



# Texas Multiple Award Schedule (TxMAS)

## PURCHASING GUIDE

### To use the TXMAS program, an agency procurement official need only:

1. Review the current TCXAS to find the required service or supply and identify a contractor with a current TXMAS contract (on the Web, go to: <http://window.state.tx.us/procurement/prog/txmas/>);
2. Contact TxMAS contractor to obtain a quote, then negotiate and evaluate the price, using the TxMAS price list as a “not to exceed” price (document in the contract file the “best value” basis);
3. Prepare a purchase order (P.O.), referencing the TxMAS Contract Number on the P.O., and send it directly to the contractor;
4. Fax a copy of the P.O. to the Comptroller of Public Accounts (CPA), 512.475.0708, for reporting purposes (for any questions about TXMAS, Mr. Richard San Jose can be reached at either (512) 463.3421 or by e-mail at [txmas@cpa.state.tx.us](mailto:txmas@cpa.state.tx.us));
5. If the award exceeds \$25,000, then post the award notice on the ESBD (TX Marketplace) (<http://esbd.cpa.state.tx.us/>).

### The Law on TxMAS

#### TX Govt. Code § 2155.504 – Use of Schedule by Governmental Entities

- (a) A state agency or local government may purchase goods or services directly from a vendor under a contract listed on a schedule developed under this subchapter. A purchase authorized by this section satisfies any requirement of state law relating to competitive bids or proposals and satisfies any applicable requirements of Chapter 2157.
- (b) The price listed for a good or service under a multiple award schedule is a maximum price. An agency or local government may negotiate a lower price for goods or services under a contract listed on a schedule developed under this chapter.

**Added by Acts 2001, 77th Leg., ch. 1422, § 2.01, eff. Sept. 1, 2001.**

**NOTE:** Under TXMAS, incidental off-schedule items and services may be purchased for “integration and completeness.” The only dollar limit on orders is the “per P.O.” limitation in the underlying GSA Schedule contract.



# TXMAS Indefinite Contract for General Construction

## JAMAIL & SMITH CONSTRUCTION

(Contract No. TXMAS-10-56010 Contract Period: 9/01/2009 - 8/31/2011)

### Overview

The Texas Comptroller of Public Accounts (CPA) has established use of Texas multiple award schedule (TXMAS) contracts as an alternative purchasing method available to governmental agencies and members of the CPA co-operative purchasing network.

The TXMAS (Texas Multiple Award Schedule) Program adapts existing competitively awarded government contracts to the procurement needs of the State of Texas.

To be considered for the TXMAS Program, an existing contract must be:

1. Awarded by the federal government or any other governmental entity in any state
2. Awarded using a competitive process
3. Adaptable to the laws of the State of Texas

### Jamail & Smith Construction: Exceeding Expectations Since 1982

Jamail & Smith Construction is a TXMAS-certified Job Order Contractor (JOC) who provides construction services to qualified public-sector purchasers throughout the state. We combine responsiveness, a client-focused mindset and a team-oriented approach to project management that allows us to deliver all of the benefits JOC has to offer—consistently and completely.

### TXMAS, Job Order Contracting and You

The Jamail & Smith Construction TXMAS contract (TXMAS-10-56010) is listed under TXMAS Schedule GSA-56, "Buildings and Building Materials/Industrial Services and Supplies. Technically an Indefinite Quantity Contract (IQC) for General Construction, the Jamail & Smith Construction TXMAS contract provides a simple way for public agencies to enjoy the benefits of working with an experienced job order contractor.

Job Order Contracting involves the owner and general contractor entering into a fixed-price, indefinite quantity, long-term relationship with pre-defined unit price line items. Originally used by the United States Military in the 1980's and in constant use in the state of Texas since 1992, JOC is especially effective for public-sector organizations such as school districts, universities, and state agencies needing regular facility project support.

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# TXMAS Indefinite Contract for General Construction cont.

## JAMAIL & SMITH CONSTRUCTION

### JOC: Benefits to You

- JOC is More Responsive – SAVE 75–85% of the time it takes to procure construction services using traditional bid and contracting methods.
- JOC is a More Professional Approach to Construction – Strengths of using JOC result in reduced risk for all parties involved in a project—architect, owner, and contractor.
- Less Costly – JOC will reduce procurement, administrative and design costs as well as direct costs of construction... all this and fewer claims and change orders as well!
- Higher Quality Construction – Quality results from JOC’s system of issuing a series of sequential work orders to the Contractor based on their ability to produce a quality project on time.
- Promotes Small Businesses –The majority of all JOC work is subcontracted to direct performing local, minority, and women owned businesses.

Relying on Jamail & Smith Construction to execute multiple renovation and repair projects effectively makes our staff an extension of your existing staff; we “learn” your facilities, your processes, your preferences, all at set, competitively bid prices!

### Contract Pricing: The Details

All work ordered under the Jamail & Smith Construction TXMAS contract is priced by applying our bid discount (coefficient) to the federal government’s General Services Administration (GSA)-based unit price book or to the current edition of R.S. Means Facilities Construction Cost Data. These resources offer very comprehensive line item pricing for the goods and services we provide.

