

CAMINO REAL REGIONAL MOBILITY AUTHORITY

Policies and Procedures Governing the Procurement of Goods and Services

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CAMINO REAL REGIONAL MOBILITY AUTHORITY

Policies and Procedures Governing the Procurement of Goods and Services

SECTION 1. STATEMENT OF GENERAL POLICY.

It is the policy of the Camino Real Regional Mobility Authority (the "Authority") that all Authority procurements shall be based solely on economic and business merit in order to best promote the interests of the citizens of the region served by the Authority. Notwithstanding anything within this policy to the contrary, for projects for which federal or state funding is utilized, the Authority will comply with all applicable federal regulations.

In addition to Authority procurements being undertaken pursuant to these policies, the Authority and one or more local governments in the region may agree that the Authority will administer solicitations for procurement of goods and services for such local governments. For a solicitation conducted by the Authority on behalf of a local government, the local government shall be solely responsible for reviewing bidder qualifications and verifying accuracy of submitted bids and making the tabulations of submitted bids. The final recommendation and any definitive contract or agreement resulting from a solicitation conducted by the Authority shall be made by the staff of the local government. The final selection for award of a contract shall be made by the governing board of the local government.

SECTION 2. CONFLICT OF INTEREST.

- 2.1. In addition to any other requirements or restrictions imposed by state law, a member of the Board of Directors or an employee or agent of the Authority shall not: (a) contract with the Authority or, without disclosure and recusal, be directly or indirectly interested in a contract with the Authority for the sale of property to the Authority; (b) accept or solicit any gift, favor, or service that might reasonably tend to influence that Board member, employee or agent in the making of procurement decisions or that the Board member, employee or agent knows or should have known is being offered with the intent to influence the Board member's, employee's or agent's making of procurement decisions; or (c) accept other compensation that could reasonably be expected to impair the Board member's, employee's or agent's independence of judgment in the making of procurement decisions. The Board and employees are explicitly prohibited from accepting any meals, gifts, or other items of value from potential vendors during pending procurements of the CRRMA involving such potential vendors. Board members and employees are also prohibited from accepting meals, gifts, or other items of value from those individuals and firms reasonably expected to become a potential vendor to the Authority.
- 2.2 A bidder shall not be eligible to contract with the Authority if a Board member, employee, or agent is related to the bidder within the second degree of consanguinity or affinity, as determined under Chapter 573, Government Code. A

bidder shall be required to complete a conflict of interest disclosure statement disclosing any business or familial relationships with Board members, employees, or agents of the Authority, which may disqualify the bidder from consideration.

SECTION 3. DISADVANTAGED BUSINESS PARTICIPATION; COMPLIANCE WITH POLICY.

Disadvantaged Business Enterprises will be encouraged to participate in the procurement process. If the Authority adopts a policy regarding Disadvantaged Business Enterprises, all procurements shall comply with such policy.

SECTION 4. DEFINITIONS.

As used in this policy, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

Available bidding capacity: Bidding capacity less uncompleted work under a construction or building contract.

Authority: The Camino Real Regional Mobility Authority.

Bid or quote: The response to a request for the pricing of products, goods, or services (other than professional services or certain consulting services) that the Authority proposes to procure.

Bid documents: Forms promulgated by the Authority which the bidder completes and submits to the Authority to document the bidder's bid on a contract to be let by the Authority. Bid documents promulgated by the Authority for a procurement will include the following information: (i) the location and description of the proposed work; (ii) an estimate of the various quantities and kinds of work to be performed and/or materials to be furnished; (iii) a schedule of items for which unit prices are requested; (iv) the time within which the work is to be completed; (v) any special provisions and special specifications; (vi) the amount of bid guaranty, if any, required; and (vii) the Authority's goals regarding the participation in the contract or in subcontracts let under the contract by Disadvantaged Business Enterprises, in accordance with the Authority's policies regarding such participation.

Bid guaranty: The security designated in the bid documents for a construction or building contract to be furnished by the bidder as a guaranty that the bidder will enter into a contract if awarded the work.

Bidder: An individual, partnership, limited liability company, corporation or any combination submitting a bid, quote, or offer of goods or services.

Bidding capacity: The maximum dollar value a contractor may have under a construction or building contract at any given time, as determined by the Authority.

Board: The Board of Directors of the Authority.

Building contract: A contract for the construction or maintenance of an Authority building, toll plaza, or appurtenant facilities or other transportation project.

Comprehensive Development Agreement: An agreement with a private entity that at a minimum provides for the design and construction of a transportation project and

may also provide for financing, acquisition, maintenance, or operation of a transportation project.

Construction contract: A contract for the construction, reconstruction, maintenance, or repair of a segment of a transportation project, including a contract let to preserve and prevent further deterioration of a transportation project.

Consulting service: The service of advising or preparing studies or analyses for the Authority under a contract that does not involve the traditional relationship of employer and employee. Except in connection with comprehensive development agreements consulting services may not be procured under a construction or building contract, Consulting services are not professional services or general goods and services as defined by this policy.

City of the Authority: The City of El Paso, as the geographic boundary of the Authority.

Emergency: Any situation or condition affecting a transportation project resulting from a natural or man-made cause, which poses an imminent threat to life or property of the traveling public or which substantially disrupts or may disrupt the safe and efficient flow of traffic and commerce or which has caused unforeseen damage to machinery, equipment or other property which would substantially interfere with or prohibit the collection of tolls in accordance with the Authority's bonding obligations and requirements.

Executive Director: The Executive Director of the Authority or any individual designated by the Board to act as the chief administrative officer of the Authority.

Federal-aid project: The construction, reconstruction, maintenance, or repair of a segment of a transportation project, including a contract let to preserve and prevent further deterioration of a transportation project, funded in whole or in part with funds provided by the government of the United States or any department thereof.

General goods and services: Goods, services, equipment, personal property, and any other item procured by the Authority in connection with the fulfillment of its statutory purposes that are not procured under a construction or building contract or that are not consulting services or professional services as defined by this policy.

Highway: A road, highway, farm-to-market road, or street under the supervision of a state or political subdivision of the State.

Intermodal hub: A central location where cargo containers can be easily and quickly transferred between trucks, trains, and airplanes.

Lowest best bidder: The lowest responsible bidder on a contract that complies with the Authority's criteria for such contract, as described in this policy.

Materially unbalanced bid: A bid, as may be more particularly defined in the bid documents, on a construction or building contract which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Authority.

Mathematically unbalanced bid: A bid, as may be more particularly defined in the bid documents, on a construction or building contract containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

Official newspaper of the Authority: A general circulation newspaper published in the county of the Authority. If there are multiple newspapers which are published in the county of the Authority, the Board of Directors shall designate which one is the official newspaper of the Authority.

Professional services: Services which political subdivisions of the State must procure pursuant to the Professional Services Procurement Act, which are services defined by state law of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, professional nursing, or forensic science, or services provided in connection with the employment or practice of a person who is licensed or registered as a certified public accountant, an architect, a landscape architect, a land surveyor, a physician (including a surgeon), an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, a registered nurse, or a forensic analyst or forensic science expert. Except in connection with a comprehensive development agreement, professional services may not be procured under a construction or building contract.

Professional Services Procurement Act: Subchapter A of Chapter 2254 of the Texas Government Code, as amended from time to time.

Public Utility Facility:

- (a) a water, wastewater, natural gas, petroleum pipeline, or associated equipment;
- (b) an electric transmission or distribution line or associated equipment; or
- (c) telecommunications information services, or cable television infrastructure or associated equipment, including fiber optic cable, conduit, and wireless communications facilities.

Salvage property: Personal property (including, without limitation, supplies, equipment, and vehicles), other than items routinely discarded as waste, that through use, time, or accident is so damaged, used, consumed, or outmoded that it has little or no value to the Authority.

Surplus property: Personal property (including, without limitation, supplies, equipment, and vehicles) that is not currently needed by the Authority and is not required for the Authority's foreseeable needs. The term includes used or new property that retains some usefulness for the purpose for which it was intended or for another purpose.

State: The State of Texas.

System: A transportation project or a combination of transportation projects designated as a system by the Board in accordance with Texas Transportation Code § 370.034.

