

HIDALGO COUNTY
PROCEDURES FOR SELECTING AND CONTRACTING WITH PROFESSIONAL SERVICE PROVIDERS
FOR FEDERAL ROAD PROJECT

Hidalgo County has used 23 CFR 172 (Code of Federal Regulations) in conjunction with the Texas Administrative Code (TAC) in the preparation of these procurement procedures for professional services. 23 CFR 172.5(c) states that the contracting agency (LG) shall prepare and maintain written policies and procedures for the procurement, management, and administration of engineering and design related consultant services. These policies and procedures, including all revisions, must be reviewed and approved by TxDOT for compliance with applicable requirements.

In accordance with 23CFR 172.5(c), the following items must be included in the policies and procedures to ensure compliance with Federal and State laws and regulations:

1. Preparing a scope of work and evaluation factors for the ranking/selection of a consultant;

The County, with assistance provided by a licensed engineer on staff with the Hidalgo County Drainage District No. 1, will prepare a clear, accurate, and detailed scope of work and evaluation factors defined in the Request for Qualifications (RFQ) and 23 CFR 172.7.a.1.ii.C for qualification based selection procurement per 23 CFR 172, 172.7.a.1.ii.A. The scope of services will communicate exactly what the county wants to accomplish and the instructions for completing the work in an exact measurable manner by the identified deadlines. The scope will include;

- a. What work will be done;
- b. Who will do the work;
- c. When the work will be done;
- d. Where the work will be done; and
- e. How the work will be done.

The scope of services will be drafted specifically for the project intended and will be tailored to promote timely delivery of services, efficient management of the contract, resourceful use of funds, and a professional rapport with the respondent to foresee and avoid potential disputes.

The RFQ/RFP, as well as any forms or referenced exhibits, will be submitted to TxDOT for approval prior to advertising. If additional scope of work is added or modified (not in the original RFQ), the County will verify and check for compliance with the procurement procedures under the Brooks Act (qualification based selection). The County will submit changes and/or modifications to TxDOT for approval and concurrence prior to revising the original scope per 23 CFR 172.9.e.

2. Soliciting interest, qualifications, or proposals from prospective consultants;

Hidalgo County will place a notice seeking Statement of Qualifications from professional engineering firms in one newspaper for a minimum of two (2) consecutive weeks. The notice will also be posted on the County's website to allow a fair opportunity for in-state and out-of-state consultants to submit a packet on the project. Procurement procedure will be a multiphase process with the issuance of a request for statements or letters of interest

or qualifications (RFQ) whereby prospective respondents are ranked solely based on qualifications and the ability of the firm to perform the work in a competent and responsible manner. A request for proposal (RFP) is then issued to a minimum of three of the most highly qualified firms. The County shall then rank the firms based on demonstrated competence and qualifications in accordance with the established/advertised criteria in the RFP.

Prior to distribution, the RFP packet will be submitted to TxDOT for approval and concurrence. If additional scope of work is added or modified (not in the original RFP), the County will verify and check for compliance with the procurement procedures under the Books Act (qualification based selection). The County will submit changes and/or modifications to TxDOT for approval and concurrence prior to revising the original scope.

The notice period will be a minimum of 21 days and will include;

- a. County website with the location of the source where RFQ packet may be obtained;
- b. RFQ number;
- c. Type of contract;
- d. General description of the project and work to be done;
- e. The due date for providers to send qualifications; and
- f. Name, address, phone and fax numbers, and email address of the contact person.

The assigned buyer for the Purchasing Department will be the single point of contact throughout the procurement process. Once the process is complete, and a contract is secured, approved, executed, and available for reference and viewing, the designated RPIC (Responsible Person in Charge) will be the point of contact through the completion and closeout of the project.

Approval and concurrence by TxDOT is required prior to the finalization of the contract.