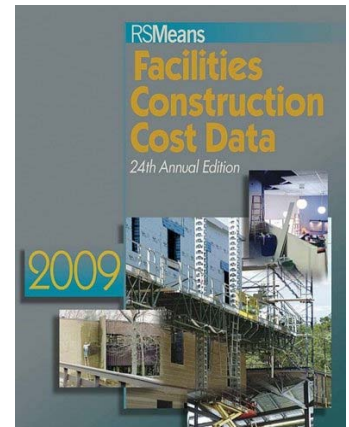
These costs are reduced by the general contractor’s bid coefficient, a figure that provides you with additional discounts on all UPB and R.S. Means provided line items.

### Jamail & Smith Construction TXMAS Coefficients

R.S. Means Facilities Construction Cost Data book: 1.05

Ready to discuss the many benefits that come with using Jamail & Smith Construction, the TXMAS Job Order Contractor of choice for Texas? So are we!

For More Information: Contact Greg Smith, Executive Vice President, at 512.288.1200 (or [gsmith@jamailsmith.com](mailto:gsmith@jamailsmith.com)).



C O N S T R U C T I O N

S U S A N

C O M B S

TEXAS COMPTROLLER *of* PUBLIC ACCOUNTS

P.O. Box 13186 • AUSTIN, TX 78711-3186



**Texas Comptroller of Public Accounts**

August 25, 2009

Gregory Smith  
Jamail & Smith Construction  
8868 Research Blvd., Suite 401  
Austin, TX 78758

RE: Contract No. TXMAS-10-56010  
Contract Period 09/01/09 through 08/31/11

Dear Mr. Gregory Smith:

Your company has been awarded a contract under the Texas Multiple Award Schedule (TXMAS) program. The period of the contract is shown above and will coincide with the contract period of your contract, P-09-00220 with the University of Texas Medical Branch (UTMB). As stated in your contract with the State of Texas, Terms and Conditions, you are responsible for notifying the Texas Comptroller of Public Accounts (CPA) within thirty (30) calendar days of any change in the status of your contract with UTMB or amendments to the UTMB Contract.

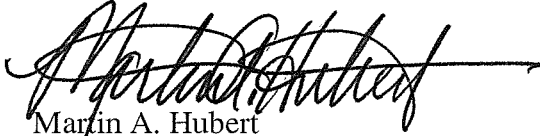
All terms and conditions set forth in the document that you signed as a part of your offer to the State are made a part of this TXMAS contract. Please note that any payment due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas. Additionally, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the CPA and the contractor to attempt to resolve all disputes arising under this contract.

As set forth in Section 8 of the Contract Terms and Conditions, a Monthly Sales Report is required under this contract. The reporting requirement will commence for the period September 2009.

Jamail & Smith Construction  
August 25, 2009  
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In order to facilitate catalog access to TXMAS contractor catalogs, the CPA will maintain a web page exclusive to your TXMAS contract. In addition to user instructions and informational details relating to the contractor, a universal resource locator (URL) address is required for the contractor's catalog. The catalog must have a TXMAS identifying cover and a URL, exclusive to the TXMAS program. It is requested that your catalog web address be established within fourteen (14) calendar days and provided by e-mail to the TXMAS Program at [txmas@cpa.state.tx.us](mailto:txmas@cpa.state.tx.us). If you have any questions regarding this or any of the other requirements relating to the TXMAS program, please contact Richard San Jose at 512-463-3421 or Jacqueline Klaus at 512-463-8839.

Respectfully,



Martin A. Hubert  
Deputy Comptroller

AMENDMENT TO  
STATE OF TEXAS  
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS  
TEXAS MULTIPLE AWARD SCHEDULES (TXMAS)

This is an Amendment to the Texas Multiple Award Schedule ("Agreement") between the State of Texas ("State"), acting by and through the Texas Comptroller of Public Accounts ("CPA") and Jamail & Smith Construction.

The Contract shall be modified to reflect that Jamail & Smith Construction will utilize the University of Texas Medical Branch Galveston Contract (Contract No. P-09-00220) in lieu of providing a GSA Federal Schedule Contract for this Agreement.

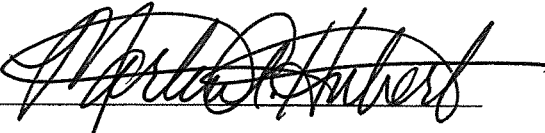
All references in the Agreement and accompanying Exhibits to the "GSA" or the "GSA Federal Schedule Contract" shall be interpreted to mean "UTMB" or the "University of Texas Medical Branch."


In all other respects, said Agreement is to remain unchanged.

In WITNESS WHEREOF, the parties have executed this Amendment as written.

