# APPENDIX 3-J

# TxDOT Administrative Circular 17-89: Urban Transportation Planning Process Contract Procedures Manual

SDHPT
1704

STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

# Administrative Circular No. 17-89

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| **SUBJECT** | Urban Transportation Planning Process Contract Procedures Manual | | |
| **TO** | Deputy Directors, District Engineers, Division Heads | | |
| **REFERENCE** | 23 USC 134<br>Administrative Order 7-86 | | |
| **RESPONSIBLE OFFICE** | Transportation Planning Div. and Finance Division | **DATE** | October 3, 1989 |

**Background**

The urban transportation planning process is a federally mandated and federally funded prerequisite for the approval of programs of projects in urbanized areas. The Metropolitan Planning Organization (MPO) is a significant partner in the Department's planning activities in urbanized areas (cities with a population of 50,000 or more).

**Purpose**

This manual is intended to assist in the transportation planning process by establishing and describing Department responsibilities and interpreting federal regulations associated with the process.

This is a District user manual and not an MPO manual.

**Effective Date**

The provisions of this manual are effective immediately.

**Contents**

The procedures are summarized in the Executive Summary on page 1 of the manual and fully explained throughout the manual.

**Coordination**

The Contract Management Section of the Finance Division worked closely with the Transportation Planning Division to develop the manual. The Office of General Counsel and the Internal Review and Audit Section reviewed the manual, and the Districts were also asked to review it.

The manual is approved by the Federal Highway Administration.

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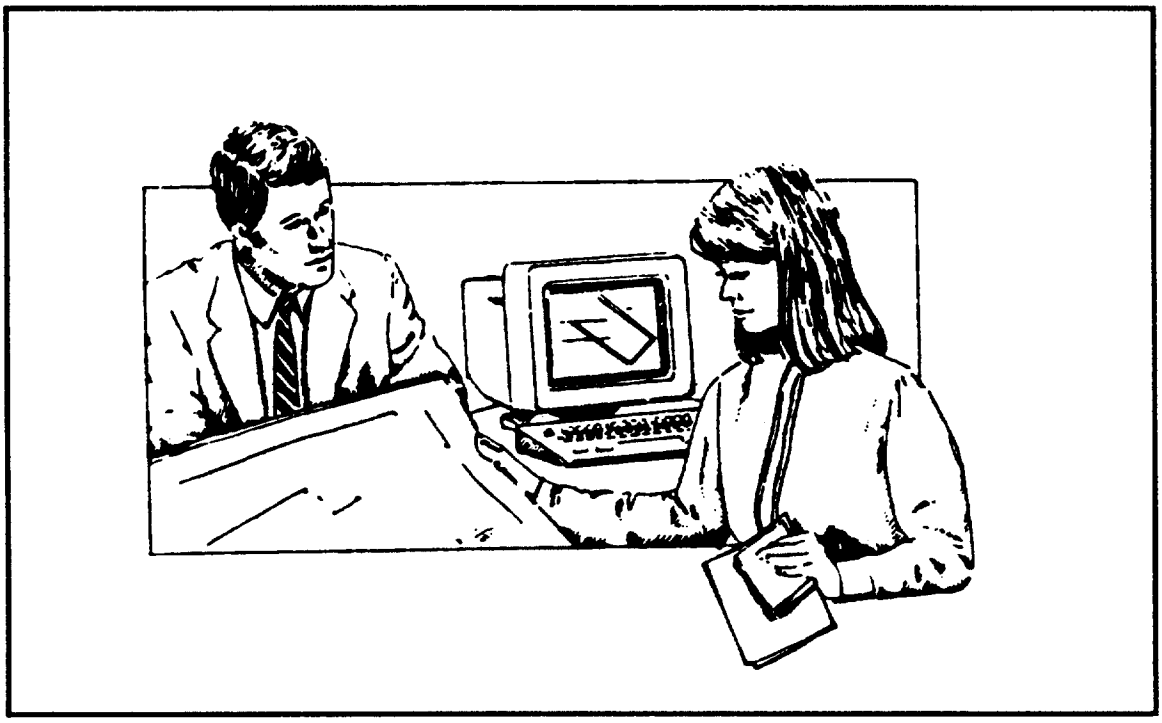
|---|---|
| Contact | Questions about the urban transportation planning process must be referred to the Transportation Planning Division while questions about the contract procedures are to be directed to the Finance Division. |
| Attachment | A copy of the "Urban Transportation Planning Process Contract Procedures Manual" is transmitted with this Circular. |

Byron C. Blaschke, P.E.
Deputy Engineer-Director

Distribution: AD, DT, DV

# THE URBAN TRANSPORTATION PLANNING PROCESS CONTRACT PROCEDURES MANUAL



**Prepared by**
**The Finance Division**
**and**
**The Transportation**
**Planning Division**
**July 1989**

**For Use by Employees of the**
**State Department of Highways**
**and Public Transportation**

# EXECUTIVE SUMMARY

The urban transportation planning process is a federally mandated and funded prerequisite for the approval of programs of projects in urbanized areas pursuant to 23 USC 105(d) and 134(a). The Metropolitan Planning Organization (MPO) is a significant partner in the Department's planning activities in urbanized areas (cities with a population of 50,000 or more).

This manual is intended to assist in the planning process by establishing and describing Department responsibilities and interpreting federal regulations associated with the process. **This is a District user manual rather than an MPO manual.**

The Federal Highway Administration has approved the procedures, thereby eliminating the requirement for federal approval of each MPO contract and the associated procurement, technical, and cost information. The Department will continue to be responsible for monitoring and obtaining assurance of MPO compliance with federal and State standards. Federal approval of each Unified Planning Work Program will continue to be an annual requirement. The manual is summarized as follows:

- The Governor designates the MPO and executes an agreement to effectuate that designation. The agreement remains in effect until terminated.
- The Department and the MPO enter into an agreement establishing terms and conditions for performance and payment. The contract included in Appendix A of this manual must be used, unless a contract has been furnished by the Finance Division.
- The MPO develops and submits an annual or biennial Unified Planning Work Program, which, when approved, becomes the current budget and statement of work for the contract.
- The Federal Highway Administration approves the Unified Planning Work Program and then issues an authorization to the State to expend federal PL funds.
- The Urban Mass Transportation Administration works directly with the MPO and only in unusual circumstances would a District be involved in UMTA approvals, etc.
- The District issues the work order, monitors MPO performance, and makes payments, assuring that the terms of the agreement and the objectives of the Unified Planning Work Program are being met.
- The MPO can self-certify and/or request approval of its procurement procedures.
- The District performs an annual physical inventory of MPO property acquired with federal funds.
- The District Engineer and the MPO jointly certify the planning process on a yearly basis.

Non-compliance with these procedures can result in corrective action as appropriate.

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**Planning Requirement**

Federal law mandates a comprehensive, continuing, cooperative planning process between State and local governments in urbanized areas (cities having a population of 50,000 or more) that results in plans and programs consistent with the comprehensively planned development of the urbanized area. Federal funds are allocated to the States on a formula basis to fund the planning process.

**Background**

Each State Highway Agency was originally responsible for implementing the planning process, and Texas had developed and staffed through the District Offices a planning process.

Pursuant to the 1973 Federal-Aid Highway Act, federal regulations were implemented which required the Governor of each State to designate a Metropolitan Planning Organization (MPO) to assume responsibility, in cooperation with the State, for the local planning process. The Act established new metropolitan planning funds (PL) which are made available to the MPOs as pass-through funds.

**UMTA**

The Urban Mass Transportation Administration (UMTA) also provides funding to the MPOs, but these funds (Section 8) do not routinely pass through the Department as do the PL funds. In most cases, the Section 8 funds go directly to the MPOs, and planning documents and other correspondence are sent directly between the MPO and UMTA.

**Status**

The Department contracts with each MPO to establish terms and conditions under which the MPO will operate. In Texas there are now 25 MPOs with a total annual budget of approximately $3 million.

**Purpose of Manual**

This manual is intended for use by Division and District Office staff as contract management standards in the areas of development, execution, administration, and close out of Metropolitan Planning Organization contracts and subcontracts.

The manual does not establish new requirements for the MPOs, but some existing federal requirements are included for District information and use in the daily management of the planning process.

**Highlights**

Certain parts of this manual are highlighted to show District responsibility and/or action required.

**User Notes**

**Federal Law**

23 USC 134 authorizes States to establish an ongoing transportation planning process in urbanized areas and further creates a single-focus planning organization with basic responsibilities in these areas.

**Federal Regulation**

Federal Highway Program Manual 4-4-2 implements the federal law applicable to the transportation planning process in urbanized areas.

The directive:

- defines the Metropolitan Planning Organization as the forum for cooperative transportation planning
- establishes funding requirements
- requires the development of a Unified Planning Work Program (UPWP), a transportation plan, and a Transportation Improvement Program (TIP).

