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Ethics During the Procurement Process

2024 PEPS Conference

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Presentation Topics

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TxDOT PEPS Perspective

- Ethics and Rules Established by TxDOT
- Consultant Selection Team (CST) Requirements
- Responsibilities of a Service Center Manager
- Responsibilities of a Procurement Engineer

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Consultant Perspective

- Teaming Arrangements
- Engaging with TxDOT Districts and Divisions
- Upholding Agreements After RFP Release
- Accurate Team Representation
- Scoping
- Negotiations and Level of Effort
- Contract Execution, Work Authorization



TxDOT Perspective

Ethics and Rules of Engagement

Expectations: Employees and Entities Doing Business with TxDOT should conduct themselves in a lawful, professional, and ethical manner that upholds the confidence and trust of the public.

TxDOT Standards of Conduct outline how, as a Texas state agency, we conduct business with the highest standards of ethics. TxDOT is committed to an environment where open, honest communications are the expectation, not the exception.

Ethics and Rules of Engagement

TxDOT Standards of Conduct – Gifts and Other Benefits

- A TxDOT employee shall not accept or solicit any gift, favor, or service that:
 1. Might reasonably tend to influence the employee in the discharge of official duties, or
 2. That the employee knows or should know is being offered with the intent to influence the employee's official conduct
- You should always ask, why am I being given this gift, favor, or service?

Types of Gifts that May Be Accepted

- Promotional Items (buttons, pens, hats)
- Gifts from sources not involved with TxDOT
- Payment for services provided in a capacity other than as a TxDOT Employee (e.g. outside employment);
- Gifts due to an independent relationship
- Meal at a conference

Types of Gifts that May Not Be Accepted

- Working meals
- Gift baskets from consultants around the holidays
- Discounted or free tickets to sporting event
- Free or discounted admission to golf tournament
- Free or discounted access to hunting grounds
- Anything given in exchange for an official action (a bribe)

Ethics and Rules of Engagement

TxDOT Standards of Conduct – Conflict of Interest

- A TxDOT employee shall not:
 - Accept other employment or compensation or engage in a business or professional activity that could reasonably be expected to impair the employee's independence of judgment;
 - Have a personal or financial interest, that could reasonably be expected to create a substantial conflict or the appearance of a substantial conflict between the employee's private interest and the public interest;
 - Have any financial or other personal interest in any real property acquired for a department project, unless the interest is openly disclosed, and the employee does not participate in the acquisition on behalf of the State.

Ethics and Rules of Engagement

TxDOT Standards of Conduct – Conflict of Interest

- Particular Matter
 - A former TxDOT employee may not work on a “particular matter” (e.g. specific contract, claim, application, investigation or proceeding) in which the former employee participated while employed at TxDOT.
 - A former TxDOT employee in this category may work for the for-profit entity but may not work on “particular matters” that involved them while they worked at TxDOT.
- Participation in Procurement
 - A for-profit entity may not hire a former TxDOT employee who, while at TxDOT, participated in a procurement or contract negotiation for a contract awarded to the entity, unless more than two years have passed since the contract was signed.
- Former Commissioners, Executive Directors, etc.
 - Former TxDOT employees who were District Engineer/Division Director or above may not solicit business from, or attempt to influence a decision of, the Transportation Commission or TxDOT on behalf of a for-profit entity within one year of leaving TxDOT.

Consultant Selection Team (CST) Requirements

Revolving Door Considerations for CST Members

The 1st Rule of the 3 Revolving Door Rules apply to the CSTs:

*The first revolving door rule applies to **all former state officers and employees of a state agency.***

*With respect to a contract for which a state agency first advertises or otherwise solicits bids, proposals, offers, or qualifications between **September 1, 2015, and August 31, 2017,** if a state officer or employee has participated on behalf of the agency in a procurement or contract negotiation involving any person, **then he or she may not accept employment from that person for two years after the date he or she leaves the agency.***

*With respect to a contract for which a state agency first advertises or otherwise solicits bids, proposals, offers, or qualifications **on or after September 1, 2017,** if a state officer or employee of a state agency participated on behalf of the agency in a procurement or contract negotiation involving any person, **then he or she may not accept employment from that person for two years after the date the contract is signed or the procurement is terminated or withdrawn.***