3. **Preventing, identifying and mitigating conflicts of interest for employees of both the contracting agency and consultants and promptly disclosing in writing any potential conflict to the STA and FHWA, as specified in 2 CFR 200.112 and 23 CFR 1.33, and the provisions of 23 CFR 172.7.b.4;**

As per Texas Local Government Code, consultants will be required to disclose in the "Conflict of Interest Questionnaire (CIQ), attached as an exhibit included in the RFQ, items that might cause a conflict of interest with the County. The County will disclose in writing any potential conflict of interest to TxDOT in accordance with 2 CFR 200.112. All communications by the respondent to the County, its officials, and department heads regarding the procurement shall be done through the Hidalgo County Purchasing Department in coordination with the designated Responsible Person in Charge (RPIC). It is the policy of Hidalgo County to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the County to perform procurement services. Commission and County employees will conduct themselves in such a manner as to foster public confidence in the integrity of the County in order to guard against any misappropriation of assets and to ensure fairness and transparency and to protect against fraud, waste, and abuse of taxpayer resources.

- 23 CFR 1.33 rules specifically prohibit all proposers, developers, consultants, and sub-consultants as well as their affiliates from offering, giving, or agreeing to give a “gift or benefit” to a member of the Commission, elected official, former elected official or to any County employee or former County employee who has any involvement in the procurement or the administration of the project.

- It shall be a breach of ethics to offer, give or agree to give any employee or former employee of Hidalgo County, or for any employee or former employee of Hidalgo County to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal, therefore, pending before this government.

- County employees who participate in the procurement, management, or administration of Federal Aid Highway Program (FAHP) funded contracts or subcontracts shall not have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract, or any financial or other personal interest in any real property acquired for the project, as specified in 23 CFR 1.33. It shall be a breach of ethics to attempt to realize personal gain through public employment with Hidalgo County by any conduct inconsistent with the proper discharge of the employee’s duties.

- No official or employee of the County who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract as specified in 23 CFR 1.33.

- No engineer, attorney, appraiser, inspector or other person performing services for the County in connection with a project shall have, directly or indirectly, a financial or other personal interest other than his employment or retention by the County in any contract or subcontract in connection with such project as specified in 23 CFR 1.33.

- To mitigate the potential conflict of interest for County employees, employees who participate in the procurement, management, or administration of FAHP funded contracts or subcontracts will execute a purchasing inner-office No Conflict Disclosure Form that will be made a part of the permanent procurement file.

- In accordance with 2 CFR 200.319a, and to mitigate potential conflict of interest, ensure objective contractor performance, and eliminate unfair competitive advantage, engineers, engineering firms, and/or a subsidiary, affiliate, or a consultant of engineer or engineering firm who has received compensation from the County, that assist in the development of, or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals, will be excluded from competing for such procurements (i.e....subsequent construction engineering/management and/or inspection/testing) for all other phases of the project.

•To comply with Texas Government Code Section §2252.908 and the rules issued by the Texas Ethics Commission found in Title 1, Section 46.1, 46.3 and 46.5 of the Texas Administrative Code, the awarded firm(s) must complete and file Form HB1295 - Certificate of Interested Parties with the Texas Ethics Committee. The County cannot enter into a contract until the Form HB1295 has been executed and filed with the Texas Ethics Commission.

A participant who becomes aware of facts that require the conflict of interest (CIQ) form to be filed must do so with the Hidalgo County Clerk's Office within seven (7) days after becoming aware of the necessity to file the form. Failure to comply may result in the termination of services.

No public official shall have an interest in a contract awarded hereunder except in accordance with Texas Local Government Code Chapter 171.

All exhibits and forms are part of the complete RFQ/RFP and will be submitted to TxDOT for review, approval, and concurrence prior to issuance of project packets. Any change or modification of exhibits will be submitted to TxDOT for review and concurrence prior to change or modification.