At the time the TIP element is submitted, the State and the MPO certify that the planning process is consistent with and being conducted in conformance with specific program objectives including transportation planning, mass transit, clean air, civil and minority business rights, and rights of the elderly and handicapped (see page 28).

**State Law**

Texas Civil Statutes Articles 6674d and 6674d-1 authorize the Department to expend federal and state funds for improvements to the State Highway System, and for improvements to roads not on the system of state highways, as may be necessary for proper construction and prosecution of the work.

This legislation permits the State to provide the necessary in-kind match (15%) for planning the integrated network of Federal, State and local roads.

**Delegation**

The Transportation Planning Division, also cited hereinafter as D-10, is responsible for carrying out the urban transportation planning process in the Department. In turn, the Division relies heavily on District involvement in the daily operations of the activity. This partnership effectively insures Department compliance with known requirements.

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|---|---|
| **Relationship** | The relationship between the Department and the MPO is that of a long-term partnership. For this reason, every attempt is made to address recurring or continuing requirements. |
| **Form** | Appendix A includes the standard contract for use with MPOs. This format is used for most of the MPOs; however, non-standard contracts will be used in those Districts with unusual circumstances. The Finance Division, also cited in this manual as D-3, will prepare all non-standard contracts. |
| **Attachments** | The contract requires three attachments:<br>Attachment A is the map of the Study Area.<br>Attachment B is the Department's copy of the agreement between the Governor's Office and the MPO in which the terms of the designation are established. A copy of the latest approved agreement is attached to the contract.<br>Attachment C is each current year's approved Unified Planning Work Program. As a new UPWP is approved, the old one is superseded. Each current UPWP is the governing budget and statement of work for the year. The UPWP must not conflict in any way with the terms of the contract. |
| **Contract Period** | The contract is written to be as flexible as practical, including a six year contract period. At the end of the contract period, the contract can be terminated and re-negotiated, or extended for another six years. Of course, the contract is automatically terminated if the MPO loses its designation for any reason. |
| **Review of MPO Costs** | If a new MPO is designated by the Governor, the Department will require cost information documenting salary, benefits, overhead rates, and other direct costs to be provided by the new MPO for review by the Department.<br>If at any time the District or Division determines that a need exists for a review of any current MPO's costs, the Department or its authorized representative will perform the review. |
| **User Notes** | |

**Urban Transportation Planning Process**
Contract Execution (State - MPO)

**Department**

The Transportation Planning Engineer is authorized to execute the contract with the MPO in accordance with Administrative Order No. 32-87 or current directive.

**MPO**

The Executive Director of the MPO, or the position which has authority to legally bind the MPO, signs the contract for the MPO. The contract must be countersigned and attested by an MPO official.

**Transmittal**

The execution process begins at the local level and follows this path:

MPO submits two signed counterparts to the District Office.

NOTE: If more than two counterparts are needed, the MPO must request additional originals from the District Office.

↓

The District checks for accuracy and forwards the counterparts to D-10.

↓

D-10 staff reviews and recommends execution.

↓

Transportation Planning Engineer executes the counterparts.

↓

D-10 retains one counterpart, returns the other(s) to District Office.

↓

District Office makes a copy for payment and management control, forwards the counterpart(s) to the MPO.

**Amendments**

Execution of amendments follows the same process for approval.

**Start Work**

The contract requires the State to issue a work order authorizing the MPO to begin work under each approved UPWP. The Division Office sends the work order to the District after receipt of all required federal approvals. The District Office then notifies the MPO to start work.

Figure 1 includes a sample work order for use by the District.

**Verbal Authority**

Because it is possible that there could be a significant time delay between the date of federal authorization and the District's issuance of a written work order, the District Engineer or his designee is authorized to issue a verbal work order when all of the following conditions are present:

- The UPWP or the amended UPWP has been approved by FHWA.
- Federal authorization has been issued.
- D-10 has notified the District (either written or verbal) of the above.
- The delay caused by waiting on the written work order would seriously jeopardize the continuity of the planning process.
- Written confirmation is to follow within 10 days of the verbal order. The written confirmation must reference the verbal work order.

**Improper Authorization**

It is improper for a District to issue verbal authorization for the MPO to begin incurring costs under the new fiscal year unless *all* of the above criteria have been met. Costs incurred by the MPO as a result of improper authorization will not be eligible for payment, and could result in administrative sanctions.

**User Notes**

SAMPLE WORK ORDER

Date

Federal Project Number
Work Order

Local MPO
Address

Dear MPO:

The Federal Highway Administration approved the FYXX Unified Planning Work Program on date. This letter is your authorization to begin work thereunder. [This letter confirms our verbal authorization to begin work as of October 1.]

The following authorization is issued pursuant to the federal approval:

The period of authorization extends from October 1, 19xx through September 30, 19xx.

close

District Engineer
(or designee)

FIGURE 1

**Purpose**

Federal-Aid Highway Program Manual 4-4-2, "Urban Transportation Planning," identifies the Unified Planning Work Program as a document describing all urban transportation and transportation related planning activities anticipated in the study area during the next one or two year period, including the planning work to be performed with federal planning assistance and with funds available from the Urban Mass Transportation Administration (UMTA). Occasionally, there may be other funding sources for special tasks; i.e., Federal Aviation Funds for airport planning.

**One-Year Program**

Although federal regulations allow a two-year planning document, the Department recommends and prefers a one year program.

**Contents**

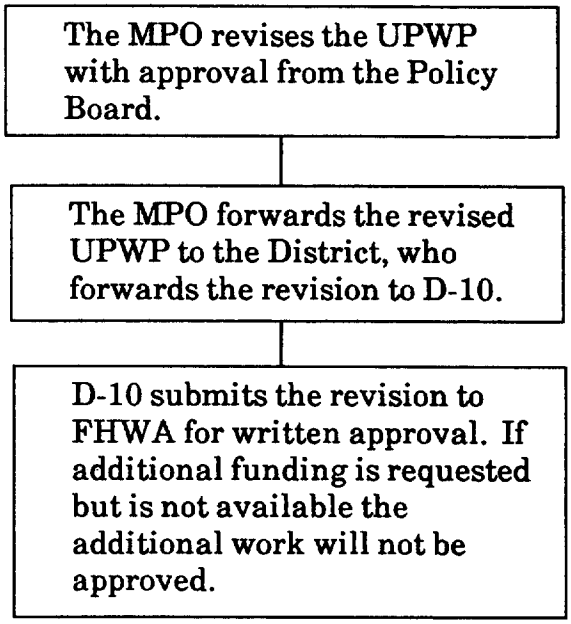
The UPWP normally includes the following as *minimum* requirements:

- Identification of tasks - Each task is identified as an element in the planning process and may contain one or more subtasks. Task identification includes a project description, a description of previous work completed, description of the methodology to be used to accomplish the task, a description of the product and a work schedule or timetable.
- Use of consultants - If the MPO intends to engage a consultant to perform one or more tasks, the UPWP must clearly indicate this intent, including a thorough description of the task(s) to be performed, estimated cost, method of payment, etc.
- Identification of task responsibility - The agency responsible for completion of the task is to be identified; if the agency intends to engage a consultant, see above paragraph.
- Cost estimates by task - Each task is to include an estimated cost.
- Funding sources by task - The funding source or sources for each task must be shown along with the estimated participation amount (by fiscal year when appropriate).

**Changes**

When approved by the State and the U.S. Department of Transportation, the UPWP becomes the statement of work and contract budget for that fiscal year. As such, any change must be approved in the appropriate method.

- If the proposed change will cause the estimated cost of one task to overrun/underrun by an amount less than 25% of the task total, but the total budget will not be exceeded due to an underrun/overrun in another task, the MPO is authorized to overrun/underrun, and no notice is required.
- If the proposed change will cause the estimated cost of one task to overrun/underrun by an amount greater than 25% of the task total, but the total budget will not be exceeded due to an underrun/overrun in another task, *or* if an increase in funding is requested, the following typical procedures can be used:




- If the proposed change does not affect the task funding but represents a significant change in the scope, complexity, nature, or outcome of the task, the FHWA must approve the change, using the procedures outlined above.

**User Notes**

**When to Amend**

The contract is written to allow each year's Unified Planning Work Program (UPWP) to become an attachment to the contract without amending the contract. The terms and conditions of the contract remain viable during the life of the contract, but the work statement and budget are changed each year through approval of the UPWP.

If any of the terms and conditions of the contract are changed, however, or proposed to be changed, a written amendment to the contract must be prepared and executed before the change is implemented.

**User Notes**

**District Staff**

The District Office staff is responsible for monitoring the MPO's performance under the contract. This monitoring involves attending meetings of technical and administrative committees, reviewing reports and records of meetings, and possibly site visits to the MPO headquarters as well as desk audits of requests for payment.

