

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 §§9.31, 9.32, 9.34, 9.35, 9.37, and 9.41 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, 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 §§9.31, 9.32, 9.34, 9.35, 9.37, and 9.41 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, Professional Engineering and  
Procurement Services Division

Recommended by:



Executive Director

**114538 MAR 31 16**

Minute  
Number

Date  
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes  
3 amendments to §9.31, Definitions, §9.32, Selection Processes,  
4 Contract Types, Selection Types, and Projected Contracts, §9.34,  
5 Comprehensive Process, §9.35, Federal Process, §9.37,  
6 Accelerated Process, and §9.41, Contract Administration,  
7 concerning Contracting for Architectural, Engineering, and  
8 Surveying Services.

9  
10 EXPLANATION OF PROPOSED AMENDMENTS

11 Effective June 22, 2015, the Federal Highway Administration  
12 revised 23 CFR 172, relating to procurement, management, and  
13 administration of engineering, architectural, and surveying  
14 contracts. States were given 12 months to make corresponding  
15 revisions to their policies and procedures. The changes to the  
16 rules incorporate the updates required by federal regulations  
17 and correct citations and terminology.

18  
19 Amendments to §9.31 include new definitions for "department  
20 project manager," "indefinite deliverable contract," "multiphase  
21 contract," "prime provider project manager," "Professional  
22 Engineering Procurement Services Division," "Professional  
23 Engineering Procurement Services Division Director," "proposal,"  
24 "request for proposal," and "specific deliverable contract."  
25 The amendments also include revisions to the terms "consultant

1 selection team," "non-listed category," and "relative importance  
2 factor." These new and revised definitions are necessary to  
3 provide clarity. The terms "managing office," "managing  
4 officer," and "notice of intent" are no longer used and are  
5 proposed to be deleted.

6  
7 Amendments to §9.32(b) add multiphase contract as a third  
8 contract type offered by the department, and provide the maximum  
9 period of five years for an indefinite deliverable contract.  
10 Federal regulations provide the five-year maximum for federally  
11 funded contracts. The amendments apply this contract period to  
12 all indefinite deliverable contracts, whether federally or  
13 state-funded, for consistency among those contracts.

14  
15 Amendments to §§9.34, 9.35, 9.37, and 9.41 update references to  
16 reflect the current names of departmental positions and  
17 entities.

18  
19 Additionally, §9.35 is amended by adding subsection (d) that  
20 modifies the short list evaluation for the federal process by  
21 adding the evaluation of proposals in addition to interview for  
22 the federal process, as directed by federal regulations.

23  
24 FISCAL NOTE

25 Brian Ragland, Chief Financial Officer, has determined that for

1 each of the first five years in which the amendments as proposed  
2 are in effect, there will be no fiscal implications for state or  
3 local governments as a result of enforcing or administering the  
4 amendments.

5  
6 Mr. Martin L. Rodin, P.E., Director, Professional Procurement  
7 Services Division, has certified that there will be no  
8 significant impact on local economies or overall employment as a  
9 result of enforcing or administering the amendments.

10

11 PUBLIC BENEFIT AND COST

12 Mr. Rodin has also determined that for each year of the first  
13 five years in which the sections are in effect, the public  
14 benefit anticipated as a result of enforcing or administering  
15 the amendments will be improvements to the department's provider  
16 selection processes. There are no anticipated economic costs  
17 for persons required to comply with the sections as proposed.  
18 There will be no adverse economic effect on small businesses.

19

20 SUBMITTAL OF COMMENTS

21 Written comments on the proposed amendments to §§9.31, 9.32,  
22 9.34, 9.35, 9.37, and 9.41 may be submitted to Rule Comments,  
23 Office of General Counsel, Texas Department of Transportation,  
24 125 East 11th Street, Austin, Texas 78701-2483 or to  
25 RuleComments@txdot.gov with the subject line "PEPS Rules." The

1 deadline for receipt of comments is 5:00 p.m. on May 16, 2016.  
2 In accordance with Transportation Code, §201.811(a)(5), a person  
3 who submits comments must disclose, in writing with the  
4 comments, whether the person does business with the department,  
5 may benefit monetarily from the proposed amendments, or is an  
6 employee of the department.

