

TFC Contract No. 21-077-000
RFQ No. 303-1-02172
Project No. 21-009-8020



**CONSULTANT AGREEMENT
FOR
PROCUREMENT ASSISTANCE: BORDER
INFRASTRUCTURE AND SUPPORT PROGRAM
MANAGER**

BETWEEN

THE TEXAS FACILITIES COMMISSION

AND

BROADDUS AND ASSOCIATES, INC.

TFC CONTRACT NO. 21-077-000

PROJECT NO. 21-009-8020

**CONSULTANT AGREEMENT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
BROADDUS AND ASSOCIATES, INC.**

The **Texas Facilities Commission** (hereinafter referred to as "TFC"), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701 and **Broaddus and Associates, Inc.** (hereinafter referred to as "CONSULTANT"), located at 1301 South Capital of Texas Highway, Suite A-302, Austin, Texas 78701, enter into the following contract for consulting services (hereinafter referred to as the "Agreement") pursuant to Texas Government Code, Chapter 2254, Subchapter B .

I. PROJECT DESCRIPTION AND SCOPE OF WORK.

1.01. **PROJECT DESCRIPTION.** The Texas Facilities Commission (TFC), headquartered in Austin, Texas, is the state agency charged by statute with charge and control of state buildings, grounds and property, maintenance or repair of state buildings, grounds, property and for construction of state buildings. TFC is a part of the Executive Branch of Texas State Government. TFC has been directed by the Governor and State leadership to hire a Program Manager to oversee the construction of a Texas border wall, lead the process of planning and scoping the project, and assist TFC in hiring the contractors and subcontractors needed to build the wall. Consultant shall function under the supervision of TFC. TFC will not relinquish control over all operations. Consultant will be subject to the same scrutiny and oversight that would apply if all work were performed by TFC employees. Accordingly, all work must be conducted in adherence to applicable statutes and the highest ethical standards. The scope of consulting services to be provided to the Commission is generally assisting TFC to procure the Program Manager, organize the scope of Program Management services and launch the delivery of Program Management services. More specifically consulting services include: project leadership, management, content research and development, agency coordination, strategic procurement planning, RFP development and coordination of those areas identified in Section 1.02 below.

1.02. **SCOPE OF WORK.** (a) CONSULTANT shall primarily provide content research and development, agency coordination, strategic procurement planning and strategic procurement planning and Request for Proposal development. Services shall be provided in accordance with this Consultant Agreement and CONSULTANT's Proposal dated July 29, 2021, **Exhibit A**, attached hereto and incorporated herein for all purposes. Services include, but may not be limited to the following.

(b) Continued support of the maintenance of procurement documents and process through review of RFP questions, assisting with answers and providing strategic planning of future steps of the procurement process.

(c) Evaluation of qualifications and scoring of submittals.

(d) Participation in interviews of short listed firms.

- (e) Participation in negotiations of scope and fee for the selected program management firm(s).
- (f) Developing scope and framework for compensation for the program management contract.
- (g) Coordination of interagency relationships and collection of data to support the program management process.
- (h) Organizing scope of services and launch of program management services.
- (i) Continued support on procurement and contract document development for expedited wall delivery.

II. TERM.

2.01. **DURATION.** This Agreement shall be effective as of the date of the last party to sign it and shall terminate on December 31, 2021, unless extended by the parties by amendment to this Agreement or terminated earlier, as provided below. This Agreement may be renewed for one (1) additional two (2) year period, provided that a new contract is issued and executed prior to the termination of this Agreement.

2.02. **EARLY TERMINATION.** This Agreement may be terminated by either party by giving written notice specifying a termination date at least thirty (30) days subsequent to the date of the notice. Upon receipt of any such notice, CONSULTANT will cease work and undertake to terminate any relevant subcontracts and will incur no further expense related to this Agreement. Such early termination shall be subject to the equitable settlement of the respective interests of the parties accrued up to the date of termination.

III. CONSIDERATION.

3.01. **CONTRACT LIMIT AND FEES AND EXPENSES.** (a) The total amount of this Agreement shall not exceed the sum of \$160,000.00, inclusive of reimbursable expenses. All fees and expenses that may be payable pursuant to this Agreement shall be billed on an hourly basis in accordance with the schedule below:

Name	Title	Hourly Rate
Rich Cellon	Program Director	\$325.00
Pete Pazos	Senior Consultant	\$250.00
Scott Sanders	Program Executive	\$225.00
Vince Yauger	RFP/RFQ Manager	\$185.00
Marie Jackson	RFP/RFQ Support	\$140.00
Barrett Newsom	Consultant	\$140.00
MJ Welwood	Coordinator	\$108.33

(b) Reasonable lodging and traveling expenses shall be considered a Reimbursable Expense under this Agreement when professional and technical personnel of CONSULTANT are away from the cities in which they are permanently assigned and are conducting authorized business directly connected with this Agreement. For the purposes of this Agreement, no travel reimbursement shall be made for travel within 100 miles of the location identified as the principal place of business or branch office of CONSULTANT, except for overnight stays, which require prior TFC project manager approval. The maximum amount for each Reimbursable Expense for travel and lodging shall be the rates established by the Texas Comptroller of Public Accounts, and outlined in Textravel, <https://finx.cpa.state.tx.us/finx/travel/textravel/index.php>, formerly known as the State of Texas Travel Allowance Guide for state employees. No Reimbursable Expenses shall exceed actual cost. In addition to those items specifically identified above as a Reimbursable Expense, permit fees and associated costs, certain other incidental direct expenses including, but not limited to, copying, telephone, data, and express mail services, and rental of special equipment or tools required in connection with provision of the Professional Services for the Project, may constitute a Reimbursable Expense; provided however, CONSULTANT must obtain the written approval of TFC prior to incurring the expense. Approval may be granted only under those limited circumstances wherein such costs are not considered normal or customary basic services under this Agreement. All requests for reimbursement must be accompanied by such documentation which, in the judgment of the TFC, allows for complete substantiation of the costs incurred.

(c) Changes in the scope of services affecting the cost of services provided shall be approved by TFC by amendment. No compensation will be allowed for work performed without such amendment.

3.02. **PROMPT PAYMENT.** CONSULTANT shall be paid in accordance with Chapter 2251 of the Texas Government Code, also known as the "Prompt Payment Act". Any CONSULTANT services performed or delivered by CONSULTANT prior to the effective date of this Agreement or the effective date of any Assignment or after the termination of this Agreement or any Assignment cannot be compensated.

3.03. **PAYMENTS TO SUB-CONSULTANTS.** For all services rendered, CONSULTANT's payment to sub-consultants is due within ten (10) days after receipt of payment from the TFC and, when appropriate, TFC shall issue joint checks to the CONSULTANT and sub-consultants.

IV. CONSULTANT'S REPRESENTATIONS, RESPONSIBILITY AND LIABILITY.

4.01. **PERFORMANCE REPRESENTATIONS.** (a) CONSULTANT represents that all services provided by CONSULTANT under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. CONSULTANT represents that any work which is specified to be delivered under an Assignment to this Agreement and which are to be paid for by TFC (collectively, the "Deliverables") under this Agreement shall be:

(i) completed in a manner consistent with standards in the applicable trade, profession, or industry;

(ii) conform to or exceed the specifications set forth in this Agreement; and,

(iii) be fit for ordinary use, of good quality, and with no material defects.