**Site Visits**

The District is to make site visits as frequently as needed. The site visit is not a requirement, but is available as a management tool for use by the District. The site visit functions distinctly from attendance at committee meetings or other District contacts with the MPO. A site visit is conducted at the MPO headquarters to review source documents and/or other administrative records. During a site visit, the District is authorized to:

- review accomplishments made by the MPO during the period preceeding the inspection
- review the MPO's management control systems, including purchasing, contracting, personnel, etc.
- provide technical assistance as may be required
- examine financial records periodically to determine that source documents are properly maintained
- review the progress of the MPO in implementing the current UPWP
- discuss potential problems or unanticipated situations.

**Report Form**

Figure 2 includes an on-site monitoring report form to be retained in District files. In the event of unusual findings, a copy should be sent to D-10.

**Assistance Available**

When making a site visit, the District can contact D-10 for assistance in determining appropriate action. The District accountant as well as the Internal Review analyst or a representative from the Contract Management Section can be invited to assist in the site visit.

**User Notes**

# Urban Transportation Planning Process
# On-Site Monitoring Report

Date _____

MPO _____

Contract Number _____ Site Location _____

Purpose of Visit _____

_____

_____

Summary of Visit _____

_____

_____

_____

_____

_____

_____

_____

Were Financial Records Reviewed? _____

If Yes, Describe _____

_____

_____

_____

Technical Assistance Provided? _____

If Yes, Describe _____

_____

_____

_____

Corrective Action Recommended? _____

If Yes, Describe _____

_____

_____

_____

**(Use Reverse Side or Additional Sheets as Needed)**

Signed _____

State Department of Highways
and Public Transportation
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FIGURE 2

**Procurement**

MPOs are encouraged to certify their procurement procedures to the State and FHWA. The certification period extends for a two-year period or until the State and FHWA have reviewed and approved the MPO's procurement system, whichever occurs first.

**Definitions**

*Certification* is the procedure whereby the MPO assures the State and FHWA that its procurements are made in compliance with appropriate state and federal regulations. Certification is not to exceed a two-year period. Within twelve months after submitting the certification, the MPO *must* submit its procedures to the State for approval. If the procedures are not submitted, the certification will be rescinded and the MPO will be required to submit each subcontract and its associated procurement information to the State for approval prior to execution. After the procedures are submitted, they must be approved by the end of the second year, or the certification will be rescinded by the State.

Method: The MPO submits the self certification to the District Office, who forwards a copy to D-10. Within the following twelve months, the MPO is required to submit its procurement procedures to the State for approval.

*Approval* occurs after the MPO submits its procurement procedures to the State and FHWA and the procedures are found to be in compliance with applicable regulations. Once approved, the procedures are not to be revised or changed without federal and State approval.

Method: The MPO submits its procedures to the District Office, who then forwards them to D-10. This submission must be made within the twelve months following the MPO's self-certification. D-10 sends the procedures to D-3 for review, and when the procedures are approvable, D-3 forwards them to the Federal Highway Administration.

The Federal Highway Administration may approve the procedures as submitted, or revisions may be required.

The Finance Division, Contract Management Section, will work appropriately with the Division and Districts and MPOs to obtain federal approval.

**Contract Approval**

After its procedures are certified or approved, the MPO is not required to submit its contracts to the State for prior approval unless a contract was not authorized in the UPWP.

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| **Self-Certification** | Figure 3 shows a self-certification statement for use by the MPO. |
| **Continuing Certification** | After the procedures are approved, the MPO is required to submit a statement every two years certifying that the procedures have not changed. Any change made in the procedures must be submitted to the State for approval. |
| **User Notes** | |

# Certification of Compliance

I,_____, a duly
(Name and Position, Typed or Printed)

authorized officer/representative of_____

_____,
(MPO)

do hereby certify that the contract and procurement procedures that are in effect and used by the aforenamed MPO are in compliance with 49 CFR 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments," as it may be revised or superseded.

_____ _____
Date Signature

Attest:

_____
Name

_____
Title

FIGURE 3

**Prior Approval**

If procurement procedures are not approved, or if the MPO will not self-certify its procedures, each contract in excess of $25,000 proposed to be awarded by the MPO must be submitted to the State for review by the Finance Division, Contract Management Section, before it is awarded. This is a time-consuming process, and the MPO must allocate sufficient time (3-6 weeks) for the review.

In addition to sending a copy of the contract, the MPO is to submit the following information as part of the approval process, in accordance with federal requirements:

- narrative description of how contractor was selected
- description of affirmative steps taken
- results of the price/cost analysis
- technical analysis
- reason for negotiation instead of formal advertising.

**Format**

Figure 4 includes a sample format for reporting the required information.

**Compliance Standards**

MPO procurement procedures will be approved when found to be in compliance with the standards established in 49CFR 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments," as it may be revised or superseded. The cost principles outlined in OMB Circular A-87, "Cost Principles for State and Local Governments," must also be followed.

The compliance standards of 49 CFR 18 are summarized in Appendix B.

**User Notes**

SDHPT CONTRACT NO._____

## PROCUREMENT INFORMATION FOR NEGOTIATED CONTRACTS

MPO_____

1. Reason for Negotiation instead of Competitive Bid (Select One):

_____ Contract is awarded to responsible jurisdiction.
_____ Public exigency would not permit the delay associated with advertising (attach justification).
_____ Material or service is available from only one source (attach justification).
_____ Contract is for a professional service exempt from formal advertising.
_____ Contract is for consultant service exempt from formal advertising.
_____ Contract is for service(s) rendered by an education institution.
_____ Other (attach justification)

2. Attach a narrative description of how the contractor was selected.

3. Attach a narrative description of the steps taken to use small, minority, and/or woman-owned businesses.

4. Price or Cost Analysis (check one):

_____ Cost analysis was conducted and a detailed budget is attached; the analysis shows:

- Costs are necessary, reasonable, allowable, and allocable.
- Cost data have been verified.
- Specific cost elements have been evaluated.
- Overhead rate is based on an approved cost allocation plan or has been otherwise approved.

_____ Price analysis was conducted with the following verified:

- Price competition was ample and effective.
- Price is reasonable and fair.

_____ Pre-award audit evaluation was conducted (copy attached).

5. A Technical Analysis was conducted with the following verified:

- Contractor has adequate resources to provide the service or product.
- Contractor is capable of complying with the required delivery or performance schedule.
- Contractor has a satisfactory record of performance.
- Contractor estimate of work hours, etc. is reasonable.

Prepared by_____ Date_____

Title_____

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FIGURE 4

**Frequency**

The contract authorizes the MPO to submit requests for payments on a monthly basis, and monthly requests are recommended but not required. The Department will exercise due diligence in making prompt payment.

**Costs Incurred**

The MPO is to submit requests for payment for only those costs incurred during the billing period. A cost is incurred when the service is performed or when supplies/goods are received.

Costs must be incurred in accordance with the approved Unified Planning Work Program, and costs are not to be incurred until a work order (see page 9) is issued by the Department.

**Required Information**

The request for payment is submitted in the original and two copies of a billing statement with information including but not limited to the following shown:

- billing period
- UPWP budget category or line item
- description of the cost, including date the cost was incurred
- quantity (when appropriate)
- price (when appropriate)
- extension
- total due this claim
- total claimed to date.

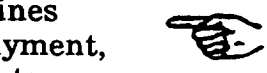
This information may be included as a summary by computer printout or as a typed document.

**Support Documentation**

All costs incurred shall be supported by original source documents such as invoices, time sheets, etc. and the documentation must be maintained in MPO files. These records must be made available to State or federal auditors at reasonable times during the fiscal year and for three years following the date of the final performance report.

**District Option**

If at any time during the contract period the District determines that documentation is required in support of a request for payment, the District may request any or all documentation necessary to support the claim.



**Cost Principles**

All costs incurred must be necessary and reasonable for the proper and efficient accomplishment of program objectives, and must be the type of charge that would be allowable under OMB Circular A-87, "Cost Principles for State and Local Governments," or other appropriate regulation.

**Associated Regulations**

The provisions of 49 CFR 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments," and applicable State law will also govern payments.

**Voucher Processing**

The period of authorization for each year's Unified Planning Work Program is based on the federal fiscal year, so charges accumulated in the Financial Information Management System (FIMS) on the respective Segment 72 details will be for the period of October 1, 19xx, through September 30, 19yy.

When the District Office processes a voucher for *September* charges, the fiscal year on the Multi-Vendor Voucher Detail (MVVD) should reflect the *State* fiscal year.

For example, charges for *September* 1988 are coded as follows:

"FY" on No. 2 card of Cash Voucher - *89*

"Detail" on No. 3 card of Cash Voucher - *288xxxx70*

**End of Year Billings**

The following procedures have been implemented to facilitate close-out of each year's UPWP:

- Billings received *within* 90 days after the close of the federal fiscal year (September 30) in which the PL project is authorized are charged to the PL project on which the work was performed.
- Late billings received later than 90 days *after* the close of the federal fiscal year (September 30) are charged to the *current* PL project.
- The amount authorized in the UPWP cannot be exceeded.
- It is therefore advantageous to the MPO to submit the required billings in a timely manner.

