

## ATTACHMENT H – SUBCONTRACTING

### INSTRUCTIONS

#### PROFESSIONAL SERVICES CONTRACTS WITH STATE FUNDING HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PROVISIONS

**[Insert the following Attachment H section into the contract template. Add Contract and PeopleSoft number into right header, modify page numbering as applicable, and delete this page of instructions.]**

This Attachment is applicable to state funded contracts with an assigned HUB goal.

A copy of the Attachment H Provisions and a copy of each Attachment H Exhibit (as indicated in the Exhibits file) shall be included and made part of the contract.]

## ATTACHMENT H - SUBCONTRACTING

### PROFESSIONAL SERVICES CONTRACTS WITH STATE FUNDING HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PROVISIONS

#### A. PURPOSE

The purpose of this Attachment is to carry out the U.S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT-assisted contracts.

#### B. DEFINITIONS

**Aspirational Advertised HUB Goal:** The statewide goal for solicitations with state funding for HUB goal for Professional Services Contracts as related to the State of Texas Disparity Study, and amendments made due to program updates.

**Centralized Master Bidders List (CMBL) - HUB Directory:** An online directory listing all HUBs currently certified. The CMBL Directory identifies HUBs whose participation on a Contract may be counted toward achievement of the HUB Contract goal, see the [CMBL Directory](#).

**Commitment:** The commitment to utilize subproviders for services that have been identified in Exhibit HSP of the contract.

**Contract HUB Goal:** The actual contract goal percentage for HUB Subcontracting for a Professional Services contract is determined by the approved Historically Underutilized Business (HUB) Subcontracting Plan (HSP) that was included in the response to the solicitation, and then becomes part of the executed contract.

**Good Faith Effort (GFE):** All necessary and reasonable steps to achieve the contract goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient HUB participation. For guidance on GFEs see: [34 TAC §20.285\(d\)\(1\)\(D\)\(iii\)](#)

**Historically Underutilized Business (HUB):** A business that is certified by the Texas Comptroller of Public Accounts in accordance with [34 TAC, §20.282](#)

**Historically Underutilized Business (HUB) Subcontracting Plan (HSP):** The Texas Comptroller of Public Accounts form used to document subcontracting participation. (HUB & non-HUB) The approved HSP becomes part of the executed contract and must be updated during the life of the contract when significant changes occur to the original subcontracting participation.

**Professional Services Contract Administration Management System (PS-CAMS):** The electronic reporting system used for PEPS professional services contracts.

**PS-CAMS Online Reporting System:** The Online Reporting System used by providers for submitting monthly electronic reporting for subprovider services under a PEPS Professional Services contract. See [Manage Active Contracts with PS-CAMS](#) for additional information on the Online Reporting System.

### C. TXDOT POLICY

It is the policy of the Texas Department of Transportation (TxDOT) to encourage the use of historically underutilized businesses (HUBs) and implement the program through race, ethnic, and gender-neutral means. The purpose of the HUB program is to promote full and equal business opportunities for all businesses to remedy disparity in state procurement and contracting in accordance with the HUB goals specified in the State of Texas Disparity Study. For additional information, see [34 TAC §20.281](#).

### D. PROVIDER REQUIREMENTS

The provider shall:

1. offer HUBs, as defined in [43 TAC Part 1, Chapter 9, Subchapter L](#) and the [34 TAC, Part 1, Chapter 20, Subchapter D, Division 1](#) the opportunity to compete fairly for contracts and subcontracts financed with State funds.
2. make a GFE to meet the HUB goals, and to meet the commitments made to **ALL** subproviders as indicated in the Exhibit-HSP of the contract.
3. adhere to the prompt payment requirements for all subproviders, including HUBs, as outlined in the [Texas Government Code, Chapter 2251](#).
4. report all subprovider activities that are performed on the contract (HUB and Non-HUB), using the provider [PS-CAMS Online Reporting System](#), or an alternative format prescribed by the State,
5. notify the State if payment to any HUB or non-HUB subprovider is withheld or reduced, with a written explanation to support the reason for withholding or reducing the payment,
6. document the GFE taken to obtain HUB participation if they fail to meet the contract HUB goal,
7. carry out applicable requirements of [43 TAC Part 1, Chapter 9, Subchapter L](#) in the award and administration of DOT-assisted contracts,
8. comply with all requirements, processes and procedures outlined in this contract, Attachment H, and the Attachment H Exhibits, in support of TxDOT's HUB program, and
9. cooperate fully and promptly with compliance audits, reviews, investigations, and other requests for information.

A provider's failure to comply with these requirements, may constitute a material breach of this contract. In such a case, the State reserves the right to:

- a. terminate the contract,
- b. deduct the amount of HUB goal not accomplished by HUBs from the money due or to become due the provider, and/or
- c. other remedy or remedies as the State deems appropriate.

### E. FALSIFICATION AND MISREPRESENTATION

If the State determines that a provider or Subprovider was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate HUB participation or any other business

arrangement determined by the State to be unallowable, or if the provider engages in repeated violations, falsification, or misrepresentation, the State may:

1. refuse to count any fraudulent or misrepresented HUB participation,
2. withhold progress payments to the provider commensurate with the violation,
3. reduce the provider's prequalification status,
4. refer the matter to the Office of Inspector General of the US Department of Transportation for investigation, and/or
5. seek any other available contractual remedy.