(b) If CONSULTANT fails to provide or satisfactorily perform any of the conditions, work, or Deliverables called for by this Agreement within the time requirements specified, then TFC may require CONSULTANT to:

(i) remediate, repair or replace, at CONSULTANT's expense, any or all non-conforming, defective or damaged Deliverables;

(ii) refund any payment received for any non-conforming, defective or damaged Deliverables and, in conjunction therewith, require CONSULTANT to accept the return of any non-conforming, defective or damaged Deliverables at CONSULTANT's sole expense; and/or

(iii) take necessary action to provide that future performance conforms to the Agreement requirements at CONSULTANT's sole expense.

V. CONSULTANT'S GENERAL AFFIRMATIONS.

5.01. **FINANCIAL INTERESTS/GIFTS.** (a) Pursuant to Texas Government Code §§ 572.051 and 2255.001 and Texas Penal Code § 36.09, CONSULTANT has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

(b) Pursuant to Texas Government Code, Chapter 573 and § 2254.032, if applicable, CONSULTANT certifies that CONSULTANT knows of no officer or employee of TFC, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TFC, that has a financial interest in CONSULTANT's company or corporation. CONSULTANT further certifies that no partner, corporation, or unincorporated association which employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which CONSULTANT will be dealing on behalf of TFC. Furthermore, CONSULTANT certifies and agrees that if it employs any former employee of TFC, such employee will perform no work in connection with this Contract during the twelve (12) month period immediately following the employee's last date of employment at TFC.

5.02. **DISCLOSURE OF PRIOR STATE EMPLOYMENT.** Pursuant to Texas Government Code, § 2254.033, CONSULTANT certifies that it does not employ an individual who has been employed by TFC or another agency at any time during the two (2) years preceding the submission of its response to the RFP or, in the alternative, CONSULTANT has disclosed in its response to the RFP the following: (i) the nature of the previous employment with TFC or another agency; (ii) the date the employment was terminated; (iii) the annual rate of compensation for the employment at the time of its termination.

5.03. **ENTITIES THAT BOYCOTT ISRAEL.** Pursuant to Tex. Gov't. Code § 2271.002, CONSULTANT certifies that either (i) it meets an exemption criteria under Tex. Gov't. Code § 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of this Agreement. CONSULTANT shall state any facts that make it exempt from the boycott.

5.04. **PROHIBITION AGAINST CONTRACTING WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATIONS.** In accordance with Tex. Gov't. Code § 2252.152, TFC is prohibited from entering into a governmental contract (as defined in Tex. Gov't. Code § 2252.151(3)) with a company that is identified on a list prepared and maintained under Tex. Gov't. Code §§ 806.051, 807.051, or 2252.153. If CONSULTANT is on the above-referenced list, this Agreement will be considered void or voidable and TFC will not be responsible to pay CONSULTANT for any work performed.

5.05. **DISASTER RELIEF CONTRACT VIOLATION.** Under §§ 2155.006 and 2261.053, Texas Government Code, CONSULTANT certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

5.06. **ELIGIBILITY.** CONSULTANT certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate pursuant to Texas Government Code, § 2155.004(b).

5.07. **FAMILY CODE.** Pursuant to the requirements of Texas Family Code, § 231.006, regarding delinquent child support, the undersigned signatory certifies that the individual or business entity named in this Agreement is not ineligible to receive payment under this Agreement and, if applicable, CONSULTANT has provided the name and Social Security number of each person (sole proprietors, firm owners, partners, or shareholders) with at least 25% ownership of the business entity entering into this Agreement prior to its execution. CONSULTANT acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

5.08. **DEBTS OR DELINQUENCIES TO STATE.** CONSULTANT understands and agrees that any payment due under this Agreement may be applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support pursuant to Texas Government Code, § 403.055.

5.09. **GENERAL AND CRIMINAL BACKGROUND CHECKS.** (a) CONSULTANT shall conduct, or has conducted, a criminal background check at its own expense on each of its employees engaged in providing services under this Agreement prior to the commencement of such services. CONSULTANT's employee shall be eligible to perform services for the Company if he or she, to such CONSULTANT's knowledge: (i) has not been convicted of or was placed in a pre-trial diversion program for any crime involving dishonesty or breach of trust including, but not limited to, check kiting or passing bad checks; embezzlement, drug trafficking, forgery, burglary, robbery, theft, perjury; possession of stolen property, identity theft, fraud, money laundering, shoplifting, larceny, falsification of documents; and/or (ii) has not been convicted of any sex, weapons or violent crime including but not limited to homicide, attempted homicide, rape, child molestation,

extortion, terrorism or terrorist threats, kidnapping, assault, battery, and illegal weapon possession, sale or use.

(b) CONSULTANT represents and warrants that CONSULTANT and CONSULTANT's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, CONSULTANT has fully advised TFC as to the facts and circumstances surrounding the conviction.

5.10. **E-VERIFY.** By entering into this Agreement, CONSULTANT certifies and ensures that it utilizes and will continue to utilize, for the term of this Agreement, the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, to determine the eligibility of: all persons employed to perform duties within the State of Texas, during the term of the Agreement; and all persons, including sub-CONSULTANTS, assigned by the CONSULTANT to perform work pursuant to the Agreement, within the United States of America. CONSULTANT shall provide, upon request of TFC and if available, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by CONSULTANT, and CONSULTANT's sub-CONSULTANTS, as proof that this provision is being followed. If this certification is falsely made, the Agreement may be immediately terminated, at the discretion of TFC, and at no fault to TFC, with no prior notification. CONSULTANT shall also be responsible for the costs of any re-solicitation that TFC must undertake to replace the terminated Agreement. For persons not eligible for E-Verify screening, CONSULTANTS, including sub-CONSULTANTS, shall provide, upon request by TFC, another form of documentation of proof of eligibility to work in the United States of America.

5.11. **BUY TEXAS.** If CONSULTANT is authorized to make purchases under this Agreement, CONSULTANT certifies that CONSULTANT will buy Texas products, services, and materials when available at a comparable price and in a comparable period of time pursuant to Texas Government Code, Chapter 2155.

5.12. **EQUAL OPPORTUNITY.** CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. CONSULTANT shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, religion, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this non-discrimination article. CONSULTANT shall include the above provisions in all subcontracts pertaining to the work.

5.13. **DECEPTIVE TRADE PRACTICE ; UNFAIR BUSINESS PRACTICES.** CONSULTANT represents and warrants that it has not been found liable of Deceptive Trade Practices violations under Texas Business and Commerce Code, Chapter 17, or of any unfair business practice in any administrative hearing or court suit. CONSULTANT further certifies that it has no officers who

have served as officers of other entities who have been found liable of Deceptive Trade Practices violations or of any unfair business practices in an administrative hearing or court suit. In the event that allegations of Deceptive Trade Practices violations under Texas Business and Commerce Code, Chapter 17, or of any unfair business practices against either CONSULTANT or any of CONSULTANT's officers are currently pending in an administrative proceeding or in a lawsuit filed with any court, then CONSULTANT shall disclose all such pending matters to TFC and provide a brief description of each allegation, information regarding the administrative body or court before which the matter is pending, and the current status of the matter.