4. Verifying suspension and debarment actions and eligibility of consultants, as specified in 2 CFR part 1200 and 2 CFR part 180;

Contractors and their principals (i.e. sub-contractors, material suppliers, vendors etc..) are not allowed to participate in Federally Funded projects if they are presently suspended or debarred or have been convicted within the past three (3) years of certain types of offenses or had a civil judgement rendered within the past three (3) years for certain types of offenses. In accordance with 2 CFR 1200 and 2 CFR part 180; the County will verify the suspension and debarment actions and eligibility of consultants by;

- a. Including a Certification Regarding Debarment, Suspension, and Ineligibility Form as an exhibit included in the RFQ/RFP acknowledging that contractor or vendor is free from suspension or debarment pursuant to Federal Regulation 45 CFR Part 76.;
- b. Require each respondent submit a copy of their status with SAM.gov, if not a current member, they must register and submit a copy of the registration form with their submittal; and
- c. Designated buyer will verify through a search for contractor status at System for Award Management and attach a printed copy of search results.

As an exhibit in the RFQ/RFP packet, the Certification Regarding Debarment, Suspension, and Ineligibility Form will be submitted to TxDOT for review and approval prior to the release of RFQ/RFP.

The Federal and State programs for Disadvantaged Business Enterprises (DBE), Historically Underutilized Business (HUB), and Small Business Enterprises (SBE) have been developed to encourage participation in the construction industry by a wide variety of contractors and therefore expand diversity in the industry. Hidalgo County adopted TxDOT's DBE Program by signing a Memorandum of Understanding (MOU) on July 24, 2014. The DBE Program as authorized by 49 CFR, Part 26 ensures nondiscrimination in the award and administration of United States Department of Transportation contracts.

Contractors/respondents are required to comply with the TxDOT DBE Program.

DBE goals submitted by the apparent low bidder will be submitted to TxDOT for review of contractor compliance, approval, and concurrence.

5. **Preparing an independent agency estimate for use in negotiation with the selected consultant per 23 CFR 172.7.a.1.v;**

Prior to receipt or review of the most highly qualified consultant's cost proposal, the County, with the assistance of the designated licensed engineer, will prepare a detailed independent estimate based on realistic date. The estimate will include;

- a. An appropriate breakdown of the work or labor hours;
- b. Types or classifications of labor required; and
- c. Other direct costs and consultant's fixed fee for the defined scope of work.

The independent estimate will serve as the basis for negotiation of a contract with the highest qualified firm. Hidalgo County will retain documentation of negotiation activities and resources used in the analysis of fair and reasonable costs in accordance with federal cost principles. The documentation shall include the original cost proposal, subsequent submittals, final cost proposal, pre-negotiation audit, audit reports, and responses to the pre-negotiation audit.

The independent agency estimate will be submitted to TxDOT for approval and concurrence prior to bid opening.

6. **Evaluating interest, qualifications, or proposals and the ranking/selection of a consultant per 23 CFR 172.7.a.1.iii-iv;**

The evaluation/grading/scoring committee will be comprised of at least one (1) licensed engineer on staff with Hidalgo County Drainage District No. 1. The licensed engineer will assist the county in preparing a clear, accurate, and detailed scope of work as well as the evaluation criteria. The designated engineer will be named in writing by the HCDD, with approval and acceptance of named engineer by the county, at the onset of the project and will serve as a consultant throughout the life of the project. The designated engineer will also serve as the Evaluation Committee Liaison and will coordinate the grading/evaluating/scoring schedule as well as determine if interviews of respondents will be required. The remaining members of the Evaluation Committee will be comprised of two representatives appointed by project precinct Commissioner. Request for Qualifications (RFQ) will be reviewed and scored based on the established evaluation factors as stated in the request for qualifications and scoring system. The provider will not be awarded a contract based on competitive bids. Qualifications will be ranked based on the scoring system provided in the request for qualifications. The ranking criteria at a minimum should be based on:

