

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §9.30 and §9.31, the repeal of §9.32, and amendments to §§9.33-9.39 and §§9.41-9.43 all relating to Contracting for Architectural, Engineering, and Surveying Services to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments and repeal, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §9.30 and §9.31, the repeal of §9.32, and amendments to §§9.33-9.39 and §§9.41-9.43 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



Director, Design Division

Recommended by:

  
Executive Director

**112340 JUL 29 10**

Minute  
Number

Date  
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes  
3 amendments to §9.30 and §9.31, the repeal of §9.32, and  
4 amendments to §§9.33 - 9.39 and §§9.41 - 9.43, concerning  
5 contracting for architectural, engineering, and surveying  
6 services.

7

8 EXPLANATION OF PROPOSED AMENDMENTS AND REPEAL

9 Architectural, engineering, and surveying services are procured  
10 by the department in accordance with Government Code, Chapter  
11 2254, Subchapter A, and 23 C.F.R. §172.5.

12

13 The amendments clarify and refine the language to improve  
14 consistency in the interpretation and application of procedures  
15 for provider precertification, administrative qualifications,  
16 and the selection and evaluation of contracts with architects,  
17 engineers, and surveyors. The amendments also recognize an  
18 organizational change within the department and identify the  
19 role that the regions and regional director perform in the  
20 contracting process; clarify who may participate in the short  
21 list interview and restrictions on participants; remove  
22 duplicate provisions related to the Historically Underutilized  
23 Business/Disadvantaged Business Enterprise (HUB/DBE) program  
24 that are located elsewhere in the Texas Administrative Code, and  
25 recognize the transfer of the HUB program from the Texas

1 Building and Procurement Commission to the Comptroller of Public  
2 Accounts; require an annual update to data in the  
3 precertification database to assist in maintaining current  
4 employee status and firm contact information; change the  
5 deadline for submission of information regarding administrative  
6 qualifications; extend the length of time that an audit report  
7 will remain in effect from eighteen to twenty-four months, and  
8 reduce the administrative qualifications burden on firms with  
9 smaller contracts or those that have a smaller participation in  
10 larger contracts.

11  
12 Amendments to §9.30 delete a reference to Transportation Code,  
13 §361.032 because the section was repealed by the 79th Texas  
14 Legislature, Regular Session, 2005.

15  
16 Amendments to §9.31 make grammatical changes to the definitions  
17 of "administrative qualification," "indefinite deliverable  
18 contract," and "team"; delete the definition of "business  
19 opportunity programs section of the construction division" as it  
20 is no longer used; add definitions for "consultant" and "firm";  
21 revise the definition of "consultant selection team" to clarify  
22 the roles of the team; clarify the definitions of "DBE/HUB goal  
23 participation," "debarment certification," "design division,"  
24 "letter of interest," "long list," "notice of intent,"  
25 "precertification," "professional engineer," "registered

1 architect," "registered professional land surveyor," "specific  
2 deliverable contract," and "request for proposal"; delete the  
3 definitions of "DBE/HUB special provision" and "good faith  
4 effort" as these are defined in 43 TAC chapter 9, subchapter d,  
5 business opportunity programs; delete the definition of "FHWA,"  
6 since it is not referenced in this subchapter; revise the  
7 definition of "historically underutilized business" to reflect  
8 transfer of the program to the comptroller of public accounts;  
9 revise the definition of "managing office" to clarify  
10 responsibility and to include a new organization unit within the  
11 department; revise the definition of "managing officer" to  
12 include the managing officer of the new organization unit within  
13 the department; revise the definition of "prime provider" to  
14 include both a provider awarded a contract and one that has  
15 submitted a letter of interest as the managing firm; make a  
16 grammatical change in the definition of "short list," and  
17 clarify that the providers on the short list are selected based  
18 on the letter of interest score; and revise the definition of  
19 "subprovider" to include a provider performing or proposing to  
20 perform work through a contractual relationship with the prime  
21 provider. Definitions are renumbered for consistency.

22  
23 Section 9.32 is repealed. The information in subsection (a),  
24 relating to the department's use of private sector professional  
25 services, is adequately stated in Transportation Code, §223.041.

1 Section 9.32(b) is moved to a more appropriate location in §9.39  
2 and renamed "Projected contracts."

3

4 Amendments to §9.33(a)(1)(A) and (2)(A) delete the reference to  
5 the term "proposed contract number" and replace it with the term  
6 "solicitation number," which is more accurate, since the number  
7 used to identify the solicitation may not be used as the actual  
8 contract number. Amendments to §9.33(a)(1)(C) add the definite  
9 article "the" to the phrase for clarity and change the reference  
10 to §9.39 to reflect the proposed change to the section title.

11 Amendments to §9.33(a)(1)(E) and (2)(C) add the time, in  
12 addition to the date, to when the letter of interest is due and  
13 clarify that this deadline corresponds to when the letter of  
14 interest is to be received by the department, not a deadline by  
15 which the letter of interest is to be sent. Amendments to  
16 §9.33(a)(1)(I) change the reference to the rule regarding the  
17 state's HUB program.

18

19 Section 9.33(b) is amended to correct punctuation and to remove  
20 redundancies. Amendments to §9.33(b)(1) clarify that the letter  
21 of interest must be sent prior to the deadline. Letters of  
22 interest must be received by the department before the deadline.

23 Section 9.33(b)(2) is amended to correct a typographical error  
24 by changing "LOI" to "NOI," and to eliminate the options to  
25 submit a letter of interest by electronic facsimile or by

1 electronic mail. It is the responsibility of the provider to  
2 submit the complete letter of interest package including the  
3 appropriate number of copies, attachments, and forms by the  
4 specified deadline. Currently, a submission by electronic  
5 facsimile is allowed for the purpose of meeting the deadline,  
6 but the provider is required to submit the originals to be  
7 responsive. In response to complaints concerning the  
8 accessibility and reliability of this submission method, the  
9 department is eliminating this option. Although electronic mail  
10 may appear to be a reasonable alternative submission option, it  
11 has limitations potentially impacting delivery by the deadline.  
12 Examples of common issues with routine electronic mail  
13 submission include: 1) the size of the attachments is limited;  
14 2) all incoming electronic mail is subject to evaluation by the  
15 department's automated spam and computer virus detection  
16 software and may be subjected to quarantine by the software; and  
17 3) problems viewing and printing documents due to  
18 incompatibility of software or versions of software used by the  
19 department and those used by the provider. Therefore, this  
20 option is excluded as a submission option.

21  
22 Amendments to §9.33(b)(3)(A) and (C) eliminate an exception to  
23 precertification for categories of work that are less than 5% of  
24 the contract. There are seventy-eight precertification work  
25 categories. A typical engineering contract solicitation uses a

1 number of work categories to detail the anticipated work.  
2 Because of the number of categories used, the percent of work  
3 estimated for many of the categories is less than 5%, allowing  
4 the use of non-precertified providers on many of the categories,  
5 defeating the purpose for precertification. Therefore, this  
6 option is being eliminated. There are circumstances when a  
7 subprovider is needed to support work in a precertified work  
8 category, but the work that they perform does not have a unique  
9 precertified work category of its own. Amendments to  
10 §9.33(b)(3)(B) clarify that the attachment is in addition to the  
11 maximum pages allowed for the letter of interest. On some  
12 larger projects, there is a need for a specialized service that  
13 supports precertified or non-listed work categories, but does  
14 not have a dedicated precertified work category. These services  
15 are performed by specialized subproviders rather than the prime  
16 provider. To identify which work category these subproviders  
17 are supporting, new language in §9.33(b)(3)(C) requires the  
18 identification of the work category being supported in these  
19 situations. Subparagraph (C) is further changed to require that  
20 the work category that each subprovider supports be identified  
21 in the letter of interest. Amendments to §9.33(b)(3)(D)(i)  
22 clarify that the information submitted applies to both the  
23 provider and the subprovider and that the attachment is in  
24 addition to the maximum number of pages allowed. New  
25 §9.33(b)(3)(F) adds a requirement that the provider demonstrate

1 in the letter of interest that it is registered with the  
2 appropriate State of Texas licensing board. New subparagraph  
3 §9.33(b)(3)(G) clarifies that to be considered, the letter of  
4 interest must be received by the department by the deadline  
5 indicated in the notice. Amendments to §9.33(b)(4)(A) delete  
6 the reference to the term "contract" and replace it with the  
7 term "solicitation," which is more accurate, since the number  
8 used to identify the solicitation may not be used as the actual  
9 contract number. Amendments to §9.33(b)(4)(B)(i) and (ii)  
10 clarify that the project manager may only be replaced by a  
11 member of the team identified in the letter of interest and who  
12 is an employee of the prime provider, and not a team member from  
13 a subprovider. Amendments to §9.33(b)(4)(D) clarify the DBE/HUB  
14 goal compliance. Amendments to §9.33(b)(4)(E) - (G) rearrange  
15 and delete unnecessary requirements.

16  
17 Section 9.34(a) is restructured. Renumbered §9.34(a)(1)(A)  
18 modifies the designation of the consultant selection team chair.  
19 Traditionally, the managing officer selected a staff member from  
20 the managing office to be the chair of the consultant selection  
21 team. With a focus on efficiency and maximizing the use of  
22 limited resources, the department has changed its business model  
23 and organizational structure, creating regional centers to  
24 support district operations. This change supports the use of a  
25 selection team, including the chair, composed of members from

1 multiple managing offices. Amendments to §9.34(a)(2) clarify  
2 that at least one of the member of the selection team must be a  
3 professional engineer for engineering contracts, a professional  
4 engineer or registered or licensed professional land surveyor  
5 for surveying contracts, or a registered architect for  
6 architectural contracts. Amendments to §9.34(b)(1) and (2)  
7 clarify the use of terms. In many cases it is not an individual  
8 firm, but a team composed of multiple firms submitting a letter  
9 of interest. New §9.34(d)(4) adds new evaluation criterion  
10 related to quality assurance and quality control. This  
11 criterion has been used as an additional criterion for several  
12 years and is now included as a standard criterion. The  
13 department will evaluate the provider's quality assurance and  
14 quality control at this step in the process or at the proposal  
15 step or interview step. The remaining paragraph in the  
16 subsection is renumbered.