Consultant Selection Team (CST) Requirements

CST Assignment Notification

- CST Member is **not allowed** to discuss the procurement
- Consultants **are not allowed** to engage with the CST member about the procurement

Signing of Non-Disclosure Agreements (NDAs)




- Formal “Cone of Silence” established
- NDAs may involve pertinent SMEs

TxDOT Training




- Center of Excellence Required Courses
 - CTR620 – PEPS Consultant Selection
 - CTR621 – PEPS Contract Negotiations
 - CTR622 – PEPS Contract and Work Authorization Management

TxDOT PEPS Service Centers




Central Service Center

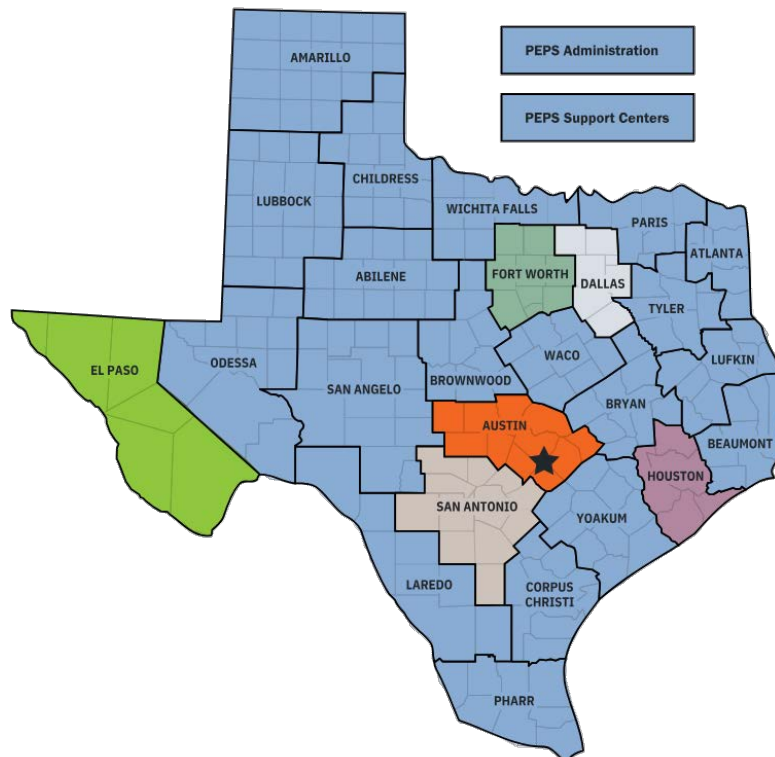
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Role of a Service Center Manager

1. Contract Management

- Making sure assignments are made correctly
 - HUB/DBE assignments
 - Process used for assigning a WA
- Monitoring SA for existing contracts for Time and Money
 - BCM to show why each is needed
 - Rules of supplementing of existing contracts

2. Procurement

- Assigning a Procurement Engineer to procurement
- Checking Proposal content and scoring criteria
- Monitoring of contract capacity across all disciplines
- Monitor District project portfolio to determine eligibility for procurement
 - UTP
 - SD vs ID – which makes more sense

3. Main Point of Contact for Consultant Community

Role of a Procurement Engineer

Facilitates the Procurement Process

- Mandatory Kick-Off training for CST Members
- Establish Preclusion List based on District input
 - Availability of data for posting, Contract type, Discipline performed
- Provide CST the Rules of engaging with consultants
- Guidance in developing Proposal Contents and Scoring Criteria
 - RFP paragraph is developed per each solicitation
- Consistent information outflow to entire consultant community (i.e., fly sheets, Pre-RFP Meetings, Bonfire uploads)



Role of a Procurement Engineer | Scoring Guidance

Establishes Scoring Parameters with CSTs

- Scoring individually not by committee
- Discussions and elaborations limited to CST meetings
- Scoring meeting to establish selection or shortlist
- Repeatable process for interviews