- 40 - Points - Project understanding and approach including quality control procedures
 - 30 - Points - The project managers' and project teams' qualification and experience
 - 20 - Points - Staff capabilities and workload capacity
 - 10 - Points - DBE Participation
- The evaluation committee will select the top five (5) firms based on qualifications and may request submission of supplemental information or may request the top five (5) firms make a formal presentation before the evaluation committee;
- In the instances where only two (2) qualified consultants respond to the solicitation, the

County will proceed according to the rules and regulations of 23 CFR 172.;

- Should the evaluation committee request formal presentations, the Evaluation Committee Liaison will prepare a list of questions and provide a copy to each respondent with the appointment schedule for interviews;
- Each respondent will be allotted equal time and each appointed evaluator must be in attendance at each interview;
- The evaluation committee will then select the top three (3) qualified firms and issue a notification to proceed to Request for Proposals (RFP); and
- The final score/grade of the RFP by the evaluation committee will be presented by the Purchasing Department to the Commissioners' Court for ranking and approval to begin negotiations with the highest ranked respondent.

Evaluations/scores/grades/ranking documents will be submitted to TxDOT for approval and concurrence prior to action by the Commissioners' Court. TxDOT will review the contract and approve the fees for the contract before negotiations are finalized with the highest ranked firm.

7. Determining based on State procedures and the size and complexity of a project, the need for additional discussions following RFQ/RFP submission and evaluation;

All questions (RFI - Request for Information) from a respondent prior to submittal of packet regarding clarification of the technical approach, qualifications, and capabilities provided in the response to the RFQ/RFP will be addressed by the county in conjunction with the designated evaluation committee. Questions may be submitted via fax or email to the Hidalgo County Purchasing Department, attention Designated Buyer. The designated buyer will vary amongst the Hidalgo County staff of buyers for each individual project. The contact information, as well as the fax number and buyer email address, will be noted in the RFQ/RFP packet.

RFQ - Inquiries Prior to Submittal of Packet:

The deadline for questions prior to submittal of the packet, as well as responses, will be provided in the RFQ and the RFP. All RFI's must be submitted in writing on or before the date of the deadline listed in the RFQ. Responses to RFI's for the Request for Qualifications (RFQ) will be distributed to the project participation list by the deadline date indicated in the packet. Prior to distribution of RFI responses, the county will forward the questions and answers to TxDOT for approval and concurrence.

RFP - Inquiries Prior to Submittal of Packet:

Participants, who are qualified to move on to the RFP, will adhere to the deadline for RFI's and responses provided in the RFP packet. Responses to RFI's for the Request for Proposals (RFP) will be provided to the group qualified to submit proposals. Prior to distribution of RFI's and responses, the county will forward the questions and answers to TxDOT for approval and concurrence.

RFP - Inquiries/Concerns Post Submission/Evaluation of Packet by Respondent:

Respondents will be allowed seven (7) working days from the RFP opening date to submit in writing questions or concerns to the County in regard to the project. The county will respond to inquiries in writing within three (3) working days. A copy of all of the questions received as well as the responses to inquiries will be sent to all parties who have received a

Request for Proposal packet. Prior to distribution of RFI's and responses, the county will forward the inquiries and responses to TxDOT for approval and concurrence.

RFP – Additional Information or Clarification Post Submission/Evaluation of Packet by County:

Should the evaluation committee require additional information from submitters, the Evaluation Committee Liaison will prepare a list of items requiring clarification and distribute to all parties who received the RFP packet. The committee liaison will then schedule a conference with all parties for discussion/resolution of clarifications. Prior to distribution of additional information or clarifications, the county will forward the additional information/clarification request as well as the validated responses to TxDOT for approval and concurrence.

8. Selecting the appropriate contract type, payment method, and terms and incorporating required contract provision, assurances, and certification in accordance with 23 CFR §172.9;

Unless otherwise specified, the contract will be project specific and will address the following requirements;

- a. Specify a reasonable maximum length of contract period, including the number and period of any allowable contract extensions, which shall not exceed five (5) years; and
- b. Specify a maximum total contract dollar amount that may be awarded under the contract.