**User Notes**

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| **Existing Rules** | OMB Circular A-87, "Cost Principles for State and Local Governments," includes federal requirements applicable to the Department and the MPO. The MPO is bound to comply with the requirements. They are included in the manual solely to inform the District of the requirements, not to impose additional or new requirements on the MPOs. |
| **Prior Approval** | OMB Circular A-87, "Cost Principles for State and Local Governments," requires approval by the grantor agency before a grantee incurs certain costs. One of these costs is capital expenditures. 49 CFR 18 also establishes acquisition, use and disposition requirements for equipment. |
| **Definitions** | *Equipment* means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above. |
| **Title** | Title to equipment vests with the MPO upon acquisition. |
| **Use** | The regulations require the MPO to observe the following standards when using the equipment:<br>• The equipment is used in the program for as long as needed, whether or not the program continues to be federally funded.<br>• The equipment can be used in other federally funded activities when the equipment is no longer needed for the original program.<br>• Other federally funded programs can be allowed to use the equipment [paying a user fee] if such use will not interfere with work on the original program.<br>• Equipment is not to be used to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by federal statute. |

| | |
|---|---|
| **Use (cont.)** | • Equipment may be used as trade-in or it can be sold to offset the cost of replacement property subject to the approval of the federal agency. |

**User Notes**

**Records**

The regulations further require the MPO to maintain property records that include but are not limited to the following information:

- description of the property
- a serial number or other identification number
- the source of property
- who holds title
- acquisition date
- acquisition cost and amount of federal participation
- location, use, and condition
- ultimate disposition date, including the disposal date and sale price.

**Inventory**

The District will take a physical inventory of the property, and reconcile the results with the MPO's property records on a yearly basis.

**Other Standards**

The regulations also require the MPO to observe the following standards in its property management system:

- Develop a control system that includes adequate safeguards to prevent loss, damage, or theft of property, and provides for the investigation of any loss, damage, or theft.
- Use adequate maintenance procedures to keep the property in good condition.
- Use proper sales procedures to ensure the highest possible return if property is to be sold.

**Disposition**

When equipment has exceeded its useful life or is no longer needed for the original program or for other activities, the regulations allow disposition in accordance with the following procedures:

- If current per-unit fair market value is less than $5,000, it may be retained, sold, or otherwise disposed of with no further obligation to the federal agency.
- If current per-unit fair market value is more than $5,000, it may be retained or sold, and the federal agency shall have a right to an amount calculated by multiplying the current market value or proceeds from the sale by the federal agency's share of the acquisition cost of the equipment.

| | |
|---|---|
| **Disposition (cont.)** | If the MPO fails to take appropriate disposition actions, the federal agency may direct the State or MPO to take final disposition action, including remittance of proceeds of sale, assignment of equipment to another federal project, etc. |
| **User Notes** | |

| | |
|---|---|
| **Use** | Contracts between the MPO and another entity are considered subcontracts, or third-party contracts, by the State. As such, they are subject to the same requirements and standards as is the MPO. |
| **Examples** | Subcontracts must include all provisions required by the State or FHWA to be included in the contract between the State and the MPO.<br><br>Subcontractors must be aware of federal and state requirements.<br><br>Subcontracts are subject to the records retention and accessibility requirements of the MPO. |
| **Format** | A suggested subcontract format is included in Appendix C for use by the MPO. |
| **Prior Approval** | If the MPO has self-certified its procurement procedures or if the procedures have been approved by the State and FHWA, the MPO is not required to submit its subcontracts to the State for approval (page 15). |
| **Copies** | The MPO is to submit a copy of each executed subcontract to the District within thirty days after execution. The District forwards a copy to D-10, who then sends it to FHWA. |

**User Notes**

| | |
|---|---|
| **Audit Standards** | Federal regulations require the MPO to comply with the standards established in OMB Circular A-128, "Audits of State and Local Governments." |
| **Requirements** | These standards primarily require an organization-wide audit to be performed by an independent auditor on an annual basis. In Texas, the MPOs generally use the services of a cognizant audit agency. The Department's Internal Review and Audit Section in Austin works with D-10 to develop audit instructions to the cognizant audit agency, and a District should refer questions about the audit tests to D-10. |
| **District Request** | The District Office will request the report if the MPO has not submitted it within a reasonable period [90 days] after completion of the audit, and will forward a copy of the report to D-10 as soon as possible. The District is not required to retain a copy of the report. |
| **Assistance Available** | If the audit report includes negative findings or questions, the District, D-10, and the Internal Review and Audit Section will coordinate a response. Any District with questions about the audit procedures is encouraged to contact D-10 or the Internal Review and Audit Section. |
| **District Assistance** | MPOs should be advised to be sure that PL money is clearly identified as FHWA-provided funds in the Financial Statements of the annual A-128 report. |

**User Notes**

**Urban Transportation Planning Process**
Contract Administration
Annual Certification

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**Requirements**

Federal regulations specify that the State and the MPO are to certify that the planning process is being carried on in compliance with all applicable requirements of the following:

- 23 USC 134
- Section 8 of the Urban Mass Transportation Act (49 USC 1607)
- Section 174, 176(c) and 176(d) of the Clean Air Act (42 USC 7504, 7506(c) and 7506(d).

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**Frequency**

The certification is made at the time the TIP annual element is submitted for approval.

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**Method**

The appropriate MPO official and the District Engineer are encouraged to use the statement on the following page or an equivalent for the certification.

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**User Notes**

# Transportation Planning Certification

The transportation planning process used by the _____
_____, its agents,
[insert MPO name]
representatives, or contractors, to develop this Transportation Improvement Program/ Annual [Biennial] Element is consistent with and carried on in conformance with all applicable requirements of:

- Sections 8(e) and 3(e) 49 USC 1607 and 1602(e) of the Urban Mass Transportation Act concerning involvement of the appropriate public and private transportation providers
- Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 USC 324 and 29 USC 794
- Section 105(f) of the Surface Transportation Assistance Act of 1982 regarding the involvement of minority business enterprise in Federal Highway Administration and Urban Mass Transportation Administration funded projects (Public Law 97-4, Section 105f, 49 CFR Part 23)
- Section 16 of the Urban Mass Transportation Act (49 USC 1912), Section 162(b) of the Federal Highway Act of 1973, as amended, and 49 CFR Part 27, which call for special efforts to plan public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons
- 23 USC 134, Section 8 of the Urban Mass Transportation Act (49 USC 1607)
- Section 174, 176(c) and 176(d) of the Clean Air Act (42 USC 7504, 7506(c) and (d))

IN WITNESS WHEREOF, we, the undersigned duly authorized representatives of the State and the MPO, do so certify.

Signed and dated.

**Contract Period**

Because of the wording in the contract, it is possible that the Department's contract with the MPO could extend for several bienniums without modification or renegotiation. Although the terms and conditions of the contract may not change, the budget and statement of work will change annually with approval of succeeding Unified Planning Work Programs (UPWP).

It is therefore the UPWP that will be closed out rather than the contract.

**When to Close Out**

Close out of the UPWP occurs 90 days after the close of the federal fiscal year. It is therefore imperative that the MPO complete all administrative requirements.

**Required Reports**

Within 90 days after the end of the fiscal year for which the UPWP was applicable, the MPO is to submit all financial, performance, and other required reports. These include but are not limited to:

- Final Performance or Progress Report
- Financial Status Report
- Final Request for Payment.

**Consequences**

Failure by the MPOs in submitting requests for payment and reports within the specified period could result in federal delay or de-authorization of federal funding under the UPWP, and costs cannot be incurred until the federal authorization and the State's work order are issued.

**User Notes**

**Debarment/ Suspension**

The MPO is required to certify that it is eligible to receive federal funds, and the key employees also must certify to that statement. The debarment certification is shown on the next page.

**Lower Tiers**

The MPO is prohibited from making an award to any party that has been debarred, suspended, etc. by the federal government. *The MPO is to require certification from its lower tier providers*, and to furnish the certification to the State upon request. This debarment certification must be retained in the MPO file and furnished to the State upon request.

This provision has been added to the State's contract with the MPO.

**When to Certify**

The MPO's debarment certification is to be submitted with each year's proposed Unified Planning Work Program.

**User Notes**

# Debarment Certification
## (Negotiated Contracts)

(1) The CONTRACTOR certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public* transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicated for or otherwise criminally or civilly charged by a governmental entity* with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions* terminated for cause or default.

(2) Where the CONTRACTOR is unable to certify to any of the statements in this certification, such CONTRACTOR shall attach an explanation to this certification.