7

8 STATUTORY AUTHORITY

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

19

20 CROSS REFERENCE TO STATUTE

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

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

3 §9.31. Definitions. The following words and terms, when used  
4 in this subchapter, have the following meanings, unless the  
5 context clearly indicates otherwise.

6 (1) Consultant Certification Information System  
7 (CCIS)--A computer system used to collect and store information  
8 related to the department's certification of providers.

9 (2) Consultant selection team (CST)--The department's  
10 team that evaluates statements of qualification, proposals, and  
11 interviews and selects the provider based on demonstrated  
12 qualifications.

13 (3) Department--The Texas Department of  
14 Transportation.

15 (4) Department project manager--A department employee  
16 who manages a project from project initiation and contracting  
17 through project close-out, including the oversight and  
18 management of deliverables and provider performance.

19 (5) [+4] Executive director--The executive director  
20 of the department.

21 (6) Indefinite deliverable contract--A contract  
22 containing a general scope of services that identifies the types  
23 of work that will later be issued under work authorizations, but

1 does not identify deliverables, locations, or timing in  
2 sufficient detail to define the provider's responsibilities  
3 under the contract.

4 (7) [(+5)] Interview and Contract Guide (ICG)--A  
5 document provided by the department to short-listed providers  
6 that includes instructions to prepare for the interview.

7 [~~(6) Managing office--The department's organizational~~  
8 ~~sub-unit responsible for overseeing the provider selection,~~  
9 ~~leading the contract negotiations, administering the contract,~~  
10 ~~and processing invoices.]~~

11 [~~(7) Managing officer--The head of a managing office.]~~

12 (8) Multiphase contract--A project specific contract  
13 where the solicited services are divided into phases whereby the  
14 specific scope of work and associated costs may be negotiated  
15 and authorized by phase as the project progresses.

16 (9) [(+8)] Non-listed category (NLC)--A formal  
17 classification [~~, developed by a managing office,~~] used to  
18 define a specific sub-discipline of work and provide the minimum  
19 technical qualifications for performing the work. NLCs address  
20 project-specific work categories not covered by the standard  
21 work categories.

22 [~~(9) Notice of intent (NOI)--A public announcement~~  
23 ~~that advertises the department's intent to enter into an~~

1 ~~architectural, engineering, or surveying contract and provides~~  
2 ~~instructions for preparation and submittal of a statement of~~  
3 ~~qualification generally referred to as a solicitation.]~~

4 (10) Precertification--A department process conducted  
5 to verify that a provider meets the minimum technical  
6 requirements to perform work under a standard work category.

7 (11) Prime provider--A firm that provides or proposes  
8 to provide architectural, engineering, or surveying services  
9 under contract with the state.

10 (12) Prime provider project manager--An employee of a  
11 prime provider who serves as the point of contact for the  
12 provider to coordinate project deliverables and project  
13 performance with the department.

14 (13) Professional Engineering Procurement Services  
15 (PEPS) Division--The department's division responsible for  
16 overseeing procurement planning, provider selection, leading the  
17 contract negotiations, administering the contract, and  
18 processing invoices.

19 (14) Professional Engineering Procurement Services  
20 (PEPS) Division Director--The head of the PEPS Division.

21 (15) Proposal--A response to a request for proposal  
22 that provides details on a provider's specific technical  
23 approach and qualifications.

1           (16) [~~(12)~~] Provider--A prime provider or subprovider.

2           (17) [~~(13)~~] Relative importance factor (RIF)--The  
3 numerical weight assigned to an evaluation criterion, used by  
4 the consultant selection team to score statements of  
5 qualification, proposals, and interviews.

6           (18) Request for proposal (RFP)--A document provided  
7 by the department to short-listed providers that provides  
8 instructions for submitting a proposal and may include  
9 instructions to prepare for the interview.

10           (19) [~~(14)~~] Request for qualification (RFQ)--A public  
11 announcement that advertises the department's intent to enter  
12 into an architectural, engineering, or surveying contract and  
13 provides instructions for the preparation and submittal of a  
14 statement of qualification generally referred to as a  
15 solicitation.

16           (20) [~~(15)~~] Short list--The list of prime providers  
17 most qualified to perform the services specified in an RFQ, as  
18 demonstrated by the statement of qualification scores.

19           (21) [~~(16)~~] Solicitation--A request for qualification.