Transportation Project: Includes a(n):

- (a) turnpike project;
- (b) system;
- (c) passenger or freight rail facility, including (i) tracks; (ii) a rail line; (iii) switching, signaling, or other operating equipment; (iv) a depot; (v) a locomotive; (vi) rolling stock; (vii) a maintenance facility; and (viii) other real and personal property associated with a rail operation.
- (d) roadway with a functional classification greater than a local road or rural minor collector;
- (e) bridge;

- (f) ferry;
- (g) airport, other than an airport that on September 1, 2005, was served by one or more air carriers engaged in scheduled interstate transportation, as those terms were defined by 14 C.F.R. Section 1.1 on that date;
- (h) pedestrian or bicycle facility;
- (i) intermodal hub;
- (j) automated conveyor belt for the movement of freight;
- (k) border crossing inspection station, including: (i) a border crossing inspection station located at or near an international border crossing; (ii) a border crossing inspection station located at or near a border crossing from another state of the United States and not more than 50 miles from an international border;
- (l) air quality improvement initiative;
- (m) public utility facility;
- (n) transit system;
- (o) parking area, structure, or facility, or a collection device for parking fees;
- (p) projects and programs listed in the most recently approved state implementation plan for the area covered by the Authority, including an early action compact;
- (q) improvements in a transportation reinvestment zone designated under Subchapter E, Chapter 222;
- (r) port security, transportation, or facility projects eligible for funding under Section 55.002; and
- (s) aerial cable car or aerial tramway for the transportation of persons or property, or both, that is located in the jurisdiction of an authority created under Section 370.031(c).

Turnpike Project: A highway of any number of lanes, with or without grade separations, owned or operated by the Authority and any improvement, extension or expansion to the highway, including:

- (a) an improvement to relieve traffic congestion or promote safety;
- (b) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, service road, ramp, or service station;
- (c) an administration, storage, or other building the Board considers necessary to operate the project;
- (d) property rights, easements and interests the Board acquires to construct or operate the project;
- (e) a parking area or structure, rest stop, park, and any other improvement or amenity the Board considers necessary, useful, or beneficial for the operation of a turnpike project; and
- (f) a toll-free facility that is appurtenant to and necessary for the efficient operation of a turnpike project, including a service road, access road, ramp, interchange, bridge, or tunnel.

TxDOT: The Texas Department of Transportation.

SECTION 5. CONSTRUCTION AND BUILDING CONTRACTS.

5.1. Competitive Bidding. A contract requiring the expenditure of public funds for the construction or maintenance of the Authority's transportation projects may be let by competitive bidding in which the contract is awarded to the lowest responsible bidder that complies with the Authority's criteria for such contract, and such bidder shall constitute the lowest best bidder in accordance with this section. Bidding for procurements made by competitive bidding will be open and unrestricted, subject to the procedures set forth in this policy.

5.2. Qualification of Bidders. A potential bidder must be qualified to bid on construction contracts of the Authority. Unless the Authority elects, in its sole discretion, to separately qualify bidders on a construction project, only bidders qualified by TxDOT to bid on construction or maintenance contracts of TxDOT will be deemed qualified by the Authority to bid on the Authority's construction contracts. Further, bidders that have been determined by the Authority to have been in default under a CRRMA contract are not eligible to bid on an Authority construction contract for up to seven (7) years from such determination of default. At its election, the Authority may waive this subsection with respect to bidders on building contracts.

5.3 Qualifying with the Authority.

(a) If, in its sole discretion, the Authority elects to separately qualify bidders on a construction project, the Authority will require each potential bidder not already qualified by TxDOT to submit to the Authority an application for qualification containing:

- (1) a confidential questionnaire in a form prescribed by the Authority, which may include certain information concerning the bidder's equipment, experience, references as well as financial condition;
- (2) the bidder's current audited financial statement in form and substance acceptable to the Authority; and
- (3) a reasonable fee to be specified by the Authority to cover the cost of evaluating the bidder's application.

(b) An audited financial statement requires examination of the accounting system, records, and financial statements of the bidder by an independent certified public accountant in accordance with generally accepted auditing standards. Based on the examination, the auditor expresses an opinion concerning the fairness of the financial statements and conformity with generally accepted accounting principles.

(c) Upon the recommendation of the Executive Director and with the concurrence of the board of Directors, the Authority may waive the requirement that a bidder's financial statement be audited if the estimated amount of the contract is one-million dollars (\$1,000,000.00) or less. A bidder with no prior experience in construction or maintenance shall not receive a bidding capacity of more than one hundred thousand dollars (\$100,000.00).

(d) The Authority will advise the bidder of its qualification and approved bidding capacity or of its failure to qualify. A bidder qualified by the Authority will remain qualified at its approved bidding capacity for twelve (12) months from the date of the bidder's financial statement; provided, however, that the Authority may require updated audited information at any time if circumstances develop which might alter the bidder's financial condition, ownership structure, affiliation status, or ability to operate as an ongoing concern, and the Authority may revoke or modify the bidder's qualification and

approved bidding capacity based on such updated information. All such decisions concerning bidder qualifications shall be at the Authority's sole discretion.

5.4. Notice of Contract Letting.

(a) Each notice of contract letting must provide:

- (1) the date, time, and place where contracts will be let and bids opened;
- (2) the address and telephone number from which prospective bidders may request bid documents; and
- (3) a general description of the type of construction, services, or goods being sought by the Authority.

(b) The Authority shall post notices of contract lettings on its website for at least two (2) weeks before the date set for letting of a contract.

(c) Notice of contract letting shall also be published in the officially designated newspaper of the Authority at least once, and no less than two (2) weeks before the date set for letting of the contract.

(d) The Authority may also publish notice of contract lettings in the *Texas Register*, trade publications, or such other places that the Authority determines will enhance competition for the work.

(e) The date specified in the notice may be extended if the Executive Director, in his or her sole discretion, determines that the extension is in the best interest of the Authority. All bids, including those received before an extension is made, must be opened at the same time.

(f) As a courtesy the Authority will attempt to post notices of contract lettings on its website, as well as any addenda thereto. Potential bidders and interested parties should not, however, rely on the website for notices and addenda, as the notice required under subparagraphs (b) and (c) above shall constitute the only official notice.

5.5. Bid Documents. The Authority will prepare a set of bid documents for each construction or building contract to be let through the procedures of this section.

5.6. Issuance of Bid Documents.

Except as otherwise provided in this policy, the Authority will issue bid documents for a construction contract or building contract upon request and only after proper notice has been given regarding the contract letting. A request for bid documents for a federal-aid project must be submitted in writing and must include a statement in a form prescribed by the Authority certifying whether the bidder is currently disqualified by an agency of the federal government as a participant in programs and activities involving federal financial and non-financial assistance and benefits. A request for bid documents for any other construction or building contract may be made orally or in writing. Unless otherwise prohibited under this policy, the Authority will, upon receipt of a request, issue bid documents for a construction contract as follows:

- (a) to a bidder qualified by TxDOT, if the estimated cost of the project is within that bidder's available bidding capacity as determined by TxDOT;
- (b) to a bidder qualified by the Authority, if the estimated cost of the project is within that bidder's available bidding capacity as determined by the Authority; and
- (c) to a bidder who has substantially complied with the Authority's requirements for qualification, as determined by the Authority.

5.7. Withholding Bid Documents. The Authority will not issue bid documents for a construction contract if:

- (a) the bidder is suspended or debarred from contracting with TxDOT or the Authority;
- (b) the bidder is prohibited from rebidding a specific project because of default of the first awarded bid;
- (c) the bidder has not fulfilled the requirements for qualification under this policy, unless the bidder has substantially complied with the requirements for qualification, as determined by the Authority;
- (d) the bidder is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits, and the contract is for a federal-aid project; or
- (e) the bidder or its subsidiary or affiliate has received compensation from the Authority to participate in the preparation of the plans or specifications on which the bid or contract is based.

5.8. Completion and Submission of Bid Documents.

- (a) At the option of the Authority, a pre-bid conference may be held before opening bids to allow potential bidders to seek clarification regarding the procurement and/or the bid documents. Alternatively, bidders may submit written requests for clarification.
- (b) Bidders shall complete all information requested in bid documents by typing, printing by computer printer, or printing in ink. The bidder shall submit a unit price, expressed in numerals, for each item for which a bid is requested (including zero dollars and zero cents, if appropriate), except in the case of a regular item that has an alternate bid item. In such case, prices must be submitted for the base bid or with the set of items of one or more of the alternates. Unit prices shown on acceptable computer printouts will be the official unit prices used to tabulate the official total bid amount and used in the contract if awarded.
- (c) Each set of bid documents shall be executed in ink in the complete and correct name of the bidder making the bid and shall be signed by the person or persons authorized to bind the bidder.
- (d) If required by the bid documents, the bidder must submit a bid guaranty with the bid. The bid guaranty shall be in the amount specified in the bid documents, shall be payable to the Authority, and shall be in the form of a cashier's check, money order, or teller's check issued by a state or national bank, savings and loan association, or a state or federally chartered credit union (collectively referred to as "bank"). The Authority will not accept cash, credit cards, personal checks or certified checks, or other types of money orders. Bid bonds may be accepted at the sole discretion of the Authority. Failure to submit the required bid guaranty in the form set forth in this subsection shall disqualify a bidder from bidding on the project described in the bid documents.
- (e) A bid on a federal-aid project shall include, in a form prescribed by the Authority, a certification of eligibility status. The certification shall describe any suspension, debarment, voluntary exclusion, or ineligibility determination actions by an agency of the federal government, and any indictment, conviction, or civil judgment involving fraud or official misconduct, each with respect to the bidder or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project

director/supervisor, manager, auditor, or a position involving the administration of federal funds; such certification shall cover the three-year period immediately preceding the date of the bid. Information adverse to the bidder as contained in the certification will be reviewed by the Authority and by the Federal Highway Administration, and may result in rejection of the bid and disqualification of the bidder.