5.14. **AGENCY EXECUTIVE HEAD.** Under Texas Government Code, § 669.003 relating to contracting with an executive of a state agency, CONSULTANT represents that no person who, in the past four (4) years served as an executive of TFC or any other State agency, was involved with or has any interest in this Agreement or any contract resulting from this Agreement. If CONSULTANT employs or has used the services of a former executive head of TFC or any other State agency, then CONSULTANT shall provide the following information: the Name of the former executive, the name of the State agency, the date of separation from State agency, the position held with CONSULTANT and the date of employment with CONSULTANT.

VI. STATE FUNDING.

6.01. **STATE FUNDING.** (a) This Agreement shall not be construed as creating any debt on behalf of the State of Texas and/or TFC in violation of TEX. CONST. art. III, § 49. In compliance with TEX. CONST. art. VIII, § 6, it is understood that all obligations of TFC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Agreement may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

(b) Furthermore, any damages due under this Agreement should not exceed the amount of funds appropriated for payment under this Agreement, but not yet paid to CONSULTANT, for the fiscal year budget in existence at the time of the breach; **provided, however, the foregoing shall not be construed as a waiver of sovereign immunity.**

VII. COPYRIGHTS AND RIGHTS IN DATA.

7.01. **COPYRIGHTS.** CONSULTANT agrees that all Deliverables provided pursuant to this Agreement are subject to the rights of TFC in effect on the date of execution of this Agreement and any Assignment. These rights include the right to use, duplicate and disclose such subject matter and data, in whole or in part, in any manner for alterations, additions, remodels or maintenance; and to have others do so including production of Deliverables in response to a public information request pursuant to Texas Government Code, Chapter 552. If the Deliverables produced by CONSULTANT are subject to copyright protection, CONSULTANT hereby grants to TFC a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such and to authorize others to do so. CONSULTANT shall include appropriate provisions to achieve the purpose of this condition in all Subcontracts entered into that produce information subject to copyright protection.

7.02. **DISCLAIMERS.** All such Deliverables furnished by CONSULTANT pursuant to this Agreement and any Assignment shall be considered instruments of its services in respect to the respective project. It is understood that CONSULTANT does not represent such Deliverables to be suitable for reuse on any other study or for any other purpose(s).

7.03. **DELIVERY TO TFC.** CONSULTANT shall promptly provide copies of the Deliverables to TFC upon completion, termination, or cancellation of this Agreement and any Assignment for any reason, including all copies of the Deliverables in any form or medium specified by TFC in this Agreement and any Assignment, whether written, digital, or electronic.

7.04. **TFC RIGHT TO USE.** Any provision herein to the contrary notwithstanding, TFC shall be authorized to make subsequent use of the Deliverables for any and all future renovations, modifications, alterations, maintenance, repairs, and the like of any Project.

7.05. **NO USE OF NAME OR TRADEMARK.** CONSULTANT agrees not to make any written use of or reference to TFC's name or registered or unregistered trademarks for any marketing, public relations, advertising, display or other business purpose or make any use of TFC's facilities for any activity related to the express business purposes and interests of TFC pursuant to this Agreement and any Assignment, without the prior written consent of TFC, which consent may be withheld or granted in TFC's sole discretion.

VIII. RECORDS, AUDIT, PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE.

8.01. **BOOKS AND RECORDS.** CONSULTANT shall keep and maintain under generally accepted accounting principles full, true and complete records, as are necessary to fully disclose to TFC or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with the terms and conditions of this Agreement and all state and federal regulations and statutes.

8.02. **INSPECTION & AUDIT.** CONSULTANT agrees that all relevant records related to this Agreement or any work product under this Agreement, including practices of its sub-CONSULTANTS, shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of CONSULTANT where such records may be found, with or without notice by the Texas State Auditor's Office, the contracting agency or its contracted examiners, or the Texas Attorney General's Office, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect the requirements of this section. In addition, pursuant to Texas Government Code, § 2262.154, the SAO may conduct an audit or investigation of any entity receiving funds under this Contract, including direct payments to the CONSULTANT and indirect payments under a subcontract to this Contract; acceptance of such monies acts as acceptance of SAO authority, under legislative audit committee direction, to audit and investigate related to those funds and the entity subject to the audit or investigation must provide SAO with access to any information SAO considers relevant to the scope of the audit or investigation.

8.03. **PERIOD OF RETENTION.** All records relevant to this Agreement shall be retained a minimum seven (7) years. The retention period runs from the date of payment for the relevant goods or services by TFC, or from the date of termination of the Agreement, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative proceeding or litigation which may ensue.

8.04. **CONFIDENTIALITY.** CONSULTANT shall keep confidential all information, in whatever form, produced, prepared, observed or received by CONSULTANT to the extent that such information is:

- (a) confidential by law;
- (b) marked or designated "confidential" (or words to that effect) by TFC; or,
- (c) information that CONSULTANT is otherwise required to keep confidential by this Agreement.

Furthermore, CONSULTANT will not advertise that it is doing business with TFC or use this Agreement as a marketing or sales tool without the prior written consent of TFC.

8.05. **PUBLIC RECORDS.** Notwithstanding any provisions of this Agreement to the contrary, CONSULTANT understands that TFC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552. If contacted by TFC, CONSULTANT will cooperate with TFC in the production of documents responsive to the request. CONSULTANT agrees to provide the documents responsive to the request in the format and within the time frame specified by TFC. CONSULTANT may request that TFC seek an opinion from the Office of the Texas Attorney General. However, the final decision whether to seek a ruling from the Office of the Texas Attorney General will be made by TFC in its sole discretion to comply with the legal requirements of the Texas Public Information Act. Additionally, CONSULTANT will notify TFC's General Counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced, collected, assembled, or maintained in connection with this Agreement and/or any Assignment. This Agreement and/or any Assignment and all data and other information generated or otherwise obtained in its performance is subject to the Texas Public Information Act. CONSULTANT agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Agreement, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Furthermore, CONSULTANT is required to make any information created or exchanged with the State pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public as specified by TFC at no additional charge to the State.

8.06. **ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS.** (a) Effective September 1, 2006, all state agencies and institutions of higher education shall procure products which comply with the State of Texas accessibility requirements for electronic and information resources specified in Title 1 of the Texas Administrative Code, Chapter 213 when such products

are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

(a) If applicable, CONSULTANT shall provide the Texas Department of Information Resources (“DIR”) with the universal resource link, also known as URL, to its Voluntary Product Accessibility Template (“VPAT”) for reviewing compliance with the State of Texas accessibility requirements (based on the Federal standards established under § 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration “Buy Accessible Wizard” (<http://www.buyaccessible.gov>). CONSULTANTS not listed with the “Buy Accessible Wizard” or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the “Buy Accessible Wizard” or obtaining a copy of the VPAT is located at <https://app.buyaccessible.gov/home>.