Role of a Procurement Engineer | Debrief Facilitation

Guides CSTS and Consultants to Navigate Debrief Procedures

- Individual vs. Group Debriefs (does not prevent an individual debrief)
- Provides Solicitation Scoring Statistics
- Ensure fair, consistent, and meaningful feedback to all consultants involved with a procurement
- Scoring grid sample information
- CST comments/feedback



Role of a Procurement Engineer | Contract Execution

Acts as a Liaison during Contract Execution

- Negotiating labor classifications
- Maintaining consistency across all similar contract types
- Coordination with Negotiation Center

Consultant Perspective



Conflict of Interest for Entities Doing Business with TxDOT

- Consultants are responsible for complying with TxDOT's conflict of interest rules and State law.
 - Rules aligned with State law and implemented to provide a fair and unbiased contracting system and to ensure high standards of ethics and fairness in the administration of TxDOT programs.
- Consultants are responsible for timely disclosing potential conflicts of interest to PEPS. PEPS will work with TxDOT's General Counsel Division to determine if conflict can be mitigated.
- Consultants may request a determination of whether hiring a former TxDOT employee would violate revolving door provisions by contacting TxDOT's General Counsel Division or Compliance Division.

Conflict of Interest for Entities Doing Business with TxDOT

Title 43 Texas Administrative Code §10.6:

A circumstance arising out of existing or past activities, business interests, contractual relationships, or organizational structure of an entity, in which:

1. the entity is or may be unable to give impartial assistance or advice to the department;
2. the entity's objectivity in performing the scope of work sought by the department is or may be otherwise impaired;
3. the entity has an unfair competitive advantage;
4. the entity's performance of services or participation in an agreement provides or may provide an unfair competitive advantage to a third party; or
5. there is a reasonable perception or appearance of impropriety or unfair competitive advantage

Ethical Conduct for Entities Doing Business with TxDOT

Title 43 Texas Administrative Code §10.101

- An entity that does business with the department is required to:
- Disclose to TxDOT in writing the existence of a conflict of interest and adequately remedy the conflict
- Adhere to all civil and criminal laws related to business;
- Maintain good standing with the comptroller, other state agencies, states, and agencies of the federal government
- Notify TxDOT in writing and must adequately address:
 - A conviction of a bidding crime or of an offense indicating a lack of moral or ethical integrity, such as bribery or payment of kickbacks
 - Debarment of the entity by the comptroller, another state agency, another state, or an agency of the federal government
 - Any behavior of the entity that seriously and directly affects the entity's responsibility to TxDOT and that is also a violation of law or TxDOT's rules
- Disclose to TxDOT any discovery of credible evidence of:
 - A violation of a law involving fraud, bribery, or conflict of interest in connection with the award or performance of its contract;
 - A violation by a subcontractor or subprovider on its contract
 - An overpayment on its contract
- Cooperate fully with the department or any other government agency responsible for audits, investigations, or corrective actions;
- Prohibit its employees who have access to non-public information from using the information for personal gain

Ethical Conduct for Entities Doing Business with TxDOT

Title 43 Texas Administrative Code §10.101

- An entity that does business with the department is required to:
- Refrain from committing acts indicating a lack of moral or ethical integrity and reflecting on the business practices of the entity, including:
 - Offering, giving, or agreeing to give a benefit to a TxDOT employee;
 - Submitting an offer below anticipated costs, with an expectation of increasing the contract amount after award;
 - Disclosing or receiving bid or proposal information in exchange for a thing of value or to give anyone a competitive advantage in the award of a TxDOT contract;
 - Retaliating against an employee for disclosing information to TxDOT relating to a violation of law related to a TxDOT contract;
 - Knowingly entering into a subcontract with an entity that is suspended or debarred by TxDOT;
 - Making false or misleading statements to obtain a benefit, including falsifying or permitting misrepresentation of its qualifications;
 - Disposing of waste in an unauthorized area.