17 Amendments to §9.34(f), relating to the short list, clarify that  
18 the selection of the short list is based on the letter of  
19 interest score. The highest qualified providers are the  
20 providers with the highest scores. Amendments to §9.34(g),  
21 relating to Notifications, clarify that the department will  
22 notify the prime provider regarding selection or non-selection  
23 for the short list. In most cases a letter of interest is  
24 submitted by a team, consisting of a number of firms, with a  
25 prime provider in the management role and subproviders

1 supporting the effort. The department will notify only the  
2 prime provider of selection or non-selection on the short list.  
3 New §9.34(h), relating to a short list meeting, is added to this  
4 section using current language from §9.35(a) with additional  
5 changes. A short list meeting may be held at the discretion of  
6 the managing officer, who is most knowledgeable about the  
7 complexity of the project. A representative of each provider's  
8 team is required to attend the meeting.

9  
10 Amendments to §9.35 rename the title to "Short List Proposals  
11 and Evaluation" to better describe the contents of the section.  
12 Subsection 9.35(a) is deleted and relocated to a more  
13 appropriate location in §9.34 as new subsection (h). New  
14 §9.35(a)(6), (7), and (8) are added to indicate additional  
15 information to be provided in the Request for Proposal (RFP).  
16 New §9.35(a)(9) identifies the forms required to be submitted  
17 with the proposal. Amendments to §9.35(c), relating to receipt  
18 of proposals, clarifies that a proposal will not be accepted by  
19 electronic mail. It is the responsibility of the provider to  
20 submit the complete proposal package including appropriate  
21 number of copies, attachments, and forms by the specified  
22 deadline. Although electronic mail may appear to be an  
23 attractive alternative submission option, it too has limitations  
24 potentially impacting delivery by the deadline. Examples of  
25 common issues with routine electronic mail submission include:

1 1) the size of the attachments is limited; 2) all incoming  
2 electronic mail is subject to evaluation by the department's  
3 automated spam and computer virus detection software and can be  
4 subject to quarantine by the software; and 3) problems viewing  
5 and printing documents due to incompatibility of software or  
6 versions of software used by the department and those used by  
7 the provider. Therefore, this option is excluded as a  
8 submission option. New §9.35(d)(5) includes a new evaluation  
9 criterion related to quality assurance and quality control.  
10 This criterion has been used as an additional criterion for  
11 several years and is now included as a standard criterion. The  
12 department will evaluate the provider's quality assurance and  
13 quality control at the short list determination step, at this  
14 step in the process, or at the interview step. Amendments to  
15 §9.35(d)(6) require the approval of the Design Division prior to  
16 the addition of other criteria for evaluation in the RFP. The  
17 purpose is to promote consistency within the department on  
18 criteria used to evaluate providers. Amendments to §9.35(e)  
19 change the term "scale" to the more correct term "score."  
20  
21 Amendments to §9.36(a) clarify that any proposal and interview  
22 requirements will be contained in the RFP or in the interview  
23 and contract guide. This subsection is further amended to  
24 delete the suggested option of the use of telephone interviews.  
25 Although not precluded, it is not the recommended and preferred

1 format. New §9.36(b) creates interview requirements. New  
2 §9.36(b)(3) limits those individuals eligible to participate in  
3 the interview to only those team members identified in the  
4 letter of interest. New §9.36(b)(4) restricts an individual  
5 included as a member on competing teams from participating in  
6 multiple interviews. Many providers form teams, consisting of  
7 multiple firms, to compete for contracting opportunities. It is  
8 common for the same subprovider to participate on multiple  
9 competing teams submitting letters of interest. It is also  
10 common for the same individual to represent the subprovider on  
11 multiple competing teams. If short listed, this individual  
12 could potentially participate in multiple interviews for the  
13 same contracting opportunity. This provision does not limit a  
14 firm from participating on multiple competing teams, but does  
15 limit an individual from the firm from participating in multiple  
16 interviews. Amendments to §9.36(c)(4), relating to interview  
17 and contract guide, change the term "delivered" to "provided"  
18 for clarity. New §9.36(c)(7), (8), and (9) are added to  
19 indicate additional information to be provided in the interview  
20 and contract guide. New §9.36(c)(10) is added to identify forms  
21 that are required to be submitted at the interview. The purpose  
22 of the interview is to examine the competence and qualifications  
23 of the providers through questioning the provider and evaluating  
24 the responses. Section 9.36(d) is amended to provide that a  
25 provider team will answer a predetermined written set of

1 questions in the interview. The requirement of the submission  
2 of written material to support a presentation for later  
3 reference is removed from §9.36(d). The change emphasizes that  
4 the evaluation will be based on what the provider's presenter  
5 conveys in the allotted time during the presentation. Although  
6 allowed, the primary focus of the interview is not on the  
7 provider's presentation. Renumbered §9.36(e), relating to  
8 "Interview evaluation criteria," is amended to indicate that the  
9 consultant selection team will evaluate responses to interview  
10 questions and information conveyed in the presentation. With  
11 this amendment, §9.36(e)(4) is deleted as it is now redundant.  
12 Amendments to §9.36(e)(2) clarify that the project manager and  
13 team will be evaluated not only on their experience, but on  
14 their demonstrated competence as well. New §9.36(e)(5) is added  
15 to include a new evaluation criterion related to quality  
16 assurance and quality control. This criterion has been used as  
17 an additional criterion for several years and is now being  
18 included as a standard criteria. The department will evaluate  
19 the provider's quality assurance and quality control at the  
20 short list determination step, at the proposal step, or at this  
21 step in the process. Amendments to §9.36(e)(6) require the  
22 approval of the Design Division prior to the addition of other  
23 criteria for evaluation in the interview and contract guide.  
24 The purpose is to promote consistency within the department on  
25 criteria used to evaluate providers. Amendments to §9.36(f)

1 change the term "scale" to the more correct term "score."  
2  
3 Amendments to §9.37(c) and (d) correct punctuation errors. The  
4 department publishes a list of all selected providers on the  
5 department's website; thus, naming the selected providers in the  
6 notification letter is redundant. Amendments to §9.37(e)(2)  
7 remove the redundancy. Amendments to §9.37(f)(1) and (4) delete  
8 language that duplicates the requirements contained in 43 TAC  
9 §9.53 and §9.54, relating to Disadvantaged Business Enterprise  
10 Program and Historically Underutilized Business (HUB) Program,  
11 respectively. Section 9.37(f) is also amended to delete  
12 language related to submission of administrative qualifications  
13 as it is covered elsewhere in the subchapter. The term  
14 "selection" is added to clarify that the selection process  
15 complies with the applicable state and federal statutes and  
16 regulations. Amendments to §9.37(f)(2)(A) add the term  
17 "providers" for clarity and remove the repeated term "automatic  
18 extensions." Amendments to §9.37(f)(2)(B)(i) and (ii) clarify  
19 that a discretionary extension can only be acted on when it is  
20 received. Amendments to §9.37(f)(3)(B) change the reference to  
21 the title of §9.39.  
22  
23 Section 9.38 is renamed to "Contract Administration."  
24 Subsection (a) is deleted because the language duplicates the  
25 requirements contained in 43 TAC §9.53, §9.54, and §9.56

1 relating to Disadvantaged Business Enterprise Program,  
2 Historically Underutilized Business Program, and Contract  
3 Compliance, respectively. Amendments to §9.38(b)(1) reorganize  
4 the paragraph and clarify the role of the department's and the  
5 provider's project managers. Section 9.38(b)(3) - (5), relating  
6 to commencement of work, suspension of work, and payment of  
7 provider contracts, is deleted because these provisions are  
8 contained within and governed by the contract. Renumbered  
9 §9.38(c)(1), relating to supplemental agreements, is amended to  
10 state that an amendment to the contract will be made through a  
11 supplemental agreement. Amendments to §9.38(c)(2) delete the  
12 term "original" in reference to the contract, since a  
13 supplemental agreement may be used to amend the terms of a  
14 previous supplemental. Amendments to §9.38(e)(2)(B) add clarity  
15 to the term "products." New subparagraph (H) is added to §9.38  
16 to indicate that an additional condition for contract closeout  
17 is the completion and finalization of the final provider  
18 performance evaluation. Amendments to §9.38(f)(2) indicate that  
19 the project constructability is to be evaluated not less  
20 frequently than every 12 months. Amendments to §9.38(f)(4)  
21 update citation references.

22  
23 Section 9.39 is amended to correct grammatical errors and to  
24 change the title of the section to "Selection Types, Contract  
25 Types, and Projected Contracts." Amendments to §9.39(a)(2)(B)

1 delete the term "randomly." In the case of multiple selections,  
2 when there are a greater number of contracts than selected  
3 providers, the remaining contracts will be assigned not  
4 randomly, but in a logical sequence. Amendments to  
5 §9.39(a)(3)(A) clarify that it is the prime provider's project  
6 manager that is required to be precertified. Amendments to  
7 §9.39(a)(3)(C) clarify the use of terms, substituting the term  
8 "provider" for "firm." Amendments to §9.39(b)(1) are made to  
9 include the department's new organizational unit, the region.  
10 The department created four regional offices, which provide  
11 support for multiple districts. New §9.39(c) moves current  
12 language from §9.32(b) to this section as a more appropriate  
13 location, and renames the subsection "Projected contracts."  
14  
15 Amendments to §9.41(a) clarify that a provider must be  
16 precertified to be eligible for selection for a contract and  
17 move language from §9.41(a)(2). Section 9.41(a)(1), relating to  
18 an exception from precertification when anticipated work for an  
19 individual work category less than 5%, is deleted. A typical  
20 engineering contract solicitation uses a number of work  
21 categories to detail the anticipated work. Because of the  
22 number of categories used, the percent of work estimated for  
23 many of the categories is less than 5%, allowing the use of non-  
24 precertified providers on many of the categories, defeating the  
25 purpose for precertification. Therefore, this option is being

1 eliminated. Amendments to §9.41(c), related to deadline,  
2 clarify that the categories are individual work categories.  
3 Amendments to §9.41(e)(2) clarify that it is the department that  
4 determines whether a firm's employee possesses the skills and  
5 experience to meet the precertification requirements.  
6 Amendments to §9.41(f)(3) add new subparagraph (D) to indicate  
7 that the department will consider any record of unprofessional  
8 conduct as a factor in reviewing an application for  
9 precertification. This is done to protect the department and  
10 the general public.

11  
12 Amendments to §9.41 add new subsection (h), related to annual  
13 renewal, and a new subsection (i), related to inactive status.  
14 Currently, each provider is required to maintain its  
15 precertification information. If there are any changes, the  
16 provider is required to update those changes within 45 days.  
17 Currently, there is no mechanism to separate active and inactive  
18 firms, firms that no longer exist, or employees that are no  
19 longer active. For the information to be correct and current, a  
20 method of distinguishing between active and inactive firms is  
21 required. New §9.41(h) requires the firm to verify annually  
22 that its information is correct. All firms that respond  
23 annually are considered active. New §9.41(i) bars inactive  
24 firms from participating in the selection process until they  
25 confirm or update their status.

