

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §9.31, Definitions, §9.33, Precertification, and §9.34, Comprehensive Process, 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, 9.33, and 9.34 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 Procurement
Division

Recommended by:



Executive Director

114736 OCT 27 '16

Minute Number Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §9.31, Definitions, §9.33, Precertification, and
4 §9.34, Comprehensive Process, concerning Contracting for
5 Architectural, Engineering, and Surveying Services.

6

7 EXPLANATION OF PROPOSED AMENDMENTS

8 Updates to the rules related to administrative qualifications
9 are necessary to clarify when a resubmittal is allowed and to
10 align requirements of the state-funded procurement process with
11 the federal procurement process. The amendments also streamline
12 the process by modifying standard work categories used for
13 precertification.

14

15 Amendments to §9.31, Definitions, provide a definition for
16 "engineering and design related services" that corresponds with
17 the federal definition of the term. This definition works in
18 conjunction with changes to §9.34(b), Administrative
19 Qualifications, to align the federal and state procurement
20 processes with respect to which types of providers must be
21 administratively qualified.

22

23 Amendments to §9.33, Precertification, change the level of
24 authority necessary to add, revise, or delete a standard work
25 category from the Texas Transportation Commission (commission)

1 to the department. This change streamlines the process by
2 allowing the department to better define and maintain work
3 categories, and the minimum qualifications of an individual to
4 perform work under those categories, without the need to bring
5 the changes before the commission.

6
7 Amendments to Section §9.34, Comprehensive Process, provide
8 several substantive changes.

9
10 Amendments to §9.34(b)(1) narrow the applicability of the
11 administrative qualification process requirement to only those
12 providers performing engineering and design related services.
13 This change aligns the federal and state procurement processes
14 with respect to whether or not a provider must be
15 administratively qualified and allows subproviders to perform
16 ancillary services that are not engineering and design related
17 without being administratively qualified. This change increases
18 the efficiency of the engineer and design related procurement
19 process, eliminates confusion between the federal and state
20 processes, and eliminates multiple forms while maintaining
21 compliance with both federal and state law.

22
23 Amendments to §9.34(b)(2)(C) expand the scope of compensation
24 analysis that must be submitted by a provider to include
25 employees as well as executives or to be a cognizant letter of

1 concurrence issued by a state transportation agency. This change
2 will bring this section into conformity with the American
3 Association of State Highway and Transportation Officials'
4 Uniform Audit and Accounting Guide.

5
6 Section 9.34(b)(3)(B) allows the department, after reviewing a
7 provider's administrative qualifications submittal, to request
8 additional information or a corrected submittal. Currently, if a
9 provider fails to return the requested information or corrected
10 submittal within a 30-day window comprised of two separate 15-
11 day periods, the department will reject the original submittal.
12 This provision has been interpreted as imposing a 1-year bar
13 against resubmittal of administrative qualification information
14 if a provider fails to return the requested information or
15 corrected submittal within the 30-day window. Amendments to
16 §9.34(b)(3) change the two 15-day periods to one 30-day period
17 and clarify that if the department rejects a provider's
18 submittal, the provider may resubmit its administrative
19 qualification information no earlier than 90 days after
20 rejection.

21
22 Amendments to §9.34(b)(3) add a good faith effort provision in
23 new subparagraph (D) which provides that the department will
24 make a good faith effort to process administrative qualification
25 submittals within 60 days following submittal. By providing a

1 target window for the department's processing of administrative
2 qualification submittals, this provision addresses the issue of
3 providers submitting administrative qualification information on
4 or very near to the date the provider must be administratively
5 qualified to compete for a particular contract.

6
7 Section 9.34(f) requires the department to disqualify a provider
8 if a named task leader leaves the provider's employment prior to
9 selection. This requirement can result in a provider being
10 disqualified when a minor task leader leaves the provider
11 through no fault of the provider. Amendments to §9.34(f) allow
12 a prime provider, in those cases, to propose a replacement task
13 leader who meets the requirements of the solicitation and is a
14 current employee of the provider or a subprovider. If the
15 proposed replacement is acceptable to the department, the prime
16 provider may continue in the procurement process. However, if
17 the proposed replacement is not acceptable to the department,
18 the department may still disqualify the prime provider.