20           (22) Specific deliverable contract--A contract  
21 containing a specific scope of services that identifies  
22 deliverables, locations, and timing in sufficient detail to  
23 define the provider's responsibilities under the contract,

1 although additional requirements may later be specified in work  
2 authorizations.

3 (23) [~~(17)~~] Standard work category--A formal  
4 classification, developed by the department, used to define a  
5 specific sub-group of work and provide the minimum technical  
6 qualifications for performing the work.

7 (24) [~~(18)~~] Statement of qualification (SOQ)--A  
8 document prepared by a prime provider, submitted in response to  
9 a request for qualification.

10 (25) [~~(19)~~] Subprovider--A firm that provides or  
11 supports, or proposes to provide or support, architectural,  
12 engineering, or surveying services under contract with a prime  
13 provider.

14

15 §9.32. Selection Processes, Contract Types, Selection Types,  
16 and Projected Contracts.

17 (a) Selection processes. The department will issue  
18 solicitations and select providers under the following selection  
19 processes: comprehensive, federal, streamlined, accelerated,  
20 emergency, and urgent and critical.

21 (b) Contract types. The department will offer three [~~two~~]  
22 types of contracts: indefinite deliverable, [~~and~~] specific  
23 deliverable, and multiphase.

1           (1) An indefinite deliverable contract may be used for  
2 a single project or for multiple projects. The solicitation  
3 will describe the typical work types to be performed under the  
4 contract.

5                   (A) Categorical limitations on contract dollar  
6 value may be established by the executive director or the  
7 executive director's designee.

8                   (B) The contract period in which initial work  
9 authorizations may be issued may not be longer than two years  
10 after the date of contract execution, unless approved by the  
11 Texas Transportation Commission before the solicitation posting  
12 date.

13                   (C) Supplemental agreements may be issued to  
14 extend the contract period beyond two years, but only as  
15 necessary to complete work on an initial work  
16 authorization. The contract period may not extend more than  
17 five years beyond the execution date.

18           (2) A specific deliverable contract may be used for a  
19 single project or for multiple projects. The solicitation will  
20 specify the specific deliverables to be provided under the  
21 contract.

22                   (3) A multiphase contract may be used for a single  
23 project or for multiple projects. The solicitation will

1 describe the services to be provided under the contract and will  
2 divide the services into phases. The specific scope of work may  
3 be established and the associated costs negotiated and  
4 authorized by phase as the project progresses.

5 (c) Selection types.

6 (1) Single contract selection. One contract will  
7 result from the solicitation.

8 (2) Multiple contract selection. More than one  
9 contract of similar work types will result from the  
10 solicitation. The solicitation will indicate the number and  
11 type of contracts.

12 (d) Projected contracts list. Quarterly, the department  
13 will publish on the department's website a list of projected  
14 contracts for architectural, engineering, and surveying  
15 services.

16

17 §9.34. Comprehensive Process.

18 (a) Applicability. The comprehensive process described  
19 under this section must be used for any specific deliverable  
20 contract that is \$1 million or more in value and is not subject  
21 to §9.35 of this subchapter (relating to Federal Process).

22 (b) Administrative qualification.

1           (1) Administrative qualification is a process used by  
2 the department to verify that a provider has an indirect cost  
3 rate that meets department requirements. Except as provided by  
4 paragraph (8) of this subsection, to compete for a contract  
5 under this section a provider either must be administratively  
6 qualified or must accept an indirect cost rate under paragraph  
7 (7) of this subsection.

8           (2) Factors in determining administrative  
9 qualification.

10           (A) A provider may demonstrate administrative  
11 qualification by an audit or by self-certification.

12           (i) An audit may be performed by an  
13 independent certified public accountant (CPA), an agency of the  
14 federal government, another state transportation agency, or a  
15 local transit agency. An audit performed by an independent CPA  
16 must be conducted in accordance with the current versions of 48  
17 C.F.R. Part 31, the Generally Accepted Government Auditing  
18 Standards (GAGAS), and the American Association of State Highway  
19 Transportation Officials (AASHTO) Uniform Audit and Accounting  
20 Guide. The provider must provide the department with  
21 unrestricted access to the audit work papers, records, and other  
22 information as requested by the department.

1                   (ii) Self-certification may be conducted by  
2 the provider and must include a cost report and an internal  
3 controls report. The self-certified cost report must comply  
4 with the current versions of 48 C.F.R. Part 31, the GAGAS, and  
5 the AASHTO Uniform Audit and Accounting Guide. The self-  
6 certified internal control report must certify the provider has  
7 internal controls in place within its organization. Both the  
8 cost report and the internal control report must be signed by a  
9 company officer and notarized.