1  
2 Currently, an exception from administrative qualifications is  
3 made for non-engineering firms and provider services in Group 6  
4 - bridge inspection, Group 12 - materials inspection and  
5 testing, Group 14 - geotechnical services, Group 15 - surveying  
6 and mapping, and Group 16 - architecture. Amendments to  
7 §9.42(a) add a list of factors that the department's Audit  
8 Office and Design Division will evaluate when exceptions for  
9 other provider services are requested. Section 9.42(b) is  
10 reworded for clarity and to change the date when the  
11 administrative qualifications information is due to the  
12 department to the letter of interest due date. Currently, the  
13 deadline to submit the information is prior to the execution of  
14 the contract, which is the final step in selection process.  
15 Because the current deadline is so late in the process, any  
16 delay in submission of the information delays contract  
17 negotiation, execution, and the ability to commence project  
18 work. To minimize the potential for delays in completing the  
19 process and initiating work, the deadline is being moved to a  
20 point earlier in the process. Amendments to §9.42(c), relating  
21 to evaluation factors, clarify that the qualifications being  
22 evaluated are administrative qualifications. Amendments to  
23 §9.42(c)(2) delete a reference to deleted §9.42(c)(2)(E).  
24 Amendments to §9.42(c)(2)(A) clarify that the accepted auditing  
25 standards are government auditing standards and correct the

1 reference to the Federal Acquisition Regulations. Amendments to  
2 §9.42(c)(2)(C) modify the reporting period and deadline. This  
3 change is intended to assist providers in determining whether  
4 existing information is still in effect for a particular  
5 solicitation. The length of time that an audit report will  
6 remain in effect is extended from eighteen months to twenty-four  
7 months from the end of the fiscal period; this extends the time  
8 an audit report will remain in effect. Amendments to  
9 §9.42(c)(2)(D) reorganize the subparagraph. The changes  
10 increase the threshold for the requirement for an indirect cost  
11 rate audit from \$250,000 to \$500,000 for existing firms and for  
12 firms in operation for less than one fiscal year. In these  
13 cases, to facilitate negotiations, the Audit Office will provide  
14 the managing office with an indirect rate, based on indirect  
15 cost rates data for providers of comparable size. Section  
16 9.42(c)(2)(E) is deleted. Amendments to §9.42(c)(4) delete the  
17 modifiers "other direct" in describing costs. Amendments to  
18 §9.42(d) clarify that the Audit Office will only provide the  
19 managing office with the administrative qualifications  
20 information after the Design Division has notified the Audit  
21 Office of the approval of the selection of the provider for the  
22 contract.  
23  
24 Amendments to §9.43(a)(1) clarify that the work categories are  
25 the precertification categories.

1

2 FISCAL NOTE

3 James Bass, Chief Financial Officer, has determined that for  
4 each of the first five years the amendments and repeal as  
5 proposed in effect, there will be no fiscal implications for  
6 state or local governments as a result of enforcing or  
7 administering the amendments and repeal.

8

9 Mark Marek, Director, Design Division has certified that there  
10 will be no significant impact on local economies or overall  
11 employment as a result of enforcing or administering the  
12 amendments and repeal.

13

14 PUBLIC BENEFIT AND COST

15 Mr. Marek has also determined that for each year of the first  
16 five years the sections are in effect, the public benefit  
17 anticipated as a result of enforcing or administering the  
18 amendments and repeal will be a clearer understanding of the  
19 interpretation and application of procedures for provider  
20 precertification, administrative qualifications, and the  
21 selection and evaluation of contracts with architects,  
22 engineers, and surveyors. There are no anticipated economic  
23 costs for persons required to comply with the sections as  
24 proposed. There will be no adverse economic effect on small  
25 businesses.

1

2 SUBMITTAL OF COMMENTS

3 Written comments on the proposed amendments to §9.30 and §9.31,  
4 the repeal of §9.32, and amendments to §§9.33 - 9.39 and  
5 §§9.41 - 9.43 may be submitted to Mark Marek, Director, Design  
6 Division, Texas Department of Transportation, 125 East 11th  
7 Street, Austin, Texas 78701-2483. The deadline for receipt of  
8 comments is 5:00 p.m. on September 13, 2010.

9

10 STATUTORY AUTHORITY

11 The amendments and repeal are proposed under Transportation  
12 Code, §201.101, which provides the Texas Transportation  
13 Commission with the authority to establish rules for the conduct  
14 of the work of the department, and more specifically,  
15 Transportation Code, §223.041, regarding the use by the  
16 department of private sector professional services for  
17 transportation projects, and Government Code, Chapter 2254,  
18 Subchapter A (Professional Services Procurement Act), which sets  
19 forth requirements for selection and contracting of  
20 architectural and engineering services.

21

22 CROSS REFERENCE TO STATUTE

23 Government Code, Chapter 2254, Subchapter A (Professional  
24 Services Procurement Act) and Transportation Code, §223.041.

1 SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING,  
2 AND SURVEYING SERVICES

3 §9.30. Purpose. This subchapter establishes standard  
4 procedures for selection and contract management of  
5 architectural, professional engineering, and land surveying  
6 service providers in accordance with Government Code, Chapter  
7 2254, Subchapter A, the Professional Services Procurement Act,  
8 and Transportation Code, §223.041 [~~, and §361.032~~]. This  
9 subchapter only applies to a contract that requires a  
10 professional engineer, registered architect, or registered or  
11 licensed professional land surveyor. Prime providers and  
12 subproviders shall be precertified for contracts that [~~which~~]  
13 require architectural, engineering, or surveying services,  
14 except as described in §9.33(b)(3) of this subchapter [~~title~~]  
15 (relating to Notice of Intent and Letter of Interest).

16  
17 §9.31. Definitions. The following words and terms, when used  
18 in this subchapter, shall have the following meanings, unless  
19 the context clearly indicates otherwise.

20 (1) AASHTO--American Association of State Highway and  
21 Transportation Officials.

22 (2) Administrative qualification--A department process  
23 conducted to determine if a prime provider or subprovider [~~can~~]:

1 (A) can support all the various rates proposed to do  
2 the work;

3 (B) has an indirect cost rate audit that meets  
4 department requirements;

5 (C) has a job cost accounting system adequate for  
6 segregating direct and indirect costs; and

7 (D) is aware of federal cost eligibility and  
8 documentation requirements.

9 (3) Audit Office--An office of the department whose  
10 internal function conducts independent and objective reviews of  
11 departmental operations and procedures to ensure that they are  
12 functioning as intended and whose external function has the  
13 responsibility to audit cost reimbursement/negotiated contracts  
14 external to the department including review of indirect cost  
15 rate data.

16 (4) Available personnel--The total number of personnel  
17 employed by the provider proposed to be used on the advertised  
18 contract.

19 (5) Border district--One of the geographical areas of the  
20 department managed by a district engineer that is headquartered  
21 in El Paso, Laredo, or Pharr.

22 [~~6) Business opportunity programs section of the~~  
23 ~~Construction Division (CSTB)---The department section that~~

1 ~~certifies DBEs and administers the DBE and HUB programs.]~~

2       (6) [~~7~~] CCIS--Consultant Certification Information

3 System.

4       (7) [~~8~~] Close out--The actions required to close out or

5 complete the contract, including receipt and acceptance of

6 deliverables, resolution of audit findings, receipt of outside

7 approvals if applicable, resolution of other contract-related

8 issues, and issuance of final payment.

9       (8) Consultant--An individual or entity that provides

10 engineering, architectural, or surveying services.

11       (9) Consultant selection team (CST)--The department's

12 managing office team that evaluates, scores, and ranks the

13 submitting providers based on demonstrated competence and

14 qualifications [~~selects the long list and short list and~~

15 ~~evaluates proposals and interviews].~~

16       (10) Disadvantaged business enterprise (DBE)--Any

17 business certified by the department in accordance with 49 CFR

18 Part 26.

19       (11) DBE/HUB goal participation--The assigned

20 participation goal for DBE/HUB providers expressed as a

21 percentage of the total cost of the contract.

22       [~~12) DBE/HUB special provision--A special provision to~~

23 ~~the provider contract that identifies DBE/HUB program~~

1 ~~requirements.]~~

2       (12) [~~(13)~~] Debarment certification--A certification that  
3 the provider and its principals are not debarred from  
4 participation and are not under consideration for debarment  
5 anywhere, and are eligible to perform the contract.

6       (13) [~~(14)~~] Department--The Texas Department of  
7 Transportation.

8       (14) [~~(15)~~] Department project manager--The department  
9 employee designated as the official contact for management of  
10 the contract and all correspondence between the department and  
11 the provider.

12       (15) [~~(16)~~] Design Division--The department division that  
13 provides guidance and oversight of [~~responsible for overseeing~~]  
14 the contracting process and procedures for [~~professional~~  
15 ~~services, including~~] engineering, architectural, and surveying  
16 services.

17       ~~[(17) FHWA--The Federal Highway Administration.]~~

18       (16) Firm--An individual or entity that provides  
19 engineering, architectural, or surveying services.

20       ~~[(18) Good faith effort--A provider must demonstrate to~~  
21 ~~the department's satisfaction, that sufficient effort on its~~  
22 ~~part was made to obtain DBE/HUB participation. Good faith~~  
23 ~~effort is identified in the DBE/HUB Special Provision to the~~

1 ~~contract.~~]

2       (17) [~~+19~~] Historically underutilized business (HUB)--  
3 Any business so certified by the Comptroller of Public Accounts  
4 [~~Texas Building and Procurement Commission~~].

5       (18) [~~+20~~] Indefinite deliverable contract--A contract  
6 containing a general scope of services that identifies the types  
7 of work that will [~~be~~] later be required under work  
8 authorizations, but does not identify deliverables, locations,  
9 or timing in sufficient detail to define the provider's  
10 responsibilities under the contract.

11       (19) [~~+21~~] Indirect cost rate guidance--Uniform Audit  
12 and Accounting Guide for audits of transportation consultants  
13 published by AASHTO. This guidance is modified by the  
14 Differences Between TxDOT and AASHTO Requirements as described  
15 on the department's website.

16       (20) [~~+22~~] Interview and Contract Guide (ICG)--An  
17 instructional document furnished to providers on the short list  
18 when a Request for Proposals is not used.

19       (21) [~~+23~~] Letter of Interest (LOI)--A letter prepared  
20 by [~~from~~] a prime provider [~~to be prepared~~] and submitted in  
21 response to and according to instructions in a Notice of Intent.

