported. **These State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Reports are required monthly even during months when no payments to subproviders have been made.** The State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report will be

required until all work on the contract has been completed. The Department may verify the amounts being reported as paid to HUBs by requesting copies of canceled checks paid to HUBs on a random basis.

- b. Subproviders should be identified on the State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report (Exhibit H-6) by name, the amount of actual payment made to each during the billing period, cumulative payment amount and percentage of the total contract amount.
- c. All such records must be retained for a period of four years following final payment, or until an investigation, audit, examination, or other review undertaken during the four years, and shall be available at reasonable times and places for inspection by authorized representatives of the Department and other agencies.
- d. Prior to receiving final payment, the Provider shall submit a Final Report (Exhibit H-4), detailing the subprovider payments to the Business Opportunity Programs Office of the Department, and one copy to the Department with the Provider's final invoice.

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# APPENDIX A – CONTRACT TEMPLATE

## ATTACHMENT H-SN

### **Historically Underutilized Business (HUB) for State Funded Professional or Technical Services Contracts No State of Texas HUB Subcontracting Plan Required**

#### **POLICY**

It is the policy of the Department to ensure that HUBs shall have an equal opportunity to participate in the performance of contracts; to create a level playing field on which HUBs can compete fairly for contracts and subcontracts; to ensure nondiscrimination on the basis of race, color, national origin, or gender in the award and administration of contracts; to help remove barriers to the participation of HUBs in department contracts; and, to assist in the development of firms that can compete successfully in the market place outside the HUB program.

Subcontracting participation on projects with no HUB Subcontracting Plan Required should be reported on the State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report, the Exhibit H-6 Form. Payment to non-HUBs subproviders must be reported on Exhibit H-6. Payments to HUBs reported on Exhibit H-6 are subject to the following requirements:

#### **DETERMINATION OF HUB PARTICIPATION.**

A firm must be an eligible HUB and perform a professional or technical function relating to the project. Once a firm is determined to be an eligible HUB, the total amount paid to the HUB should be reported as race-neutral HUB participation.

A HUB subprovider may subcontract no more than 70% of a contract. The HUB subprovider shall perform not less than 30% of the value of the contract work with assistance of employees employed and paid directly by the HUB; and equipment owned or rented directly by the HUB.

A provider must report a portion of the total value of the contract amount paid to a HUB joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the HUB.

Proof of payment, such as copies of canceled checks, properly identifying the Department's contract number or project number may be required to substantiate the payment, as deemed necessary by the Department.

The provider and any subprovider shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts. These requirements shall be physically included in any subcontract.

#### **REQUIRED FORMS.**

If subcontractors are used under the contract that has no stated HUB goal, Exhibits H-1, H-2, H-4 and H-6 are required. Exhibits H-1 and H-6 are required if no subcontractors are being used to perform work under this contract.

State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report (Exhibit H-6) **is required monthly even when no subcontracting activity has occurred.** In addition, State of Texas HUB Subcontracting Plan Prime Contractor Progress Assessment Report (Exhibit H-6) should be submitted with the Provider's invoice.

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## EXHIBIT H-1

### Texas Department of Transportation Subprovider Monitoring System Commitment Worksheet

Contract #: \_\_\_\_\_ Assigned Goal: \_\_\_\_\_% Federally Funded \_\_\_\_\_ State Funded \_\_\_\_\_

Prime Provider: \_\_\_\_\_ Total Contract Amount: \_\_\_\_\_

Prime Provider Info: DBE \_\_\_ HUB \_\_\_ Both \_\_\_

Vendor ID #: \_\_\_\_\_ DBE/HUB Expiration Date: \_\_\_\_\_

(First 11 Digits Only)

*If no subproviders are used on this contract, please indicate by placing "N/A" on the 1<sup>st</sup> line under Subproviders.*

Subprovider(s) (List All)	Type of Work	Vendor ID # (First 11 Digits Only)	D=DBE H=HUB	Expiration Date	\$ Amount or % of Work *
<b>Subprovider(s) Contract or % of Work* Totals</b>					

\*For Work Authorization Contracts, indicate the % of work to be performed by each subprovider.