*federal, state or local

_____
Signature of Certifying Official

_____
Title

_____
Date

Form 1734-A
4-89

# Lower Tier Participant Debarment Certification
## (Negotiated Contracts)

_____, being duly sworn
(insert name of certifying official)
or under penalty of perjury under the laws of the United States, certifies that neither _____ nor its
(insert name of lower tier participant)
principals are presently:

- debarred, suspended, proposed for debarment,
- declared ineligible,
- or voluntarily excluded from participation in this transaction by any Federal department or agency

Where the above identified lower tier participant is unable to certify to any of the above statements in this certification, such prospective participant shall indicate below to whom the exception applies, the initiating agency, and dates of action.

Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

**EXCEPTIONS:**

_____
Signature of Certifying Official

_____
Title

_____
Date of Certification

See Reverse for Information

Form 1734
Rev. 4-89

# APPENDIX A
# STATE / MPO CONTRACT

# URBAN TRANSPORTATION PLANNING CONTRACT

THE STATE OF TEXAS **

THE COUNTY OF TRAVIS **

THIS CONTRACT IS MADE by and between the State of Texas, acting by and through the State Department of Highways and Public Transportation, hereinafter called the State, and the _____
_____,
which has been designated the Metropolitan Planning Organization (MPO) of the _____urbanized area(s), hereinafter called the MPO.

W I T N E S S E T H

WHEREAS, 23 USC 104(f) authorizes federal highway funds to be made available to Metropolitan Planning Organizations (MPO) duly designated by the Governor of each of the several States to support the urban transportation planning process; and,

WHEREAS, the Governor of the State of Texas has designated the_____ _____to be the MPO for the above-mentioned urbanized area(s); and,

WHEREAS, an area equal to or larger than the above-mentioned urbanized area has been delineated in accordance with Federal guidelines where required Transportation Planning activities may take place; said area is shown in Attachment A and hereinafter called the Study Area; and,

WHEREAS, the Governor of the State of Texas and the _____
_____
have executed an agreement pursuant to the MPO designation, said agreement as it was executed and any subsequent amendments being attached hereto as Attachment B and made a part hereof;

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements of the parties hereto to be by them respectively kept and performed, as hereinafter set forth, the State and the MPO do agree as follows:

A G R E E M E N T

Article 1. Contract Period

This agreement becomes effective when signed by all parties hereto and shall extend for the succeeding six years. It is provided, however, that nothing shall obligate the State to the MPO if the Governor's designation is withdrawn or if federal funds cease to become available within the six-year period or if the contract is terminated as hereinafter provided.

Article 1. Contract Period (cont.)

At the end of six years, this agreement shall be reviewed and an amendment or a new agreement executed, if both parties agree to the need for an amendment or a new agreement. If all terms and conditions of this agreement remain viable, no amendment or new agreement shall be required. In the event that no amendment or new agreement is required, a letter from the State to the MPO shall constitute renewal of the agreement for an additional six years, subject to all terms and conditions herein specified.

Article 2. Unified Planning Work Program

Each year the MPO shall submit to the State for approval a program of work which includes goals, objectives, and/or tasks required by each of the several agencies involved in the urban transportation planning process. This program of work is to be called the Unified Planning Work Program (UPWP) or any name that may be specified in later federal or state regulations, and each year's approved UPWP shall be incorporated into this contract by reference as Attachment C.

The budget and statement of work for each year of this contract will be as included in each UPWP. The U.S. Department of Transportation must approve the UPWP in writing before any costs may be incurred thereunder for the new fiscal year, and the maximum amount payable for each year will not exceed the estimated budget included in the UPWP.

The effective date of each UPWP will be October 1 of each applicable fiscal year or the date of federal approval, whichever occurs later. On that date, the UPWP shall constitute a new federal project and shall supersede the previous UPWP.

This provision of the contract will eliminate the necessity for annual amendments to reflect new funding and new tasks for each fiscal year.

The UPWP shall comply with all applicable federal and state requirements, and will describe urban transportation and transportation related planning activities anticipated in the area during the next one or two year period, including any planning work to be performed with federal planning assistance, and as in any way specified in the Federal-Aid Highway Program Manual (FHPM) 4-4-2 and 4-1-2 as appropriate.

Should any conflict be discovered between the terms of this contract and the UPWP, the terms of this contract shall prevail.

Article 3. Compensation

The State's payment of any cost incurred hereunder is contingent upon the following:

a. Sufficient federal funds are available to the State for making payments hereunder.

Article 3. Compensation (cont.)

b. The incurred cost is authorized in the prevailing UPWP. The maximum amount payable under this contract shall not exceed the total budget amount of each year's approved budget as included in the UPWP.

c. The cost has actually been incurred by the MPO and meets the following criteria:

(1) is verifiable from MPO records
(2) is not included as match funds for any other federally-assisted program
(3) is necessary and reasonable for the proper and efficient accomplishment of program objectives
(4) is the type of charges that would be allowable under OMB Circular A-87, "Cost Principles for State and Local Governments"
(5) is not paid by the state or federal government under another assistance agreement unless authorized to be used as match under the other federal or state agreement and the laws and regulations to which it is subject.

d. No work shall be performed in a fiscal year without the State's issuance of a work order subsequent to federal approval of the prevailing UPWP. The State's work order shall state the date of federal authorization and the effective date of the approved UPWP.

e. The MPO is authorized to submit requests for payment of authorized costs incurred hereunder on a monthly basis. Each request for payment will be submitted in a manner acceptable to the State, which includes as a minimum the following information:

(1) UPWP budget category or line item
(2) description of the cost
(3) quantity
(4) price
(5) extension
(6) total

Article 4. Indemnification

The MPO shall save harmless the State from all claims and liability due to the acts or omissions of the MPO, its agents or employees. The MPO also agrees to save harmless the State from any and all expenses, including attorney fees, all court costs and awards for damages, incurred by the State in litigation or otherwise resisting such claims or liabilities as a result of any activities of the MPO, its agents or employees.

Further, the MPO agrees to protect, indemnify, and save harmless the State from and against all claims, demands and causes of action of every kind and character brought by any employee of the MPO against the State due to personal injuries and/or death to such employee resulting from any alleged negligent act, by either commission or omission on the part of the MPO or the State.

Article 5. Inspection of Work

The State and, when federal funds are involved, the U.S. Department of Transportation, and any authorized representative thereof, have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed.

If any inspection or evaluation is made on the premises of the MPO or a subcontractor, the MPO shall provide and require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

Article 6. Work Performance

All work performed hereunder shall be carried out in a professional and orderly manner, and the products authorized in the UPWP shall be accurate and exhibit high standards of workmanship.

Article 7. Disputes

The MPO shall be responsible for the settlement of all contractual and administrative issues arising out of procurements entered into in support of contract work.

In the event of a dispute concerning the work performed hereunder in support of the urban transportation planning process, the Engineer-Director of the State shall act as referee, and his decision shall be final and binding.

Article 8. Noncollusion

The MPO warrants that it has not employed or retained any company or person, other than a bona fide employee working for it, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this contract. If the MPO breaches or violates this warranty, the State shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

Article 9. Reporting

The MPO shall submit an annual performance report within 90 days after the end of the federal fiscal year.

Article 9. Reporting (cont.)

During the term of the contract, the MPO shall promptly advise the State in writing of events which have a significant impact upon the contract, including:

a. Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any state or federal assistance needed to resolve the situation.

b. Favorable developments or events that enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

Article 10. Records

The MPO agrees to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and work performed hereunder and shall make such materials available at its office during the time period covered and for three years from the date of final payment under the UPWP. Such materials shall be made available during the specified period for inspection by the State, the U.S. Department of Transportation and the Office of the Inspector General, and any of their authorized representatives for the purpose of making audits, examinations, excerpts, and transcriptions.

Article 11. Subcontracts

Any subcontract for services rendered by individuals or organizations not a part of the MPO's organization shall not be executed without prior authorization and approval of the subcontract by the State and, when federal funds are involved, the U.S. Department of Transportation. If the subcontract is authorized in the current approved Unified Planning Work Program, and if the MPO's procurement procedures have been approved by the State either directly or through self-certification by the MPO, the subcontract shall be deemed to be authorized and approved, provided that the subcontract includes all provisions required by the State and the U.S. Department of Transportation.

Subcontracts in excess of $25,000 shall contain all required provisions of this contract.

No subcontract will relieve the MPO of its responsibility under this contract.

Article 12. Termination

The State may terminate this contract at any time before the date of completion if the Governor withdraws his designation of the MPO or if it is determined that the MPO has failed to comply with the conditions of the contract. The State shall give written notice to the MPO at least seven days prior to the effective date of termination and specify the effective date of termination.

Article 12. Termination (cont.)

The State may terminate this contract for reasons of its own, not subject to agreement by the MPO.

If both parties to this contract agree that the continuation of the contract would not produce beneficial results commensurate with the further expenditure of funds, the parties shall agree upon the termination conditions.

Upon termination of this contract, whether for cause or at the convenience of the parties hereto, all finished or unfinished documents, data, studies, surveys, reports, maps, drawings, models, photographs, etc., prepared by the MPO shall, at the option of the State, be delivered to the State.