(f) The bidder shall place each completed set of bid documents in a sealed envelope which shall be clearly marked "Bid Documents for _____" (name of the project or service). When submitted by mail, this envelope shall be placed in another envelope which shall be sealed and addressed as indicated in the notice. Bids must be received at the location designated in the notice on or before the hour, as established by the official clock of the Authority, and date set for the receipt. The official clock at the place designated for receipt of bids shall serve as the official determinant of the hour for which the bid shall be submitted and shall be considered late.

5.9. Revision of Bid by Bidder. A bidder may change a bid price before it is submitted to the Authority by changing the price and initialing the revision in ink. A bidder may change a bid price after it is submitted to the Authority by requesting return of the bid in writing prior to the expiration of the time for receipt of bids. The request must be made by a person authorized to bind the bidder. The Authority will not accept a request by telephone, telegraph, or electronic mail, but will accept a properly signed facsimile request. The revised bid must be resubmitted prior to the time specified for the close of the receipt of bids.

5.10. Withdrawal of Bid. A bidder may withdraw a bid by submitting a request in writing before the time and date of the bid opening. The request must be made by a person authorized to bind the bidder. The Authority will not accept telephone, telegraph, or electronic mail requests, but will accept a properly signed facsimile request.

5.11. Acceptance, Rejection, and Reading of Bids. Bids will be opened and read at a public meeting held at the time, date and place designated in the notice. Only the person so designated by the Authority shall open bids on the date specified in the notice, or as may have been extended by direction of the Executive Director. The Authority, acting through the Executive Director or the Executive Director's designee, will not accept and will not read a bid if:

- (a) the bid is submitted by an unqualified bidder;
- (b) the bid is in a form other than the official bid documents issued to the bidder;
- (c) the form and content of the bid do not comply with the requirements of the bid documents and/or subsection 5.8;
- (d) the bid, and if required, federal-aid project certification, are not signed;
- (e) the bid was received after the time or at some location other than specified in the notice or as may have been extended;
- (f) the bid guaranty, if required, does not comply with subsection 5.8;
- (g) the bidder did not attend a specified mandatory pre-bid conference, if required under the bid documents;
- (h) the proprietor, partner, majority shareholder, or substantial owner is thirty (30) or more days delinquent in providing child support under a court order or a written repayment agreement;
- (i) the bidder was not authorized to be issued a bid under this policy;

- (j) the bid did not otherwise conform with the requirements of this policy; or
- (k) more than one bid involves a bidder under the same or different names.

5.12. Tabulation of Bids. Except for lump sum building contracts bid items, the official total bid amount for each bidder will be determined by multiplying the unit bid price written in for each item by the respective quantity and totaling those amounts. Bid entries such as "no dollars and no cents" or "zero dollars and zero cents" will be interpreted to be one-tenth of a cent (\$.001) and will be entered in the bid tabulation as \$.001. Any entry less than \$.001 will be interpreted and entered as \$.001. If a bidder submits both a completed set of bid documents and a properly completed computer printout of unit bid prices, the Authority will use the computer printout to determine the total bid amount of the bid. If the computer printout is incomplete, the Authority will use the completed bid documents to determine the total bid amount of the bid. If a bidder submits two computer printouts reflecting different totals, both printouts will be tabulated, and the Authority will use the lowest tabulation. If a unit bid price is illegible, the Authority will make a documented determination of the unit bid price for tabulation purposes. If a unit bid price has been entered for both the regular bid and a corresponding alternate bid, the Authority will determine the option that results in the lowest total cost to the Authority and tabulate as such. If both the regular and alternate bids result in the same cost to the Authority, the Authority will select the regular bid item or items.

5.13. Award of Contract. Except as otherwise provided in this section 5, if the Authority does not reject all bids, it will award the contract to the lowest best bidder. In determining the lowest best bidder, in addition to price the Authority shall consider:

- (a) the bidder's ability, capacity, and skill to perform the contract or provide the service required;
- (b) the bidder's ability to perform the contract or provide the service promptly, or in the time required, without delay or interference;
- (c) the bidder's character, responsibility, integrity, reputation, and experience;
- (d) the quality of performance by the bidder of previous contracts or services;
- (e) the bidder's previous and existing compliance with laws relating to the contract or service; and
- (f) the sufficiency of the bidder's financial resources and ability to perform the contract or provide the service.

5.14. Rejection of Bids; Nonresident Bidders. The Authority, acting through the Executive Director or his designee, may reject any and all bids opened, read, and tabulated under this policy. It will reject all bids if:

- (a) there is reason to believe collusion may have existed among the bidders;
 - (b) the low bid is determined to be both mathematically and materially unbalanced;
 - (c) the lowest best bid is higher than the Authority's estimate and the Authority determines that re-advertising the project for bids may result in a significantly lower low bid or that the work should be done by the Authority; or
 - (d) the Board of Directors, acting on the recommendation of the Executive Director, determines, for any reason, that it is in the best interest of the Authority to reject all bids.
- In accordance with Texas Government Code, Chapter 2252, Subchapter A, the Authority will not award a contract to a nonresident bidder unless the nonresident underbids the

lowest best bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

5.15. Bid Protests.

(a) All protests relating to advertising of bid notices, alleged improprieties or ambiguities in bid documents, deadlines, bid openings and all other bid-related procedures must be made in writing and submitted to the Executive Director within five (5) days of the bid opening. Each protest must include the following:

- (1) the name and address of the protester, and the vendor it represents, if different;
- (2) the identification number, reference number, or other identifying criteria specified in the bid documents to identify the procurement in question;
- (3) a statement of the grounds for protest; and
- (4) all documentation supporting the protest.

(b) A decision and response to the protest will be prepared by the Executive Director within a reasonable time after receipt of a properly prepared written protest.

(c) Appeals of responses and decisions regarding protests must be made to the Board in writing, and must be filed with the Executive Director of the Authority, with a copy to the Chairman of the Board of Directors, within ten (10) days after the response and decision regarding the original protest are issued. Written appeals shall include all information contained in the original written protest, as well as any newly discovered documentation supporting the protest that was not reasonably available to the protester when the original protest was filed. Subject to all applicable laws governing the Authority, the decision of the Board regarding an appeal shall be final.

5.16. Contract Execution; Submission of Ancillary Items.

(a) Within the time limit specified by the Authority, the successful bidder must execute and deliver the contract to the Authority together with all information required by the Authority relating to the Disadvantaged Business Enterprises participation to be used to achieve the contract's Disadvantaged Business Enterprises goal as specified in the bid documents and the contract.

(b) After the Authority sends written notification of its acceptance of the successful bidder's documentation to achieve the Disadvantaged Business Enterprises goal, if any, the successful bidder must furnish to the Authority within the time limit specified by the Authority:

- (1) a performance bond and a payment bond, if required and as required by Texas Government Code, Chapter 2253, with powers of attorneys attached, each in the full amount of the contract price, executed by a surety company or surety companies authorized to execute surety bonds under and in accordance with state law;
- (2) a certificate of insurance on form ACORD-27 showing coverages in accordance with contract requirements; provided, however, that a successful bidder on a routine construction contract will be required to provide the certificate of insurance prior to the date the contractor begins work as specified in the Authority's order to begin work.

5.17. Unbalanced Bids. The Authority will examine the unit bid prices of the apparent low bid for reasonable conformance with the Authority's estimated prices. The Authority will evaluate, and may reject, a bid with extreme variations from the Authority's estimate, or where obvious unbalancing of unit prices has occurred.

5.18. Bid Guaranty. Not later than seven (7) days after bids are opened, the Authority will mail the bid guaranty of all bidders to the address specified on each bidder's bid documents, except that the Authority will retain the bid guaranty of the apparent lowest best bidder, second-lowest best bidder, and third-lowest best bidder, until after the contract has been awarded, executed, and bonded. If the successful bidder (including a second-lowest best bidder or third-lowest best bidder that ultimately becomes the successful bidder due to a superior bidder's failure to comply with these rules or to execute a contract with the Authority) does not comply with subsection 5.16 the bid guaranty will become the property of the Authority, not as a penalty but as liquidated damages, unless the bidder effects compliance within seven (7) days after the date the bidder is required to submit the bonds and insurance certificate under subsection 5.16. A bidder who forfeits a bid guaranty will not be considered in future bids for the same work unless there has been a substantial change in the design of the project subsequent to the forfeiture of the bid guaranty and the Board of Directors, upon request made in writing by bidder and received at such time that the Board may consider the request at a regularly scheduled board meeting prior to the due date for the bids approves of the submission of a bid by the bidder.