IX. INSURANCE AND LEGAL OBLIGATIONS.

9.01. **INSURANCE.** Prior to the commencement of work under this Agreement, CONSULTANT agrees to carry and maintain insurance in the following types and amounts for the duration of this Agreement, and furnish certificates of insurance and make available copies of policy declaration pages and policy endorsements as evidence thereof:

(a) Workers’ compensation and employers’ liability coverage with minimum policy limits for employers’ liability of \$1,000,000.00 bodily injury per accident, \$1,000,000.00 bodily injury disease policy limit and \$1,000,000.00 per disease, per employee. Workers’ compensation insurance coverage must meet the statutory requirements of Texas Labor Code, § 401.011(44). Certification in writing from the CONSULTANT and sub-CONSULTANTS shall be provided to TFC in accordance with Texas Labor Code, § 406.096. The policy shall be endorsed to include Waiver of Subrogation in favor of TFC. TFC shall be entitled, upon request and without expense, to receive copies of these certifications.

(b) Commercial general liability with a combined single limit of \$1,000,000.00 per occurrence including products/completed operations, where appropriate, with a separate general aggregate of \$2,000,000.00. The policy shall contain the following provisions:

- (i) The general aggregate limit shall apply on a per Project basis;
- (ii) Independent CONSULTANTS coverage;
- (iii) State of Texas, TFC, its officials, directors, employees, representatives, and volunteers must be listed as an additional insureds;
- (iv) Thirty (30) day Notice of Cancellation in favor of TFC; and,
- (v) Waiver of Subrogation in favor of TFC.

(c) Business automobile liability insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000.00 per accident for bodily injury and property damage. Alternate acceptable limits are \$1,00,000.00 bodily injury per person, \$1,000,000.00 bodily injury per accident and at least \$1,000,000.00 property damage liability per accident. The policy shall contain the following endorsements in favor of TFC:

- (i) Waiver of Subrogation endorsement;
- (ii) Thirty (30) day Notice of Cancellation endorsement; and,
- (iii) Additional Insured endorsement.

(d) Professional Liability insurance with a minimum limit of \$1,000,000.00 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed with respect to plans, maps, drawings, analysis, reports, surveys, change orders, designs, or specifications prepared by the insured. CONSULTANT shall maintain coverage for the duration of this Agreement and for not less than twenty-four (24) months following completion of the Project, whichever is longer.

9.02. **GENERAL REQUIREMENTS FOR INSURANCE.** (a) CONSULTANT shall be responsible for deductibles and self-insured retention, if any, stated in policies. All deductibles or self-insured retention shall be disclosed on the certificate of insurance required above. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date.

(b) CONSULTANT shall maintain coverage for the duration of this Agreement, and shall maintain coverage for the professional liability insurance for not less than twenty-four (24) months following completion of the Project. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. CONSULTANT shall, on at least an annual basis, provide TFC with an insurance certificate as evidence of such insurance. The premium for this extended reporting period shall be paid by CONSULTANT.

(c) CONSULTANT shall not commence work under this Agreement until they have obtained the required insurance and until such insurance has been reviewed by TFC. CONSULTANT shall not allow any sub-CONSULTANTs to commence work until the required insurance has been obtained and approved. Approval of insurance by TFC shall not relieve or decrease the liability of CONSULTANT hereunder.

(d) Insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued and shall be written by a company with an A.M. Best rating of A- or better.

(e) CONSULTANT shall produce endorsements upon TFC's request to each affected policy:

(i) That obligates the insurance company to notify the Project Manager, at TFC, P.O. Box 13047, Austin, Texas 78711, of any non-renewal, cancellations or material changes at least thirty (30) days prior to change or cancellation.

(ii) That the "other" insurance clause shall not apply to the State where TFC is an additional insured shown on the policy. It is intended that policies required in this Agreement, covering both TFC and CONSULTANT, shall be considered primary coverage as applicable.

TFC shall be entitled, upon request and without expense, to receive copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies and if such request for deletions, revisions, or modifications are commercially available.

(g) CONSULTANT shall not cause any insurance required under this Agreement to cancel nor permit any insurance to lapse during the term of this Agreement.

(h) TFC reserves the right to review the insurance requirements of this section during the effective period of the Agreement and to make reasonable adjustments to insurance coverage and their limits when deemed necessary and prudent by TFC based upon changes in statutory law, court decisions or the claims history of the industry as well as CONSULTANT (such adjustments shall be commercially available to CONSULTANT).

(i) CONSULTANT shall provide TFC thirty (30) days written notice of erosion of the aggregate limit.

(j) Actual losses not covered by insurance as required by this Agreement shall be paid by CONSULTANT.

9.03. **LEGAL OBLIGATIONS.** CONSULTANT shall procure and maintain for the duration of this Agreement any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by CONSULTANT to provide the goods or services required by this Agreement. CONSULTANT will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. CONSULTANT agrees to be responsible for payment of any such government obligations not paid by its sub-CONSULTANTS during performance of this Agreement.

X. MISCELLANEOUS PROVISIONS.

10.01. INDEMNIFICATION.

(a) **ACTS OR OMISSIONS.** CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS TFC, THE STATE OF TEXAS, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, ASSIGNEES,

AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONSULTANT OR ITS AGENTS, EMPLOYEES, SUBCONSULTANTS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONSULTANTS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY CONSULTANT WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONSULTANT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONSULTANT AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

(b) INFRINGEMENTS. CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONSULTANT PURSUANT TO THIS AGREEMENT. CONSULTANT AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONSULTANT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONSULTANT WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONSULTANT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONSULTANT SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED; ANY MODIFICATION MADE TO THE PRODUCT WITHOUT CONSULTANT'S WRITTEN APPROVAL; ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CONSULTANT PURSUANT TO TFC'S SPECIFIC INSTRUCTIONS; ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TFC; OR ANY USE OF THE PRODUCT OR SERVICE BY TFC THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT. IF CONSULTANT BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TFC PROVIDES CONSULTANT WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CONSULTANT MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TFC, SHALL), AT CONSULTANT'S SOLE OPTION AND EXPENSE: PROCURE FOR TFC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE; OR MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TFC'S USE IS NON-INFRINGEMENT.

(c) **TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY.** CONSULTANT AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, CONSULTANT SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONSULTANT'S AND CONSULTANT'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. CONSULTANT AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TFC AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONSULTANT, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. CONSULTANT AGREES TO INDEMNIFY AND HOLD HARMLESS TFC, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS AGREEMENT. CONSULTANT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONSULTANT WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONSULTANT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONSULTANT AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

10.02. **ASSIGNMENT AND SUBCONTRACTS.** CONSULTANT shall neither assign, transfer, nor delegate any rights, obligations, or duties under this Agreement without the prior written consent of TFC. Notwithstanding this provision, it is mutually understood and agreed that CONSULTANT may subcontract with others for some or all of the services to be performed. In any approved subcontracts, CONSULTANT shall legally bind such sub-CONSULTANT to perform and make such sub-CONSULTANT subject to all the duties, requirements, and obligations of CONSULTANT specified herein. Nothing herein shall be construed to relieve CONSULTANT of the responsibility for ensuring that the goods delivered and/or the services rendered by CONSULTANT and/or any of its sub-CONSULTANT comply with all the terms and provisions of this Agreement. CONSULTANT will provide written notification to TFC of any such sub-CONSULTANT performing work under this Agreement, including the name and taxpayer identification number of sub-CONSULTANT, the task(s) being performed, and the number of sub-CONSULTANT employees expected to work on the task.