22       (22) [~~+24~~] Licensed state land surveyor--A professional  
23 land surveyor described in Occupations Code, Chapter 1071.

1           (23) [~~+25~~] Long list--The list of responsive [~~qualified~~]  
2 providers submitting an acceptable letter of interest for a  
3 contract.

4           (24) [~~+26~~] Lower tier debarment certification --A  
5 debarment certification form that is completed by subproviders  
6 or other lower tier participants.

7           (25) [~~+27~~] Lower tier participant--A subprovider or  
8 other participant in the contract, other than the state, that is  
9 not the prime provider.

10           (26) [~~+28~~] Managing office--The division, office,  
11 region, or district with the responsibility for selecting the  
12 provider [~~awarding~~] and managing the contract.

13           (27) [~~+29~~] Managing officer--The division director,  
14 office director, regional director, or district engineer of the  
15 managing office.

16           (28) [~~+30~~] Metropolitan district-- One of the  
17 geographical areas of the department managed by a district  
18 engineer that is headquartered in Austin, Corpus Christi,  
19 Lubbock, Dallas, El Paso, Fort Worth, Houston, Pharr, or San  
20 Antonio.

21           (29) [~~+31~~] Notice of Intent (NOI)--Formal notice of the  
22 department's intent to enter into one or more engineering,  
23 architectural, or surveying [~~professional service~~] contracts

1 with instructions [~~or reference to instructions~~] for preparation  
2 and submittal of a Letter of Interest.

3 (30) [~~(32)~~] Precertification --A review process conducted  
4 by the department to determine if a provider [~~prime provider or~~  
5 ~~subprovider~~] meets the minimum technical requirements to perform  
6 work identified in a work category.

7 (31) [~~(33)~~] Prime provider--A provider submitting a  
8 letter of interest as the managing firm or that has been awarded  
9 a department engineering, architectural, or surveying [~~The~~  
10 ~~provider awarded a department provider~~] contract.

11 (32) [~~(34)~~] Professional engineer--An individual  
12 registered or licensed to practice engineering in the state or  
13 states that he or she performs professional services.

14 (33) [~~(35)~~] Professional services provider (provider)--An  
15 individual or entity that provides engineering, architectural,  
16 or surveying services.

17 (34) [~~(36)~~] Registered architect--An individual licensed  
18 to practice architecture in the state or states in which [~~that~~]  
19 he or she performs professional services.

20 (35) [~~(37)~~] Registered professional land surveyor--An  
21 individual registered or licensed to perform land surveying in  
22 the state or states in which [~~that~~] he or she performs  
23 professional services.

1           (36) [~~+38~~] Request for proposal (RFP)--A request for  
2           submittal of a technical proposal from short-listed providers [~~a~~  
3           ~~provider that demonstrates competence and qualifications to~~  
4           ~~perform the requested services, and shows an understanding of~~  
5           ~~the specific contract~~].

6           (37) [~~+39~~] Relative importance factor (RIF)--The  
7           numerical weight of each evaluation criterion as it relates to a  
8           particular contract.

9           (38) [~~+40~~] Short List--The list of providers, selected  
10          from the long list [~~, selected~~] by the CST, that by score best  
11          meet the requirements indicated by the letter of interest.

12          (39) [~~+41~~] Short list meeting--A meeting held with the  
13          providers on the short list to answer questions regarding the  
14          contract and distribute the RFP or ICG prior to submittal of  
15          proposals or interviews.

16          (40) [~~+42~~] Specific deliverable contract--A contract  
17          containing a specific scope of services that identifies  
18          deliverables, locations, and timing in sufficient detail to  
19          define the provider's responsibilities under the contract,  
20          although additional particulars may later be enumerated in work  
21          authorizations, if used.

22          (41) [~~+43~~] Subprovider--A provider proposing to perform  
23          or performing work through a contractual agreement with the

1 prime provider.

2           (42) [~~44~~] Team--The provider and all proposed  
3 subproviders that [~~who~~] will be working on a particular  
4 contract.

5  
6 [~~§9.32. Provider Services Policy.~~]

7           ~~[(a) Pursuant to Transportation Code, §223.041, it is the~~  
8 ~~policy of the department to use private sector professional~~  
9 ~~services to assist in accomplishing its activities in providing~~  
10 ~~transportation projects. In order to do so, the department may~~  
11 ~~contract the following types of work:]~~

12           ~~[(1) preliminary engineering, design, plan work,~~  
13 ~~specifications, and estimates;]~~

14           ~~[(2) construction engineering and inspection;]~~

15           ~~[(3) bridge inspection and scour analysis services;]~~

16           ~~[(4) environmental engineering, project observation, and~~  
17 ~~inspection;]~~

18           ~~[(5) architectural design, plan work, specifications, and~~  
19 ~~estimates;]~~

20           ~~[(6) architectural observation and inspection;]~~

21           ~~[(7) surveying and mapping; and]~~

22           ~~[(8) other engineering, architectural, or surveying~~  
23 ~~services as defined in Government Code, Chapter 2254, Subchapter~~

1 A.]

2 [~~(b) Organizations. The department will publish quarterly~~  
3 ~~a statewide list of projected contracts for consulting~~  
4 ~~engineering, architectural, and surveying services and will~~  
5 ~~provide upon request, or make available on the department's web~~  
6 ~~site, a copy of each list to community, business, and~~  
7 ~~professional organizations for dissemination to their~~  
8 ~~membership.]~~

9

10 §9.33. Notice of Intent and Letter of Interest.

11 (a) Notice of Intent (NOI).

12 (1) Electronic notice. Not less than 21 days before the  
13 letter of interest due date, the department will post on an  
14 electronic bulletin board a notice identifying:

15 (A) the solicitation [~~proposed contract~~] number;

16 (B) work category codes;

17 (C) the type of selection in accordance with §9.39 of  
18 this subchapter [~~title~~] (relating to Selection Types, [~~and~~  
19 Contract Types, and Projected Contracts]);

20 (D) the general description of the project and work to  
21 be done;

22 (E) the due date and time [~~for providers to send~~  
23 ~~letters of interest to the department~~];

1 (F) qualification information if the work type is not  
2 an approved category according to §9.43 of this subchapter  
3 [~~title~~] (relating to Precertification Requirements);

4 (G) whether the department has waived the  
5 precertification requirement of §9.41 of this subchapter [~~title~~]  
6 (relating to Precertification) when the total contract fee for  
7 professional services is anticipated to be less than \$250,000 on  
8 an individual contract;

9 (H) selection criteria to be used to determine the  
10 short list; and

11 (I) the assigned HUB or DBE participation goal for the  
12 contract(s) (The department may assign individual contract DBE  
13 or HUB goals pursuant to 49 CFR Part 26 or 34 TAC §20.13 [~~1 TAC~~  
14 ~~§111.13~~], respectively.).

15 (2) Newspaper notice. Not less than 21 days before the  
16 letter of interest due date, the department will publish a  
17 notice in a local newspaper within the geographical area of the  
18 district, division, or office in which the work will be  
19 performed. If the newspaper fails to print the notice, the  
20 department will consider the notice posted. The notice will  
21 contain:

22 (A) the solicitation [~~proposed contract~~] number;

23 (B) the general description of the project and work to

1 be done;

2 (C) the due date and time [~~for providers to send~~  
3 ~~letters of interest to the department~~];

4 (D) the contact person; and

5 (E) the location of the electronic bulletin board that  
6 contains more information.

7 (b) Letter of interest (LOI).

8 (1) The provider shall send a letter of interest to the  
9 department notifying the department of the provider's interest  
10 in the contract prior to [~~not later than~~] the deadline published  
11 in the notice.

12 (2) The following requirements apply unless otherwise  
13 specified in the NOI [~~LOI~~]. The letter of interest will consist  
14 of a minimum of three and a maximum of five pages plus  
15 attachments. The maximum page length will be stated in the  
16 notice. Attachments will be restricted to precertification  
17 information required in subsection (b)(3) of this section. The  
18 department will not accept a letter of interest by electronic  
19 facsimile or electronic mail.

20 (3) To be considered:

21 (A) a prime provider or a subprovider[~~7~~] that will be  
22 performing work in any individual work category [~~which is 5.0%~~  
23 ~~or more of the contract~~], must be precertified by the deadline

1 for receiving the letter of interest in accordance with §9.41 of  
2 this subchapter [~~title~~] (relating to Precertification) unless  
3 the work category is not approved according to §9.43 of this  
4 subchapter [~~title~~] (relating to Precertification Requirements);

5 (B) a prime provider or subprovider must demonstrate in  
6 an attachment to the LOI how it meets the minimum qualifications  
7 for work that does not fall within any work category approved  
8 according to §9.43 of this subchapter [~~title~~] (The attachment is  
9 [~~may be~~] in addition to the maximum pages allowed for the LOI.);

10 (C) in the LOI, a subprovider that is not precertified  
11 must identify both the service to be provided for which there is  
12 no dedicated pre-certified work category and the precertified or  
13 non-listed work category that the service supports [~~if the work~~  
14 ~~in any individual work category as shown in the notice is less~~  
15 ~~than 5.0% of the contract, a provider or subprovider that is not~~  
16 ~~precertified must demonstrate in an attachment to the LOI how it~~  
17 ~~meets the minimum requirements specified for the work category~~  
18 ~~on the department's web site or how it possesses the knowledge~~  
19 ~~and skill to perform the work in those categories (The~~  
20 ~~attachment may be in addition to the maximum pages allowed for~~  
21 ~~the LOI.)~~];

22 (D) if the total contract fee for professional services  
23 is anticipated to be less than \$250,000 on an individual

1 contract and the department has waived the precertification  
2 requirement of §9.41 of this subchapter [~~title~~] (relating to  
3 Precertification), then a provider or subprovider that:

4 (i) is not precertified must submit an attachment  
5 with the LOI that [~~which~~] describes how the prime provider or  
6 subprovider [~~firm~~] meets the minimum requirements specified for  
7 the work category approved according to §9.43(b) of this  
8 subchapter [~~title~~] or how it possesses the knowledge and skill  
9 to perform the work in those categories (The attachment is [~~may~~  
10 ~~be~~] in addition to the maximum pages allowed for the LOI.); or

11 (ii) is precertified must submit a LOI, but is not  
12 required to submit an attachment describing its qualifications  
13 in precertified categories (If the firm proposes to do work in  
14 categories in which it has not been precertified, then it must  
15 submit an attachment describing how the firm meets the minimum  
16 requirements or how it possesses the knowledge and skill to  
17 perform the work in those categories.); [~~and~~]

18 (E) the proposed team must demonstrate that they have a  
19 professional engineer, architect, or surveyor registered or  
20 licensed in Texas who will sign and/or seal the work to be  
21 performed on the contract; [~~-~~]

22 (F) the provider must demonstrate that it is registered  
23 with the appropriate State of Texas licensing board, such as

1 the:

2 (i) Texas Board of Professional Engineers;

3 (ii) Texas Board of Architectural Examiners; or

4 (iii) Texas Board of Professional Land Surveying; and

5 (G) the letter of interest is received by the

6 department by the deadline specified in the notice.