Ethics and Fraud Risks

- Preclusion
- Errors & Omissions
- Working outside scope of contract or on Expired WAs
- Procurement process violation
- Use of confidential information
- Overcharging






Teaming Arrangements

Monitoring Procurement Projections

Alternative Delivery Program - Discussion Document (Subject to Change)

D-B Project Planning Cadence:

Based on planned contract execution dates

	FY 2024 – 2025 Biennium; 0 Projects; \$0M DB Cost Estimate	FY 2026 – 2027 Biennium; 3 Projects; \$2.7B DB Cost Estimate			FY 2028 – 2029 Biennium; 1 Project; \$1.4M DB Cost Estimate	FY 2030 – 2031 Biennium; 1 Project; \$1.3B DB Cost Estimate
						
		SH 183 Expansion	SH 99 Segment B-1	US 290 at SH 36 Interchange – Brenham (Small DB Project)	NHHIP Segment 3C-2 (IH 45: IH 69 N & IH 10 E)	NHHIP Segment 3D-1 (IH 45: At IH 69 S)
District		Fort Worth	Houston	Bryan	Houston	Houston
DB Cost Est.*		\$841.0M	\$1.6B	\$230.9M	\$1.4B	\$1.3B
From		FM 157	I-45 South	2.0 Miles West of SH 36 (CR 49)	McKee Street	At IH 69 S Interchange
To		SH 161	North of FM 2403	1.4 Miles South of BU 290 (FM 389)	East of Gregg Street	At IH 69 S Interchange
Environmental Clearance		07/2024	11/2016	03/2024	02/2021	02/2021
IAIR Approval		N/A	07/2024	N/A	05/2023	05/2023

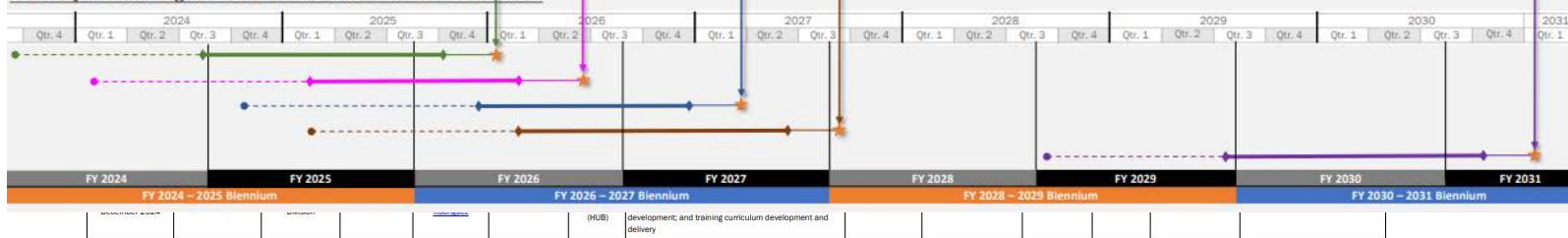
Notes/Abbreviations:

*All dates are estimates and subject to change.

*Cost estimates are being further refined and are subject to change.

NHHIP - North Houston Highway Improvement Project.