STATE OF TEXAS,  
TEXAS COMPTROLLER  
OF PUBLIC ACCOUNTS

THE CONTRACTOR

By:   
Name: Martin Hubert

By:   
Name: Gregory Smith

Title: Deputy Comptroller

Title: Executive Vice President

Date: 8/25/09

Date: 8/24/2009

**STATE OF TEXAS  
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS  
TEXAS MULTIPLE AWARD SCHEDULE (TXMAS)**

**THIS CONTRACT** is by and between the STATE OF TEXAS ("State") acting through the TEXAS COMPTROLLER OF PUBLIC ACCOUNTS ("CPA"), with offices in the LBJ State Office Building, 111 E. 17<sup>th</sup> Street, Austin, Texas 78774 and Jamail & Smith  
Construction ("Contractor") with offices at 16875 Diana Lane,  
Houston, Texas 77058.

**1. BACKGROUND:**

The Contractor has entered into a contract with the Federal Government under the Federal Government's Supply Schedule Contract Program administered by the General Services Administration ("GSA"). That program allows a contractor and the GSA to negotiate in advance of actual purchases the terms and conditions under which a contractor will supply goods or services to the Federal Government. Such a Federal schedule contract is not a commitment to purchase any goods or services; it is only a convenient way to do so should a Federal agency so choose during the contract's term.

The Texas Comptroller of Public Accounts has also determined that the Contractor's Federal schedule contract offers goods or services that may be of interest to various state agencies and has therefore decided to use the Contractor's Federal contract as a basis for a state multiple award schedule contract with the Contractor. This state multiple award schedule contract (the "Contract") establishes terms and conditions under which a state agency may acquire the Contractor's goods or services, but it in no manner obligates any state agency to do so.

**TERMS & CONDITIONS**

**2. COMPOSITION OF CONTRACT:**

- (a) This Contract consists of the terms of the Contractor's Federal Schedule Contract, Number P-09-00220(VTMB) (the "Federal Schedule Contract" or "Schedule Contract"), as amended by this Contract (*see Paragraph 36 "ENTIRE AGREEMENT"*). The Contractor's Schedule Contract consists of all the documents and materials incorporated in that agreement with the Federal Government. Those documents include, among possible others, the Federal Government's original solicitation, the Contractor's offer to the Federal Government, with amendments, the Contractor's best and final offer letter, the final award, and the Contractor's most current version of its Authorized Schedule Price List.
- (b) Additionally, all representations, clarifications, and certifications submitted by the Contractor as a part of that contracting process are also included. And it includes any laws, regulations, documents, guidelines, and other materials incorporated by reference in the Contractor's Schedule Contract, including all Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation (DFAR), Federal Information Processing Standards Publication (FIPS PUB), Federal Standards (FED-STD) and

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United States Code (USC) provisions, among others. By way of example, such would include all cited FAR and DFAR provisions relating to warranties, liabilities, and rights in data, and the GSA's Price Reduction Clause, among others.

- (c) It is recognized that prices reflected on GSA schedule contracts are most favored customer prices and are maximum prices. A State Agency or Local Government may negotiate a lower price for goods and services listed on a schedule contract. CPA operates an online ordering system. A 1.5% administrative fee is charged on all orders. The contractor is authorized to charge up to 1.5228% to recover this charge. The Contractor shall remit this administrative fee to the TexasOnline vendor on a monthly basis, as invoiced.

**3. CERTIFICATION OF ACCURACY:**

The Contractor hereby certifies that all copies of the Contractor's Authorized Schedule Price List that were submitted to the State as part of the negotiation of this Contract are true, correct, current, and complete copies of that Price List. The Contractor further represents and warrants that all future Price Lists submitted to revise this Contract will also be true, correct, current, and complete copies of the then-current Price List under the Contractor's then-current Federal Contract.

**4. FEDERAL REPRESENTATIONS:**

The Contractor warrants that all certifications and representations made to the Federal Government as a basis for obtaining or as a part of its GSA Schedule Contract were and still are true and accurate. The Contractor further agrees that such representations are a basis for the State entering into this Contract and that such representation and certifications inure to the State's benefit.

**5. FUTURE NOTICE:**

The Contractor acknowledges that any continuing obligation to notify the Federal Government of changes affecting its GSA Schedule Contract, including by way of example, notices required under the price reduction provisions of its Schedule Contract, must be provided in the same manner to the State. The State's rights under those notices will be the same as the rights of the Federal Government. Additionally, the Contractor agrees to notify the State within thirty (30) calendar days of all changes in the status of or amendments to its Federal Schedule Contract.

**6. PARTIES TO THE CONTRACT:**

- (a) For purposes of this Contract, all references to "Government," "Federal Government," "GSA," or similar terms meaning the Federal Government in the Contractor's Schedule Contract will mean the "State." And references to the "Contracting Officer" will mean the State representative, or their successor or designee, who signed this Contract on

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behalf of the State. Additionally, for purposes of this Contract, all rights and obligations of the Contractor and the Federal Government under the Contractor's Schedule Contract, except to the extent that such would create an absurdity, or are otherwise clearly inappropriate, or would violate state or federal law, will be rights and obligations between the Contractor and the State.