19 Amendments to §9.34(f) also clarify for solicitations under the
20 streamline process for which the department determines that
21 interviews are not required, the prime provider may propose to
22 replace the prime provider project manager at any time before
23 the provider is selected for the contract.

24

25 FISCAL NOTE

1 Brian Ragland, Chief Financial Officer, has determined that for
2 each of the first five years in which the amendments as proposed
3 are in effect, there will be no fiscal implications for state or
4 local governments as a result of enforcing or administering the
5 amendments.

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

11
12 PUBLIC BENEFIT AND COST

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

24
25 SUBMITTAL OF COMMENTS

1 Written comments on the proposed amendments to §§9.31, 9.33, and
2 9.34 may be submitted to Rule Comments, General Counsel
3 Division, Texas Department of Transportation, 125 East 11th
4 Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov
5 with the subject line "PEPS Rules." The deadline for receipt of
6 comments is 5:00 p.m. on December 12, 2016. In accordance with
7 Transportation Code, §201.811(a)(5), a person who submits
8 comments must disclose, in writing with the comments, whether
9 the person does business with the department, may benefit
10 monetarily from the proposed amendments, or is an employee of
11 the department.

12

13 STATUTORY AUTHORITY

14 The amendments are proposed under Transportation Code, §201.101,
15 which provides the commission with the authority to establish
16 rules for the conduct of the work of the department.

17

18 CROSS REFERENCE TO STATUTE

19 Government Code, Chapter 2254, Subchapter A and Transportation
20 Code, §223.041.

1 SUBCHAPTER C. Contracting for Architectural, Engineering, and
2 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) Engineering and design related services--Program
20 management, construction management, feasibility studies,
21 preliminary engineering, design engineering, surveying, mapping,
22 or architectural related services; or professional services of
23 an architectural or engineering nature that are required to or

1 may logically or justifiably be performed or approved by a
2 person licensed, registered, or certified to provide the
3 services.

4 (6) Executive director--The executive director of the
5 department.

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

12 (8)~~(+7)~~ Interview and Contract Guide (ICG)--A
13 document provided by the department to short-listed providers
14 that includes instructions to prepare for the interview.

15 (9)~~(+8)~~ Multiphase contract--A project specific
16 contract where the solicited services are divided into phases
17 whereby the specific scope of work and associated costs may be
18 negotiated and authorized by phase as the project progresses.

19 (10)~~(+9)~~ Non-listed category (NLC)--A formal
20 classification used to define a specific sub-discipline of work
21 and provide the minimum technical qualifications for performing
22 the work. NLCs address project-specific work categories not
23 covered by the standard work categories.

1 (11)~~(10)~~ Precertification--A department process
2 conducted to verify that a provider meets the minimum technical
3 requirements to perform work under a standard work category.

4 (12)~~(11)~~ Prime provider--A firm that provides or
5 proposes to provide architectural, engineering, or surveying
6 services under contract with the state.

7 (13)~~(12)~~ Prime provider project manager--An employee
8 of a prime provider who serves as the point of contact for the
9 provider to coordinate project deliverables and project
10 performance with the department.

11 (14)~~(13)~~ Professional Engineering Procurement
12 Services (PEPS) Division--The department's division responsible
13 for overseeing procurement planning, provider selection, leading
14 the contract negotiations, administering the contract, and
15 processing invoices.

16 (15)~~(14)~~ Professional Engineering Procurement
17 Services (PEPS) Division Director--The head of the PEPS
18 Division.

19 (16)~~(15)~~ Proposal--A response to a request for
20 proposal that provides details on a provider's specific
21 technical approach and qualifications.

22 (17)~~(16)~~ Provider--A prime provider or subprovider.

23 (18)~~(17)~~ Relative importance factor (RIF)--The

1 numerical weight assigned to an evaluation criterion, used by
2 the consultant selection team to score statements of
3 qualification, proposals, and interviews.