10.03. **HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS).** In accordance with State law, it is TFC's policy to assist HUBs, whether minority or women-owned, whenever possible, to participate in providing goods and services to the agency. TFC encourages those parties with whom it contracts

for the provision of goods and services to adhere to this same philosophy in selecting sub-CONSULTANTs to assist in fulfilling CONSULTANT's obligations with TFC. If CONSULTANT subcontracts with others for some or all of the services to be performed under this Agreement, CONSULTANT shall comply with all HUB requirements pursuant to Texas Government Code, Chapter 2161 and file with TFC a HUB Subcontracting Plan for review and approval by TFC. CONSULTANT'S Approved HUB Subcontracting Plan is attached hereto and incorporated herein for all purposes as **Exhibit B**. When required, CONSULTANT shall submit an updated HUB Subcontracting Plan. Upon TFC approval of HUB Subcontracting Plan update(s) such update(s) shall become, without further notice or action, a part of the incorporated **Exhibit B**. A copy of the HUB Subcontracting Form is attached hereto and incorporated for all purposes as **Exhibit C**. CONSULTANT shall provide TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on the HUB Subcontracting Plan Progress Assessment Report (PAR) attached hereto and incorporated herein for all purposes as **Exhibit D**. PARs shall be submitted monthly with each invoice and are a condition of payment.

10.04. ABANDONMENT AND DEFAULT. If CONSULTANT defaults on this Agreement, TFC reserves the right to cancel the Agreement without notice and either re-solicit or re-award the Agreement to the next best responsive and responsible respondent. The defaulting CONSULTANT will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work.

10.05. ANTITRUST AND ASSIGNMENT OF CLAIMS. CONSULTANT represents and warrants that neither CONSULTANT nor any firm, corporation, partnership, or institution represented by CONSULTANT, or anyone acting for such firm, corporation or institution has (i) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (ii) communicated directly or indirectly the proposal to any competitor or any other person engaged in such line of business during the procurement process for this Agreement. CONSULTANT assigns to the State of Texas all of CONSULTANT's rights, title, and interest in and to all claims and causes of action CONSULTANT may have under the antitrust laws of Texas or the United States for overcharges associated with the Agreement.

10.06. IMMIGRATION REFORM. (a) The Immigration Reform and Control Act of 1986 and 1990 requires that all employees hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by all CONSULTANTs and sub-CONSULTANTs who contract with the State. CONSULTANT shall not place any employee of CONSULTANT at a worksite, nor shall CONSULTANT permit any employee, nor any sub-CONSULTANT, to perform any Professional Services on behalf of or for the benefit of the State, without first confirming said employee's authorization to lawfully work in the United States.

(b) CONSULTANT warrants that CONSULTANT: (i) maintains and follows an established policy to verify the employment authorization of its employees and to ensure continued compliance for the duration of employment; (ii) has verified the identity and employment eligibility of all employees in compliance with applicable law; (iii) has established internal safeguards and reporting policies to encourage its employees to report any suspected violations of immigration policies or of immigration law promptly to CONSULTANT's senior management; and (iv) is without

knowledge of any fact that would render any employee or sub-CONSULTANT ineligible to legally work in the United States.

(c) CONSULTANT further acknowledges, agrees, and warrants that CONSULTANT: (i) has complied, and shall at all times during the term of the Agreement comply, in all respects with the Immigration Reform and Control Act of 1986 and 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all of the laws, rules, and regulations relating thereto; (ii) has properly maintained, and shall at all times during the term of the Agreement properly maintain, all records required by the Department of Homeland Security, Immigration and Customs Enforcement (“DHS–ICE”), including, without limitation, the completion and maintenance of the Form I-9 for each of CONSULTANT’s employees; and (iii) has responded, and shall at all times during the term of the Agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of the Agreement, CONSULTANT shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by TFC or any state agency of CONSULTANT or any of its employees.

(d) CONSULTANT acknowledges, agrees, and warrants that all sub-CONSULTANTs permitted by it to perform Professional Services will be required to agree to these same terms as a condition to being awarded any Subcontract for such work.

10.07. DRUG FREE WORK PLACE. CONSULTANT, CONSULTANT’s employees and sub-CONSULTANTs shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and CONSULTANT, CONSULTANT’s employees and sub-CONSULTANTs shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

10.08. NO SMOKING. All facilities where work is to be performed are nonsmoking buildings. CONSULTANT’s employees and sub-CONSULTANTs are prohibited from smoking in all areas except in areas designated for smoking.

10.09. RELATIONSHIP OF THE PARTIES. CONSULTANT is associated with TFC only for the purposes and to the extent specified in this Agreement, and with respect to performance of the contracted services pursuant to this Agreement, CONSULTANT is and shall be an independent CONSULTANT. Subject only to the terms of this Agreement, CONSULTANT shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for TFC whatsoever with respect to the indebtedness, liabilities, and obligations of CONSULTANT or any other party. CONSULTANT shall be solely responsible for, and TFC shall have no obligation with respect to:

- (a) withholding of income taxes, FICA or any other taxes or fees;
- (b) industrial or workers compensation insurance coverage;
- (c) participation in any group insurance plans available to employees of the State of Texas;
- (d) participation or contributions by the State to the State Employees Retirement System;
- (e) accumulation of vacation leave or sick leave; or,
- (f) unemployment compensation coverage provided by the State.

10.10. COMPLIANCE WITH OTHER LAWS. In the execution of this Agreement, CONSULTANT shall comply with all applicable federal, state, and local laws, including laws governing labor, equal employment opportunity, safety, and environmental protection. CONSULTANT shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect performance under this Agreement.

10.11. NOTICES. Any notice required or permitted to be delivered under this Agreement shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the TFC or CONSULTANT, as the case may be, at the address set forth below:

For TFC: Texas Facilities Commission
Attention: Legal Services Division
1711 San Jacinto Blvd., Room 400
Austin, Texas 78701

For CONSULTANT: James A. Broaddus
President
Broaddus and Associates, Inc.
1301 South Capital of Texas Highway Suite A-302
Austin, Texas 78746-6581
Phone: (512) 347-3651
E-Mail: [broaddus@broaddusassociates.com](mailto:broadus@broaddusassociates.com)

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

10.12. NAME AND ORGANIZATIONAL CHANGES. CONSULTANT must provide TFC with written notification of all name changes and organizational changes relating to CONSULTANT including, but not limited to, merger, acquisition or sale no later than ten (10) business days of such change. CONSULTANT, in its notice, shall describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change

will impact its ability to perform under the Agreement. If the change entails personnel changes for personnel performing the responsibilities of the Agreement for CONSULTANT, CONSULTANT shall identify the new personnel and provide resumes to TFC, if resumes were originally required by the solicitation. TFC may request other information about the change and its impact on the Agreement and CONSULTANT shall supply the requested information within five (5) working days of receipt of the request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of CONSULTANT or successor entity, as applicable, to maintain its status as a party to this Agreement. TFC may terminate the Agreement due to any change to CONSULTANT that materially alters CONSULTANT's ability to perform under the Agreement.