The State shall compensate the MPO for those eligible expenses incurred during the contract period which are directly attributable to the completed portion of the work covered by this contract, provided that the work has been completed in a manner satisfactory and acceptable to the State. The MPO shall not incur new obligations for the terminated portion after the effective date of termination.

Except with respect to defaults of subcontractors, the MPO shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the MPO to progress in the performance of the work) if such failure arises out of causes beyond the control and without the default or negligence of the MPO. Such causes may include but are not limited to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In every case, however, the failure to perform must beyond the control and without the fault or negligence of the MPO.

Article 13. Remedies

Violation or breach of contract terms by the MPO shall be grounds for termination of the contract. Any increased cost arising from the termination shall be paid by the MPO.

This agreement shall not be considered as specifying the exclusive remedy for any dispute, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

Article 14. Gratuities

State Highway and Public Transportation Commission policy mandates that employees of the State shall not accept any benefits, gifts or favors from any person doing business with or who reasonably speaking may do business with the State under this contract.

Any person doing business with or who reasonably speaking may do business with the State under this contract may not make any offer of benefits, gifts or favors to State employees, except as mentioned hereabove. Failure on the part of the MPO to adhere to this policy may result in termination of this contract.

Article 15. Compliance With Laws

The MPO shall comply with all Federal, State and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this contract, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the MPO shall furnish the State with satisfactory proof of its compliance therewith.

Article 16. Successors and Assigns

The State and the MPO each binds itself, its successors, executors, assigns and administrators to the other party to this agreement and to the successors, executors, assigns and administrators of such other party in respect to all covenants of this agreement. The MPO shall not assign, sublet, or transfer its interest in this agreement without written consent of the State.

Article 17. Debarment/Suspension

The MPO is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension.

The MPO shall require any party to a subcontract or purchase order awarded under this contract as specified in Title 49 of the Code of Federal Regulations, Part 29 (Debarment and Suspension) to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

Article 18. MPO Resources

All employees of the MPO shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of the MPO who, in the opinion of the State, is incompetent, or whose conduct becomes detrimental to the work, shall be removed from association with any of the State's projects when so requested by a duly authorized representative of the State.

Article 19. Additional Work

The MPO is not authorized to request payment for any work it may perform that is not included in the prevailing Unified Planning Work Program.

Article 20. Equal Employment Opportunity

The MPO agrees to comply with Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor Regulations (41 CFR 60).

Article 21. Nondiscrimination

During the performance of this contract, the MPO, its assigns and successors in interest, agrees as follows:

1. *Compliance with Regulations*: The MPO shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21 and Title 23, Code of Federal Regulations, Part 710.405(b), as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. *Nondiscrimination*: The MPO, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The MPO shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 and Part 710.405(b) or the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. *Solicitations for Subcontracts, Including Procurements of Materials and Equipment*: In all solicitations either by competitive bidding or negotiation made by the MPO for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the MPO of the MPO's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

4. *Information and Reports*: The MPO shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or the U.S. Department of Transportation to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the MPO is in the exclusive possession of another who fails or refuses to furnish this information, the MPO shall so certify to the State or the U.S. Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

5. *Sanctions for Noncompliance*: In the event of the MPO's noncompliance with the nondiscrimination provisions of this contract, the State shall impose such contract sanctions as it or the U.S. Department of Transportation may determine to be appropriate, including but not limited to:

- withholding of payments to the MPO under the contract until the MPO complies, and/or
- cancellation, termination, or suspension of the contract in whole or in part.

Article 21. Nondiscrimination (cont.)

6. *Incorporation of Provisions*: The MPO shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The MPO shall take such action with respect to any subcontract or procurement as the State may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event an MPO becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the MPO may request the State to enter into such litigation to protect the interests of the State; in addition, the MPO may request the United States to enter into such litigation to protect the interests of the United States.

Article 22. Minority Business Enterprise

It is the policy of the U.S. Department of Transportation that Minority Business Enterprises as defined in 49 CFR 23, Subpart A, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently the Minority Business Enterprise requirements of 49 CFR 23, exclusive of Subpart D, apply to this contract as follows.

- The MPO agrees to insure that Minority Business Enterprises as defined in 49 CFR 23, Subpart A, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, the MPO shall take all necessary and reasonable steps in accordance with 49 CFR 23, exclusive of Subpart D, to insure that Minority Business Enterprises have the maximum opportunity to compete for and perform contracts.

- The MPO and any subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts funded in whole or in part with Federal funds.

These requirements shall be physically included in any subcontract.

Failure to carry out the requirements set forth above shall constitute a breach of contract and, after the notification of the State, may result in termination of the contract by the State or other such remedy as the State deems appropriate.

Article 23. Procurement

The MPO shall maintain written procurement procedures that meet or exceed the requirements of 49 CFR 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments," as it may be revised or superseded. These procedures will be used for all acquisitions authorized in any UPWP.

Article 24. Property Management

The MPO shall maintain written property management procedures that meet or exceed the requirements of 49 CFR 18, "Uniform Administrative Requirements for Grants and Agreements with State and Local Governments," as it may be revised or superseded. These procedures will be used for any property acquired in whole or in part with federal or state funds provided through this contract.

Article 25. Audit

The MPO shall comply with the requirements of OMB Circular A-128, "Audit Require ments for State and Local Governments," and shall promptly furnish the State a copy of each audit report.

The MPO shall be responsible for any funds determined to be ineligible for federal reimbursement, and shall reimburse the State the amount of any such funds previ- ously provided to it by the State.

Article 26. Amendments

Any change to one or more of the terms and conditions of this agreement shall not be valid unless made in writing and agreed to by the parties hereto before the change is implemented.

Article 27. Distribution of Products

The MPO will provide a number of copies to be specified by the State of all information, reports, proposals, brochures, summaries, written conclusions, graphic presentations, and similar materials developed by the MPO and financed in whole or in part as pro- vided herein. All reports published by the MPO shall contain a prominent credit reference to the State and the U.S. Department of Transportation, Federal Highway Administration:

> Prepared in cooperation with the State Department of Highways and Public Transportation and the U.S. Department of Transportation, Federal Highway Administration.

Article 28. Ownership of Documents

Upon completion or termination of this contract, all documents prepared by the MPO or furnished to the MPO by the State shall be delivered to and become the property of the State. All such documents, photographs, calculations, programs, and other data prepared or used under this contract shall be used by the State without restriction or limitation of further use.

Article 29. Signatory Warranty

The undersigned signatory for the MPO hereby represents and warrants that he is an officer of the MPO and that he has full and complete authority to enter into this contract on behalf of the MPO.

IN WITNESS WHEREOF, the State and the MPO have caused this contract to be executed, but the contract shall not be valid until signed by a duly authorized representative of each party.

THE MPO

By_____

Title_____

Date_____

ATTEST

By_____

Title_____

Date_____

THE STATE OF TEXAS

Certified as being executed for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the State Highway and Public Transportation Commission under the authority of Minute Order 82513.

By_____
Transportation Planning Engineer

Date_____

For the purpose of this agreement, the following addresses shall be used to mail all required notices, reports, claims, and correspondence:

For the MPO:

For the District Office:

# APPENDIX B
# PROCUREMENT STANDARDS

**Urban Transportation Planning Process**
Contract Administration
Procurement Standards

| AREA | STANDARD |
|---|---|
| Procurement Procedures | MPOs will use their own procedures if consistent with these standards and applicable laws. |
| Contract Administration | MPOs will maintain a contract administration system to manage its contracts effectively. |
| Code of Conduct | MPOs will adopt a code of written standards governing the performance of employees engaged in awarding or otherwise administering contracts. The code will provide for penalties in accordance with local or state law. |
| Review | MPO procedures provide for review of proposed procurements to avoid unnecessary or duplicative purchases. |
| Intergovernmental Agreements | MPOs are encouraged to enter into agreements with one another for the procurement of common goods or services to foster efficiency/economy. |
| Responsible Contractors | MPOs will award contracts only to contractors demonstrating an ability to perform. |
| Procurement Files | The MPO must maintain records sufficient to detail a procurement history, including procurement method, contractor selection process, and basis for contract price. |
| Time and Materials Type Contract | This type of contract is used only if no other type contract is suitable; the contract is to include a ceiling price that the contractor exceeds at his own risk. |
| Disputes | MPOs are responsible for resolution of any protests, disputes, or claims arising from procurements. Federal or State agencies will not intervene unless the matter is primarily a Federal or State concern. |
| Protest Procedures | MPOs are to maintain written protest procedures and to follow the procedures in the handling of disputes, protests, or claims. |

**Competition**

All procurement transactions by the MPO and its subcontractors are to be conducted in a manner providing full and open competition consistent with the preceding standards.