The contract award will be in effect until the contract expires, delivery and acceptance of products, or terminated by County with thirty (30) days written notice prior to cancellation.

On contracts exceeding \$400,000.00, the county may retain five percent (5%) of the contract price. The county may continue to retain the amount until the entire project has been completed and accepted or release the retained amount at any time before the project is completed. Retainage for each project will be indicated in the RFQ. The county will insert in the contract a clause that requires the contractor to pay each subcontractor no later than ten (10) days after receipt of payment from the county the amount to which the subcontractor is entitled. The contractor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in a similar manner. The contractor must submit written evidence that all subcontractors have been paid for work completed within ten (10) days of receipt of payment from the county. All payments must meet prompt payment requirements, as specified in 49 CFR 26.29. The county will ensure compliance with retainage requirements by legal means under Local, State, & Federal laws.

The county will submit a draft of the contract to TxDOT for approval of the contract and verification of said clause.

Payment Method

Unless otherwise specified, the county shall pay a negotiated lump sum fee at the hourly labor rates and non-labor rates specified in the contract negotiation. An exhibit detailing the contract rates will be attached to the contract document. Payments for services rendered

will be made while work is in progress as executed through a lump sum fee assigned to each work authorization. Work authorizations will be submitted with a monthly progress report in sufficient detail to support the progress of the work and in support of the request for payment. The RPIC will review each request for payment and the invoice will be submitted to the purchasing department for placement on the next available commissioner's court meeting for approval.

The county will ensure that all contracts include required provisions by referencing or physical incorporation as applicable. The following provisions as per 172.9.a.3.c.i are:

- **Administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and provide for such sanctions and penalties as may be appropriate;**
- **Notice of contracting agency requirements and regulations pertaining to reporting;**
- **Requirements and regulations pertaining to copyrights and rights of data;**
- **Access by government entities to all documents related to the project for the purpose of making audit, examination, excerpts, and transcriptions;**
- **Retention of all records requirements;**
- **Standard DOT Title VI Assurance (DOT Order 1050.2);**
- **Disadvantage Business Enterprise (DBE) assurance as specified in 49 CFR 26.13**
- **Prompt pay requirements as specified in 49 CFR 26.29 and in accordance with the MOU DBE program;**
- **Determination of allowable costs in accordance with federal cost principles;**
- **Requirements of Consultant's errors and omissions;**
- **Requirements of pertaining to conflict of interest as specified in the 23 CFR 1.33;**
- **Termination for cause and termination for convenience by the contracting agency;**

All contract/payment/work authorizations, as well as exhibits to the contract, will be sent to TxDOT for review/approval/concurrence prior to execution of the contract.

9. Negotiating a contract with the selected consultant including instructions for proper disposal of concealed cost proposals of unsuccessful bidders;

The County will conduct the process of negotiation in compliance with the requirements of 40 U.S.C. 1104 (b) and 23 CFR 172.7.a.1.v for the order of negotiations.

- The evaluation committee will select the top three (3) highest qualified firms (documentation will be submitted to TxDOT for approval and concurrence prior to presentation to Commissioners' Court);
- A grid of the scores/grades will be presented to the Commissioners' Court for approval for the Purchasing Department to enter into negotiations with the number one (1) ranked firm (scoring/grading documents will be submitted to TxDOT for approval and concurrence prior to beginning negotiations);
- A cost proposal from that firm will be requested at the time of negotiating the fees;
- The Purchasing Department will begin a fee negotiation phase with the most qualified

firm;

- If negotiations with the number one (1) ranked firm fail, the Purchasing Department will recommend to the Commissioner's Court that negotiations cease with the number one ranked firm and commence to negotiate with the next highest ranked firm; and
- The negotiated contract including best and final offer with the successful firm will be presented to Commissioners' Court for consideration and approval.

TxDOT will review the contract and the negotiated fees before execution of the contract.