7 (4) The letter of interest shall include: [÷]

8 (A) the solicitation [~~contract~~] number;

9 (B) an organizational chart containing:

10 (i) the prime provider's project manager (who may be  
11 replaced during the selection process and before contract  
12 execution only by another person proposed in the LOI for the  
13 prime provider [~~provider's team~~] and approved by the director of  
14 the Design Division); and

15 (ii) names of the prime provider's and any  
16 subprovider's key personnel (who may be replaced during the  
17 selection process and before contract execution only by another  
18 person from the [~~prime provider's or subprovider's~~] team  
19 proposed in the LOI and approved by the CST);

20 (C) information addressing the criteria stated in the  
21 notice;

22 (D) evidence of compliance with the assigned DBE/HUB  
23 goal [~~through the prime provider and subproviders identified on~~

1 ~~the team, or a written commitment to make a good faith effort to~~  
2 ~~meet the assigned goal];~~

3 (E) name and contact information for references from  
4 the department or other entities; and [~~similar project related~~  
5 ~~experience;~~]

6 (F) other pertinent information addressed in the  
7 notice. [~~name and contact information for references from the~~  
8 ~~department or other entities; and]~~

9 [~~(G) other pertinent information addressed in the~~  
10 ~~notice.~~]

11

12 §9.34. Short List Determination.

13 (a) Composition of the Consultant Selection Team. [~~The CST~~  
14 ~~shall be composed of;~~]

15 (1) The CST shall be composed of:

16 (A) [(1)] the department [~~managing office~~] staff member  
17 designated [~~by the managing officer~~] to be the chair;

18 (B) [(2)] the department project manager; and

19 (C) [(3)] at least one other department employee  
20 designated by the managing officer. [~~and]~~

21 (2) [(4)] At least [~~a minimum of~~] one CST member must be  
22 a professional engineer for engineering contracts; [~~7]~~] a [~~minimum~~  
23 ~~of one~~] professional engineer or registered or licensed

1 professional land surveyor for surveying contracts; ~~[,]~~ or ~~[and]~~  
2 a ~~[minimum of one]~~ registered architect for architectural  
3 contracts.

4 (b) Qualification for long list.

5 (1) The department may disqualify a team ~~[firm]~~ if the  
6 department or the team's ~~[firm's]~~ references have knowledge that  
7 a ~~[the]~~ firm on the team or an employee of a ~~[the]~~ firm on the  
8 team has a record of unprofessional conduct, including being  
9 cited by ~~[, but not limited to, whether]~~ the appropriate  
10 licensing board ~~[has cited the firm or an employee of the firm]~~  
11 for a violation of its rules concerning conduct.

12 (2) If a team ~~[firm]~~ is not disqualified under paragraph  
13 (1) of this section, the CST will review each letter of interest  
14 to see if it meets the submittal requirements and  
15 precertification requirements of §9.33(b)(3) of this subchapter  
16 (relating to Notice of Intent and Letter of Interest).

17 (c) Long list evaluation. The CST will review the  
18 information submitted in the letters of interest and evaluate  
19 each team on the long list to determine the short list based on  
20 the criteria described in subsection (d) of this section and as  
21 listed in the notice.

22 (d) Criteria. The CST will consider the following criteria  
23 in its review of long-listed providers:

1 (1) project understanding and approach;

2 (2) the provider project manager's experience with  
3 similar projects;

4 (3) similar project related experience of the task  
5 leaders responsible for the major work categories identified in  
6 the notice; [~~and~~]

7 (4) the provider's Quality Assurance/Quality Control  
8 program, if not evaluated under §9.35 or §9.36 of this  
9 subchapter (relating to Short List Proposals and Evaluation and  
10 Short List Interviews and Evaluation, respectively); and

11 (5) [~~(4)~~] other criteria approved by the Design Division  
12 and listed in the notice.

13 (e) Score. The CST will assign a relative importance  
14 factor (RIF) weight to each criterion. The RIF total for all  
15 criteria will equal 100. Each criterion will be scored  
16 separately on a 0-10 point scale with 10 considered the best  
17 qualified. The maximum possible score that a CST member may  
18 give is 1000 points.

19 (f) Short list. Selection of the short list will be made  
20 using the LOI score. For individual contract selections, the  
21 [~~CST will prepare a~~] short list shall contain [~~containing~~] a  
22 minimum of three of the most highly qualified providers, by  
23 score, unless fewer than three qualified providers submitted a

1 letter of interest. For multiple contract selections, the short  
2 list shall contain a minimum number of providers equal to the  
3 desired number of contracts plus three unless fewer than the  
4 desired minimum submitted a letter of interest.

5 (g) Notification. The department will notify a prime  
6 provider [~~firm~~] submitting a letter of interest that it was or  
7 was not selected for the short list. If a prime provider [~~firm~~]  
8 is selected for the short list, the department will either  
9 notify it that a meeting will be held, or if a meeting is not  
10 held, the department will provide a Request for Proposal (RFP)  
11 or an Interview and Contract Guide (ICG). The department will  
12 also notify selected prime providers [~~firms~~] of any additional  
13 required reference information and the deadline for submission.

14 (h) Short list meeting. The managing office may require a  
15 short list meeting during the selection process for providers  
16 advancing to the short list. A provider will be dropped from  
17 further consideration if the provider's representative fails to  
18 attend the short list meeting.

19

20 §9.35. Short List [~~Meeting~~]<sub>7</sub> Proposals<sub>7</sub> and Evaluation.

21 [~~(a) Short list meeting. The managing office may require a~~  
22 ~~short list meeting which will include an explanation of the~~  
23 ~~proposal and/or the interview format and requirements. The~~

1 ~~department will furnish a Request for Proposal (RFP) or an~~  
2 ~~Interview and Contract Guide (ICG) to providers on the short~~  
3 ~~list either prior to or at the short list meeting. If a short~~  
4 ~~list meeting is held, the department will not accept proposals~~  
5 ~~from or conduct interviews with providers that did not have a~~  
6 ~~representative at the short list meeting.]~~

7 (a) [~~(b)~~] Request for proposals. If a written proposal is  
8 required, the managing office will provide an RFP to the short  
9 listed providers. The RFP will include:

10 (1) instructions for:

11 (A) a written proposal preparation and/or the interview  
12 process; and

13 (B) submittal of the proposal;

14 (2) scope of services to be provided by the department;

15 (3) scope of services to be provided by the provider;

16 (4) proposed contract duration;

17 (5) proposed method of payment;

18 (6) short list meeting information, if applicable;

19 (7) administrative qualification requirement information;

20 (8) insurance requirement information;

21 (9) forms to be submitted with the proposal, if

22 applicable, including:

23 (A) [~~(6)~~] a debarment certification form;

1            (B) [~~(7)~~] a lower tier debarment certification form;

2            (C) [~~(8)~~] a lobbying certification/disclosure form;

3 and,

4            (D) other forms as specified in the RFP;

5            (10) [~~(9)~~] any special contract requirements; and

6            (11) [~~(10)~~] the interview format and requirements if  
7 interviews are conducted subsequent to the proposal.

8            (b) [~~(e)~~] Proposal format. When a written proposal is  
9 required, the proposal shall be limited to the specific length  
10 and information outlined in the RFP.

11           (c) [~~(d)~~] Receipt of proposals. A proposal must be  
12 received by the date, time, and place specified in the RFP. The  
13 department will not accept a proposal by electronic facsimile or  
14 by electronic mail.

15           (d) [~~(e)~~] Proposal evaluation criteria. The CST will  
16 evaluate proposals based on the following criteria:

17           (1) understanding of scope of services;

18           (2) experience of the project manager and project team;

19           (3) ability to meet the project schedule;

20           (4) if no interview is required, past performance scores  
21 included in the database for department contracts or references  
22 identified in the LOI or provided in response to an additional  
23 request; [~~and~~]

1           (5) the provider's Quality Assurance/Quality Control  
2 program, if not evaluated under §9.34 or §9.36 of this  
3 subchapter (relating to Short List Determination and Short List  
4 Interviews and Evaluation, respectively); and

5           (6) [~~5~~] other criteria approved by the Design Division  
6 and listed in the RFP.

7           (e) [~~f~~] Proposal evaluation score [~~scale~~]. The CST will  
8 assign a RIF weight to each criterion. The RIF total for all  
9 criteria will equal 100. Each criterion will be scored  
10 separately on a 0-10 point scale with 10 considered the best  
11 qualified. The maximum possible score that a CST member may  
12 give is 1000 points.

13

14 §9.36. Short List Interviews and Evaluation.

15           (a) Interviews. The CST may conduct interviews with the  
16 providers on the short list if a written proposal is required.  
17 If a written proposal is not required, then an interview will be  
18 conducted, and the managing office will give participating  
19 providers an Interview and Contract Guide. If proposals and  
20 interviews will be required, proposal and interview requirements  
21 can be included in the RFP or in the Interview and Contract  
22 Guide. [~~The CST may elect to perform telephone interviews. In~~  
23 ~~order for a member of the CST to score a provider, the member~~

1 ~~must be present for all interviews. The prime provider's~~  
2 ~~project manager is required to be present for the interview.]~~

3 (b) Interview attendance.

4 (1) In order for a member of the CST to score a provider,  
5 the member must be present for all interviews.

6 (2) The prime provider's project manager is required to  
7 be present for the interview.

8 (3) To participate in the interview with the project  
9 manager, a team member must be identified in the prime  
10 provider's LOI.

11 (4) An individual who has been proposed as a team member  
12 in more than one competing LOI may only participate in one  
13 interview.