4 (19)~~(18)~~ Request for proposal (RFP)--A document
5 provided by the department to short-listed providers that
6 provides instructions for submitting a proposal and may include
7 instructions to prepare for the interview.

8 (20)~~(19)~~ Request for qualification (RFQ)--A public
9 announcement that advertises the department's intent to enter
10 into an architectural, engineering, or surveying contract and
11 provides instructions for the preparation and submittal of a
12 statement of qualification generally referred to as a
13 solicitation.

14 (21)~~(20)~~ Short list--The list of prime providers
15 most qualified to perform the services specified in an RFQ, as
16 demonstrated by the statement of qualification scores.

17 (22)~~(21)~~ Solicitation--A request for qualification.

18 (23)~~(22)~~ Specific deliverable contract--A contract
19 containing a specific scope of services that identifies
20 deliverables, locations, and timing in sufficient detail to
21 define the provider's responsibilities under the contract,
22 although additional requirements may later be specified in work
23 authorizations.

1 (24)~~(+23)~~ Standard work category--A formal
2 classification, developed by the department, used to define a
3 specific sub-group of work and provide the minimum technical
4 qualifications for performing the work.

5 (25)~~(+24)~~ Statement of qualification (SOQ)--A
6 document prepared by a prime provider, submitted in response to
7 a request for qualification.

8 (26)~~(+25)~~ Subprovider--A firm that provides or
9 supports, or proposes to provide or support, architectural,
10 engineering, or surveying services under contract with a prime
11 provider.

12

13 §9.33. Precertification.

14 (a) Standard work categories. Precertification establishes
15 the minimum technical qualifications to perform work under a
16 standard work category. The department [~~Texas Transportation~~
17 ~~Commission, by minute order,~~] may add, revise, or delete a
18 standard work category.

19 (b) Contract eligibility.

20 (1) To be eligible to perform work under a standard
21 work category, a firm providing a task leader must have active
22 precertification status in that work category by the closing
23 date of the solicitation.

1 (2) The department will not delay the selection
2 process or the contract execution to accommodate a provider that
3 is not in active precertification status.

4 (c) Precertification status of firms and employees.

5 (1) A firm is precertified in a standard work category
6 only if it employs an individual precertified in that category.

7 (2) A firm that employs an individual who is
8 precertified in multiple standard work categories is, by
9 extension, precertified in each of those categories.

10 (3) A firm's precertification status is only
11 applicable to the incorporated business entity that employs the
12 individual upon whom the firm's precertification status is based
13 and does not extend to a subsidiary, affiliate, or parent of the
14 incorporated entity.

15 (4) An employee's precertification status is based
16 solely on the individual's qualifications. A firm's
17 qualifications may not serve as a basis for precertifying an
18 employee.

19 (5) Precertification status shall transfer with the
20 employee, should the employee leave the firm.

21 (d) Precertification website. The department will maintain
22 a precertification website that will include:

23 (1) the definitions of the standard work categories;

1 (2) the minimum technical qualifications to perform
2 work under the standard work categories; and

3 (3) the precertification application form, with
4 instructions.

5 (e) Application and review process.

6 (1) To apply for precertification in a standard work
7 category, a firm must employ an individual qualified to become
8 precertified in that category and present the individual's
9 qualifications in a precertification application.

10 (2) The department will consider the following factors
11 in reviewing an application:

12 (A) the minimum technical qualifications as
13 applicable;

14 (B) the individual's professional license or
15 registration;

16 (C) the individual's experience and training; and

17 (D) any record that shows that the individual or
18 the firm is the subject of a final administrative or judicial
19 determination that the employee or firm has violated a statute
20 or rule of a state licensing entity related to occupational or
21 professional conduct.

22 (3) If a submitted application is incomplete or
23 inaccurate, the firm will be given an opportunity to correct the

1 application and provide additional information. The firm must
2 provide the information within 30 days after the day that it
3 receives the department's notice that the application is
4 incomplete or inaccurate.