10                   (B) The audit or self-certification shall be  
11 based on the provider's fiscal year. The indirect cost rate, as  
12 approved by the department, shall become effective six months  
13 after the end of the provider's fiscal year, or immediately if  
14 filed more than six months after the end of the provider's  
15 fiscal year. It shall be effective no more than twelve months  
16 and shall expire eighteen months after the end of the fiscal  
17 year upon which it is based.

18                   (C) A provider must submit on an annual basis a  
19 compensation analysis for all executives in accordance with the  
20 AASHTO Uniform Audit and Accounting Guide.

21                   (D) The department may audit the indirect cost  
22 rate of a provider under contract with, or seeking to do

1 business with, the department. These audits will be conducted  
2 in accordance with the criteria outlined in this subsection.

3 (E) A provider must submit a signed Certification  
4 of Final Indirect Costs with the audit report or self-  
5 certification. The certification must follow the requirements  
6 of the Federal Highway Administration.

7 (3) Submittal and review process for administrative  
8 qualification.

9 (A) A provider must submit its administrative  
10 qualification information to the department in accordance with  
11 the instructions on the department's website.

12 (B) Upon review of an audit report or self-  
13 certification received from a provider, the department may  
14 request additional information from the provider. If the  
15 submittal is not complete and accurate, the department will  
16 return it to the provider for correction. Upon request for  
17 additional information by the department, the provider shall  
18 submit the information within 15 days after the day that it  
19 receives the department's request. If the information is not  
20 provided within the 15-day period, the submittal will be placed  
21 on pending status for an additional 15 days. If the information  
22 is not received within the additional 15-day period, the

1 submittal will not be processed for administrative  
2 qualification.

3 (4) Administrative qualification is applicable only to  
4 the incorporated business entity upon which the indirect cost  
5 rate is based and does not extend to a subsidiary, affiliate, or  
6 parent of the incorporated entity, except as provided by this  
7 paragraph. A corporation may administratively qualify a  
8 business segment of the corporation if the business segment is  
9 not limited to a geographical area that is less than the entire  
10 state of Texas and if the corporation is able to demonstrate and  
11 justify the allocation of costs between the business segment and  
12 other corporate operations. If a corporate business segment is  
13 administratively qualified, the resulting indirect cost rate is  
14 not applicable to staff not employed by the business segment.

15 (5) The department will use [~~provide~~] a selected  
16 firm's indirect cost rate information [~~to the managing office~~  
17 ~~for use~~] in negotiations under §9.40 of this subchapter  
18 (relating to Negotiations).

19 (6) The department will not provide a firm's  
20 administrative qualification information to the department's  
21 staff conducting negotiations [~~managing office~~] or the  
22 consultant selection team before the selection of that firm.

1           (7) Providers not administratively qualified. The  
2 department may contract with a prime provider or allow the use  
3 of a subprovider that is not administratively qualified if:

4                   (A) the provider has been in operation, as  
5 currently organized, for less than one fiscal year and the  
6 provider accepts an indirect cost rate developed by the  
7 department; or

8                   (B) on request by the department during the  
9 selection process, the prime provider provides written  
10 certification that the prime provider or subprovider, as  
11 applicable, does not have an indirect cost rate audit and will  
12 accept an indirect cost rate developed by the department.

13           (8) Exemptions to administrative qualification.

14                   (A) A non-engineering firm is exempt from the  
15 administrative qualification requirement of this section.

16                   (B) A provider performing a service under  
17 standard work category 18.2.1, subsurface utilities engineering,  
18 or any of the following work groups, as listed on the  
19 department's precertification website, is exempted from  
20 administrative qualification, to the extent of the service being  
21 performed:

22                           (i) Group 6, bridge inspection;

1 (ii) Group 12, materials inspection and  
2 testing;

3 (iii) Group 14, geotechnical services;

4 (iv) Group 15, surveying and mapping; and

5 (v) Group 16, architecture.

6 (C) The department may exempt services other than  
7 those indicated in subparagraph (B) of this paragraph on a case-  
8 by-case basis. Any request for an exemption must be received by  
9 the department by the closing date of the solicitation.