5.19 Progress Payments; Retainage and Liquidated Damages.

(a) In addition to other provisions required by the Authority, construction and building contracts will provide for the Authority to make progress payments, which shall be reduced by retainage, as work progresses and is approved by the Authority.

(b) Retainage shall be in the amount of five percent (5%) of the contract price until the entire work has been completed and accepted by the Board. Unless the Authority agrees otherwise in writing, retainage shall not bear interest or be segregated from other Authority funds. If the Authority agrees to segregate retainage in an interest-bearing account, the Authority may impose terms and conditions on such arrangement, including but not limited to, the following:

(1) retained funds must be deposited under the terms of a trust agreement with a state or national bank domiciled in Texas and approved by the Authority;

(2) all expenses incident to the deposit and all charges made by the escrow agent for custody of the securities and forwarding of interest shall be paid solely by the contractor;

(3) the Authority may, at any time and with or without reason, demand in writing that the bank return or repay, within 30 days of the demand, the retainage or any investments in which it is invested; and

(4) any other terms and conditions prescribed by the Authority as necessary to protect the interests of the Authority.

(c) Without limiting the Authority's right to require any other contract provisions, the Authority, at its sole discretion, may elect to require that a liquidated damages provision be made a part of any contract it enters into.

SECTION 6. PROFESSIONAL SERVICES.

6.1 General. Except as otherwise permitted by Transportation Code, Chapter 370, the Authority shall procure all professional services governed by the Professional Services Procurement Act in accordance with the requirements of that Act. In the event of any conflict between these policies and procedures and the Act, the Act shall control.

6.2 Selection of Provider; Fees.

(a) The Authority may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award based on the provider's:

(1) demonstrated competence and qualifications to perform the service, including pre-certification by TxDOT; and

(2) ability to perform the services for a fair and reasonable price.

(b) The professional fees under the contract:

(1) may be consistent with and must not be higher than the recommended practices and fees published by any applicable professional associations and which are customary in the area of the authority; and

(2) may not exceed any maximum provided by law.

6.3 Request For Qualifications. In order to evaluate the demonstrated competence and qualifications of prospective providers of professional services, the Authority shall invite prospective providers of professional services to submit their qualifications to provide such services as specified in a Request for Qualifications ("RFQ") issued by the Authority. Each RFQ for professional services shall describe the services required by the Authority, the criteria used to evaluate proposals, and the relative weight given to the criteria.

6.4 Notice of RFQs.

(a) Notice of the issuance of a RFQ for professional services must provide (1) the date, time, and place where responses to the RFQ will be opened, (2) the contact or location from which prospective professional service providers may request the RFQ, and (3) a general description of the type of professional services being sought by the Authority. Alternatively, the Authority may publish or otherwise distribute, in accordance with these procedures, the RFQ itself in lieu of publishing a notice of RFQ. Neither a notice of a RFQ for professional services, nor any RFQ itself shall require the submission of any specific pricing information for the specific work described in the RFQ, and may only require information necessary to demonstrate the experience, qualifications, and competence of the potential provider of professional services.

(b) The Authority shall publish on its website all notices of the issuance of a RFQ and/or the entirety of the RFQ itself at least two (2) weeks prior to the deadline for the responses.

(c) The Authority may also publish notice of the issuance of a RFQ, or the content of the RFQ itself, in an issue of the *Texas Register*, and in newspapers, trade journals, or other

such locations as the Authority determines will enhance competition for the provision of services.

(d) The date specified in the RFQ as the deadline for submission of responses may be extended if the Executive Director determines that the extension is in the best interest of the Authority.

6.5 Contract for Professional Services.

(a) In procuring professional services, the Authority shall:

(1) first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and

(2) then attempt to negotiate with that provider a contract at a fair and reasonable price.

(b) If a satisfactory contract cannot be negotiated with the most highly qualified provider of professional services, the Authority shall:

(1) formally end negotiations with that provider;

(2) select the next most highly qualified provider; and

(3) attempt to negotiate a contract with that provider at a fair and reasonable price.

(c) The Authority shall continue the process described in this section to select and negotiate with providers until a contract is entered into or until it determines that the services are no longer needed or cannot be procured on an economically acceptable basis.

SECTION 7. GENERAL GOODS AND SERVICES.

7.1 Approval of Board. Every procurement of general goods and services costing more than fifty thousand dollars (\$50,000.00) shall require the approval of the Board, evidenced by a resolution adopted by the Board. A large procurement may not be divided into smaller lot purchases to avoid the dollar limits prescribed herein.

7.2. Purchase Threshold Amounts. The Authority may procure general goods and services costing fifty thousand dollars (\$50,000.00) or less by such method and on such terms as the Executive Director determines to be in the best interests of the Authority. General goods and services costing more than fifty thousand dollars (\$50,000.00) shall be procured using competitive bidding or competitive sealed proposals. A large procurement may not be divided into smaller lot purchases to avoid the dollar limits prescribed herein.

7.3 Competitive Bidding Procedures. Competitive bidding for general goods and services shall be conducted using the same procedures specified for the competitive bidding of construction contracts, except that:

(a) with respect to a particular procurement, the Executive Director may waive the qualification requirements for all prospective bidders;

(b) the Executive Director may waive the submission of payment or performance bonds (or both) and/or insurance certificates by the successful bidder if not otherwise required by law;

(c) notice of the procurement shall be published once at least two (2) weeks before the deadline for the submission of responses in the officially designated newspaper of the Authority, as well as on the Authority's website;

(d) in addition to advertisement of the procurement as set forth in subsection 7.3(c) above, the Authority may solicit bids by direct mail, telephone, *Texas Register* publication, advertising in other locations, or via the Internet. If such solicitations are made in addition to newspaper advertising, the prospective bidder may not be solicited by mail, telephone and internet or in any other manner, nor may the prospective bidder receive bid documents until such time that the advertisement has appeared on the Authority's website; and

(e) a purchase may be proposed on a lump-sum or unit price basis. If the Authority chooses to use unit pricing in its notice, the information furnished to bidder must specify the approximate quantities estimated on the best available information, but the compensation paid the bidder must be based on the actual quantities purchased.

7.4. Award Under Competitive Bidding.

(a) Contracts for general goods and services procured using competitive bidding shall be awarded to the lowest best bidder based on the same criteria used in awarding construction contracts, together with the following additional criteria:

(1) the quality and availability of the goods or contractual services to be provided and their adaptability to the Authority's needs and uses; and

(2) the bidder's ability to provide, in timely manner, future maintenance, repair parts, and service for goods being purchased.

(b) In accordance with Texas Government Code, Chapter 2252, Subchapter A, the Authority will not award a contract to a nonresident bidder unless the nonresident underbids the lowest best bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

7.5. Competitive Sealed Proposals.

(a) Request for Proposals. The Authority may solicit offers for provision of general goods and services by issuing a request for proposals ("RFP"). Each RFP shall contain the following information:

(1) the Authority's specifications for the good or service to be procured;

(2) an estimate of the various quantities and kinds of services to be performed and/or materials to be furnished;

(3) a schedule of items for which unit prices are requested;

(4) the time within which the contract is to be performed;

(5) any special provisions and special specifications; and

(6) the Authority's goals regarding the participation in the contract or in subcontracts let under the contract by Disadvantaged Business Enterprises. The Authority shall give public notice of a RFP in the manner provided for requests for competitive bids for general goods and services.

(b) Opening and Filing of Proposals; Public Inspection. The Authority shall avoid disclosing the contents of each proposal on opening the proposal and during negotiations

with competing offerors. The Authority shall file each proposal in a register of proposals, which, after a contract is awarded, is open for public inspection unless the register contains information that is excepted from disclosure as public information.

(c) Revision of Proposals. After receiving a proposal but before making an award, the Authority may permit an offeror to revise its proposal to obtain the best final offer. The Authority may discuss acceptable or potentially acceptable proposals with offerors to assess an offeror's ability to meet the solicitation requirements. The Authority may not disclose information derived from proposals submitted from competing offerors. The Authority shall provide each offeror an equal opportunity to discuss and revise proposals.

(d) Refusal of All Proposals. The Authority shall refuse all proposals if none of those submitted is acceptable.