- (b) This Contract may be relied on by any "State Agency" as defined under §2251.001(8), Texas Government Code and any "Local Government" as defined under §271.101, Texas Local Government Code. Whenever a Local Government relies upon this Contract to issue a purchase order, the Local Government will step into the shoes of the State under this Contract. Any order placed by a Local Government under this contract will be between the Contractor and the Local Government. The Contractor will look solely to the Local Government for performance, including but not limited to payment, and will hold the State harmless with regard to such orders. The State, however, will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Local Government.
- (c) Nothing in this Contract requires the Contractor to accept an order from a Local Government where the Contractor reasonably believes that the Local Government is or will be unable to perform its obligations in relation to that order.
- (d) Contractor or Contractor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under this Contract. Contractor or Contractor's employees, representatives, agents and any subcontractors shall not be employees of the State. Should Contractor subcontract any of the services required in this Contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), the State is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this Contract.

**7. SPECIFIC CHANGES TO PROVISIONS INCLUDED IN THE CONTRACTOR'S SCHEDULE CONTRACT:**

The State and the Contractor agree to the following changes to specific provisions of the Contractor's Federal Schedule Contract, notwithstanding anything to the contrary contained in the Contractor's Federal Contract:

- (a) All equipment will be new and all replacement parts will be new.
- (b) The ordering and payment addresses under this Contract will be those contained in the Contractor's offer letter to the State.

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- (c) Payments and invoicing will be in accordance with the terms discussed under Paragraph 12 "PAYMENT; TRAVEL EXPENSES" and Paragraph 13 "INVOICE REQUIREMENTS", below.
- (d) All shipping of equipment under warranty for repairs will be at the Contractor's expense.
- (e) All references to hours of the day will be deemed to be references to Central Standard/Daylight Time.
- (f) The State will not purchase goods or services for overseas delivery, or provide the Contractor with overseas support.
- (g) The Contractor will not offer to the State any products that are not Year 2000 compliant. All such items listed in the Contractor's Authorized Price List are deleted for purposes of the State.
- (h) As this Contract refers to a GSA schedule contract for convenience, orders under this Contract are not orders under the GSA schedule program. Therefore, the federal supply schedules for blanket purchase agreements, contractor team arrangements are not applicable to this contract. However, for administrative convenience and to satisfy a total best value procurement requirement, a purchasing entity may, if the quoted price is determined to be fair and reasonable, purchase incidental items that are not on the GSA contract schedule. The purchase of incidental, off schedule items will be treated as an open market purchase and clearly labeled on the schedule purchase order as open market items.
- (i) Those terms and conditions of the Contractor's offering documentation not specifically referenced by the Amendments delineated under this heading shall remain unchanged.
- (j) The Contractor will provide a Universal Resource Locator (URL) address that is exclusive to the Contractor's TXMAS contract and catalog. The "hot link" must allow users access to the Contractor's TXMAS catalog from the CPA website.

**8. CONTRACTOR MONTHLY SALES REPORT:**

- (a) The Contractor shall report to the State the monthly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of the sales under this Contract. The dollar value of the sale shall be the price paid by the schedule user for the products and services on a schedule contract task or delivery order, as recorded by the Contractor.
- (b) The Contractor shall report the monthly dollar value of sales electronically in the on-line format provided by CPA (See Paragraph 8(e), below). If no sales occur, the

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Contractor shall report "NO" sales. The report shall be submitted within ten (10) calendar days following the end of the calendar month.

- (c) The Contractor shall remit to the State of Texas a sales rebate which will not exceed the GSA Industrial Funding Fee (IFF) that is in effect at the time of the submission. The sales rebate shall be remitted on a quarterly basis, using the State of Texas Fiscal Calendar, which starts on September 1 and ends on August 31 of each year. The sales rebate will be for the amount of sales under the Contract for the previous quarter.
- (d) The Sales Rebate remittance should be identified as "TXMAS Sales Rebate" and made payable to **CPA**. The remittance address is: Texas Comptroller of Public Accounts, TPASS, Attn: Accounts Payable, P.O. Box 13186, Austin, TX 78711-3186.
- (e) The Contractor shall also submit a final closeout report within one hundred and twenty (120) calendar days after the expiration or termination of this Contract. The contract shall expire upon the physical completion of the last outstanding task or delivery the final order under the Contract. The closeout report shall include all sales not shown in the final or most recent quarterly report and shall reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor shall report "zero" sales in the closeout report.
- (f) The Monthly Sales Report shall be submitted electronically online at: <http://portal.cpa.state.tx.us/txmas/vendor/>, (see Attachment A).
- (g) If the Contractor fails to submit sales reports, falsifies sales reports, or fails to submit sales reports in a timely manner, the State may terminate or cancel this Contract in accordance with Paragraph 19 "TERMINATION; SURVIVAL".