14 (c) [~~b~~] Interview and Contract Guide. The ICG includes:

15 (1) a description of the interview format;

16 (2) instructions for content and subject matter for a  
17 provider's presentation, if required;

18 (3) the scope of services to be provided by the  
19 department;

20 (4) the scope of services to be provided [~~delivered~~] by  
21 the provider;

22 (5) the proposed contract duration;

23 (6) the proposed method of payment;

- 1           (7) short list meeting information, if applicable;  
2           (8) administrative qualification requirement information;  
3           (9) insurance requirement information;  
4           (10) forms to be submitted at the interview, if  
5 applicable, including:

- 6           (A) [+7] a debarment certification form;  
7           (B) [+8] a lower tier debarment certification form;  
8           (C) [+9] a lobbying certification/disclosure form; and  
9           (D) other forms as specified in the ICG; and  
10          (11) [+10] any special contract requirements.

11          (d) [+e] Interview format [~~structure~~]. The interview

12 allows providers to demonstrate their understanding of the

13 project and knowledge of applicable rules, regulations, codes,

14 and special information to be gathered. The CST may allow a

15 provider team to make a presentation [~~with written material for~~

16 ~~the CST to reference in evaluating the interview~~]. The CST will

17 [~~may~~] require a provider team to answer a predetermined written

18 set of questions in the interview.

19          (e) [+d] Interview evaluation criteria. The CST will

20 evaluate responses to interview questions and information

21 conveyed in the presentation [~~interviews~~] based on the following

22 criteria:

- 23           (1) understanding of the scope of services;

1           (2) experience and demonstrated competence of the project  
2 manager and project team;

3           (3) ability to meet the project schedule;

4           ~~[(4) responses to interview questions;]~~

5           (4) [(5)] past performance scores included in the  
6 database for department contracts or references identified in  
7 the LOI or provided in response to an additional request; ~~[and]~~  
8           (5) the provider's Quality Assurance/Quality Control  
9 program, if not evaluated under §9.34 or §9.35 of this  
10 subchapter (relating to Short List Determination and Short List  
11 Proposals and Evaluation, respectively); and

12           (6) other criteria approved by the Design Division and  
13 listed in the RFP or Interview and Contract Guide [ICG].

14           (f) [(e)] Interview evaluation score [scale]. The CST will  
15 assign a RIF weight to each criterion. The RIF total for all  
16 criteria will equal 100. Each criterion will be scored  
17 separately on a 0-10 point scale with 10 considered the best  
18 qualified. The maximum possible score that a CST member may  
19 give is 1000 points.

20

21 §9.37. Selection.

22           (a) Basis of final selection.

23           (1) If a proposal and interview are both required, the

1 final selection will be made by using the CST proposal score for  
2 30% of the total score and the interview score for 70% of the  
3 total score.

4 (2) If an interview is not required, the final selection  
5 will be made by using the written proposal score.

6 (3) If a written proposal is not required, the final  
7 selection will be made by using the interview score.

8 (b) Tie scores. In the event of a tie, the managing  
9 officer will break the tie using the following method.

10 (1) The first tie breaker, if needed, will be the score  
11 for the experience of the project manager and the project team.

12 (2) The second tie breaker, if needed, will be the score  
13 for ability to meet the proposed project schedule.

14 (3) The third tie breaker, if needed, and if an interview  
15 was conducted, will be the score for the responses to interview  
16 questions; if proposals were submitted, it will be the score for  
17 understanding of scope of services.

18 (4) The fourth or additional tie breakers, if needed, and  
19 if an interview was conducted, will be the next criterion  
20 listed; if proposals were submitted, it will be the next  
21 criterion listed. The remaining criteria should be compared in  
22 the order listed until the tie is broken.

23 (5) If there is still a tie, the provider will be chosen

1 by random selection.

2 (c) Selection summary. The CST will prepare a contract  
3 evaluation summary containing the scores of the prime providers  
4 on the short list[7] for consideration by the managing officer.

5 (d) Submittal of selection. The managing officer will  
6 submit the contract evaluation summary, evaluation  
7 documentation, certification that the procedures provided by  
8 this subchapter were used, and recommendation for selection to  
9 the Design Division for review. If the procedural review is  
10 acceptable, the executive director or the director's designee  
11 will concur with the selection.

12 (e) Notification. The department will:

13 (1) prepare a letter to notify the provider selected for  
14 contract negotiation and arrange a meeting to begin contract  
15 negotiations;

16 (2) prepare a letter to each of the providers remaining  
17 on the short list that were not selected[~~, naming the provider~~  
18 ~~that was selected~~]; and

19 (3) publish the short list and the provider selected for  
20 a contract on an electronic bulletin board.

21 (f) Negotiations.

22 (1) Selected provider. The department will enter into  
23 negotiations with the selected provider. The provider shall

1 submit the information required for the contract. [~~The provider~~  
2 ~~shall also provide a list of all suppliers and subproviders~~  
3 ~~contacted relative to this project in accordance with~~  
4 ~~§9.53(d)(5) of this title (relating to Disadvantaged Business~~  
5 ~~Enterprise (DBE) Program). Any information necessary to meet~~  
6 ~~the administrative qualification requirements found in §9.42 of~~  
7 ~~this title (relating to Administrative Qualification), that has~~  
8 ~~not been submitted to the department prior to selection shall be~~  
9 ~~submitted so that the department may determine the fairness and~~  
10 ~~reasonableness of the contract price.] This selection process  
11 complies with Transportation Code, §223.041, Government Code,  
12 Chapter 2254, Subchapter A, and 23 CFR §172.5(a)(4). State  
13 funded architectural contracts are based on percentage of  
14 construction cost as provided in the General Appropriations Act.  
15 Pursuant to 23 CFR §172.5(c), federally funded contracts are not  
16 based on percentage of construction cost.~~

17 (2) Negotiation period. The provider shall sign the  
18 contract within 30 working days from the date of notification to  
19 the provider. An extension must be authorized before the  
20 expiration of the negotiation period or previous extension.  
21 Extensions or schedules will be used as provided in this  
22 paragraph.

23 (A) Automatic extensions. Providers [~~Automatic~~

1 ~~extensions~~] for multiple contracts selected under one  
2 advertisement in which negotiations will be conducted at the  
3 same time are entitled to an automatic extension of the initial  
4 negotiation period. For each individual contract that has been  
5 awarded as part of a multiple contract package and that is  
6 anticipated to be valued at:

7 (i) \$1 million or more each, the initial negotiating  
8 period is extended by five working days for each contract; or

9 (ii) less than \$1 million each, the initial  
10 negotiating period is extended by five working days for every  
11 two contracts.

12 (B) Discretionary extensions. Discretionary extensions  
13 of the initial negotiating period may be granted to providers.

14 (i) Upon receipt [~~submission by the managing officer~~]  
15 of sufficient written justification prepared by the managing  
16 officer indicating that adequate progress is being made to  
17 conclude successful negotiations, the director of the Design  
18 Division will grant an extension not to exceed 30 working days.

19 (ii) Upon receipt [~~submission by the managing~~  
20 ~~officer~~] of sufficient written justification prepared by the  
21 managing officer establishing that additional time to conduct  
22 negotiations is necessary due to the uniqueness or complexity of  
23 the project scope of services, the executive director or the

1 director's designee not below the level of assistant executive  
2 director may grant additional extensions.

3 (C) Unique negotiating schedules. The director of the  
4 Design Division may approve a unique negotiating schedule  
5 submitted by the managing officer prior to the start of  
6 negotiations.

7 (3) Selection of alternative providers. If the  
8 department and the selected provider are unable to execute a  
9 satisfactory contract containing a fair and reasonable price  
10 within the allotted time period, the managing officer shall end  
11 negotiations with that provider and commence negotiations with  
12 alternative providers.

13 (A) Single contract selection. If negotiations are  
14 ended, the department shall negotiate with the next highest  
15 ranked provider and shall follow in this sequence through the  
16 third highest ranked provider. If a satisfactory contract  
17 containing a fair and reasonable price is not negotiated with  
18 any of the three highest-ranked providers within the time frame  
19 specified in this section, the proposed contract shall be  
20 canceled. If the proposed contract is canceled, it may be  
21 readvertised.

22 (B) Multiple contract selection. Beginning with the  
23 next highest ranked provider, after the last provider selected

1 for the multiple contracts, and within the acceptable range of  
2 scores as required by §9.39 of this subchapter (relating to  
3 Selection Types, [~~and~~] Contract Types, and Projected Contracts),  
4 negotiations shall be undertaken until a satisfactory contract  
5 containing a fair and reasonable price is agreed upon. If a  
6 satisfactory contract is not negotiated with any of the  
7 providers within the acceptable range of scores within the time  
8 frame specified in this section, the proposed contract shall be  
9 canceled. If the proposed contract is canceled, it may be  
10 readvertised.

11 [~~(4) DBE/HUB goal documentation. The selected provider~~  
12 ~~shall provide information to the department documenting its~~  
13 ~~satisfaction or attempts to satisfy the DBE/HUB goal. The~~  
14 ~~department will cease negotiation with the provider and enter~~  
15 ~~into negotiation with the next provider in the order of~~  
16 ~~preference for this contract if the selected provider fails to~~  
17 ~~submit the required documentation. The selected provider shall~~  
18 ~~submit to the managing officer, through the department's project~~  
19 ~~manager, for review and acceptance.;~~]

20 [~~(A) names and addresses of DBE/HUB firms that will~~  
21 ~~participate in the contract.;~~]

22 [~~(B) a description of the work that each DBE/HUB will~~  
23 ~~perform.;~~]

1           ~~[(C) the dollar amount of the participation of each~~  
2 ~~DBE/HUB firm participating;]~~

3           ~~[(D) written documentation of the providers commitment~~  
4 ~~to use a DBE/HUB subprovider whose participation it submits to~~  
5 ~~meet a contract goal;]~~

6           ~~[(E) written confirmation from the DBE/HUB that they~~  
7 ~~will participate; and]~~

8           ~~[(F) when applicable, evidence of good faith efforts.]~~

9           (g) Appeal. A provider may file a written complaint  
10 concerning the selection process with the executive director or  
11 the director's designee.

12

13 §9.38. Contract Administration [Management].

14           ~~[(a) DBE/HUB participation.]~~

15           ~~[(1) HUB program goals may be satisfied by a HUB prime~~  
16 ~~provider. DBE prime providers may receive DBE credit for work~~  
17 ~~performed by its own forces or performed by a DBE subprovider,~~  
18 ~~but not by a non DBE subprovider.]~~

19           ~~[(2) If the prime provider or the subprovider is a~~  
20 ~~DBE/HUB, the DBE/HUB provider and subprovider may subcontract in~~  
21 ~~accordance with §9.56 of this title (relating to Contract~~  
22 ~~Compliance).]~~

23           (a) ~~[(b)]~~ Subcontracts. A prime provider shall perform at

1 least 30% of the contracted work with its own work force unless  
2 approved by the director of the Design Division when the work is  
3 so specialized that the prime provider cannot perform at least  
4 30% of the work.