10 (c) Consultant selection team (CST).

11 (1) The department shall use a CST in selecting  
12 providers under this section.

13 (2) The CST shall be composed of at least three  
14 department employees.

15 (3) At least one CST member must be a professional  
16 engineer, for engineering contracts; a registered architect, for  
17 architectural contracts; and either a professional engineer or  
18 registered professional land surveyor, for surveying contracts.

19 (4) If a CST member leaves the CST during the  
20 selection process, the process may continue with the remaining  
21 members, subject to paragraph (3) of this subsection.

22 (d) Request for qualifications (RFQ). Not fewer than 14  
23 calendar days before the solicitation closing date, the

1 department will post on a web-based bulletin board an RFQ  
2 providing the contract information and specifying the  
3 requirements for preparing and submitting a statement of  
4 qualification.

5 (e) Statement of qualification (SOQ). To be considered, an  
6 SOQ must comply with the requirements specified in the RFQ.

7 (f) Replacements. An individual may be proposed as a  
8 replacement for the prime provider project manager or a task  
9 leader prior to the department's notification of firms short-  
10 listed for an interview. A proposed replacement must be  
11 designated in the SOQ and must satisfy the applicable  
12 precertification and non-listed category requirements.

13 (g) SOQ screening and evaluation.

14 (1) The department may disqualify an SOQ if the  
15 department has knowledge that a firm on the project team or an  
16 employee of a firm on the project team is the subject of a final  
17 administrative or judicial determination that the firm or  
18 employee has violated a statute or rule of a state licensing  
19 entity related to occupational or professional conduct.

20 (2) If an SOQ is not disqualified under paragraph (1)  
21 of this subsection, the CST will screen the SOQ to determine  
22 whether it complies with the requirements specified in the RFQ.

1 Each SOQ that meets these requirements will be considered  
2 responsive to the RFQ and evaluated.

3 (3) The CST will evaluate the responsive SOQ according  
4 to the evaluation criteria detailed in the RFQ based on factors  
5 the department has identified as most likely to result in the  
6 selection of the most qualified provider.

7 (h) Short list. The short list will consist of the most  
8 qualified providers, as indicated by the SOQ scores.

9 (1) For single contract selections, the minimum number  
10 of short-listed prime providers is three, unless fewer than  
11 three prime providers submitted a responsive SOQ.

12 (2) For multiple contract selections, the minimum  
13 number of short-listed prime providers is the number of desired  
14 contracts plus three, unless fewer than the desired number of  
15 prime providers submitted a responsive SOQ.

16 (3) Notification.

17 (A) The department will notify each prime  
18 provider that submitted an SOQ whether it was short-listed.

19 (B) The department will notify each short-listed  
20 prime provider whether a short list meeting will be held.

21 (i) Short list evaluation.

22 (1) Interviews. The department will evaluate the  
23 short-listed providers through interviews. The department will

1 issue an Interview and Contract Guide (ICG) to each short-listed  
2 prime provider. The ICG will provide contract information and  
3 specify the requirements for the interview.

4 (2) Short list evaluation criteria. The CST will  
5 evaluate the interviews according to the criteria specified in  
6 the ICG, including the prime provider's past performance scores  
7 in the Consultant Certification Information System database  
8 reflecting less than satisfactory performance.

9 (j) Selection.

10 (1) Basis of final selection. The CST will select the  
11 best qualified provider, as indicated by the short list scores.

12 (2) Tie scores. The PEPS Division Director [~~managing~~  
13 ~~officer~~] will break a tie using the following method.

14 (A) The first tie breaker will be the scores for  
15 the interview criterion with the highest RIF.

16 (B) The remaining interview criteria shall be  
17 compared in the order of decreasing RIF until the tie is broken.

18 (C) If the providers have identical scores on all  
19 of the interview criteria, the provider will be chosen by random  
20 selection.

21 (3) Notification. The department will:

1 (A) provide written notification to the prime  
2 provider selected for contract negotiation and arrange a meeting  
3 to begin contract negotiations;

4 (B) provide written notification to each short-  
5 listed prime provider that was not selected, notifying the  
6 provider of the non-selection; and

7 (C) publish the short list and the selected  
8 provider on a web-based bulletin board.