D-B Project Planning Cadence: Planned Procurement Timeline*

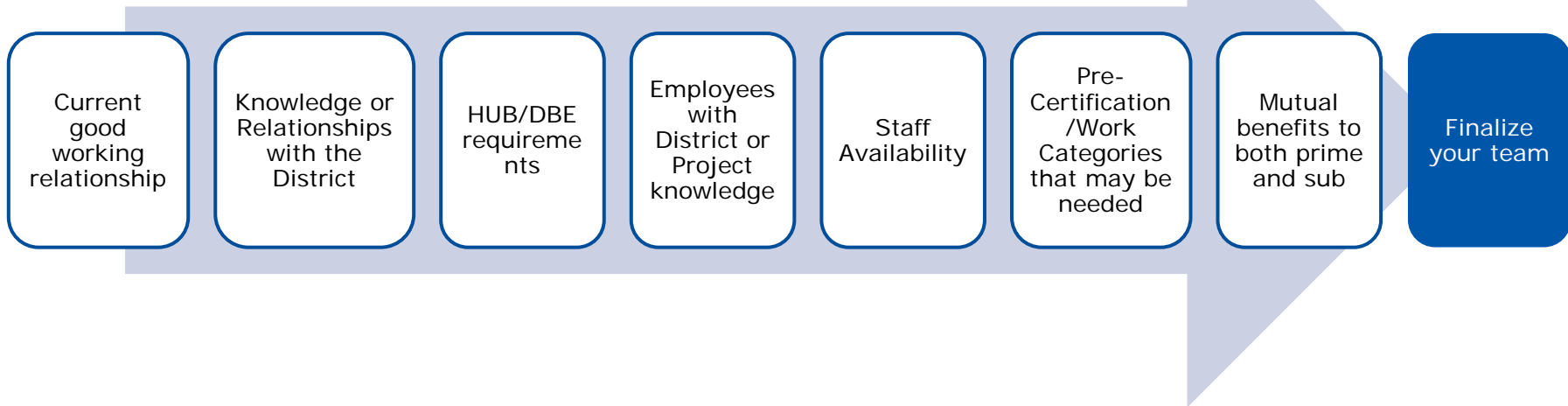


Establish Teaming Arrangements

- Monitor the [TxDOT PEPS Projected Contracts List](#)
 - Updated Regularly
- Make Go/No-Go Decisions Timely
 - Prime or Subprovider Role
 - Number of Pursuits in a Wave
 - Time for prepositioning
 - Availability of Staff
- Monitor for Preclusions

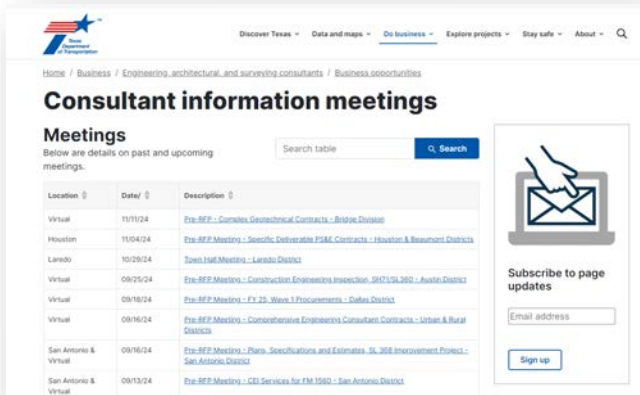
Establish Teaming Arrangements

Determine your Best Partners



Engaging with TxDOT

- Gathering information
- Engaging with the District Staff
- Public meetings/Pre-RFP Meetings/Townhalls
- Respecting CST Cone-of-Silence



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Consultant information meetings

Meetings

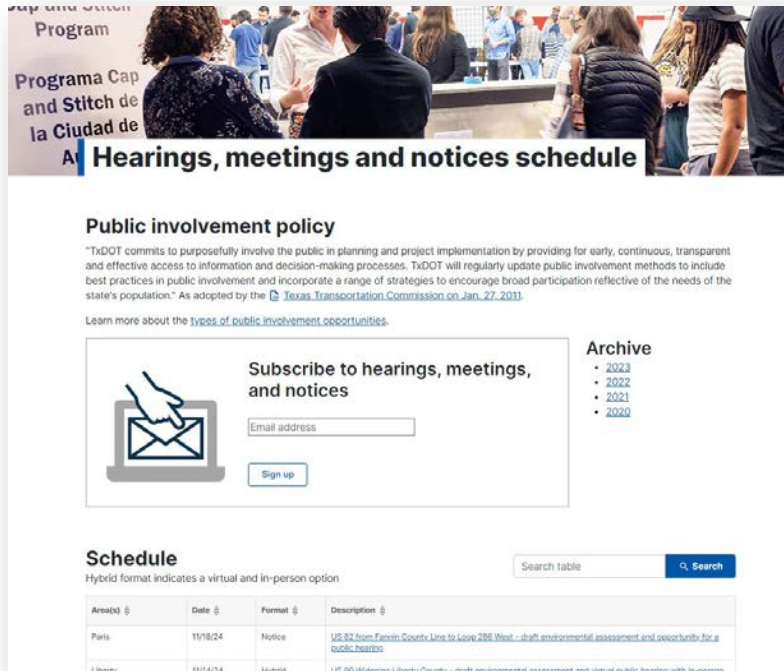
Below are details on past and upcoming meetings.