#### **F. HUB PARTICIPATION (GOAL CREDIT)**

Texas Comptroller of Public Accounts (CPA) certifies the eligibility of HUBs. Once a firm is determined to be an eligible HUB, the total amount paid to the HUB subprovider for work performed with his/her own forces is counted toward the HUB contract goal.

Payments made to a HUB that cannot be linked by an invoice or canceled check to the contract under which credit is claimed will not be credited.

#### **G. HUB TERMINATION OR SUBSTITUTION**

The provider shall not terminate or substitute a HUB Subprovider named in Exhibit-HSP of the contract without prior written approval from the State. The provider must demonstrate to the satisfaction of the State that the originally designated HUB was not able or willing to perform and make a good faith effort to substitute the HUB subprovider with another certified HUB that is qualified and approved by the state. The [HUB Directory](#) is available at the CPA's website

The provider submits the [HSP Change Request Form 2580](#) and an updated Exhibit HSP to the Contract Administrator and the HUB Program Section for approval. PEPS will process a supplemental agreement to update Attachment E, Exhibit HSP, and Exhibit H-2 where applicable

#### **H. GOOD FAITH EFFORT**

The provider shall make all reasonable efforts to honor commitments as indicated in Exhibit-HSP for ALL subproviders, including HUB subproviders for services to be provided under the contract.

If a determination is made that the provider failed to implement the HUB subcontracting plan in good faith, the State, in addition to any other remedies, may report nonperformance to the comptroller in accordance with [TAC §20.585](#) and [§20.586](#). In addition, if the provider fails to implement the HUB subcontracting plan in good faith, the State may revoke the contract for breach of contract and make a claim against the provider.

## ATTACHMENT H EXHIBITS

The following Exhibits are required and part of the state funded contract:

### A. EXHIBIT HSP ([HUB SUBCONTRACTING PLAN](#)),

Provider completes form in response to the solicitation, and the form is inserted into the contract template and becomes part of the executed contract.

Exhibit HSP must be updated when there are changes to the subprovider activity. This includes but is not limited to:

1. addition or removal of any subproviders,
2. provider or subprovider name changes,
3. mergers or acquisitions,
4. significant changes to the scope of work that effects the subprovider utilization.

### B. EXHIBIT H-2 HUB SUBPROVIDER COMMITMENT AGREEMENT

1. **Specific Deliverable Contracts without Work Authorizations (WAs):** Completed when a contract is developed and then becomes part of the executed contract. If no HUB subproviders are used, complete the form per instruction, and insert N/A (not applicable) in Subprovider Firm Name field on the H-2 form, and include it as part of the executed contract.
2. **Specific Deliverable with WAs and Indefinite Deliverable Contracts:** Completed when a Work Authorization (WA) is developed and then becomes part of the executed WA. If no HUB subproviders are used, insert N/A (not applicable) in Subprovider Firm Name field on the top of the H-2 form, and include it as part of the executed WA.
3. **Supplemental WAs:** When a supplement to the WA updates the WA amount, and this results in the dollar amount change for a HUB, an updated H-2 is included as part of the executed SWA. If the result is no dollar amount change for any HUBs, complete the H-2 per the instructions, insert N/A (not applicable) in the Subprovider Firm Name field, and include the H-2 as part of the executed SWA.

### C. EXHIBIT H-2 (2<sup>ND</sup> TIER):

This is a continuation of Exhibit H-2 when there is a 2<sup>nd</sup> Tier subprovider to a subprovider. The entire Exhibit H-2 must be completed when using Exhibit H-2 (2<sup>nd</sup> Tier).

1. **Specific Deliverable Contracts without Work Authorizations (WAs):** PEPS SC completes form when the contract is developed and then becomes part of the executed contract, if applicable.
2. **Specific Deliverable with WAs and Indefinite Deliverable Contracts:** PEPS SC completes form when a WA is developed and then becomes part of the executed WA, if applicable. If there are no 2<sup>nd</sup> Tier subproviders, this Exhibit will not be included and will not be part of the WA.

### D. EXHIBIT H-6 SUBPROVIDER MONTHLY PROGRESS ASSESSMENT REPORT (PAR)

Provider enters data using the State's [PS-CAMS Online Reporting System](#). Once work begins, the electronic report must be submitted monthly, even if there is no invoice being submitted or subcontracting to report. A sample copy of the Exhibit H-6 that will be generated electronically is attached for reference.

**E. [TXDOT HUB HSP PROGRESS COMPLIANCE FORM 2579](#).**

Section I completed by provider and submitted electronically by using the "submit by e-mail" tab on the form.

**F. EXHIBIT H-4 SUBPROVIDER FINAL REPORT:**

Generated from TxDOT's electronic reporting system. This report shows the accumulative total of all data entered into the [PS-CAMS Online Reporting System](#) for the contract. This report shall be verified to ensure that all monthly reports have been submitted electronically under the contract. This report shall also be used for a final assessment of HUB activities for the contract. A sample copy of the electronically generated form is attached for reference.

[Insert Exhibits starting here.]

Add Contract and PeopleSoft number in top right header, modify page numbering as applicable, and delete this page of instructions.]

EXAMPLE