5 (b) [~~(e)~~] Operations.

6 (1) Management responsibility. [~~The department's project~~  
7 ~~manager will be designated by the managing officer.~~]

8 (A) The department's project manager is the  
9 department's official contact for management of the contract  
10 between the department and the provider.

11 (B) [~~(2) Project manager.~~] The prime provider's project  
12 manager is the provider's official contact for management of the  
13 contract between the department and the provider. The  
14 provider's project manager may not be changed without prior  
15 written consent of the department.

16 [~~(3) Commencement of work. The provider shall not~~  
17 ~~proceed with any contract work until advised in writing by the~~  
18 ~~department to proceed.~~]

19 [~~(4) Suspension of work. The department may suspend the~~  
20 ~~work by:~~]

21 [~~(A) verbally notifying the provider; and]~~

22 [~~(B) providing written notification of the suspension,~~  
23 ~~including:~~]

1           ~~[(i) identifying the reason for suspension; and]~~  
2           ~~[(ii) identifying approximate length of suspension~~  
3 ~~and payment based on actual work completed as of the date of~~  
4 ~~suspension.]~~

5           ~~[(5) Payment on provider contracts. Payment for eligible~~  
6 ~~costs will be made within 30 days after receiving a correct~~  
7 ~~invoice. Payment may be withheld pending verification of~~  
8 ~~satisfactory work performed. To receive payment for services,~~  
9 ~~the provider shall submit to the department project manager:]~~

10           ~~[(A) a monthly progress report;]~~

11           ~~[(B) an itemized and certified invoice; and]~~

12           ~~[(C) a DBE/HUB report (The CSTB may require proof of~~  
13 ~~DBE/HUB use, including submittal of canceled checks that are~~  
14 ~~properly identified by department project number or contract~~  
15 ~~number).]~~

16           (2) ~~[(6)]~~ Interim audit. The department may perform  
17 interim audits.

18           (c) ~~[(d)]~~ Supplemental agreements.

19           (1) An amendment to the contract will be made through a  
20 supplemental agreement. ~~[The original executed contract will~~  
21 ~~require a supplemental agreement if:]~~

22           ~~[(A) additional funding is required in accordance with~~  
23 ~~terms of the contract;]~~

1           ~~[(B) additional time is needed to complete work in~~  
2 ~~progress; or]~~

3           ~~[(C) changes in scope of services are necessary.]~~

4           (2) The supplemental agreement will be executed:

5           (A) prior to the expiration date of the ~~[original]~~  
6 contract;

7           (B) prior to exceeding the contract amount; and

8           (C) prior to performance of unauthorized work.

9           (d) ~~[(e)]~~ Indefinite deliverable contract work  
10 authorization. If the department and the provider are unable to  
11 execute a satisfactory work authorization containing a fair and  
12 reasonable price, the department project manager shall end  
13 negotiations with that provider. Only after negotiations have  
14 been ended will the department contact another provider with an  
15 indefinite deliverable contract to initiate negotiations for the  
16 work.

17           (e) ~~[(f)]~~ Contract close out.

18           (1) Final audit. The department's Audit Office may  
19 perform an audit.

20           (2) Time. A contract is ready for close out when:

21           (A) services have been provided;

22           (B) products, including data and deliverables, have  
23 been received and accepted;

1 (C) approval has been received from the U.S. Department  
2 of Transportation, when federally funded;

3 (D) payments have been made;

4 (E) audit findings have been resolved;

5 (F) the contract expires unless extended by  
6 supplemental agreement; ~~and~~

7 (G) the final DBE/HUB report has been submitted; and

8 (H) the final provider performance evaluation is  
9 completed and finalized.

10 (f) [~~g~~] Provider performance evaluations.

11 (1) The department will document demonstrated competence  
12 and qualifications by evaluating the prime provider and project  
13 manager's performance.

14 (A) The evaluation shall be conducted annually at  
15 twelve month intervals during ongoing contract activity, upon  
16 completion of a contract, or when the managing office determines  
17 that the work is behind schedule or not being performed  
18 according to the contract.

19 (B) Optional evaluations may be conducted upon  
20 completion of a contract phase.

21 (2) The department may evaluate project constructability  
22 not less than every 12 months during project construction and  
23 upon completion of the construction contract.

1           (3) The department will give a copy of the performance  
2 evaluation to the prime provider for review and comment. If the  
3 prime provider responds with comments on its evaluation, the  
4 department will include the comments in the CCIS database  
5 identified in §9.41 of this subchapter [~~title~~] (relating to  
6 Precertification).

7           (4) Performance evaluation scores will be entered into  
8 the CCIS database and may be used in determining the  
9 qualifications of the prime provider or subprovider in  
10 accordance with §9.35 or §9.36 of this subchapter (relating to  
11 Short List Proposals and Evaluation and Short List Interviews  
12 and Evaluation, respectively) [~~(relating to Short List Meeting,~~  
13 ~~Proposals, and Evaluation) or §9.36 (relating to Short List~~  
14 ~~Interviews and Evaluation) of this subchapter].~~

15  
16 §9.39. Selection Types, [~~and~~] Contract Types, and Projected  
17 Contracts.

18           (a) Selection types. The department will perform three  
19 types of contract selections.

20           (1) Individual contract selection. One contract will  
21 result from the contract notice.

22           (2) Multiple contract selection. More than one contract  
23 of similar work types will result from the contract notice. The

1 notice will indicate the number and type of contracts to result  
2 from the advertisement, and specify a range of scores for prime  
3 providers that will be considered qualified to perform the work.

4 (A) If more prime providers fall within the specified  
5 range than the anticipated number of contracts, prime providers  
6 will be selected in order of ranking in the evaluation process.

7 (B) If the anticipated number of contracts is greater  
8 than the number of prime providers that fall within the  
9 specified range, then each prime provider will be selected for  
10 one contract. Each of the remaining contracts will be  
11 [~~randomly~~] awarded to the prime providers that [~~who~~] fall within  
12 the specific range until all providers have two contracts or all  
13 contracts have been awarded. If there is still an excess of  
14 contracts, then the process repeats.

15 (3) Emergency contract selection. To utilize the  
16 emergency selection procedure, the executive director of the  
17 department or the director's designee must certify in writing  
18 that there is good cause to believe that an emergency situation  
19 exists, including safety hazards or a substantial disruption of  
20 the orderly flow of traffic and commerce for the department.

21 (A) Eligibility. To be eligible to work on an  
22 emergency contract, a prime provider's [~~firm's~~] project manager  
23 must be precertified pursuant to §9.41 of this subchapter

1 ~~[title]~~ (relating to Precertification) or must complete a  
2 precertification application form prescribed by the department.

3 (B) Notification.

4 (i) After an emergency is certified, the managing  
5 officer will review the department's file of eligible firms. If  
6 there are ~~[is]~~ a sufficient number of firms, the managing  
7 officer will notify at least three of those firms.

8 (ii) Consistent with and contingent upon the nature  
9 of the emergency, the managing officer may contact prospective  
10 firms by telephone, letter, facsimile ~~[telefacsimile]~~, or other  
11 appropriate form of communication.

12 (iii) The managing officer will inform each firm of  
13 the nature of the emergency and furnish specifications for the  
14 remedy, including time constraints, and any additional  
15 information needed for the firm to prepare a project team.

16 (C) Selection. The department will select the provider  
17 ~~[firm]~~ based on demonstrated competence and qualifications. The  
18 department will negotiate ~~[at]~~ a fair and reasonable price with  
19 the top-ranked provider. If agreement cannot be reached, the  
20 department will negotiate with the subsequent firms, in order of  
21 selection, until an agreement is reached. If no eligible firm  
22 is able to provide the required type of service, the managing  
23 officer may take any measure necessary to identify and locate an

1 available firm that [~~who~~] is able to provide the required  
2 service. If selected, the prospective contractor thus  
3 identified must complete the precertification application prior  
4 to execution of the contract.

5 (b) Contract types. The department will offer two types of  
6 contracts.

7 (1) Indefinite deliverable contract. This contract may  
8 be for an individual project or for multiple projects. The  
9 typical type of work will be described in the notice. The total  
10 of the contract work authorizations shall not exceed \$5,000,000  
11 in a division, region, metropolitan district, or border district  
12 of the department, unless approved by the Texas Transportation  
13 Commission prior to NOI publication. The total of the contract  
14 work authorizations shall not exceed \$2,000,000 in a district of  
15 the department other than a metropolitan or border district.  
16 The contract period [7] in which initial work authorizations may  
17 be issued [7] may not be longer than two years from the date of  
18 contract execution, unless approved by the Texas Transportation  
19 Commission prior to NOI publication. Supplemental agreements  
20 may be issued to extend the contract period beyond the two  
21 years, but only as necessary to complete work on an initial work  
22 authorization.

23 (2) Specific deliverable contract. This contract may be

1 for an individual project or for multiple projects. The notice  
2 will describe the specific deliverables to be procured under the  
3 contract. There is no dollar limit on the size of the contract,  
4 and there is no time restriction on the contract period.

5 (c) Projected contracts. The department will publish  
6 quarterly a statewide list of projected contracts for consulting  
7 engineering, architectural, and surveying services and will  
8 provide upon request, or make available on the department's web  
9 site, a copy of each list to community, business, and  
10 professional organizations for dissemination to their  
11 membership.

12  
13 §9.41. Precertification.

14 (a) Contract Eligibility. To be eligible for selection [~~to~~  
15 ~~perform work~~] in the categories approved according to §9.43 of  
16 this subchapter [~~title~~] (relating to Precertification  
17 Requirements), a [~~prime~~] provider [~~and a subprovider~~] must be  
18 precertified under [~~in accordance with~~] this section unless the  
19 department has waived the precertification requirements for a  
20 contract that is less than \$250,000.[~~+~~]

21 [~~(1) the anticipated work in an individual work category~~  
22 ~~is less than 5.0% of the contract; or~~]

23 [~~(2) the department has waived the precertification~~]

1 ~~requirements for a contract that is less than \$250,000.]~~

2 (b) Application.

3 (1) Registered architects, registered professional  
4 engineers, registered or licensed professional surveyors, and  
5 other technical staff who desire to be precertified by the  
6 department to perform work on architectural, engineering, or  
7 surveying contracts[~~7~~] shall submit a completed precertification  
8 application to the Design Division for review and determination  
9 of precertification status.

10 (2) An application form prescribed by the department [~~7~~]  
11 may be obtained by contacting the Texas Department of  
12 Transportation, Design Division, 125 East 11th Street, Austin,  
13 Texas 78701-2483, or through the department's web site.