Any concealed cost proposals submitted with the RFP will not be opened. A cost proposal for a selected consultant may be considered when the negotiations are initiated. Any concealed cost proposal from unsuccessful consultants will be filed unopened in project records.

10. Establishing elements of contract costs, accepting indirect cost rates for application to contracts, and assuring consultant compliance with the Federal cost principles in accordance with §172.11;

Hidalgo County shall establish the elements of contract costs as per 23 CFR 172.11.b.1-4. Consultants are required to comply with Federal Cost principles in accordance with 23 CFR 172.11 and 23 CFR 172.9.c.1.ix. Hidalgo County shall receive a certificate of final indirect costs and shall establish elements of costs such as those specified in 23 CFR 172.11.b.1.

11. Ensuring consultant costs billed are allowable in accordance with the Federal cost principles as contained in 48 CFR part 31 and consistent with the contract terms as well as the acceptability and progress of the consultants' work per 23 CFR 172.9(d) and 23 CFR 172.11

Payment will be made while work is in progress as executed through a lump sum fee assigned to each work authorization. Payment of the lump sum fee for each work authorization identified in the request for payment will be in proportion to the percent completion of the work tasks identified in work authorization together with a detailed breakdown of the amount and the sum of all prior payments. Progress reports shall also be included in each invoice. The progress report shall describe the work performed during the period covered by the invoice. County will review each request for payment and verify that costs are consistent with the cost rates exhibit in the contract and submit to the auditor's office.

12. Monitoring the consultants' work and compliance with the terms, conditions, and specification of the contract;

The designated Responsible Person in Charge for the county will monitor the contract by;

- a. attending progress meetings;
- b. be familiar with the qualifications and responsibilities of the consultant's staff;
- c. announced and unannounced visits to the site and the offices of contractor;
- d. be aware of day to day operations as they relate to the construction contract;
- e. be involved in decisions leading to change orders or supplemental agreements;
- f. verify work is complete, accurate and consistent with the contract;
- g. review and verify that costs billed are consistent with the acceptability and progress of contractors work; and
- h. prepare a final evaluation report for contractor performance.

The RPIC will review and verify the work associated with monthly billing invoice and will notify the purchasing department. The purchasing office prepares an agenda on the next available Commissioners' Court agenda seeking approval of payment. The invoice and activity documentation is forwarded to the Auditor's Office for payment and the Department of Budget & Management for review and completion of reimbursement request from TxDOT per 23 CFR 172.9.d and 172.11.

A copy of all documents pertaining to monitoring of the contract and verification of invoices will be submitted to TxDOT for review, approval, and/or file documentation.

13. Preparing a consultants' performance evaluation when services are completed and using such performance data in future evaluation and ranking of a consultant to provide similar services;

The County will prepare and conduct performance evaluations when the services are completed. These evaluations summarizing the consultants' performance shall include, but not be limited to;

- a. an assessment of the timely completion of work;
- b. adherence to contract scope and budget; and
- c. quality of the work conducted.

The county will provide a copy of the performance evaluation report to the consultant. The contractor shall be allowed the opportunity to provide written comments on their performance evaluation report. The performance evaluations shall be archived by the Purchasing Department and made available to all procurement and precinct staff for future consideration of the consultant in other similar services per 23 CFR 172.9.d.2.

Consultant Performance Evaluations will be submitted to TxDOT for review and monitoring.

14. Closeout of contract;

At the completion of the contract, the county will coordinate with consultants' project manager and TxDOT to ensure that the project scope has been completed according to the Advance Funding Agreement (AFA) and the contract and is acceptable to TxDOT. The AFA will contain project-specific information on the audit requirements. Any outstanding issues or disputes will be resolved prior to final payment. The county will provide TxDOT with all necessary project documentation for review. The Federal awarding agency or pass-through entity should complete all closeout actions for Federal awards no later than one year after receipt and acceptance of all required final reports per 2 CFR 200.343(g). Per 2 CFR 200.333, the county will ensure that all contract project files are complete and stored securely to protect the file of record until the legal document retention requirements are met. TxDOT district has the primary responsibility to fiscally close-out an AFA project. The district maintains cost data throughout the project and will determine the actual shared cost at the conclusion of the work.