Total DBE or HUB Commitment Dollars \$ \_\_\_\_\_

Total DBE or HUB Commitment Percentages of Contract \_\_\_\_\_%

(Commitment Dollars and Percentages are for Subproviders only)

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## EXHIBIT H-2

### Texas Department of Transportation Subprovider Monitoring System Commitment Agreement

This commitment agreement is subject to the award and receipt of a signed contract from the Texas Department of Transportation (TxDOT). *NOTE: Exhibit H-2 is required to be attached to each contract that does not include work authorizations. Exhibit H-2 is required to be attached with each work authorization. Exhibit H-2 is also required to be attached to each supplemental work authorization. If DBE/HUB Subproviders are used, the form must be completed and signed. If no DBE/HUB Subproviders are used, indicate with "N/A" on this line: \_\_\_\_\_ and attach with the work authorization or supplemental work authorization.*

Contract #: \_\_\_\_\_ Assigned Goal: \_\_\_\_\_ % Prime Provider: \_\_\_\_\_

Work Authorization (WA)#: \_\_\_\_\_ WA Amount: \_\_\_\_\_ Date: \_\_\_\_\_

Supplemental Work Authorization (SWA) #: \_\_\_\_\_ to WA #: \_\_\_\_\_ SWA Amount: \_\_\_\_\_

Revised WA Amount: \_\_\_\_\_

Description of Work <i>(List by category of work or task description. Attach additional pages, if necessary.)</i>	Dollar Amount <i>(For each category of work or task description shown.)</i>
<b>Total Commitment Amount</b> <i>(Including all additional pages.)</i>	\$ _____

**IMPORTANT:** The signatures of the prime and the DBE/HUB and Second Tier Subprovider, if any (both DBE and Non-DBE) and the total commitment amount must always be on the same page.

<b>Provider Name:</b> <b>Address:</b> <b>Phone # &amp; Fax #:</b> <b>Email:</b>	<b>Name:</b> _____ <i>(Please Print)</i>  <b>Title:</b> _____  <hr style="width: 80%; margin-left: 0;"/> <div style="display: flex; justify-content: space-between; width: 80%; margin-left: 0;"> <span><b>Signature</b></span> <span><b>Date</b></span> </div>
<b>DBE/HUB Sub Provider</b> <b>Subprovider Name:</b> <b>VID Number:</b> <b>Address:</b> <b>Phone # &amp; Fax #:</b> <b>Email:</b>	<b>Name:</b> _____ <i>(Please Print)</i>  <b>Title:</b> _____  <hr style="width: 80%; margin-left: 0;"/> <div style="display: flex; justify-content: space-between; width: 80%; margin-left: 0;"> <span><b>Signature</b></span> <span><b>Date</b></span> </div>
<b>Second Tier Sub Provider</b> <b>Subprovider Name:</b> <b>VID Number:</b> <b>Address:</b> <b>Phone # &amp; Fax #:</b> <b>Email:</b>	<b>Name:</b> _____ <i>(Please Print)</i>  <b>Title:</b> _____  <hr style="width: 80%; margin-left: 0;"/> <div style="display: flex; justify-content: space-between; width: 80%; margin-left: 0;"> <span><b>Signature</b></span> <span><b>Date</b></span> </div>
<b>VID Number is the Vendor Identification Number issued by the Comptroller. If a firm does not have a VID Number, please enter the owner's Social Security or their Federal Employee Identification Number (if incorporated).</b>	

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### EXHIBIT H-3

#### Texas Department of Transportation Subprovider Monitoring System for Federally Funded Contracts Progress Assessment Report for month of (Mo./Yr.) \_\_\_\_\_ / \_\_\_\_\_