10.13. GOVERNING LAW AND VENUE. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Agreement shall be in a court of competent jurisdiction in Travis County, Texas. CONSULTANT irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of *forum non conveniens*, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Agreement or any document related hereto. **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY TFC.**

10.14. SEVERABILITY. If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

10.15. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement. CONSULTANT acknowledges Agreement is effective for the period of time specified in the Agreement. Any services performed by CONSULTANT before this Agreement is effective or after it ceases to be effective are performed at the sole risk of CONSULTANT.

10.16. FORCE MAJEURE. (a) Any delays in or failure of performance by either party, except in respect of the obligation of payments under this Agreement, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure" including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, or floods, earthquakes, hurricanes or any other natural disaster or governmental actions. In any such event, the party claiming Force Majeure shall promptly notify the other party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, TFC may terminate this Agreement immediately upon written notification to CONSULTANT.

(b) Changes in the schedule or in the design or scope of the Project as a result of any Force Majeure which affect the cost of the CONSULTANT's services under this Agreement shall be approved by TFC by amendment to this Agreement.

10.17. **DISPUTE RESOLUTION.** Subject to Texas Government Code, § 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used by the parties to attempt to resolve all disputes arising under this Agreement. In accordance with the Texas Civil Practice and Remedies Code, § 114.005, the parties agree claims encompassed by Texas Government Code, § 2260.002(3) and Texas Civil Practice and Remedies Code, § 114.002 shall be governed by the following dispute resolution process:

(a) Claims for Breach of Contract and Counterclaims.

(i) CONSULTANT may make a claim against TFC for breach of a contract between TFC and CONSULTANT. TFC may assert a counterclaim against CONSULTANT.

(ii) CONSULTANT must provide written notice to TFC of a claim for breach of contract not later than one hundred eighty (180) days after the date of the event giving rise to the claim.

(iii) The notice must state with particularity:

(A) the nature of the alleged breach;

(B) the amount CONSULTANT seeks as damages; and

(C) the legal theory of recovery.

(iv) TFC must assert, in a writing delivered to CONSULTANT, any counterclaim not later than the sixtieth (60th) day after the date of notice of a claim under Paragraph (ii) above.

(b) Damages.

(i) The total amount of money recoverable on a claim for breach of contract under this Section 10.17 may not, after deducting the amount specified in Paragraph (b)(ii) below, exceed an amount equal to the sum of:

(A) the balance due and owing on the contract price;

(B) the amount or fair market value of orders or requests for additional work made by a unit of state government to the extent that the orders or requests for additional work were actually performed; and

(C) any delay or labor-related expense incurred by the CONSULTANT as a result of an action of or a failure to act by the unit of state government or a party acting under the supervision or control of the unit of state government.

(ii) Any amount owed the unit of state government for work not performed under a contract or in substantial compliance with its terms shall be deducted from the amount in Paragraph (b)(i)(C) above.

(iii) Any award of damages under this Agreement may not include:

(A) consequential or similar damages, except delays or labor-related expenses described by Paragraph (b)(i)(C) above;

(B) exemplary damages;

(C) any damages based on an unjust enrichment theory;

(D) attorney's fees; or

(E) home office overhead.

(c) Negotiation.

(i) TFC's general counsel shall examine the claim and any counterclaim and negotiate with CONSULTANT in an effort to resolve them. The negotiation must begin no later than one hundred twenty (120) days after the date the claim is received.

(ii) TFC's administrative rules located at Title 1, Part 5, § 111.31 of the Texas Administrative Code apply to this Agreement and govern the negotiation of any dispute arising from this Agreement.

(iii) In the event negotiation results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the settlement to writing, and each party shall sign the settlement. A partial settlement or resolution of a claim does not waive a party's rights as to the parts of the claim that are not resolved.

10.18. **MEDIATION.** Before the one hundred twentieth (120th) day after the date the claim is filed with TFC and before the expiration of any extension of time mutually agreed upon, the parties may agree to mediate a claim made under this Agreement.

10.19. **TIME IS OF THE ESSENCE.** Time is of the essence with respect to this Agreement; provided however, in the event that any of the deadlines set forth herein end on a Saturday, Sunday, or federal legal holiday, such deadline shall automatically be extended to the next day which is not a Saturday, Sunday, or federal legal holiday.

10.20. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same agreement.


10.21. **SURVIVAL OF TERMS.** Termination of the Agreement for any reason shall not release CONSULTANT from any liability of obligation set forth in the Agreement that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution and invoice and verification.

10.22. **ENTIRE CONTRACT AND MODIFICATION.** This Agreement and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistently with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification, renewal, extension or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

TEXAS FACILITIES COMMISSION

BROADDUS AND ASSOCIATES, INC.


By: 
Mike Novak
Executive Director

By: 
James A. Broaddus
President

Date signed: 08/31/2021 | 4:45 PM CDT

Date signed: 8/30/2021

Approved:


Steven E. Halpin
Deputy General Counsel

DED/J. S. Raff 



July 29, 2021

Michael Novak
Executive Director
Texas Facilities Commission
Austin, Texas

Dear Mr. Novak:

Thank you for the opportunity to provide a proposal to Texas Facilities Commission (TFC) for a short-term, high-impact team to provide high level programming, scope development, design and construction considerations and development of procurement documents for your border defense initiative program management role within 30 days. The purpose of this letter is to propose a scope of duties and expectations for this engagement, including schedules and fees, for your review and consideration. As a licensed professional engineering firm in Texas, our firm maintains all credentials necessary to perform the scope of services for this engagement. Additionally, please note we will provide these services with no expectation or intention to compete for the border wall program manager position.

Term and Deliverable

The full term for this engagement proposes 856 work hours over approximately 30 days providing project leadership, content research and development, engineering analysis, agency coordination, scope development and coordination with RFP development. Our team will work with TFC to define scope, establish expectations, and confirm compliance in order to support delivery of final RFP/Q documents for the procurement of the program manager. The relevant experience of our project team will be leveraged to generate procurement documents that ensure TFC solicits responses tailored to the specific needs of this project from the most qualified teams. In the performance of duties in this initial phase, additional scope and corresponding hours may require additional time added to this schedule at the direction of TFC.

Proposed Team

The proposed team is an ideal combination of highly experienced leaders who can work all organizational lines to develop a comprehensive solicitation for the Border Wall Program Manager. Our team will be deployed on both a full and part-time basis over the term, working at the direction of TFC. The scope, role and level of engagement for each of these roles can be defined upon evaluation with TFC.