14 (3) The application form will request information  
15 concerning the experience of the individual.

16 (4) The precertification web site will include:

17 (A) a copy of the application form;

18 (B) instructions concerning submittal of information  
19 for precertification, including format and length restrictions  
20 for data to be submitted; and

21 (C) the requirements for precertification in each  
22 category.

23 (5) The submittal date for review deadlines as described

1 in subsection (f) of this section shall be the date the  
2 precertification application is received by the Design Division.

3 (6) The precertification of a provider by the department  
4 does not guarantee that work will be awarded to that provider.

5 (c) Deadline. When precertification is required as  
6 described in subsection (a) of this section, prime providers and  
7 subproviders must be precertified in the individual work  
8 [~~technical~~] categories by the deadline for receipt of the letter  
9 of interest to be eligible for selection. The department will  
10 not delay the consultant selection process or contract execution  
11 for a prime provider or subprovider that has not been  
12 precertified.

13 (d) Data management. The department will maintain the CCIS  
14 containing qualification information submitted in the  
15 precertification application by the firm for an employee.

16 (e) Firm and employee status.

17 (1) A firm may be precertified in a work category if the  
18 firm has a current employee precertified in the category.

19 (2) A firm employee may be precertified in a work  
20 category if the department determines the employee possesses the  
21 skills and experience to meet the requirements. An employee is  
22 not precertified based on the firm's experience.

23 (3) A precertification will transfer with the employee if

1 the employee leaves the firm.

2 (4) The department may review a firm's information to  
3 evaluate whether the support, equipment, and other resources  
4 necessary to do the work are provided to the employee.

5 (5) A firm with one employee who is precertified in  
6 multiple work categories is precertified in those categories.  
7 When required, prime providers and subproviders must be  
8 precertified in the categories of work they will be performing;  
9 however, a provider or subprovider is not required to be  
10 precertified in every category of work involved in the contract,  
11 unless it will be performing in a lead capacity on all  
12 categories of work.

13 (f) Review process.

14 (1) An individual, and therefore the firm, will be  
15 precertified within 60 days of receipt of complete and accurate  
16 information for the submittal or notified in writing within the  
17 same time period that they did not meet the requirements for  
18 precertification or that additional submittals will be required  
19 for review.

20 (2) If the submittal is incomplete, a firm will be  
21 requested to submit additional information for review. The firm  
22 shall submit such information within 30 days of receipt of the  
23 department's request for such information. If the information

1 is not provided within 30 days after receipt of the request, the  
2 application for precertification will be processed with the  
3 information available. The department will make a determination  
4 on precertification status within 60 days of receipt of the  
5 additional information.

6 (3) The department will consider the following factors in  
7 reviewing the precertification applications:

8 (A) current license or registration;

9 (B) personal experience and training; ~~and~~

10 (C) work category requirements as maintained on the  
11 department's web site; and [-]

12 (D) any record of unprofessional conduct.

13 (g) Updates. A firm must report any change in the  
14 information included in the original application no later than  
15 45 days after the change occurs.

16 (h) Annual renewal. To maintain eligibility under  
17 subsection (a) of this section, no later than March 31 of each  
18 year, the provider must renew the precertification of the  
19 provider and the provider's employees. The provider shall  
20 submit its annual renewal through CCIS.

21 (i) Inactive status. Any provider that has not renewed by  
22 the annual renewal deadline is inactive. When precertification  
23 is required as described in subsection (a) of this section, a

1 provider in an inactive status on the deadline for receipt of  
2 the letter of interest is not eligible for selection. To become  
3 active and eligible the provider must renew under subsection (h)  
4 of this section.

5 (j) [~~(h)~~] Appeal. A firm may appeal denial of  
6 precertification by submitting additional information within 30  
7 days of receipt of written notification of denial to the Design  
8 Division. This information shall justify why the applicant  
9 meets the requirements for precertification. The department  
10 will review the information and make a determination regarding  
11 precertification. A firm may file a written complaint regarding  
12 precertification denial with the executive director or his or  
13 her designee.

14  
15 §9.42. Administrative Qualification.

16 (a) Exception. Administrative qualification is not  
17 necessary for non-engineering firms and provider services  
18 included in Group 6 - bridge inspection, Group 12 - materials  
19 inspection and testing, Group 14 - geotechnical services, Group  
20 15 - surveying and mapping, or [~~and/or~~] Group 16 - architecture  
21 as listed on the department's web site for precertification.  
22 Provider [~~Providers~~] compensation for these services is  
23 typically based on units of service rates. The Audit Office and

1 the Design Division may agree to grant exceptions for other  
2 provider services on a case by case basis. In determining  
3 whether to grant an exception, the Audit Office and the Design  
4 Division may consider the nature of the services to be provided,  
5 the method of payment to be used, the reasonableness and  
6 feasibility of requiring an audited indirect cost rate, and any  
7 other relevant factors. Any request for an exception must be  
8 received by the Audit Office prior to the due date of the letter  
9 of interest.

10 (b) Time to provide information. Each prime provider and  
11 subprovider must submit the [Prime providers and subproviders  
12 may provide] information described in this section no later than  
13 the LOI due date. [prior to selection. If the information is  
14 not furnished before selection, it must be provided after  
15 selection and before contract execution.] The administrative  
16 qualification submittal is a separate submittal from the  
17 precertification submittal, and is submitted to the Texas  
18 Department of Transportation, Audit Office, 125 E. 11th Street,  
19 Austin, Texas 78701-2483. Administrative qualification  
20 submittals will not be received by the Design Division.  
21 [~~Submission prior to selection is encouraged to facilitate~~  
22 ~~timely contract execution requirements.~~]

23 (c) Evaluation factors. The department will consider the

1 following factors in determining administrative qualifications  
2 of prime providers or subproviders.

3 (1) Adequate accounting system. The prime provider or  
4 subproviders must demonstrate the existence of an adequate  
5 accounting system that meets the department's audit  
6 requirements, as evidenced by certification by an independent  
7 certified public accountant or governmental agency. The system  
8 must be adequate to support all billings made to the department  
9 and other clients.

10 (2) Indirect cost rate audit. The prime provider or  
11 subprovider must submit an indirect cost rate audit for the time  
12 period specified in subparagraph (C) of this paragraph performed  
13 by an independent certified public accountant, an agency of the  
14 federal government, another state transportation agency, or a  
15 local transit agency except as provided in subparagraph  
16 [~~subparagraphs~~] (D) [~~and (E)~~] of this paragraph. If the audit  
17 is performed by an independent certified public accountant, the  
18 provider or subprovider must assure that the department will be  
19 given access to the audit work papers.

20 (A) The audit report shall include statements that the  
21 audit was performed in accordance with generally accepted  
22 government auditing standards and the indirect cost rate was  
23 developed in accordance with the Federal Acquisition

1 Regulations, 48 CFR Part 31.

2 (i) AASHTO Uniform Audit and Accounting Guide is  
3 acceptable guidance for the audit of the indirect cost rate.

4 (ii) Department requirements that differ from the  
5 AASHTO guide are contained in the Indirect Cost Rate Guidance  
6 available through the department's website.

7 (B) The department may perform indirect cost rate  
8 audits of any prime provider or subprovider under contract to,  
9 or desiring to do business with, the department. These audits  
10 will be conducted consistent with the criteria outlined in this  
11 subsection.

12 (C) The end of the fiscal period of the audit report  
13 must be within twenty four [~~eighteen~~] months of the date the  
14 notice was posted [~~provider selection~~].

15 (D) The department may contract with a prime provider  
16 or allow utilization of a subprovider lacking an approved  
17 indirect cost rate audit if[+] the prime provider or subprovider  
18 has been in operation, as currently organized, for less than one  
19 fiscal year or the estimated value of its portion of the  
20 contract is not more than \$500,000.

21 [~~(i) the value of the contract is less than~~  
22 ~~\$250,000;~~]

23 [~~(ii) the prime provider or subprovider can~~

1 ~~adequately document and support all proposed costs; and]~~

2  ~~[(iii) all other qualification requirements of this~~  
3  ~~subsection are met.]~~

4  ~~[(E) Prime providers or subproviders who have been in~~  
5  ~~operation with an accounting system acceptable to the~~  
6  ~~department, for less than one fiscal year since organization or~~  
7  ~~comprehensive reorganization shall prepare a projected indirect~~  
8  ~~cost rate for the first fiscal year of operation. The indirect~~  
9  ~~cost rate will be supported by estimated expenditures and be in~~  
10  ~~accordance with the Indirect Cost Rate guidance referred to in~~  
11  ~~subparagraph A of this paragraph. The department's Audit Office~~  
12  ~~will review the estimate and establish a provisional indirect~~  
13  ~~cost rate for use in contract negotiations.]~~

14 (3) Salary rates. The department will consider current  
15 salary rates, range of rates, or average rates by job  
16 classification.

17 (4) Direct costs. The department will consider [~~other~~  
18 ~~direct~~] costs such as copies, Computer Aided Design and Drafting  
19 (CADD), or other direct costs.

20 (d) Provision of administrative qualification information.  
21 The department's Audit Office will provide administrative  
22 qualification information to the managing office when notified  
23 [~~requested~~] by the Design Division [~~a managing office~~] upon

1 selection approval of a provider for the contract, for use in  
2 negotiations as identified in §9.37 of this subchapter [~~title~~]  
3 (relating to Selection).

4 (e) Prohibited actions. Administrative qualification  
5 information obtained through this section will not be made  
6 available to the CST by the department's Audit Office prior to  
7 contract selection.

8

9 §9.43. Precertification Requirements.

10 (a) Requirements.

11 (1) Eligible employees. A firm may be precertified in  
12 the precertification [~~technical~~] work categories maintained on  
13 the department's web site by providing the listed requirements.  
14 A firm may only submit an application for an individual who is  
15 employed by that firm at the time of submittal for  
16 precertification.

17 (2) Experience. The experience used to meet requirements  
18 may be either prior to or after licensure unless otherwise  
19 stated in a specific category. For the purpose of experience  
20 for precertification, the employee may be licensed to practice  
21 in any state for which that experience is recognized by the:

22 (A) Texas Board of Professional Engineers for  
23 engineers;

1           (B) Texas Board of Architectural Examiners for  
2 architects; or

3           (C) Texas Board of Professional Land Surveying for land  
4 surveyors.

5           (b) Work categories. The approved precertification work  
6 category definitions and requirements will be maintained on the  
7 department's web site. The Texas Transportation Commission, by  
8 minute order, may add, revise, or delete a work category.