**9. DEALERS/DISTRIBUTORS:**

- (a) Upon approval of CPA, the Contractor may designate one or more dealers or distributors to provide services under this Contract on behalf of the Contractor. To designate a dealer or distributor, the Contractor must provide a Letter of Authorization. The Contractor shall provide a separate Letter of Authorization for each designated dealer or distributor.
- (b) The Letter of Authorization must be submitted on the Contractor's official letterhead, signed by an authorized representative, and addressed to the attention of the Director of the Texas Procurement and Support Services Division at the address set forth in Paragraph 30 (Notices) of this Contract. The Letter of Authorization must include a Letter of Acceptance from the dealer/distributor and all supporting documentation. By submitting a Letter of Authorization, the Contractor represents and warrants the following:

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- (1) The dealer/distributor has been given a copy of this Contract, a duly authorized representative of the dealer/distributor has agreed in writing to be bound by the terms and conditions of this Contract, and that such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
  - (2) The Contractor agrees to remain liable under this Contract for any failure of the dealer/distributor to perform and for any breach of the dealer/distributor under this Contract.
  - (3) Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due the Contractor once the State has paid the dealer.
  - (4) To the extent that there is any liability to the State arising from doing business with a dealer or distributor that has not signed the Letter of Acceptance required under this section with the Contractor, the Contractor will indemnify the State for such liability.
  - (5) The Contractor's Letter of Authorization shall remain effective until CPA receives written notification from the Contractor that the authorization to a dealer or distributor is withdrawn.
- (c) The Letter of Acceptance must be submitted on the dealer/distributor's official letterhead, signed by an authorized representative of the dealer/distributor, and addressed to the attention of the Contractor. In the Letter of Acceptance, the dealer or distributor must represent and warrant that it has been given a copy of this Contract, it agrees to be bound by the terms and conditions of this Contract, and such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
- (1) For a dealer, the Letter of Acceptance must also include the following information:
    - i. the dealer's name and address,
    - ii. the dealer's point of contact name, telephone number, fax number, and email address,
    - iii. the dealer's purchase order, invoice, and payment address(es),
    - iv. the dealer's Federal Employer's Identification number (FEI),
    - v. the dealer's Dun and Bradstreet (DUNS) number, if available,
    - vi. the dealer's completed W9, and
    - vii. the dealer's HUB Certificate, if dealer is a Texas HUB.
  - (2) For a distributor, the Letter of Acceptance must also include the following information:
    - i. the distributor's name and address,
    - ii. the distributor's point of contact name, telephone number, fax number, and email address,
    - iii. the distributor's purchase order, invoice, and payment address(es),
    - iv. the distributor's Federal Employer's Identification number (FEI),
    - v. the distributor's Dun and Bradstreet (DUNS) number, if available, and

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- vi. the distributor's HUB Certificate, if distributor is a Texas HUB.
- (d) Prior to CPA's approval of the Contractor's designated dealer or distributor, CPA will review the Letter of Authorization and the required documentation for compliance with this section and applicable state laws and regulations. If the Letter of Authorization is incomplete, e.g. does not include the Letter of Acceptance or other required documentation, then CPA reserves the right to reject the Letter of Authorization and require re-submission by the Contractor of the Letter of Authorization and all required documentation.

**10. POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS):**

- (a) In accordance with §§2161.181-2161.182, Texas Government Code and 34 Texas Administrative Code (TAC) §20.11, state agencies shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction, services, including professional and consulting services and commodities contracts. The Texas Comptroller of Public Accounts (CPA) HUB Rules, 34 TAC §§20.11-20.28 encourages the use of HUBs by implementing these policies through race-ethnic-and gender-neutral means.
- (b) The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study:
  - (1) 11.9% for heavy construction other than building contracts;
  - (2) 26.1% for all building construction, including general contractors and operative builders contracts;
  - (3) 57.2% for all special trade construction contracts;
  - (4) 20% for professional services contracts;
  - (5) 33% for all other services contracts; and
  - (6) 12.6% for commodities contracts.
- (c) Each state agency shall make a good faith effort to meet or exceed these goals and assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year.
- (d) Contractors are urged to utilize Texas Certified HUBs as dealers or distributors whenever possible to promote full and equal business opportunities and assist state agencies in meeting the goals listed above. Instructions for generating a list of Certified Texas HUB Vendors that are registered on the Texas Centralized Master Bidder List (CMBL) for the commodities included in the contract schedule are attached (see Attachment B). Contractors are also strongly encouraged to make a good faith effort within the basic terms of the GSA contract and consider engaging the service of a HUB to meet the contractual obligation in Texas. *The attached TXMAS HUB Good Faith*

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*Effort Certification must be completed and returned with this document (see Attachment C).*

**11. LIMITATION OF LIABILITY:**

TO THE EXTENT PERMITTED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, THE PARTIES AGREE THAT IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAD BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