- *Project Executive* - Scot Sanders P.E. Currently COO for Broaddus & Associates.
 - 24 yrs. US Navy Civil Engineer Corps/Seabee Officer with major security barrier work in Iraq, Afghanistan, US-Mexico Border.
 - 7 yrs. Professional Program Project Management Executive
 - 4 yrs. Regional VP/COO for the Broaddus & Associates, \$2B in projects managed.
- *Project Director* - Richard Cellon P.E.
 - 35 yrs. US Navy Civil Engineer Corps/Seabee Officer retiring as a Rear Admiral. Had global responsibilities for Navy facilities worldwide, as well as commanding all Naval Construction Forces (Seabees) including combat operations
 - 4 yrs. President of a pipeline construction firm
 - 10 yrs. Executive consultant improving the effectiveness of institutional facilities organizations, often working under the auspices of Broaddus & Associates

- *Border Wall Expert & Sr. Consultant* – Rafael Pazos, P.E.
 - 30 yrs. US Army Corps of Engineers retiring as a Colonel responsible for all Army Military Construction (MILCON) including DOD funded Border Wall work.
 - At Corps headquarters in Washington, was responsible for Border Wall construction accomplished through MILCON funds
 - As the first Southwest Border District Engineer, was responsible for the \$10B of border barrier infrastructure projects along the US-Mexico Border

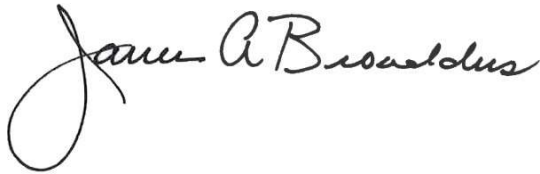
- *RFQ Manager* – Vince Yauger, AIA, PMP, CCM– 35 yrs. Professional Project Manager experience, 3 yrs. with Broaddus & Associates
 - Senior Program Manager for large Capital programs Broaddus & Associates
 - Led major project management teams, 15 years with UT OFPC NTX
 - Expert certified instructor for CMAA for Construction Management
 - 4 yrs Texas Army National Guard

Proposed Fee

Applying the estimated allocation of time a (856 hrs) against the hourly rates generates a not-to-exceed amount of \$165,760.00, with a credit of \$24,920.00 (initial engagement) for a total fee of \$140,840.00 to stand up the delivery team for the aforementioned staff augmentation services. This fee can be billed on an agreeable billing schedule. Only hours worked will be billed to the contract, and no unearned fee will be invoiced to TFC. Should the scope or schedule change, we will work with TFC to determine any needed revisions to the terms above.

In closing, as Texans we are excited to serve TFC in a role that will assist in getting this program off to the strong and decisive start that it needs. We have assembled a highly capable team that can achieve your objective comprehensively and responsively. Please let me know if you have a question regarding this or any other aspect of our proposed services. You have my personal assurance that I will closely follow the progress of this RFP development and will do whatever it takes to meet your expectations.

Respectfully,



James Broaddus, P.E. Ph.D.
President

Texas Facilities Commission (TFC) - HUB Program EVALUATION OF RESPONDENT'S HUB SUBCONTRACTING PLAN (HSP)

Instructions: This evaluation must be completed for each response before it can be considered further. Please complete a separate evaluation sheet for each response within five (5) business days after the opening date of the solicitation.

Section I: Name of Respondent: Broaddus & Associates TFC Contract No. 21-077-000

Name of Project: Consulting Svcs for Procurment Assisance Border Wall

Contract # _____ **Req #:** 303-1-02172 **PO #:** _____ **PROJECT/WO #:** _____

RFQ #: _____ **RFP #:** _____ **IFB #:** _____

SERVICES **AE:** **CMR** **RC** **IDIQ** **Assignment #:** _____

Amendment #: _____ **GMP#:** _____ **POCN#:** _____

TFC HUB Coordinator has reviewed the above referenced HSP response to this solicitation and finds that the HSP:

complies with **does not comply with**

Method Used to Achieving HUB Compliance:

HSP - Self Performing - Respondent will perform entire contract with own employees, material, supplies and equipment (per TAC 20.285(d)(5))

Print/Type Name:

TFC HUB Coordinator/Date:

Burks_S

Digitally signed by Burks_S
Date: 2021.07.21 11:11:55 -05'00'

Section II: Does the respondent intend to subcontract? YES NO N/A

Instructions: If "Yes," do not proceed to the following questions. If "No," proceed to the next question.

Comments:

Did the respondent verify that no subcontractors would be used in the performance of the work (verification must be provided on the form prescribed in the solicitation). YES NO N/A

Section III: Respondents who DO intend to subcontract: YES NO

1. Did the respondent divide the work into reasonable portions, consistent with prudent industry practices (Identified the areas of subcontracting)?

Comments:

**Texas Facilities Commission (TFC) - HUB Program
EVALUATION OF RESPONDENT'S HUB SUBCONTRACTING PLAN (HSP)**

2. Did the respondent provide notice to HUBs of the work that the respondent intends to subcontract, in accordance with 1 T.A.C. Section 111.14? **YES** **NO** **N/A**
- Comments:

3. Did the respondent include an executed Mentor Protégé Agreement (per Section 2161.065 Government Code), registered with TPASS? Does the HUB subcontracting plan identify the area(s) of subcontracting the protégé will perform? (Submission of a protégé as a subcontractor constitutes a good faith effort for the particular area to be subcontracted with the protégé). **YES** **NO** **N/A**
- Comments:

4. Did the respondent provide written justification of the selection process if a non-HUB subcontractor was selected by a process other than by competitive bidding, or a HUB bid was the best value responsive bidder to a competitive bid invitation, but was not selected? **YES** **NO** **N/A**
- Comments:

5. Did the respondent provide notice to minority or women trade organizations or development centers to assist in identifying HUBs by disseminating subcontracting opportunities to their membership/participants? Did the notice in all instances, include the scope of the work, specifications, and identify a contact person? Did Respondent provide notice to organizations or development centers no less than five (5) working days for construction contracts prior to submission of the response (bid, proposal, offer, or other applicable expression of interest)? **YES** **NO** **N/A**
- Comments:



HUB Subcontracting Plan (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
 - Section 2 c. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - No
 - Section 4 - Affirmation
 - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
 - Section 3 - Self Performing Justification
 - Section 4 - Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

In accordance with 34 TAC §20.284, the goal below are applicable for the Texas Facilities Commission.

The HUB Goal for this solicitation has been identified as: BUILDING CONSTRUCTION: 21.1%

- Respondents shall submit a completed HUB Subcontracting Plan (HSP) to be considered responsive. Failure to submit a completed HSP shall result in the bid, proposal or other expression of interest to be considered non-responsive.

- Prime Contractor Progress Assessment Report (PAR) shall be submitted with each request for payment as a condition of payment.

- Cursory reviews requests and questions can be sent to: HUB@tfc.state.tx.us

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: Broaddus & Associates State of Texas VID #: 1742985884200
 Point of Contact: Rick Johnson Phone #: 512.329.8822
 E-mail Address: RJohnson@BroaddusUSA.Com Fax #: 512.329.8242
- b. Is your company a State of Texas certified HUB? - Yes - No
- c. Requisition #: 303-1-02172 Bid Open Date: 7/19/21

(mm/dd/yyyy)

TFC Contract No. 21-077-000
Enter your company's name here: Broaddus & Associates

Exhibit B

Broaddus and Associates, Inc.
Requisition #: 303-1-02172**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b of this SECTION and continue to Item c of this SECTION.)
- No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If No, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to Non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- No (If No, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

TFC Contract No. 21-077-000

Exhibit B

Broaddus and Associates, Inc.

Enter your company's name here: Broaddus & AssociatesRequisition #: 303-1-02172

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

Broaddus & Associates has the in-house resources to successfully complete this Texas Facilities Commission project. Broaddus & Associates is one of the leading providers of facilities program management, consulting, and planning services in the United States for institutional owners who are planning and developing construction projects. Established in 2000, our firm has managed more than \$12B in capital projects for numerous public entities across the State of Texas. Headquartered in Austin, we have more than 120 professionals working from 7 regional Texas offices.