(e) Contract Execution. The Authority shall submit a written contract to the offeror (the "first-choice candidate") whose proposal is the most advantageous to the Authority, considering price and the evaluation factors in the RFP. The terms of the contract shall incorporate the terms set forth in the RFP and the proposal submitted by the first choice candidate, but if the proposal conflicts with the RFP, the RFP shall control unless the Authority elects otherwise. If the Authority and the first choice candidate cannot agree on the terms of a contract, the Authority may elect not to contract with the first choice candidate, and at the exclusive option of the Authority, may submit a contract to the offeror ("second-choice candidate") whose proposal is the next most favorable to the Authority. If agreement is not reached with the second choice candidate, the process may be continued with other offerors in like manner, but the Authority shall have no obligation to submit a contract to the next highest-ranked offeror if the Authority determines at any time during the process that none of the remaining proposals is acceptable or otherwise within the best interest of the Authority.

7.6. Proprietary Purchases. If the Executive Director finds that the Authority's requirements for the procurement of a general good or service describe a product that is proprietary to one vendor and do not permit an equivalent product to be supplied, the Authority may solicit a bid for the general good or service solely from the proprietary vendor, without using the competitive bidding or competitive proposal procedures. The Executive Director shall justify in writing the Authority's requirements and shall submit the written justification to the Board. The written justification must (1) explain the need for the specifications; (2) state the reason competing products are not satisfactory; and (3) provide other information requested by the Board.

SECTION 8. CONSULTING SERVICES.

8.1. Contracting for Consulting Services. The Authority may contract for consulting services if the Executive Director reasonably determines that the Authority cannot adequately perform the services with its own personnel.

8.2. Selection Criteria. The Authority shall base its selection on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services.

8.3. Contract Amounts. The Authority may procure consulting services anticipated to cost no more than fifty thousand dollars (\$50,000.00) by such method and on such terms as the Executive Director determines to be in the best interests of the Authority. Without limiting the foregoing, the Executive Director may procure consulting services anticipated to cost no more than fifty thousand dollars (\$50,000.00) pursuant to a "single-source contract," if the Executive Director determines that only one prospective consultant possesses the demonstrated competence, knowledge, and qualifications to provide the services required by the Authority at a reasonable fee and within the time limitations required by the Authority. Consulting services anticipated to cost more than fifty thousand dollars (\$50,000.00) shall be procured by the Authority's issuance of either a Request for Qualifications ("RFQ") or a Request for Proposals ("RFP") as the Authority deems appropriate.

8.4 Request for Qualifications. Each RFQ prepared by the Authority shall invite prospective consultants to submit their qualifications to provide such services as specified in the RFQ. Each RFQ shall describe the services required by the Authority, the criteria used to evaluate proposals, and the relative weight given to the criteria. In procuring consulting services through issuance of a RFQ, the Authority shall follow the notices set forth in section 6 of these policies for the procurement of professional services.

8.5 Request for Proposals. Each RFP shall contain the following information:

- (a) the Authority's specifications for the service to be procured;
- (b) an estimate of the various quantities and kinds of services to be performed;
- (c) a schedule of items for which unit prices are requested;
- (d) the time within which the contract is to be performed;
- (e) any special provisions and special specifications; and
- (f) the Authority's goals regarding the participation in the contract or in subcontracts let under the contract by Disadvantaged Business Enterprises. The Authority shall give public notice of a RFP in the manner provided for requests for competitive bids for general goods and services.

In procuring consulting services through issuance of a RFP, the Authority shall follow the notices set forth in section 7 of these policies for the procurement of general goods and services.

8.6 Notice of RFQs and RFPs.

- (a) Notice of the issuance of a RFQ or RFP must provide (1) the date, time, and place where responses to the RFQ or RFP will be opened, (2) the address and telephone number from which prospective proposers may request the RFQ or RFP, and (3) a general description of the type of services being sought by the Authority. Alternatively, the Authority may publish and otherwise distribute, in accordance with these procedures, the RFQ or RFP itself in lieu of publishing a notice of issuance of a RFQ or RFP.
- (b) The Authority shall publish the notice of issuance of a RFQ or RFP on its website and shall either (1) publish notice of the issuance of a RFQ or RFP, or the content of the RFQ or RFP itself, in an issue of the *Texas Register*; or (2) publish in the officially designated newspaper of the Authority notice of the issuance of a RFQ or RFP, or the content of the RFQ or RFP itself, once at least two (2) weeks before deadline for the submission for responses in the officially designated newspaper of the Authority..

(c) The Authority may, but shall not be required to, solicit responses to a RFQ or RFP by direct mail, telephone, advertising in trade journals or other locations, or via the Internet. With regard to RFPs, if such solicitations are made in addition to the required publications, the prospective bidder may not be solicited by mail, telephone and internet or in any other manner, nor may the prospective bidder receive bid documents until such time that notice of the RFP has been made available on the Authority's website.

(d) The date specified in the RFQ or RFP as the deadline for submission of responses may be extended if the Executive Director determines that the extension is in the best interest of the Authority.

8.7. Opening and Filing of Responses; Public Inspection. The Authority shall avoid disclosing the contents of each response to a RFQ on opening the response and during negotiations with competing respondents. The Authority shall file each response in a register of responses, which, after a contract is awarded, is open for public inspection unless the register contains information that is excepted from disclosure as an open record.

8.8. Contract Negotiation and Execution.

(a) With regard to consulting services procured through issuance of a RFQ, the Authority shall submit a written contract to the respondent (the "first choice candidate") whose response best satisfies the Authority's selection criteria. If the Authority and the first choice candidate cannot agree on the terms of a contract, the Authority may terminate negotiations with the first choice candidate, and, at the exclusive option of the Authority, the Authority may enter into contract negotiations with the respondent ("second choice candidate") whose response is the next most favorable to the Authority. If agreement is not reached with the second choice candidate, the process may be continued with other respondents in like manner, but the Authority shall have no obligation to submit a contract to the next highest-ranked respondent if the Authority determines that none of the remaining responses is acceptable or that continuing with the procurement is not within the best interest of the Authority.

(b) With regard to consulting services procured through issuance of a RFP, the Authority shall submit a written contract to the offeror (the "first-choice candidate") whose proposal is the most advantageous to the Authority, considering price and the evaluation factors in the RFP. The terms of the contract shall incorporate the terms set forth in the RFP and the proposal submitted by the first choice candidate, but if the proposal conflicts with the RFP, the RFP shall control unless the Authority elects otherwise. If the Authority and the first choice candidate cannot agree on the terms of a contract, the Authority may elect not to contract with the first choice candidate, and at the exclusive option of the Authority, may submit a contract to the offeror ("second-choice candidate") whose proposal is the next most favorable to the Authority. If agreement is not reached with the second choice candidate, the process may be continued with other offerors in like manner, but the Authority shall have no obligation to submit a contract to the next highest-ranked offeror if the Authority determines at any time during the process that none of the remaining proposals is acceptable or otherwise within the best interest of the Authority.

8.9. Single-Source Contracts. If the Executive Director determines that only one prospective consultant possesses the demonstrated competence, knowledge, and qualifications to provide the

services required by the Authority at a reasonable fee and within the time limitations required by the Authority, consulting services from that consultant may be procured without issuing a RFQ or RFP. Provided, however, that the Executive Director shall justify in writing the basis for classifying the consultant as a single-source and shall submit the written justification to the Board. The justification shall be submitted for Board consideration prior to contracting with the consultant if the anticipated cost of the services exceeds fifty thousand dollars (\$50,000.00). If the anticipated cost of services is less than fifty thousand dollars (\$50,000.00), the Executive Director, with the prior approval of the Executive Committee, may enter into a contract for services and shall submit the justification to the Board at its next regularly scheduled board meeting.

8.10. Prior Employees. Except as otherwise provided by state or federal law or for those employment positions identified in a resolution of the Board, nothing shall prohibit the Authority from procuring consulting services from an individual who has previously been employed by the Authority or by any other political subdivision of the state or by any state agency; provided, that if a prospective consultant has been employed by the Authority, another political subdivision, or a state agency at any time during the two years preceding the making of an offer to provide consulting services to the Authority, the prospective consultant shall disclose in writing to the Authority the nature of his or her previous employment with the Authority, other political subdivision, or state agency; the date such employment was terminated; and his or her annual rate of compensation for the employment at the time of termination.

8.11. Mixed Contracts. This section 8 applies to a contract that involves both consulting and other services if the primary objective of the contract is the acquisition of consulting services.

SECTION 9. COMPREHENSIVE DEVELOPMENT AGREEMENTS.

9.1 Comprehensive Development Agreements Allowed. The Authority may enter into a comprehensive development agreement (CDA) with a private entity to construct, maintain, repair, operate, extend, or expand a transportation project. A CDA shall, at a minimum, provide for the design and construction of a transportation project, and may also provide for the financing, acquisition, maintenance, or operation of a transportation project. The Authority is also allowed to negotiate provisions relating to professional and consulting services provided in connection with a CDA.