5 (4) If the information is not provided under paragraph
6 (3) of this subsection within the 30-day period prescribed by
7 that paragraph, the application will be processed at the end of
8 that 30-day period with the information available.

9 (5) The department will make a good faith effort to
10 make a precertification determination within 60 days after the
11 day that the department receives a complete and accurate
12 application or if paragraph (4) of this subsection applies,
13 within 60 days after the day that the 30-day period prescribed
14 by that paragraph ends.

15 (f) Appeal. A firm may appeal a precertification denial to
16 the department by submitting additional information within 30
17 days after the day that it receives written notification of the
18 denial. The information must justify why precertification
19 should be granted. The department will review the information
20 and make a second precertification determination. A firm may
21 file a written complaint regarding a second precertification
22 denial to the executive director or the executive director's
23 designee.

1 (g) Updates. A firm must report any change in its
2 application information no later than 45 days after the day that
3 the change occurs.

4 (h) Data management. A firm's application information will
5 be maintained in the Consultant Certification Information System
6 (CCIS).

7 (i) Annual renewal. To maintain contract eligibility, a
8 firm must renew its precertification status no later than March
9 31 of each year. The firm must submit its annual renewal
10 through the CCIS.

11 (1) A firm that has renewed its precertification
12 status by the annual deadline will maintain an active
13 precertification status in the standard work categories in which
14 it is precertified.

15 (2) A firm that has not renewed its precertification
16 by the annual deadline will be placed in inactive status.

17

18 §9.34. Comprehensive Process.

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

23 (b) Administrative qualification.

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

9 (2) Factors in determining administrative
10 qualification.

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

13 (i) An audit may be performed by an
14 independent certified public accountant (CPA), an agency of the
15 federal government, another state transportation agency, or a
16 local transit agency. An audit performed by an independent CPA
17 must be conducted in accordance with the current versions of 48
18 C.F.R. Part 31, the Generally Accepted Government Auditing
19 Standards (GAGAS), and the American Association of State Highway
20 and Transportation Officials (AASHTO) Uniform Audit and
21 Accounting Guide. The provider must provide the department with
22 unrestricted access to the audit work papers, records, and other
23 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:

19 (i) a cognizant letter of concurrence issued
20 by a state transportation agency in accordance with the AASHTO
21 Uniform Audit and Accounting Guide; or

22 (ii) a compensation analysis for all
23 executives and employees in accordance with the AASHTO Uniform

1 Audit and Accounting Guide for which the provider may use either
2 the National Compensation Matrix or surveys as prescribed in the
3 AASHTO Uniform Audit and Accounting Guide.

4 (D) The department may audit the indirect cost
5 rate of a provider under contract with, or seeking to do
6 business with, the department. These audits will be conducted
7 in accordance with the criteria outlined in this subsection.

8 (E) A provider must submit a signed Certification
9 of Final Indirect Costs with the audit report or self-
10 certification. The certification must follow the requirements
11 of the Federal Highway Administration.

12 (3) Submittal and review process for administrative
13 qualification.

14 (A) A provider must submit its administrative
15 qualification information to the department in accordance with
16 the instructions on the department's website.

17 (B) Upon review of an audit report or self-
18 certification received from a provider, the department may
19 request additional information from the provider. If the
20 submittal is not complete and accurate, the department will
21 return it to the provider for correction. The [~~Upon request for~~
22 ~~additional information by the department, the~~] provider shall
23 submit the additional information or the corrected

1 administrative qualification submittal within 30 [~~15~~] days after
2 the day that it receives the department's request. [~~If the~~
3 ~~information is not provided within the 15-day period, the~~
4 ~~submittal will be placed on pending status for an additional 15~~
5 ~~days.~~] If the information is not received within the 30-day
6 [~~additional 15-day~~] period, the department will reject and not
7 process the [~~submittal will not be processed for~~] administrative
8 qualification submittal.

9 (C) If an administrative qualification submittal
10 is rejected under subparagraph (B) of this paragraph, the
11 provider may refile a corrected audit report or self-
12 certification and shall include any previously requested
13 information. The provider may not refile earlier than 90 days
14 after the day that the department sends the notice rejecting the
15 submittal.