9 (4) Appeal. A provider may file a written appeal  
10 concerning the selection process with the executive director or  
11 the executive director's designee as provided under §9.7 of this  
12 chapter (relating to Protest of Contract Practices or  
13 Procedures).

14

15 §9.35. Federal Process.

16 (a) This section applies to an engineering or design  
17 related service contract directly related to a highway  
18 construction project and reimbursed with federal-aid highway  
19 program (FAHP) funding.

20 (b) A firm providing engineering and design related  
21 services must be administratively qualified under §9.34(b)(2)-  
22 (6) of this subchapter (relating to Comprehensive [~~Standard~~]  
23 Process), or use an indirect cost rate applicable under Federal

1 Highway Administration regulations or guidelines, by the closing  
2 date of the RFQ [~~NOI~~] to compete for contracts under this  
3 section. Paragraphs (7) and (8) of §9.34(b) of this subchapter  
4 do not apply to a contract under this section.

5 (c) Except as provided in subsection (b) of this  
6 section and in §9.34(i) of this subchapter, the process  
7 described in §9.34 of this subchapter applies to contracts under  
8 this section.

9 (d) Short list evaluation.

10 (1) Request for proposals and interviews. The  
11 department will issue an RFP to the short listed providers. The  
12 RFP will provide contract information and specify the  
13 requirements for the proposal and interview.

14 (2) Short-list evaluation criteria. The CST will  
15 evaluate proposals and interviews according to the criteria  
16 specified in the RFP, including the prime provider's past  
17 performance scores in the Consultant Certification Information  
18 System database reflecting less than satisfactory performance.

19  
20 §9.37. Accelerated Process.

21 (a) Applicability. The accelerated process described in  
22 this section may be used for contracts that are not subject to  
23 §§9.34, 9.35, or 9.36 of this subchapter (relating to

1 Comprehensive Process, Federal Process, or Streamlined Process,  
2 respectively).

3 (b) Administrative qualification. Section 9.34(b) of this  
4 subchapter applies to contracts under this section.

5 (c) Selection process. Section 9.34(c) - (e) and (g) of  
6 this subchapter are applicable for this process.

7 (d) Selection.

8 (1) Basis of final selection. The consultant  
9 selection team will select the best qualified provider, as  
10 indicated by the SOQ scores, which will include evaluation of  
11 the prime provider's past performance scores in the Consultant  
12 Certification Information System database reflecting less than  
13 satisfactory performance.

14 (2) Tie scores. The PEPS Division Director [~~managing~~  
15 ~~officer~~] will break a tie using the following method.

16 (A) The first tie breaker is the scores for the  
17 selection criterion with the highest relative importance factor  
18 (RIF).

19 (B) The remaining selection criteria will be  
20 compared in the order of decreasing RIF until the tie is broken.

21 (C) If the providers have identical scores on all  
22 of the selection criteria, the provider will be chosen by random  
23 selection.

1 (3) Notification. The department will:

2 (A) provide written notification to a prime  
3 provider selected for contract negotiation and arrange a meeting  
4 to begin contract negotiations;

5 (B) provide written notification to each prime  
6 provider that was not selected, notifying the provider of the  
7 non-selection; and

8 (C) publish the selected provider on a web-based  
9 bulletin board.

10 (4) Appeal. Section 9.34(j)(4) of this subchapter  
11 applies to this section.

12

13 §9.41. Contract Administration.

14 (a) Prime provider's percentage of work. A prime provider  
15 shall perform at least 30 percent of the contracted work with  
16 its own work force, unless otherwise approved by the department.

17 (b) Project manager replacement. The prime provider  
18 project manager may not be replaced without the prior written  
19 consent of the department.

20 (c) Department audits. The department may perform interim  
21 and final audits.

22 (d) Performance evaluations.

1           (1) The department project manager [~~managing office~~]  
2 will document the prime provider's performance on the contract  
3 by evaluating the project manager and the firm. Evaluations  
4 will be conducted during the ongoing contract activity and at  
5 the completion of the contract.

6           (2) Further evaluations pertaining to project  
7 constructability may be conducted during project construction  
8 and at the completion of the construction contract.

9           (3) The department will give a copy of each completed  
10 performance evaluation to the prime provider for review and  
11 comment. The prime provider's comments will be entered into the  
12 Consultant Certification Information System (CCIS).

13           (4) Performance evaluation scores will be entered into  
14 the CCIS and may be used for the purpose of provider selection.