9.2 Competitive Procurement Process For CDA. The Authority may either accept unsolicited proposals relating to a CDA or solicit proposals relating to a CDA in accordance with this section 9. The competitive bidding requirements for highway projects as specified under Chapter 223, Texas Transportation Code, and the Texas Professional Services Procurement Act (Chapter 2254, Texas Government Code) do not apply to a CDA.

9.3 Unsolicited Proposals.

(a) The Authority may accept unsolicited proposals for a project proposer to be developed through a CDA. An unsolicited proposal must be filed with the Authority and

be accompanied by a \$20,000.00 non-refundable review fee. An unsolicited proposal must include the following information:

- (1) the proposed transportation project location, scope, and limits;
- (2) information regarding the proposing entity's qualifications, experience, technical competence, and capability to develop the project;
- (3) a proposed financial plan for the proposed project that includes, at a minimum (A) projected project costs, and (B) proposed sources of funds; and
- (4) the identity of any member of, or proposed subconsultant for, the proposing entity or team who is also performing work, directly or as a subconsultant, for the Authority.

(b) Unsolicited proposals shall be reviewed by the Authority staff and/or consultants. The staff/consultants may request additional information from the proposer. Based on its review, the staff will make an initial recommendation to the Board (or a designated committee thereof) as to whether the Authority should authorize further evaluation of the unsolicited proposal.

(c) If the Authority authorizes further evaluation of an unsolicited proposal, then the Authority shall publish a request for qualifications (RFQ) in accordance with the requirements of section 9.4. Evaluation of proposals submitted in response to RFQs shall occur in accordance with the provisions of section 9.5.

9.4 Authority Solicitation of Proposals and Competing Proposals; Requests for Qualifications. The Authority may solicit proposals or competing proposals by issuing a RFQ relating to a CDA project. The Authority shall publish a RFQ (or a notice of availability of a RFQ) in the *Texas Register* and post it on the Authority's website.

(a) A RFQ issued by the Authority shall include the following information:

- (1) a description of the project;
- (2) criteria used to evaluate the proposals;
- (3) the relative weight given to the criteria; and
- (4) the deadline by which proposals must be received by the Authority.

(b) A proposal submitted in response to a RFQ issued under this section 9.4, or a competing proposal submitted in response to a RFQ issued under section 9.3(c) above, must include, at a minimum, the following:

- (1) information regarding the proposer's qualifications, experience, technical competence, and capability to develop the project;
- (2) a proposed financial plan for the proposed project that includes, at a minimum, (A) projected project costs, and (B) proposed sources of funds;
- (3) such additional information that the Authority requests within the RFQ;
- (4) the identity of any member of, or proposed subconsultant for, the proposing entity or team who is also performing work, directly or as a subconsultant, for the Authority; and
- (5) in the case of a competing proposal submitted in response to a RFQ published by the Authority after receipt of an unsolicited proposal, a \$20,000 non-refundable proposal review fee.

(c) The Authority may withdraw a RFQ at any time, and may then publish a new RFQ in accordance with this section 9.4.

9.5 Evaluation of Proposals Submitted in Response to a Request For Qualifications.

(a) The Authority shall review responses to a RFQ submitted in accordance with section 9.4 based on the criteria described in the RFQ. The Authority shall evaluate all proposals received, and shall determine which proposers will qualify to submit detailed proposals in accordance with the requirements of section 9.6. The Authority may include an interview as part of its evaluation process.

(b) The Authority must qualify at least two (2) private entities to submit detailed proposals in accordance with the procedures under section 9.6, unless the Authority does not receive more than one (1) proposal in response to a RFQ. If only one (1) entity responds to a RFQ (or no entity submits a response to a RFQ issued after receipt of an unsolicited proposal) the Authority may request a detailed proposal from, and may attempt to negotiate a CDA with, the sole proposer.

9.6 Requests For Detailed Proposals.

(a) The Authority shall issue a request for detailed proposals (RFDP) from all proposers qualified in accordance with section 9.5 above. The Authority shall mail a RFDP directly to the proposer's main address as designated in the response to the RFQ, and such RFDP must contain the following information:

- (1) the criteria which will be used to evaluate the detailed proposals;
- (2) the relative weight to be given to the criteria;
- (3) a stipulated amount to be paid to unsuccessful proposers subject to section 9.12 below; and
- (4) the deadline date by which proposals must be received.

(b) A RFDP under this section 9.6 may require proposers to provide information relating to the following:

- (1) the proposer's qualifications and demonstrated technical competence;
- (2) the feasibility of developing the project as proposed;
- (3) detailed engineering or architectural designs;
- (4) the proposer's ability to meet schedules;
- (5) costing methodology; and
- (6) any other information the Authority considers relevant or necessary to fully assess the project.

(c) The Authority may withdraw a RFDP at any time prior to the submission deadline for detailed proposals. In such event the Authority shall have no liability to the entities chosen to submit detailed proposals.

(d) In developing and preparing to issue a RFDP in accordance with section 9.6(a), the Authority may solicit input from entities qualified under section 9.5 or any other person.

(e) After the Authority has issued a RFDP under section 9.6(a), the Authority may solicit input from the proposers regarding alternative technical concepts.

9.7 Evaluation and Ranking of Detailed CDA Proposals. The Authority shall evaluate and rank each detailed proposal received based on the criteria described in the RFDP and shall identify the proposer whose proposal offers the best value to the Authority. The Authority may interview the proposers as part of its evaluation process.

9.8 Post-Submissions Discussions.

(a) After the Authority has evaluated and ranked the detailed proposals in accordance with section 9.7, the Authority may enter into discussions with the proposer whose proposal offers the apparent best value provided that the discussions must be limited to incorporation of aspects of other detailed proposals for the purpose of achieving the overall best value for the Authority, clarifications and minor adjustments in scheduling, cash flow, similar items, and other matters that have arisen since the submission of the detailed proposal.

(b) If at any point in discussions under subsection 9.8(a) above, it appears to the Authority that the highest-ranking proposal will not provide the Authority with the overall best value, the Authority may enter into discussions with the proposer submitting the next-highest ranking proposal.

(c) If, after receipt of detailed proposals, the Authority determines that development of a project through a CDA is not in the best interest of the Authority, or the Authority determines for any other reason that it does not desire to continue the procurement, the Authority may terminate the process and, in such event, it shall not be required to negotiate a CDA with any of the proposers.

9.9 Negotiations for CDA. Subsequent to the discussions conducted pursuant to section 9.8 and provided the Authority has not terminated or withdrawn the procurement, the Authority and the highest-ranking proposer shall attempt to negotiate the specific terms of a CDA.

(a) The Authority shall prescribe the general form of the CDA and may include any matter therein considered advantageous to the Authority.

(b) The Authority may establish a deadline for the completion of negotiations for a CDA. If an agreement has not been executed within that time, the Authority may terminate the negotiations, or, at its discretion, may extend the time for negotiating an agreement.

(c) In the event an agreement is not negotiated within the time specified by the Authority, or if the parties otherwise agree to cease negotiations, the Authority may commence negotiations with the second-ranked proposer or it may terminate the process of pursuing a CDA for the project which is the subject of the procurement process.

(d) Notwithstanding the foregoing, the Authority may terminate the procurement process, including the negotiations for a CDA, at any time upon a determination that continuation of the process or development of a project through a CDA is not in the Authority's best interest. In such event, the Authority shall have no liability to any proposer beyond the payment provided for under section 9.12 if detailed proposals have been submitted to the Authority.

9.10 CDA Projects with Private Equity Investment.

(a) If a project to be developed through a CDA involves an equity investment by the proposer, the terms to be negotiated by the Authority and the proposer may include, but shall not be limited to:

- (1) methods to determine the applicable cost, profit, and project distribution between the proposer and the Authority;
- (2) reasonable methods to determine and clarify toll rates or user fees;
- (3) acceptable safety and policing standards; and
- (4) other applicable professional, consulting, construction, operational and maintenance standards, expenses and costs.

(b) The Authority may only enter into a CDA with private equity investment if the project which is the subject of the CDA is identified in TxDOT's unified transportation program or is located on a transportation corridor identified in a statewide transportation plan.

(c) The Authority may not incur a financial obligation for a private entity that constructs, maintains, or operates a transportation project. A CDA must include a provision authorizing the Authority to purchase the interest of a private equity investor in a transportation project.

9.11 Authority Property Subject to a CDA. A transportation project (excluding a public utility facility) that is the subject of a CDA is public property and belongs to the Authority, provided that the Authority may lease rights-of-ways, grant easements, issue franchises, licenses, permits or any other lawful form of use to enable a private entity to construct, operate, and maintain a transportation project, including supplemental facilities. At the termination of any such agreement, the transportation project shall be returned to the Authority in a state of maintenance deemed adequate by the Authority and at no additional cost to the Authority.