16 (D) The department will make a good faith effort
17 to complete the administrative qualification review process
18 within 60 days after the day that it receives a complete and
19 accurate audit report or self-certification.

20 (4) Administrative qualification is applicable only to
21 the incorporated business entity upon which the indirect cost
22 rate is based and does not extend to a subsidiary, affiliate, or
23 parent of the incorporated entity, except as provided by this

1 paragraph. A corporation may administratively qualify a
2 business segment of the corporation if the business segment is
3 not limited to a geographical area that is less than the entire
4 state of Texas and if the corporation is able to demonstrate and
5 justify the allocation of costs between the business segment and
6 other corporate operations. If a corporate business segment is
7 administratively qualified, the resulting indirect cost rate is
8 not applicable to staff not employed by the business segment.

9 (5) The department will use a selected firm's indirect
10 cost rate information in negotiations under §9.40 of this
11 subchapter (relating to Negotiations).

12 (6) The department will not provide a firm's
13 administrative qualification information to the department's
14 staff conducting negotiations or the consultant selection team
15 before the selection of that firm.

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

19 (A) the provider has been in operation, as
20 currently organized, for less than one fiscal year and the
21 provider accepts an indirect cost rate developed by the
22 department; or

23 (B) on request by the department during the

1 selection process, the prime provider provides written
2 certification that the prime provider or subprovider, as
3 applicable, does not have an indirect cost rate audit and will
4 accept an indirect cost rate developed by the department.

5 (8) Exemptions to administrative qualification.

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

8 (B) A provider performing a service under
9 standard work category 18.2.1, subsurface utilities engineering,
10 or any of the following work groups, as listed on the
11 department's precertification website, is exempted from
12 administrative qualification, to the extent of the service being
13 performed:

14 (i) Group 6, bridge inspection;

15 (ii) Group 12, materials inspection and
16 testing;

17 (iii) Group 14, geotechnical services;

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

19 (v) Group 16, architecture.

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

1 (c) Consultant selection team (CST).

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

4 (2) The CST shall be composed of at least three
5 department employees.

6 (3) At least one CST member must be a professional
7 engineer, for engineering contracts; a registered architect, for
8 architectural contracts; and either a professional engineer or
9 registered professional land surveyor, for surveying contracts.

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

13 (d) Request for qualifications (RFQ). Not fewer than 14
14 calendar days before the solicitation closing date, the
15 department will post on a web-based bulletin board an RFQ
16 providing the contract information and specifying the
17 requirements for preparing and submitting a statement of
18 qualification.

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

21 (f) Replacements.

22 (1) An individual may be proposed as a replacement for
23 the prime provider project manager [~~or a task leader~~] prior to

1 the department's notification of firms short-listed for an
2 interview or, if an interview is not required, prior to
3 selection.

4 (2) An individual may be proposed as a replacement for
5 a task leader prior to contract execution.

6 (3) A proposed replacement for the prime provider
7 project manager must be an employee of the prime provider. A
8 proposed replacement for a task leader must be an employee of
9 the prime provider or its subprovider. A proposed replacement
10 for either position [~~designated in the SOQ and~~] must satisfy the
11 applicable precertification and non-listed category
12 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.
23 Each SOQ that meets these requirements will be considered

1 responsive to the RFQ and evaluated.

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

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

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

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

15 (3) Notification.

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

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

20 (i) Short list evaluation.

21 (1) Interviews. The department will evaluate the
22 short-listed providers through interviews. The department will
23 issue an Interview and Contract Guide (ICG) to each short-listed

1 prime provider. The ICG will provide contract information and
2 specify the requirements for the interview.

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

8 (j) Selection.

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

11 (2) Tie scores. The PEPS Division Director will break
12 a tie using the following method.

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

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

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

20 (3) Notification. The department will:

21 (A) provide written notification to the prime
22 provider selected for contract negotiation and arrange a meeting
23 to begin contract negotiations;

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

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

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