**Restriction of Competition**

Examples of actions that restrict competition and are therefore prohibited include:

- unreasonable requirements on firms in order for them to qualify to do business
- requiring unnecessary experience and excessive bonding
- noncompetitive pricing practices between firms or between affiliated companies
- noncompetitive awards to consultants that are on retainer contracts
- organizational conflicts of interest
- specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing performance and technical data
- any arbitrary action.

**Geographical Preferences**

MPOs will conduct procurements in a manner that prohibits the use of statutory or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals unless:

- federal statutes mandate or encourage geographic preference, or
- when contracting for architectural and engineering services, as long as an appropriate number of qualified firms compete for the project.

**Written Selection Procedures**

MPOs are to have written selection procedures for procurement transactions.

These procedures are to require all solicitations to incorporate a clear and accurate description of the technical requirements for the product or service.

The description may include:

- a statement of the qualitative nature of the material, product, or service to be procured
- minimum essential characteristics and standards to which it must conform
- if an accurate technical description is impractical, a "brand name or equal" description may be used as a means to define important requirements.

**Evaluation Factors**

The written procurement request must identify all requirements which the offerers must fulfill and all factors to be used in evaluating bids or proposals.

**Selection List**

The MPO will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.

**User Notes**

**Procurement Methods**

MPO procurements are made by one of the following methods:

- small purchase procedures
- competitive sealed bids (formal advertising)
- negotiated contracts (competitive negotiation)
- noncompetitive negotiation.

**Small Purchase Procedures**

These procedures are relatively simple and informal methods used to secure services, supplies or other property that do not cost more than $25,000.00.

**Sealed Bids**

Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid provides the required goods or services at the lowest price.

Sealed bids are appropriate for procurements under the following conditions:

- A complete, adequate, realistic product specification is possible.
- Two or more responsible bidders are willing and able to compete.

When sealed bids are used, the following standards apply:

- Invitations for bids will be publicly advertised and bids solicited from an adequate number of suppliers in a timely fashion.
- Invitations will include adequate descriptions of desired goods and services.
- Bids will be opened publicly at the time and place described in the invitation.
- The contract award will be made in writing to the lowest responsible bidder, after a complete analysis of price.
- All bids may be rejected for good reason.

**Negotiated Contracts**

This method is used when the selection of a product or service will be based on qualitative factors, in addition to price. These factors might include experience, education, or technical expertise.

Examples of MPO acquisitions that might be made using this method are:

- engineering, architectural and accounting services
- consulting services for traffic or demographic studies or graphics design.

Usually a fixed-price or cost reimbursement type contract is awarded.

When a contract is to be negotiated, the following standards apply:

- RFPs identifying all evaluation factors and their importance are published.
- Proposals are solicited from an adequate number of sources.
- A technical evaluation of the offer is made.
- The best qualified proposer is selected.
- A price/cost analysis is conducted.
- Negotiations are documented in MPO files.

The contract is awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

**Non-Competitive Proposal**

This method is procurement through solicitation from only one source. This method may be used only if none of the other three methods is feasible and one of the following circumstances applies:

- The item has only one source.
- A public need will not permit a delay.
- The awarding agency authorizes the action.
- After solicitation of a number of sources competition is determined inadequate.

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| **Non-Competitive Proposals, cont.** | A cost analysis that verifies the proposed cost data and profit is required. MPOs and subgrantees are required to submit the proposed procurement to the State for pre-award approval, regardless of any approval or certification of the overall system. |

| | |
|---|---|
| **Required Analysis** | MPOs must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis depends on the facts surrounding the particular procurement and pricing situation. |
| **Price Analysis** | A price analysis is an evaluation of a proposed price that does not involve an in-depth evaluation of all the separate cost elements and the profit factors that comprise a potential contractor's price proposal. This method is appropriate when the procurement involves goods or services where the market price is easily determined and set through open and free competition. |
| **Cost Analysis** | A cost analysis is a more detailed evaluation of the cost elements in the potential contractor's offer. This analysis is performed to determine if the offer is fair, reasonable, allowable, and allocable under the federal cost principles.<br><br>In addition to identifying individual components of the procurement's cost, the amount of profit is also explicitly calculated. This amount cannot exceed federal limitation, and is guaranteed to the contractor. |
| **Cost-Plus Unallowable** | Cost-plus-a-percentage-of-cost and percentage-of-construction-cost methods of contracting are prohibited. |

**User Notes**

**Disadvantaged Business Enterprises**

It is national policy to award a fair share of contracts to small, minority, and women's business enterprises and labor surplus area firms (DBE).

- DBEs should be included on solicitation lists.
- DBEs are solicited whenever they are potential sources.
- When economically feasible, divide procurements into smaller components to permit participation.
- Adjust delivery schedules.
- Use Small Business Administration, Office of Minority Business Enterprise, and the Community Services Administration, as required.
- If subcontracts are let, require the prime contractor to take affirmative action.

**Contract Provisions**

An MPO's contract must include the following provisions; other provisions are to be included as appropriate:

- Reference to Cost Principles
- Civil Rights (49 CFR 21 and 23 CFR 710.405(b)
- Documentation (Progress and Final Reports)
- Subcontracts (Authority to and Contents of)
- Scope of Work
- Time Period Covered
- Contract Price, including limiting amount
- Changes in Work
- Disputes
- Obligations of Contracting Agency
- Ownership of Documents
- Inspection of Work
- Equipment & Instrumentation Required.

Contracts in excess of $25,000 are to include the above plus the following:

- Remedies
- Reporting Requirements
- Patent Rights, Copyrights and Rights in Data
- Energy Efficiency
- Compliance with Clean Air and Clean Water Act (if contract exceeds $100,000)
- Termination.

Construction contracts must also include:

- Equal Employment Opportunity (if over $100,000)
- Compliance with Copeland "Anti-Kickback" Act
- Compliance with Davis-Bacon Act (if over $2000)
- Contract Work Hours and Safety Standards.

# APPENDIX C
# MPO / CONSULTANT CONTRACT

THE STATE OF TEXAS )(

COUNTY OF ******** )( KNOW ALL MEN BY THESE PRESENTS

This contract is made, entered and executed between the_____

_____,

which is the designated Metropolitan Planning Organization (MPO) of the_____

_____urbanized area(s), hereinafter called the MPO, and

_____

_____, hereinafter

called the Consultant.

W I T N E S S E T H

WHEREAS, pursuant to provisions of 23 USC 134, the Governor of the State of Texas has designated the MPO to be the single-focus planning organization for the _____urbanized area(s) and has executed an agreement to effectuate the designation; and,

WHEREAS, pursuant to the Governor's designation and in compliance with applicable federal, state, and local laws, regulations, and ordinances, the MPO has developed and maintains a current Unified Planning Work Program which outlines work tasks and estimated expenditures; and,

WHEREAS, the current Unified Planning Work Program has been approved by the State of Texas, acting by and through the State Department of Highways and Public Transportation, and the U.S. Department of Transportation, acting by and through the Federal Highway Administration; and,

WHEREAS, the current Unified Planning Work Program authorizes the MPO to engage a consultant to_____

_____and the Consultant has proposed a plan to complete the task, and the MPO has accepted the proposal;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, the MPO and the Consultant do mutually agree as follows.

# A G R E E M E N T

Article 1. Contract Period

This contract becomes effective when fully executed by all parties hereto or on _____, whichever occurs later, and shall terminate upon the MPO's final approval of work completed by the Consultant or on _____, whichever occurs earlier, unless otherwise terminated or modified as hereinafter provided.

Article 2. Responsibilities of the Parties

The Consultant shall undertake and complete the task as described in Attachment A, Approved Project Description, and in accordance with all terms and conditions included hereinafter.

The MPO shall provide assistance as appropriate and as specified in said Attachment A, including approval of all work.

Article 3. Compensation

The maximum amount payable under this contract shall not exceed the amount of $_____, which includes estimated costs in the approximate amount of _____as well as a fixed fee of $_____. The MPO may make partial proportionate payments of the fixed fee based on the amount of work completed by the MPO.

All payments made hereunder will be made on the basis of reimbursement of actual costs incurred, not to exceed the limits authorized in Attachment B, Approved Project Budget, and the fixed fee specified above.

To be eligible for reimbursement, a cost must be incurred within the contract period specified in Article 1 above and be authorized or not prohibited in Attachment B, Approved Project Budget. All costs must be supported by source documents which comply with generally accepted accounting practices.

Payment of costs incurred is further governed by cost principles outlined in the Federal Acquisition Regulation, Part 31, Subpart 31.2, Contracts with Commercial Organizations.

Article 4. Contract Amendments

Significant changes in the terms and conditions of this contract can be made only by written amendment executed by the parties hereto prior to the changes being made. Any such amendment must be approved by the U.S. Department of Transportation before the changes are made.