**12. PAYMENT; TRAVEL EXPENSES:**

- (a) Payment shall be made in accordance with Chapter 2251, Texas Government Code.
- (b) Except as provided for in §2251.021(b), Texas Government Code payment by a State Agency or Local Government is due within thirty (30) calendar days after the later of:
  - (1) the date the State Agency or Local Government receives the goods under the contract;
  - (2) the date the State Agency or Local Government receives a proper invoice (*see Paragraph 13 "INVOICE REQUIREMENTS"*) for the goods or services; or
  - (3) the date the performance of the service under the contract is completed
- (c) Except as provided for in §2251.021(b), Texas Government Code, a payment will begin to accrue interest at a rate of one percent a month on the 31<sup>st</sup> day after the later event described by subsections (b)(1) through (3) above. Interest stops accruing on the date the State Agency or Local Government mails (postmark) or electronically transmits the payment.
- (d) Any travel or per diem required by the Contractor to perform its obligations under this Contract will be at the Contractor's expense. All travel and per diem that the State requests in addition to what this Contract requires the Contractor to provide at the Contractor's expense will be paid in accordance with State of Texas Travel Allowance Guide.

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**13. INVOICE REQUIREMENTS:**

- (a) In order to receive payment, the Contractor must submit an original invoice to the office designated in the purchase order as the "Bill To" address. To be a proper invoice, the invoice must include the following information and/or attachments:
  - (1) Name and address of the Contractor as designated in this Contract.
  - (2) The Contractor's Texas Identification Number (TIN) as designated in this Contract.
  - (3) The Contractor's invoice remittance address as designated in this Contract.
  - (4) The purchase order number authorizing the delivery of products or services.
  - (5) A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).
- (b) If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information.
- (c) If an invoice does not meet this section's requirements or if the Contractor fails to give proper notice of a price increase (*see Paragraph 15 "NOTIFICATION OF PRICE INCREASE"*), the State will send the Contractor written notice with the improper invoice to the address designated for receipt of purchase orders within twenty-one (21) calendar days after receipt of the invoice. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice.

**14. AUDIT REQUIREMENTS:**

In addition to and without limitation on the other audit provisions of this Contract, pursuant to §2262.003, Texas Government Code, the state auditor may conduct an audit or investigation of the Contractor or any other entity or person receiving funds from the state directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds by the Contractor or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Contractor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Contract may be amended unilaterally by CPA to comply with any rules and procedures of the state auditor in the implementation and enforcement of §2262.003, Texas Government Code. The Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.

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**15. NOTIFICATION OF PRICE INCREASES:**

For price increases authorized under this contract, notification of such must be given to the CPA and to the purchase order "bill to" address contained in the applicable purchase order(s) for any orders affected by the increase (e.g., existing leases, licenses, or annual maintenance programs). The Contractor must give these notices no later than thirty (30) calendar days before the effective date of the price increase. This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

**16. NON-APPROPRIATION OF FUNDS:**

This Contract and any order resulting from this Contract is subject to termination or cancellation, without penalty to the State, either in whole or in part, subject to the availability of state funds. If the Texas Legislature fails to continue funding for the payments due under a Purchase Order under this Contract, the Purchase Order will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, the State will not be liable to Contractor for any damages, which are caused or associated with such termination, or cancellation and the State will not be required to give prior notice.

**17. PUBLIC INFORMATION; SEARCH ENGINE KEYWORDS:**

- (a) Notwithstanding any provisions of this Contract to the contrary, Contractor understands that the State will comply with the Texas Public Information Act (Chapter 552, Texas Government Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Information, documentation and other material in connection with this Contract may be subject to public disclosure pursuant to the Texas Public Information Act.
- (b) The CPA maintains a TXMAS-only search engine on the TXMAS Web site. This search engine allows State Agencies and participating Local Government to search TXMAS contractor catalogs. The Contractor may submit to the CPA a list of keywords that directly relate to the Contractor's catalog items/services. The Contractor may update this list of keywords at its discretion during the term of this Contract.

The CPA, at its sole discretion, may review the keywords submitted by the Contractor. If the CPA determines that the keywords submitted do not directly relate to the Contractor's catalog items/services, the CPA may terminate this Contract in accordance with Paragraph 19, TERMINATION; SURVIVAL.

**18. TAX EXEMPTION:**

The State is exempt from State Sales tax and Federal Excise tax. Ordering entities will furnish Tax Exemption Certificate(s) to the Contractor upon request.

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**19. TERMINATION; SURVIVAL:**

The State or the Contractor may cancel this Contract, in whole or in part, without cause on thirty (30) calendar day's written notice. The Contract shall terminate upon later to occur of (1) the expiration of the Contractor's Federal Schedule Contract or (2) the physical completion of the last outstanding task or delivery of the final order under the Contract. All applicable service agreements that were entered into between the Contractor and the ordering entity under the terms and conditions of the Contract shall survive the cancellation or termination of the Contract.

**20. AUTOMATIC RENEWAL:**

This contract is automatically renewed on the date that GSA exercises the renewal option. All State of Texas terms and conditions will continue and apply to all renewal periods unless modified by mutual agreement.

**21. DELIVERIES:**

Unless stated otherwise in the Contractor's Federal Schedule Contract, all deliveries will be F.O.B. Destination.