Contract #: \_\_\_\_\_ Original Contract Amount: \_\_\_\_\_

Date of Execution: \_\_\_\_\_ Approved Supplemental Agreements: \_\_\_\_\_

Prime Provider: \_\_\_\_\_ Total Contract Amount: \_\_\_\_\_

Work Authorization No. \_\_\_\_\_ Work Authorization Amount: \_\_\_\_\_

*If no subproviders are used on this contract, please indicate by placing "N/A" on the 1<sup>st</sup> line under Subproviders.*

DBE	All Subproviders	Category of Work	Total Subprovider Amount	% Total Contract Amount	Amount Paid This Period	Amount Paid To Date	Subcontract Balance Remaining

Fill out Progress Assessment Report with each estimate/invoice submitted, *for all subcontracts*, and forward as follows:  
**1 Copy with Invoice - Contract Manager/Managing Office**  
**1 Copy – TxDOT, BOP Office, 125 E. 11th, Austin, TX 78701, 512-486-5500, toll free 866-480-2518, or Fax to 512-486-5519**

I hereby certify that the above is a true and correct statement of the amounts paid to the firms listed above.

Print Name - Company Official /DBE Liaison Officer	Signature	Phone	Date
Email		Fax	



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**EXHIBIT H-4**

**Texas Department of Transportation  
Subprovider Monitoring System  
Final Report**

The Final Report Form should be filled out by the Prime Provider and submitted to the Contract Manager and the Business Opportunity Programs Office for review upon completion of the contract. The report should reflect **all subcontract activity** on the project. The report will aid in expediting the final estimate for payment. If the HUB or DBE goal requirements were not met, documentation supporting good faith efforts must be submitted.

DBE Goal: \_\_\_\_\_% **OR** HUB Goal: \_\_\_\_\_%

Total Contract Amount: \$ \_\_\_\_\_ Total Contract Amount: \$ \_\_\_\_\_

Contract Number: \_\_\_\_\_

Vendor ID #	Subprovider	Total \$ Amt Paid to Date
<b>TOTAL</b>		

This is to certify that \_\_\_\_\_% of the work was completed by the HUB or DBE subproviders as stated above.

\_\_\_\_\_  
By: Prime Provider

\_\_\_\_\_  
Per: Signature

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public \_\_\_\_\_ County

My Commission expires: \_\_\_\_\_

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## EXHIBIT H5

### FEDERAL SUBPROVIDER AND SUPPLIER INFORMATION

The Provider shall indicate below the name, address and phone number of all successful and unsuccessful subproviders and/or suppliers that provided proposals/quotes for this contract prior to execution. You may reproduce this form if additional space is needed.

Name	Address	Phone Number

The information must be provided and returned with the contract.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
e-mail

\_\_\_\_\_  
Phone Number

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EXHIBIT H-6



# HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report

*This form must be completed and submitted to the contracting agency each month to document compliance with your HSP.*

Contract/Requisition Number: _____	Date of Award: _____ <small>(mm/dd/yyyy)</small>	Object Code: _____ <small>(Agency Use Only)</small>
Contracting Agency/University Name: _____		
Contractor (Company) Name: _____	State of Texas VID #: _____	
Point of Contact: _____	Phone #: _____	
Reporting (Month) Period: _____	Total Amount Paid this Reporting Period to Contractor: \$ _____	

## ***Report HUB and Non-HUB subcontractor information***

<b>Subcontractor's Name</b>	<b>Subcontractor's VID or HUB Certificate Number</b>	<b>*Texas Certified HUB? (Yes or No)</b>	<b>Total Contract \$ Amount from HSP with Subcontractor</b>	<b>Total \$ Amount Paid This Reporting Period to Subcontractor</b>	<b>Total Contract \$ Amount Paid to Date to Subcontractor</b>	<b>Object Code (Agency Use Only)</b>
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<b>TOTALS:</b>			\$ -	\$ -	\$ -	

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

\*Note: Prime contractors can verify subcontractor HUB certification status on-line at <http://www2.tbpc.state.tx.us/cmb1/cmb1hub.html> HSP-PAR Rev. 9/05