Article 5. Additional Work

If the Consultant is of the opinion that any work it has been directed to perform is beyond the scope of this contract and constitutes additional work, the Consultant shall promptly notify the MPO in writing. In the event that the MPO finds that such work does constitute additional work, the MPO shall so advise the Consultant and provide compensation for doing the work on the same basis as the original work *or* the MPO shall advise the Consultant not to perform the work. If the compensation for the additional work will cause the maximum amount payable to be exceeded, a written amendment will be executed. Any amendment so executed must be approved within the contract period specified in Article 1.

Article 6. Changes in Work

When the approved project description requires a completed work product, the MPO will review the work as specified in the approved project description. If the MPO finds it necessary to request changes in previously satisfactorily completed work or parts thereof, the Consultant will make such revisions as requested and directed by the MPO. Such work will be considered as additional work and subject to the requirements established in Article 5.

If the MPO finds it necessary to require the Consultant to revise completed work to correct errors appearing therein, the Consultant will make such corrections, and no compensation will be paid for the corrections.

Article 7. Indemnification

The Consultant shall save harmless the MPO from all claims and liability due to the acts or omissions of the Consultant, its agents or employees. The Consultant also agrees to save harmless the MPO from any and all expenses, including attorney fees, all court costs and awards for damages, incurred by the MPO in litigation or otherwise resisting such claims or liabilities as a result of any activities of the Consultant, its agents or employees.

Further, the Consultant agrees to protect, indemnify, and save harmless the MPO from and against all claims, demands and causes of action of every kind and character brought by any employee of the Consultant against the MPO due to personal injuries and/or death to such employee resulting from any alleged negligent act, by either commission or omission on the part of the Consultant or the MPO.

Article 8. Inspection of Work

The MPO, the State of Texas, and the U.S. Department of Transportation, and any authorized representative thereof, have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises on which it is being performed.

Article 8. Inspection of Work (cont.)

If any inspection or evaluation is made on the premises of a subcontractor, the Consultant shall provide and require his subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

Article 9. Disputes

The Consultant shall be responsible for the settlement of all contractual and administrative issues arising out of procurements entered into in support of contract work.

The MPO shall act as referee in all disputes regarding nonprocurement issues, and the MPO's decision shall be final and binding.

Article 10. Noncollusion

The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working for him, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this contract. If the Consultant breaches or violates this warranty, the MPO shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

Article 11. Reporting

The Consultant shall submit quarterly performance reports that provide as a minimum (1) a comparison of actual accomplishments to the goals established for the period, (2) reasons why established goals were not met, if appropriate, and (3) other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

The Consultant shall submit a final report within 90 days after completion of the contract.

The Consultant shall promptly advise the MPO in writing of events which have a significant impact upon the contract, including:

1. Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

Article 11. Reporting (cont.)

2. Favorable developments or events that enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

Article 12. Records

The Consultant agrees to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and work performed hereunder and shall make such materials available at its office during the contract period and for three years from the date of final payment under the contract. Such materials shall be made available during the specified period for inspection by the authorized representatives of the MPO, the State of Texas, the U.S. Department of Transportation and the Office of the Inspector General, for the purpose of making audits, examinations, excerpts, and transcriptions.

Article 13. Subcontracts

Any subcontract for professional services rendered by individuals or organizations not a part of the Consultant's organization shall not be executed without prior authorization and approval of the subcontract by the MPO.

Subcontracts in excess of $25,000 shall contain all required provisions of this contract.

No subcontract will relieve the Consultant of his responsibility under this contract.

Article 14. Termination

The MPO may terminate this contract in part or in whole at any time before the date of completion whenever it is determined that the Consultant has failed to comply with the conditions of the contract. The MPO shall give written notice to the Consultant at least seven days prior to the effective date of termination and specify the effective date of termination and the reason for termination.

If both parties to this contract agree that the continuation of the contract in whole or in part would not produce beneficial results commensurate with the further expenditure of funds, the parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated.

Upon termination of this contract, whether for cause or at the convenience of the parties hereto, all finished or unfinished documents, data, studies, surveys, reports, maps, drawings, models, photographs, etc., prepared by the Consultant shall, at the option of the MPO, be delivered to the MPO with no restriction on future use.

Article 14. Termination (cont.)

The MPO shall compensate the Consultant for those eligible expenses incurred during the contract period which are directly attributable to the completed portion of the work covered by this contract, provided that the work has been completed in a manner satisfactory and acceptable to the MPO. The Consultant shall not incur new obligations for the terminated portion after the effective date of termination.

Except with respect to defaults of subcontractors, the Consultant shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Consultant to progress in the performance of the work) if such failure arises out of causes beyond the control and without the default or negligence of the Consultant. Such causes may include but are not limited to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In every case, however, the failure to perform must be beyond the control and without the fault or negligence of the Consultant.

Article 15. Remedies

Violation or breach of contract terms by the Consultant shall be grounds for termination of the contract, and any increased cost arising from Consultant's default, breach of contract, or violation of terms shall be paid by the Consultant.

This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

Article 16. Compliance With Laws

The Consultant shall comply with all Federal, State, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this contract, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Consultant shall furnish the MPO with satisfactory proof of its compliance therewith.

Article 17. Successors and Assigns

The MPO and the Consultant each binds itself, its successors, executors, assigns and administrators to the other party to this agreement and to the successors, executors, assigns and administrators of such other party in respect to all covenants of this agreement. Neither the MPO nor the Consultant shall assign, sublet, or transfer his interest in this agreement without written consent of the other.

Article 18. Ownership of Documents

Upon completion or termination of this contract, all documents prepared by the Consultant or furnished to the Consultant by the MPO shall be delivered to and become the property of the MPO. All sketches, photographs, calculations, and other data prepared under this contract shall be made available, upon request, to the MPO without restriction or limitation of further use.

Article 19. Signatory Warranty

The undersigned signatory for the Consultant hereby represents and warrants that he is an officer of the organization for which he has executed this contract and that he has full and complete authority to enter into this contract on behalf of his firm.

Article 20. Consultant Resources

The Consultant warrants that it presently has adequate qualified personnel in its employment for performance of services required under this contract, or will be able to obtain such personnel from sources other than the MPO.

Unless otherwise specified, the Consultant shall furnish all equipment, materials, and supplies required to perform the work authorized herein.

All employees of the Consultant shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of the Consultant who, in the opinion of the MPO, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the project.

Article 21. Equal Employment Opportunity

The Consultant agrees to comply with Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor Regulations (41 CFR 60).

Article 22. Nondiscrimination

During the performance of this contract, the Consultant, its assigns and successors in interest, agrees as follows:

1. *Compliance with Regulations:* The Consultant shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21 and Title 23, Code of Federal Regulations, Part 710.405(b), as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

Article 22. Nondiscrimination (cont.)

2. *Nondiscrimination:* The Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 and Part 710.405(b) of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. *Solicitations for Subcontracts, Including Procurements of Materials and Equipment:* In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

4. *Information and Reports:* The Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State Department of Highways and Public Transportation or the U.S. Department of Transportation to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the State Department of Highways and Public Transportation or the U.S. Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

5. *Sanctions for Noncompliance:* In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the State Department of Highways and Public Transportation shall impose such contract sanctions as it or the U.S. Department of Transportation may determine to be appropriate, including but not limited to:

- withholding of payments to the Consultant under the contract until the Consultant complies, and/or
- cancellation, termination, or suspension of the contract in whole or in part.

6. *Incorporation of Provisions:* The Consultant shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the MPO may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Consultant becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the MPO to enter into such litigation to protect the interests of the MPO; in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

Article 23. Minority Business Enterprises

It is the policy of the U.S. Department of Transportation that Minority Business Enterprises as defined in 49 CFR 23, Subpart A, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently the Minority Business Enterprise requirements of 49 CFR 23, exclusive of Subpart D, apply to this contract as follows:

- The Consultant agrees to insure that Minority Business Enterprises as defined in 49 CFR 23, Subpart A, have the maximum opportunity in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, the Consultant shall take all necessary and reasonable steps in accordance with 49 CFR 23, exclusive of Subpart D, to insure that Minority Business Enterprises have the maximum opportunity to compete for and perform contracts.

- The Consultant and any subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts funded in whole or in part with Federal funds.

These requirements shall be physically included in any subcontract. Failure to carry out the requirements set forth above shall constitute a breach of contract and, after the notification of the MPO, may result in termination of the contract by the MPO or other such remedy as the MPO deems appropriate.

Article 24. Delinquent Tax Certification

Pursuant to Article 2.45 of the Business Corporation Act, Texas Civil Statutes, which prohibits the State from awarding a contract to a corporation that is delinquent in paying taxes under Chapter 171, Tax Code, the Consultant hereby certifies that it is not delinquent in its Texas franchise tax payments, or that it is exempt from or not subject to such tax. A false statement concerning the corporation's franchise tax status shall constitute grounds for cancellation of the contract at the sole option of the State.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED DUPLICATE COUNTERPARTS TO EFFECTUATE THIS AGREEMENT.

MPO CONSULTANT