Search table

Location	Date	Description
Virtual	11/11/24	Pre-RFP - Cummins Geotechnical Contracts - Bridge Division
Houston	11/04/24	Pre-RFP Meeting - Specific Deliverable PS&E Contracts - Houston & Reservoir Districts
Laredo	10/29/24	Town Hall Meeting - Laredo District
Virtual	09/25/24	Pre-RFP Meeting - Construction Engineering Inspection (SEI) 151,360 - Austin District
Virtual	09/18/24	Pre-RFP Meeting - FY 25 Work 3 Procurements - Dallas District
Virtual	09/18/24	Pre-RFP Meeting - Comprehensive Engineering Consultant Contracts - Urban & Rural Districts
San Antonio & Virtual	09/16/24	Pre-RFP Meeting - Plans, Specifications and Estimates - SL 368 Improvement Project - San Antonio District
San Antonio & Virtual	09/13/24	Pre-RFP Meeting - CIO Services for FM 1590 - San Antonio District

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Hearings, meetings and notices schedule

Public involvement policy

"TxDOT commits to purposefully involve the public in planning and project implementation by providing for early, continuous, transparent and effective access to information and decision-making processes. TxDOT will regularly update public involvement methods to include best practices in public involvement and incorporate a range of strategies to encourage broad participation reflective of the needs of the state's population." As adopted by the [Texas Transportation Commission on Jan. 27, 2011](#).

Learn more about the [types of public involvement opportunities](#).

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Archive

- 2023
- 2022
- 2021
- 2020

Schedule

Hybrid format indicates a virtual and in-person option

Search table

Area(s)	Date	Format	Description
Paris	11/18/24	Notice	US 82 from Fannin County Line to Loop 280 West - draft environmental assessment and opportunity for a public hearing
Liberty	11/14/24	Hybrid	US 90 Widening Liberty County - draft environmental assessment and virtual public hearing with in-person



Honoring Commitments and Agreements

- How much Prime firm retains
- Percentage that is fair per partner
- Precertification alignment
- Accuracy of allocated percentages at WA stage
- HUB or DBE requirements



Accurate Representation of the Team

- Avoid Bait and Switch
 - Assigning talent with the correct seniorities within the boundaries of ethics
- Follow TL and PM Replacement Policies outlined in RFPs
- Accurately represent individual's experience
- Level of experience expected or warranted on the project
- Determining Key Staff that will be highlighted
- Key Staff in the proposal must match the PTC Form

Scoping, Negotiations, Level of Effort

- Accurately place subproviders in work categories to reflect who will be doing the work **to avoid supplemental agreement (time-saver!)**
- Involve the entire team – including subconsultants
- Scope, work categories, allocated percentages and how they shape the project scope
- Scope the project accurately to represent what is needed for the completion of the project

"Too good is as bad as not good enough in engineering"

Scoping, Negotiations, Level of Effort

Specific Deliverable (SD)

- Contract Scope will be **specific** to the advertised project built from the standard scope language – Can be a combination of different disciplines
- Contract will include **only** the work categories needed for the project
- Scope language **CAN** be changed at master contract level
- Level of Effort negotiations in master contract
- If an SD with WAs, scope **can be** refined for WA to reflect the project needs

Indefinite Deliverable (ID)

- Contract Scope will include **standard** advertised scope language for that discipline
- Contract will include **all** typical work categories
- Scope language **CAN NOT** be changed at master contract level
- **No** Level of Effort negotiations in master contract
- Scope **will be** refined for WA to reflect the project needs

Contract Execution and Work Authorization

Follow Best Practices when advertising the utilization of your Contract

1. Contact PEPS SC holding your contract
 - Discuss number of WAs received and the amount of remaining time or money
 - Discuss assignment of contract process
 - HUB – Rotation
 - DBE – Second Tier Evaluation
2. If assigned to a District, discuss with the district your remaining contract capacity and time to be issued a WA. Determine if they will have an assignment, that can utilize your contract.
3. Contact PEPS Contract Utilization SC for advertisement to all PEPS SC or Districts
4. Meet with Districts to explain your contract and team's capabilities
5. District will submit the Identification of Contract Need (ICN) Form and the correct process will be followed to make an assignment (This might not be YOU!)



BUSINESS REPUTATION

“Your reputation is more important than your paycheck, and your integrity is worth more than your career.”

-Ryan Freitas



Questions?

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