We are registered as a Professional Engineering Firm in the State of Texas and our staff includes Professional Engineers, Registered Architects, Licensed General Contractors, BIM Specialists, Certified Project Management Professionals, Certified Construction Managers, and LEED Accredited Professionals. Broaddus & Associates is a certified Historically Underutilized Business in the State of Texas, as well as being verified as a Service-Disabled Veteran Owned Business (SDVOB) by the U.S. Department of Veteran's Affairs.

Our project management team is ideally suited to address the needs of TFC based on our project portfolio with public agencies in Texas, experience with the procurement process for complex programs, and our experience as an Austin-based firm managing projects from the Rio Grande Valley to El Paso. Our submitted team has significant experience managing procurement initiatives at the state and federal level. Our key team members are veterans and former military engineers with Border Wall experience who have dealt with the highest levels of security and intrusion detection.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.



Signature

Rick Johnson

Printed Name

Vice President 7/19/21

Title

Date
(mm/dd/yyyy)

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

TFC Contract No. 21-077-000

Exhibit B

Broadus and Associates, Inc.

Enter your company's name here: Broadus & Associates

Requisition #: 303-1-02172

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: Broaddus & Associates Requisition #: 303-1-02172

IMPORTANT: If you responded “No” to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method B (Attachment B)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If *Yes*, continue to SECTION B-4.)
- No / Not Applicable (If *No* or *Not Applicable*, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be “day zero” and does not count as one of the seven (7) working days.

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas’ Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code “A” signifies that the company is a Texas certified HUB.
- b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company’s Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID <small>(Do not enter Social Security Numbers.)</small>	Date Notice Sent <small>(mm/dd/yyyy)</small>	Did the HUB Respond? <input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program’s webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.

- d.** List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent <small>(mm/dd/yyyy)</small>	Was the Notice Accepted? <input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

Enter your company's name here: Broaddus & Associates Requisition #: 303-1-02172

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/passcmlsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: Broaddus & Associates State of Texas VID #: 1742985884200
 Point-of-Contact: Rick Johnson Phone #: 512.329.8822
 E-mail Address: RJohnson@BroaddusUSA.Com Fax #: 512.329.8242

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____
 Point-of-Contact: _____ Phone #: _____
 Requisition #: 303-1-02172 Bid Open Date: 7/19/21
(mm/dd/yyyy)

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than _____ on _____
Central Time Date (mm/dd/yyyy)

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications:

- Not Applicable

4. Bonding/Insurance Requirements:

- Not Applicable

5. Location to review plans/specifications:

- Not Applicable



GLENN HEGAR TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

The Texas Comptroller of Public Accounts (CPA) administers the Statewide Historically Underutilized Business (HUB) Program for the State of Texas, which includes certifying minority, woman, and service disabled veteran-owned businesses as HUBs and facilitates the use of HUBs in state procurement and provides them with information on the state's procurement process.

We are pleased to inform you that your application for certification/re-certification as a HUB has been approved. Your company's profile is listed in the State of Texas HUB Directory and may be viewed online at <https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. Provided that your company continues to meet HUB eligibility requirements, the attached HUB certificate is valid for the time period specified.

You must notify the HUB Program in writing of any changes affecting your company's compliance with the HUB eligibility requirements, including changes in ownership, day-to-day management, control and/or principal place of business. *Note: Any changes made to your company's information may require the HUB Program to re-evaluate your company's eligibility.*

Please visit our website at <http://comptroller.texas.gov/procurement/prog/hub/> and reference our publications (i.e. Grow Your Business pamphlet, HUB Brochure and Vendor Guide) providing additional information on state procurement resources that can increase your company's chances of doing business with the state.

Thank you for your participation in the HUB Program! If you have any questions, you may contact a HUB Program representative at 512-463-5872 or toll-free in Texas at 1-888-863-5881.

Texas Historically Underutilized Business (HUB) Certificate



Certificate/VID Number:	1742985884200
File/Vendor Number:	012710
Approval Date:	03-JAN-2020
Scheduled Expiration Date:	03-JAN-2024

The Texas Comptroller of Public Accounts (CPA), hereby certifies that

BROADDUS & ASSOCIATES, INC.

has successfully met the established requirements of the State of Texas Historically Underutilized Business (HUB) Program to be recognized as a HUB. This certificate printed 03-JAN-2020, supersedes any registration and certificate previously issued by the HUB Program. If there are any changes regarding the information (i.e., business structure, ownership, day-to-day management, operational control, business location) provided in the submission of the business' application for registration/certification as a HUB, you must immediately (within 30 days of such changes) notify the HUB Program in writing. The CPA reserves the right to conduct a compliance review at any time to confirm HUB eligibility. HUB certification may be suspended or revoked upon findings of ineligibility.

*Statewide HUB Program
Statewide Procurement Division*

Note: In order for State agencies and institutions of higher education (universities) to be credited for utilizing this business as a HUB, they must award payment under the Certificate/VID Number identified above. Agencies, universities and prime contractors are encouraged to verify the company's HUB certification prior to issuing a notice of award by accessing the Internet (<https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>) or by contacting the HUB Program at 512-463-5872 or toll-free in Texas at 1-888-863-5881.



HUB Subcontracting Plan (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
 - Section 2 c. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - No
 - Section 4 - Affirmation
 - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
 - Section 3 - Self Performing Justification
 - Section 4 - Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: _____ State of Texas VID #: _____
 Point of Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____
- b. Is your company a State of Texas certified HUB? - Yes - No
- c. Requisition #: _____ Bid Open Date: _____
(mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- *Yes*, I will be subcontracting portions of the contract. (If *Yes*, complete Item b of this SECTION and continue to Item c of this SECTION.)
- *No*, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If *No*, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- *No* (If *No*, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- *No* (If *No*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____ Requisition #: _____

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

[Empty box for justification text]

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

 Signature Printed Name Title Date
 (mm/dd/yyyy)

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method B (Attachment B)

Enter your company's name here: _____	Requisition #: _____
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IMPORTANT: If you responded “No” to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method B (Attachment B)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If *Yes*, continue to SECTION B-4.)
- No / Not Applicable (If *No* or *Not Applicable*, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be “day zero” and does not count as one of the seven (7) working days.

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas’ Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code “A” signifies that the company is a Texas certified HUB.
- b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company’s Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID <small>(Do not enter Social Security Numbers.)</small>	Date Notice Sent <small>(mm/dd/yyyy)</small>	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program’s webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.

- d.** List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent <small>(mm/dd/yyyy)</small>	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/passcmlsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: _____
 Point-of-Contact: _____
 E-mail Address: _____

State of Texas VID #: _____
 Phone #: _____
 Fax #: _____

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____
 Point-of-Contact: _____
 Requisition #: _____

Phone #: _____
 Bid Open Date: _____
 (mm/dd/yyyy)

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than _____ on _____
 Central Time Date (mm/dd/yyyy)

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications:

- Not Applicable

4. Bonding/Insurance Requirements:

- Not Applicable

5. Location to review plans/specifications:

- Not Applicable