**22. EQUAL EMPLOYMENT OPPORTUNITY:**

The Contractor shall comply with all Federal and Texas laws regarding equal employment opportunity.

**23. DRUG FREE WORKPLACE:**

The Contractor shall make a good faith effort to ensure that none of its employees are under the influence of or possess illegal drugs or alcohol or abuse prescription drugs while they are on State property.

**24. AMERICANS WITH DISABILITIES ACT:**

The Contractor shall comply with the requirements of the Americans with Disabilities Act.

**25. IMMIGRATION:**

The Contractor shall comply with the requirements of the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under this Contract.

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**26. CONTRACTOR AFFIRMATIONS:**

- (a) The Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted contract.
- (b) The Contractor certifies that, pursuant to 15 U.S.C. Sec. 1, *et seq.* and Tex. Bus. & Comm. Code Sec. 15.01, *et seq.*, neither the Contractor nor the firm, corporation, partnership, or institution represented by the Contractor, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business. The Contractor hereby assigns to the ordering entity any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States 15 U.S.C.A. §1, *et seq.* (1973) as amended, and the Texas Free Enterprise and Antitrust Act of 1983, Tex. Bus. & Comm. Code Sec. 15.01, *et seq.* (1983).
- (c) The Contractor certifies that the Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that the Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that the Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.
- (d) Pursuant to §231.006(d), Texas Family Code, regarding child support, the Contractor certifies that the individuals or business entity named in this Contract are not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment may be withheld if the certification is inaccurate. Furthermore, any Contractor subject to §231.006, Texas Government Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award.
- (e) Pursuant to §2155.004(a), Texas Government Code, the Contractor certifies that neither it nor any person or entity which will participate financially in the Contract has received compensation for participation in the preparation of specifications for this Contract. Under §2155.004, Texas Government Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and/or payment withheld if this certification is inaccurate.
- (f) **THE CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES,**

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**AND CPA, ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF THE CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. THE CONTRACTOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY CPA. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE THE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OF TEXAS OR CPA FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF CPA OR ITS EMPLOYEES.**

- (g) The Contractor acknowledges and agrees that, to the extent the Contractor owes any debt, including but not limited to delinquent taxes or child support to the State of Texas, any payments or other amounts the Contractor is otherwise owed under or related to any order resulting from this Contract may be applied by CPA toward any debt the Contractor owes the State of Texas until the debt is paid in full. These provisions are effective at any time the Contractor owes any such debt or delinquency. The Contractor shall comply with rules adopted by CPA under §§403.055, 403.0551, and 2252.903, Texas Government Code, and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.
  
- (h) The Contractor certifies that this Contract is in compliance with §669.003, Texas Government Code, relating to contracting with executive head of a state agency. If §669.003, Texas Government Code applies, the Contractor will complete the following information in order for the offer to be evaluated:

Name of Former executive: \_\_\_\_\_

Name of State Agency: \_\_\_\_\_

Date of separation from State Agency: \_\_\_\_\_

Position with the Contractor: \_\_\_\_\_

Date of Employment with the Contractor: \_\_\_\_\_

- (i) To the extent applicable, in accordance with §2155.4441, Texas Government Code, the Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

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- (j) The Contractor certifies that it has no actual or potential conflicts of interest with CPA in entering into the Contract, and that the Contractor entering into such Contract will not reasonably create an appearance of impropriety.
- (k) The Contractor certifies that payment to the Contractor and the Contractor's receipt of appropriated or other funds under this Contract are not prohibited by §556.005 or §556.008, Texas Government Code.
- (l) Under §2155.006(b), Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by §39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by §39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under §2155.006, Texas Government Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract and any order resulting from this Contract may be terminated and payment withheld if this certification is inaccurate.
- (m) The Contractor agrees that each of the above referenced affirmations apply to and is for the benefit of the ordering entities. Furthermore, the Contractor agrees that by accepting an order under this Contract the Contractor certifies to the ordering entity that the above listed affirmations are true and correct with respect to the specific ordering entity.

**27. PUBLICITY:**

The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without the prior, written consent of the State.

**28. TRAINING REQUIREMENTS:**

The Contractor will send at least one corporate representative and at least one dealer/distributor representative from each authorized dealer/distributor which is new to TXMAS, for training on TXMAS procedures upon receiving award of a TXMAS contract. The TXMAS Program in Austin, Texas will provide training. Training dates, location and times will be coordinated with the TXMAS Program.

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**29. ASSIGNMENT:**

The Contractor will not assign this Contract without the written consent of the State.

**30. NOTICES:**

Any written notices required under this Contract shall be sent to the party at the respective address indicated below:

- (a) The address for the Contractor shall be the address specified on Page 1 of this Contract.
- (b) The address for CPA shall be as follows:

*for hand delivery:*

Texas Comptroller of Public Accounts  
Attn: Director of Texas Procurement and Support Services Division  
1711 San Jacinto Blvd., Room 104  
Austin, TX 78701

*for U.S. mail:*

Texas Comptroller of Public Accounts  
Attn: Director of Texas Procurement and Support Services Division  
P.O. Box 13186  
Austin, TX 78711-3186

Notices will be by either hand delivery or by U.S. Mail, certified, return receipt requested, addressed to the appropriate foregoing address. Notice will be effective on receipt by the affected party. The Contractor and CPA agree that either party may change the designated notice address in this Paragraph by written notification to the other party.