15. Retaining supporting programmatic and contract records, as specified in 2 CFR 200.333 and the requirements of this part;

All supporting programmatic and contract records shall be retained in accordance with 2 CFR 200.333.

The county will retain all project records for no less than three (3) years after the final payment.

The records will be retained until all litigation, claims, or audit findings have been resolved and final action was taken.

The county shall provide accessibility to TxDOT and Federal Agencies for the purpose of audits and reviewing project records.

16. Determining the extent to which the consultant, which is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors and omissions in the work furnished under its contract;

It is the County's policy to enforce its contracts with engineering, architectural, and surveying consultants to ensure the delivery of quality professional services, the prudent expenditure of public funds, and the preservation of business relationships.

County contracts for professional services include standard provisions that address the consultant's responsibility for error and omissions. Consultants are subject to these provisions before, during, and after the construction of a project, as well as before and after contract termination. When a dispute arises under one of those contracts regarding apparent errors or omissions in the work provided to the county, every effort will be made to resolve that dispute in a way ensuring that the public receives the services for which it has paid and that the consultant is treated with respect and fairness. When an apparent error or omission is identified in work provided by a consultant, the county will;

- A. Notify the consultant of the problem; and
- B. Involve the consultant in efforts to resolve the problem.

These efforts must include consideration of the totality of relevant facts, including the level of services provided, the consultant's overall performance, the cost to the County of the services provided and of the apparent error or omission, and the value of the services provided. If these efforts do not succeed, the consultant must be given an opportunity to raise the issue with Hidalgo County Commissioners Court and Hidalgo County Administration before any effort is made by the county to institute legal proceedings to collect damages. The consultant will be given an opportunity to submit a response before any final action is taken per 23 CFR 172.9.c.x.

17. Assessing administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and providing for such sanctions and penalties as may be appropriate;

Consultants are subject to suspension and debarment actions as specified in 2 CFR part 1200 and 2 CFR part 180, potential cause of action under False Claims Act as specified in 32 U.S.C. 3729-3733, and prosecution for making a false statement as specified in 18 U.S.C. 1020.

Upon failure of the consultant to fulfill obligations set forth in the contract in a satisfactory manner as determined by the County and in the sole opinion of the County, the County will issue a written notice of such failure. The consultant will be allowed thirty (30) days

to correct such failure. If the consultant does not correct the failure within thirty (30) days, the County may take over the project and prosecute the work to completion. In such case, the consultant shall be liable to the County for any additional cost occasioned by the County.

Throughout the project, consultant agrees to maintain an insurance policy listing the County as an additional insured in the amounts required by County. Should the consultant fail to maintain an insurance policy in the minimum requirements identified by County the consultant will be considered to be in breach of contract.

18. Resolution disputes in the procurement, management, and administration of engineering and design related consultant services;

All disputes will be brought to the attention of the RPIC as they arise. The RPIC will gather appropriate documentation regarding the alleged dispute and will schedule a conference with all parties involved within seven (7) working days to implement corrective action. The RPIC will make every effort to resolve disputes/misinterpretations in a mutually beneficial agreement; however, if all parties cannot agree on corrective actions, the RPIC will notify the Evaluation Committee Liaison (project engineer on staff with HCID No. 1) and all documents pertaining to the dispute will be reviewed by the engineer/liaison. The liaison will submit in writing his opinion as to corrective action needed within five (5) working days. If these attempts to come to an agreement as to corrective action are not successful, the RPIC will then involve the Commission and legal counsel.

Hidalgo County, Texas

By: _____

Date: _____

Texas Department of Transportation

By:  _____

Date: 01/10/2018