9.12 Payment For Submission of Detailed CDA Proposals.

(a) The Authority shall pay an unsuccessful proposer that submits a detailed proposal in response to a RFDP under section 9.6 a stipulated amount of the final contract price for any costs incurred in preparing that detailed proposal. Such amount may not exceed the lesser of the amount identified in the RFDP or the value of any work product contained in the proposal that can, as determined by the Authority, be used by the Authority in the performance of its functions. Use by the Authority of any design element contained in an unsuccessful detailed proposal is at the sole risk and discretion of the Authority and does not confer liability on the recipient of the stipulated amount under this section.

(b) After payment of the stipulated amount, the Authority shall own the exclusive rights to, and may make use of, any work product contained in the detailed proposal, including technologies, techniques, methods, processes, and information contained in the project design. In addition, the work product contained in the proposal becomes the property of the Authority.

9.13 Confidentiality of Negotiations for CDAs. The Authority shall use its best efforts to protect the confidentiality of information generated and/or submitted in connection with the process for entering into a CDA to the extent permitted by Transportation Code §370.307. The Authority shall notify any proposer whose information is submitted in connection with the process for entering into a CDA is the subject of a Public Information Act request received by the Authority.

9.14 Performance and Payment Security.

(a) The Authority shall require any private entity entering onto a CDA to provide a performance and payment bond or an alternative form of security in an amount sufficient to insure the proper performance of the agreement and protect the Authority and payment bond beneficiaries who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material. A performance or payment bond or alternative form of security shall be in an amount equal to the cost of

constructing or maintaining the project, provided that if the Authority determines that it is impracticable for a private entity to provide security in such amount, the Authority shall set the amount of the bond or alternative form of security.

(b) An alternative form of security may not be utilized unless requested by the private entity proposing to enter into a CDA. Such request shall include an explanation as to why an alternative form of security is appropriate, the form of alternative security to be utilized, and the benefits and protections provided to the Authority through use of the requested form of alternative security. A decision on whether to accept alternative forms of security, in whole or in part, shall be at the sole discretion of the Authority.

(c) A payment or performance bond or alternative form of security is not required for that portion of a CDA that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.

(d) In no event may the amount of the payment security be less than the performance security.

(e) Alternative forms of security may be permitted or required in the following forms:

- (1) a cashier's check drawn on a financial entity specified by the Authority;
- (2) a U.S. Bond or Note;
- (3) an irrevocable bank letter of credit; or
- (4) any other form of security determined suitable by the Authority.

SECTION 10 – DESIGN-BUILD AND DESIGN-BUILD-FINANCE AGREEMENTS

This section is reserved for future use.

SECTION 11. DEVELOPMENT AGREEMENTS

11.1 Development Agreements Allowed. Pursuant to Section 370.302 of the Transportation Code, the Authority may enter into a development agreement with a public or private entity, including a governmental entity, to acquire design, finance, construct, maintain, repair operate, extend or expand a transportation project.

11.2 Competitive Procurement Process for Development Agreements. The Authority must solicit qualifications and proposals for a development agreement in accordance with this section. The Professional Services Procurement Act does not apply to a development agreement that combines design or other professional services with construction services.

11.3 Use of Engineer and Other Professional Services. The Authority must select or designate an engineer or a qualified engineering firm that is independent of the development agreement contractor to act as the Authority's representative during the procurement of a development agreement. The engineer representative may be an engineer that is an employee of the Authority; the Authority's general engineering consultant, if any; or a qualified engineer or engineering firm hired by the Authority pursuant to the Professional Services Procurement Act. Any engineer or firm selected pursuant to this section 11.3 and who is not an employee of the Authority must be selected in accordance with the Professional Services Procurement Act and this Policy.

11.4 Requests for Qualifications and Proposals. The Authority shall solicit qualifications and proposals for a development agreement by issuing a Request for Qualifications and Proposals (“RFQP”). The Authority shall publish the RFQP (or notice of availability of the RFQP) in the Texas Register and post it on the Authority’s website.

(a) An RFQP issued by the Authority shall include the following information:

- (1) a description of the project concept, including general location and objectives;
- (2) the criteria that will be used to evaluate the proposals, which must include the proposer’s qualifications, experience, ability to develop the project; and general project cost projections;
- (3) the relative weight given to the criteria; and
- (4) the deadline by which RFQP responses must be received by the Authority, which shall be no less than forty-five (45) days from the date of issuance of the RFQP.

(b) The Authority may withdraw an RFQP at any time, and may then publish a new RFQP in accordance with this section 11.4.

11.5 Evaluation of Proposals Submitted in Response to a Request For Qualifications and Proposals.

(a) The Authority shall review responses to an RFQP submitted in accordance with section 11.4 based on the criteria described in the RFQP. The Authority shall evaluate, score and rank all proposals received, and based on the scoring and ranking, shall determine which proposers, if any, qualify for an interview with the Authority’s evaluation team and/or board of directors.

(b) Prior to completing an evaluation of the RFQP responses received, or prior to an interview, the Authority may request additional information related to a proposal. A responding firm shall have no right to supplement its proposal once submitted, but may respond to specific information requests from the Authority. Any information submitted beyond the scope of the information requested will be disregarded, and if excessive or unsolicited information is received, the Authority may disqualify the proposal.

11.6 Interviews.

(a) Following the evaluation, scoring, and ranking of responses received to the RFQP, the evaluation team will recommend the firms that should be interviewed by the evaluation team and/or the board of directors. The Authority may provide a list of specific subjects to be addressed in the interviews, including without limitation more specific project cost estimates, financial feasibility analysis, the proposed risk allocation between the Authority and the proposer on critical items, and projected schedule for construction.

(b) Once the interviews have been completed, the board of directors may select a firm that it determines offers the project and proposal that best meets the goals and objective of the Authority for the project that can be implemented in an efficient and cost-effective manner. Alternatively, the board of directors may terminate the procurement if it finds that none of the project proposals meet the Authority’s goals and objectives or cannot be implemented in an economical manner which protects the interests of the Authority.

(c) In the event the board of directors selects a firm to advance its project proposal it shall authorize staff and consultants of the Authority to enter into negotiations for terms of a

possible development agreement with the selected firm. The board of directors may establish a deadline for the completion of negotiations and presentation to the board of a recommended form of development agreement.

11.7 Negotiations of Development Agreement.

(a) The terms of a development agreement may provide for delivery of a project for a guaranteed maximum price and consistent with commitment made by the selected firm in its proposal and during the interview process. Alternatively, a development agreement may provide for phased work to be done by the selected firm and the Authority, with the first phase to define the project cost and delivery schedule with specificity.

(b) Whether identified initially or following a phased development agreement approach, a development agreement must identify a guaranteed maximum price, a delivery date/construction schedule, and any terms for financing that the developer will make available to the Authority.

(c) Once a guaranteed maximum price is identified, the Authority must confirm that it can finance the project prior to authorizing the commencement of construction. Furthermore, once the project concept and all material assumptions necessary to determine a project cost are identified, the Authority shall secure an engineer's estimate of the project cost if feasible to do so given the circumstances and characteristics of the project. In the event the guaranteed maximum price exceeds the engineer's estimate, the Authority may terminate the procurement.

(d) In the event the Authority determines that it cannot secure financing for the project on terms it determines, in its sole discretion, to be in the best interest of the Authority, the development agreement shall be terminated. No amounts will be owed to the developer except amounts authorized by the Authority under the terms of the development agreement (if any), and only if all work product authorized is transferred to, and becomes the sole property of, the Authority.

(e) A development agreement must provide that ownership of the project, including necessary right-of-way, is by the Authority. No leasehold interest may be granted to the developer, nor may any right to collect user fees or project revenues (other than as a contract operator) be granted to the developer.

(f) The Authority shall use its best efforts to protect the confidentiality of information generated and/or submitted in connection with the process for entering into a development agreement to the extent permitted by law. The Authority shall notify any proposer whose information submitted in connection with the process for entering into a development agreement is the subject of a Public Information Act request received by the Authority.

11.8 Performance and Payment Security.

(a) The Authority shall require a development agreement contractor to provide a performance and payment bond, an alternative form of security, or a combination of a performance and payment bond and alternative security in an amount equal to the cost of constructing or maintaining the project. If, however, the Authority determines that it is impracticable for a private entity to provide security in such amount, the Authority shall set the amount of the bond or alternative form of security.

(b) Alternative forms of security may be permitted or required in the following forms:

- (1) a cashier's check drawn on a financial entity specified by the Authority;
- (2) a U.S. Bond or Note;
- (3) an irrevocable bank letter of credit drawn from a federal or Texas chartered bank; or
- (4) any other form of security determined suitable by the Authority.