**31. DISPUTE RESOLUTION:**

- (a) Chapter 2260, Texas Government Code (“Chapter 2260”) prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, CPA has adopted rules under Chapter 2260 for CPA’s Texas Procurement and Support Services Division, codified at 34 Texas Administrative Code §20.384, and may adopt revisions to these rules throughout the term of this Contract, including any extensions. The Contractor and CPA shall comply with such rules.

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- (b) Disputes arising between an ordering entity and the Contractor shall be resolved in accordance with the dispute resolution process of the ordering entity that is not inconsistent with Chapter 2260. CPA shall not be a party to any such dispute unless CPA, the ordering entity, and the Contractor agree in writing.

**32. AMENDMENT:**

- (a) This Contract may be amended only upon written agreement between CPA and the Contractor, but in no case shall this Contract be amended so as to make it conflict with the laws of the State of Texas.
- (b) No additional term or condition in a purchase order issued by an ordering entity may weaken a term or condition of this Contract. However, additional terms and conditions that do not weaken the terms or conditions of this Contract and are acceptable to the Contractor may be added to the purchase order and given effect.

**33. NO WAIVER:**

No provision of the Contract will constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in the Contract or otherwise available to the State by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

**34. HEADINGS:**

The headings used in this Contract are for convenience only and will not be used in interpreting this Contract.

**35. ORDER OF PRIORITY:**

If there is any inconsistency or conflict between this document and any provision of any document incorporated by reference, this document will prevail.

**36. ENTIRE AGREEMENT:**

This Contract consists of the Contractor's Schedule Contract (*see Paragraph 2 "COMPOSITION OF CONTRACT"*), this Contract document together with Attachments A, B, and C (which are incorporated herein by this reference), the Contractor's State Offer Letter, and, if applicable, the Contractor's letter(s) designating dealers and/or distributors, and any price lists or catalogs specifically mentioned elsewhere in this Contract. The foregoing constitutes the entire agreement between the parties, and any changes or modifications to this Contract must be in writing.

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**37. GOVERNING LAW, VENUE:**

This Contract is governed by and will be construed under and in accordance with the laws of the State of Texas, and venue for any dispute will be in a court of competent jurisdiction in Travis County, Texas.

**38. SEVERABILITY:**

In the event that any term, provision, covenant, or condition of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

**TO SHOW THEIR AGREEMENT**, the parties have caused this Contract to be executed by their undersigned, duly authorized representatives on the date(s) below and this Contract is effective as of the date of signature by the State.

**State of Texas,  
Texas Comptroller of Public Accounts**

**Contractor**

BY 

BY 

NAME Martin A. Hubert

NAME Gregory Smith

TITLE Deputy Comptroller

TITLE Executive Vice President

DATE 8/25/09

DATE 08/24/2009

To Prospective Texas Multiple Award Schedule (TXMAS) Vendors

Subject: Historically Underutilized Business (HUB)  
Good Faith Effort Certification

As addressed in the basic Contract Terms and Conditions, contractors are strongly encouraged to engage the services of Texas Certified HUBs as distributors or dealers whenever possible to promote full and equal business opportunities and to assist state agencies in meeting the goals specified in the State of Texas Disparity Study. The decision to utilize the services of a currently Certified Texas HUB must be based on a good faith effort and as a potential contractor you are required to show documented evidence that an active participatory role for a HUB entity was considered. Should you elect to use the services of a Minority Business Enterprise (MBE) or Disadvantaged Business Enterprise (DBE) that may be eligible for Texas Hub certification, arrangements can be made to expedite the application process.

Please answer the following questions by selecting the response that applies to your good faith effort decision. Check the appropriate response(s).

- YES  NO  1. Are the services of a Certified Texas HUB being utilized to perform the contract referred to in the Terms and Conditions? \*\*
- YES  NO  2. Are the services of a MBE/DBE or equivalent that may be eligible for Texas HUB certification being utilized to perform the contract referred to in the Terms and Conditions?
- YES  NO  3. Will a Small Business, as defined by regulations of the Small Business Administration (SBA) in 13 C.F.R., Section 121.201, perform the basic contract as awarded by the General Services Administration (GSA)?
- YES  NO  4. Will the contract be performed by a company, under existing agreements approved by GSA, that includes Small Business/MBE/DBE/HUB participation?

Note: This document will become an attachment to the Contract Terms and Conditions and is affirmed by the signature on the Contract Terms and Conditions.

\*\* The attached randomly selected list of Certified Texas HUBs dealing in the goods and services included in this multiple award schedule contract opportunity should be considered in the selection/decision process.