SECTION 12. PARTICIPATION IN STATE AND COOPERATIVE PURCHASING PROGRAMS; AND INTERGOVERNMENTAL AGREEMENTS.

12.1. State of Texas Cooperative (CO-OP) Purchasing Program. Pursuant to and in accordance with § 2155.204 of the Government Code and Subchapter D, Chapter 271 of the Local Government Code, the Authority may request the Texas Comptroller of Public Accounts ("Comptroller") to allow the Authority to participate on a voluntary basis in the program established by Comptroller by which the Comptroller performs purchasing services for local governments.

12.2. Catalog Purchase of Automated Information Systems. Pursuant to and in accordance with §2157.067 of the Government Code, the Authority may utilize the catalogue purchasing procedure established by the Comptroller with respect to the purchase of automated information systems.

12.3. Cooperative Purchases. Pursuant to and in accordance with Subchapter F, Chapter 271 of the Local Government Code, the Authority may participate in one or more cooperative purchasing programs with local governments or local cooperative programs.

12.4 Interlocal Agreements with TxDOT. Subject to limitations imposed by general law, the Authority may enter into inter-local agreements with TxDOT to procure goods and services from TxDOT.

12.5 Effect of Procurements Under This Section. Purchases made through the Comptroller, a cooperative program or by interlocal agreement shall be deemed to have satisfied the procurement requirements of this Policy and shall be exempted from the procurement requirements contained in this policy.

SECTION 13. EMERGENCY PROCUREMENTS.

Emergency Procurement Procedures. The Authority may employ alternate procedures for the expedited award of construction contracts and to procure goods and services to meet emergency conditions in which essential corrective or preventive action would be unreasonably hampered or delayed by compliance with the foregoing rules. Types of work which may qualify for emergency contracts include, but are not limited to, emergency repair or reconstruction of streets, roads, highways, building, facilities, bridges, toll collection systems and other Authority property; clearing debris or deposits from the roadway or in drainage courses within the right of

way; removal of hazardous materials; restoration of stream channels outside the right of way in certain conditions; temporary traffic operations; and mowing to eliminate safety hazards.

(a) Before a contract is awarded under this section, the Executive Director or his designee must certify in writing the fact and nature of the emergency giving rise to the award.

(b) To be eligible to bid on an emergency construction and building projects, a contractor must be qualified to bid on TxDOT construction or maintenance contracts or be pre-qualified by the Authority to bid on Authority construction or building contracts.

(c) A bidder need not be qualified or pre-qualified by the Authority to be eligible to bid on emergency non-construction or non-building projects.

(d) After an emergency is certified, if there are three or more firms qualified to bid on the contract as reflected by the Authority's files, the Authority will send bid documents for the work to at least three qualified contractors. The Authority will notify recipients of the bid documents of the date and time by which the bids must be submitted and when the bids will be opened, read, and tabulated. The Authority will also notify the recipients of any expedited schedule and information required for the execution of the contract. Bids will be opened, read, and tabulated, and the contract will be awarded, in the manner provided in the other subsections of this policy as required to procure construction or goods and services, as the case may be.

SECTION 14. DISPOSITION OF SALVAGE OR SURPLUS PROPERTY.

14.1. Sale by Bid or Auction. The Authority may periodically sell the Authority's salvage or surplus property by competitive bid or auction. Salvage or surplus property may be offered as individual items or in lots at the Authority's discretion.

14.2. Trade-In for New Property. Notwithstanding subsection 14.1, the Authority may offer salvage or surplus property as a trade-in for new property of the same general type if the Executive Director considers that action to be in the best interests of the Authority.

14.3. Heavy Equipment. If the salvage or surplus property is earth-moving, material-handling, road maintenance, or construction equipment, the Authority may exercise a repurchase option in a contract in disposing of such types of property. The repurchase price of equipment contained in a previously accepted purchase contract is considered a bid under subsection (a).

14.4. Sale to State, Counties, etc. Notwithstanding subsection 14.1 above, competitive bidding or an auction is not necessary if the purchaser is the State or a county, municipality, or other political subdivision of the State. The Authority may accept an offer made by the State or a county, municipality, or other political subdivision of the State before offering the salvage or surplus property for sale at auction or by competitive bidding.

14.5. Failure to Attract Bids. If the Authority undertakes to sell property under subsection 14.1 and is unable to do so because no bids are made for the property, the Executive Director may order such property to be destroyed or otherwise disposed of as worthless. Alternatively, the Executive Director may cause the Authority to dispose of such property by donating it to a civic, educational or charitable organization located in the State.

14.6. Terms of Sale. All salvage or surplus property sold or otherwise disposed of by the Authority shall be conveyed on an "AS IS, WHERE IS" basis. The location, frequency, payment terms, inspection rights, and all other terms of sale shall be determined by the Authority in its sole and absolute discretion.

14.7. Rejection of Offers. The Authority or its designated representative conducting a sale of salvage or surplus property may reject any offer to purchase such property if the Executive Director or the Authority's designated representative finds the rejection to be in the best interests of the Authority.

14.8. Public Notices of Sale. The Authority shall publish the address and telephone number from which prospective consultants may request information concerning an upcoming sale in at least two issues of the officially designated newspaper of the Authority, or any other newspaper of general circulation in each City of the Authority, and the Authority may, but shall not be required to, provide additional notices of a sale by direct mail, telephone, or via the internet.

SECTION 15. DISPOSITION OF SURPLUS REAL PROPERTY.

This section is reserved for future use.

SECTION 16. LEASE OF TRANSPORTATION ASSETS.

This section is reserved for future use.

SECTION 17. SOLICITATION OF EMPLOYEE APPLICANTS.

17.1 Solicitation of Employee Applicants. In conjunction with efforts to solicit applicants for available employment positions with the Authority, Authority staff shall follow the solicitation and application guidelines set forth in this section in order to (1) provide notice of the employment position opening, (2) provide a method of allowing potential applicants to receive detailed information regarding particular criteria and requirements for the individual employment position, and (3) provide information related to any application deadlines or extensions of deadlines.

17.2 Solicitation of Applicants for Professional or Managerial Positions. In order to reach the largest potential pool of qualified applicants for employment positions that are either professional or managerial in nature, Authority staff shall post information regarding potential employment opportunities, detailed position descriptions, and requirements for applications for professional or managerial staff positions in the following manner:

- (a) Notice of employment position openings with the Authority shall be published on the Authority's website, and shall include: (1) employment position title; (2) a general description of position duties and responsibilities; (3) educational and prior work experience requirements; (4) the statement that the Authority is an equal opportunity employer; (5) materials required to be submitted for position applications; (6) the

physical mailing address and/or e-mail address for submitting application materials; and (7) the telephone number for questions regarding the employment position description and/or application process.

(b) Notice of employment position openings with the Authority may be published in the officially designated newspaper of the Authority, the *Texas Register*, trade journals, and other sources that the Authority determines are appropriate for contacting potentially qualified applicants. In addition, the Authority may, but shall not be required to, solicit potential applicants by direct mail, telephone, or via the Internet.

(c) The application deadline specified in the notice of employment position opening may be extended if the Executive Director determines that the extension is in the best interest of the Authority.

17.3 Solicitation of Administrative or Clerical Applicants. Authority staff shall post information regarding potential employment opportunities, detailed position descriptions, and requirements for application for administrative or clerical staff positions in the following manner:

(a) Notice of employment position openings with the Authority shall be published on the Authority's website, and shall include: (1) employment position title; (2) a general description of position duties and responsibilities; (3) educational and prior work experience requirements; (4) the statement that the Authority is an equal opportunity employer; (5) materials required to be submitted for position applications; (6) the physical mailing address and/or e-mail address for submitting application materials; and (7) the telephone number for questions regarding the position description or application process. Authority staff may include any and all of the required information listed in (1)-(7) above in a standard employment application form issued by the Authority.

(b) Notice of employment position openings with the Authority may be published in the officially designated newspaper of the Authority and in such other places that the Authority determines are appropriate for contacting potentially qualified applicants. In addition, the Authority may, but shall not be required to, solicit potential applicants by direct mail, telephone, or via the Internet.

(c) The application deadline specified in the notice of employment position opening may be extended if the Executive Director determines that the extension is in the best interest of the Authority.

SECTION 18. DISPUTE RESOLUTION PROCEDURES.

The Authority shall have the general ability and authority, when negotiating the terms and conditions of any contract to be entered into with any entity, to negotiate for the inclusion of dispute resolution procedures in such contract. Such dispute resolution procedures may vary from contract to contract. Any such procedures adopted may require that a meeting of principles, mediation, and/or formal alternative dispute resolution procedures be followed before any party may file suit against, or initiate an arbitration proceeding against, the Authority for an alleged breach of contract claim.

[END OF POLICY]