

**HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY
AMENDED POLICIES AND PROCEDURES GOVERNING
PROCUREMENTS OF GOODS AND SERVICES**

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**AMENDED POLICIES AND PROCEDURES GOVERNING PROCUREMENTS
OF GOODS AND SERVICES BY THE
HIDALGO COUNTY REGIONAL MOBILITY
AUTHORITY**

SECTION 1. STATEMENT OF GENERAL POLICY.

1.1. Documented Procedures. This policy reflects the documented procedures for procurement transactions, including those required for transactions under a federal award or subaward. This policy is intended to be consistent with federal, state, and local laws. To the extent this policy is consistent with the US Constitution, applicable federal, state, and local statutes and regulations, this policy shall govern the procurement of goods and services by the Hidalgo County Regional Mobility Authority (the “Authority”).

1.2. Policy. It is the policy of the Authority that all Authority procurements shall be based solely on economic and business merit and conducted in a manner that provides full and open competition in order to best promote the interests of the citizens of the Hidalgo County.

1.3. Required Conduct. An entity that does business with the Authority is required to (i) adhere to all civil and criminal laws related to business; maintain good standing with the State of Texas and Hidalgo County; and (ii) notify the Authority in writing within five (5) days after the date the entity knows or should have known of the existence of (a) a conviction of, plea of guilty or no lo contendere to, a civil judgment for, or a public admission to a crime or offense related to the business by the entity; (b) debarment by the entity by the State of Texas, federal government, Hidalgo County or any municipality within Hidalgo County; or (c) any behavior of the entity that seriously and directly affects the entity’s responsibility to the Authority that is also a violation of the law or Authority’s rules or policies. Any violation of Required Conduct is grounds for score reduction or contract termination.

1.4. Unnecessary or Duplicative Items. The HCRMA is committed to avoiding the acquisition of unnecessary or duplicative items. Consideration shall be given to consolidating or breaking out procurements to obtain more economical purchases. When appropriate, an analysis shall be made between leasing and purchasing property or equipment to determine the most economical approach.

1.5. Violations. The Authority shall report violations of law to the federal, state, or local authority with proper jurisdiction.

1.6. Solicitations. All solicitations issued by the Authority shall incorporate a clear and accurate description of the technical requirements for the property, equipment, or service being procured. When necessary, the description must provide minimum essential characteristics and standards to which the property, equipment, or service must conform. Detailed product specifications should be avoided if at all possible. When it is impractical

or uneconomical to clearly and accurately describe the technical requirements, a “brand name or equivalent” description of features may be used to provide procurement requirements. The specific features of the named brand must be clearly stated. Solicitations shall identify any additional requirements which the offerors must fulfill and all other factors that will be used in evaluating bid or proposals.

1.7. Noncompetitive procurements. The Authority may use noncompetitive procurement in certain situations as provided under applicable state and federal law.

1.8. Domestic Preference. To the greatest extent practicable and consistent with the law, the Authority shall provide a preference for the purchase, acquisition, or use of goods, produces, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This requirement shall be included in all purchase orders and contracts subject to federal funding. For purposes of this section, (i) “produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States, and (ii) “manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

1.9. Independent Estimates. Prior to receiving bids or proposals, the Authority shall make an independent estimate or cost/price analysis for the solicited item, service, or contract.

1.10. Required Certifications. From time to time the Texas Legislature, by statute, and the Governor, executive order, identify required certifications for parties contracting with a governmental entity in Texas. The Authority requires these certifications to be provided as part of any executed contract. (See Schedule 1.10 attached hereto.)

SECTION 2. CONFLICT OF INTEREST.

2.1. Standard of Conduct. This policy provides a written standard of conduct covering conflicts of interests and governing the actions of HCRMA employees and representatives engaged in the award and administration of contracts.

2.2. Conflict in Selection or Award. No employee, officer, or agent of the contracting agency shall participate in the selection, or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict arises when there is a financial or other interest in or a tangible personal benefit from an entity or the consultant considered or selected for award by: (a) the employee, officer, agent, or board member; (b) any member of his or her immediate family; (c) his or her partner; or (d) an organization that employs or is about to employ any of the above.

2.3. Independence and Influence. 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 or the sale of property to the Authority; (b) directly or indirectly accept or solicit any gratuities, gifts, favors, service, or anything of monetary value 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.

2.4. Familial Relationships. 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, including non-married partners and soon to be employers, with Board members, employees or agents of the Authority which may disqualify the bidder from consideration.

2.5. Benefits. An entity, including an individual representing or affiliated with such entity, or individual doing business with the Authority shall not provide a benefit to any Board Member or employee of the Authority. For the purposes of this Section 2.3, "benefit" shall have the meaning ascribed to it in Title 43 Texas Administrative Code, Rule 10.5: "a benefit ... is anything that is reasonably regarded as financial gain or financial advantage, including a benefit to another person in whose welfare the beneficiary has a direct and substantial interest, regardless of whether the donor is reimbursed. Examples are cash, loans meals, lodging, services, tickets, door prizes, free entry to entertainment or sporting events, transportation, hunting or fishing trips, or discounts on goods or services." The following are not benefits: (i) a token item, other than cash, a check, stock, bond or similar item, that is distributed generally as a normal means of advertising and that does not exceed an estimated value of \$25; (ii) an honorarium in the form of a meal served at an official event, such as conference, workshop, seminar or symposium; or (iii) reimbursement for food, travel, or lodging to an official event described in (ii) above in an amount allowable under the Authority's travel and entertainment policies, or as otherwise approved by the Executive Director.

2.6. Disclosure. It is the Authority's policy not to enter into a contract where a conflict of interest exists. The Authority shall take reasonable steps to identify and mitigate conflicts of interest for employees, board members, and consultants and will promptly disclose any potential conflict of interest in writing to TxDOT. Additionally,

- (a) bidders for Authority contracts and affected Board Members are required to file form CIQ Conflicts of Interest Questionnaire for Vendor and Other Persons Doing Business with Local Governmental Entity, attached hereto

as *Schedule 2.4 (a)*;

(b) an entity that does business with the Authority is required to disclose, in writing, the existence of a conflict of interest involving an agreement between the entity and the Authority and adequately remedy the conflict either before the effective date of the agreement or, if the conflict arises after the effective date of the agreement, promptly after the date the entity knows or should have known of the conflict. Contractors and consultants of the Authority shall complete a certificate attesting to the following: (i) no ownership in real property that is known or anticipated to be necessary for the development of an Authority project; (ii) no personal investments that could be reasonably expected to create a conflict of interest with the Authority; (iii) after reasonably inquiry, no knowledge of any subcontractor having any investment in real property that is known or anticipated to be necessary for an Authority project or personal investment that could reasonably be expected to create a conflict of interest with the Authority; and (iv) no offer of any gift, favor, or service to a member or representative of the Authority Board of Directors that might reasonably influence any official duty or that is being offered with the intent to influence official conduct. If a contractor or consultant to the Authority cannot make such attestations, then a formal disclosure must be made. See *Schedule 2.4 (b)*;

(c) an entity that enters into a contract with the Authority must submit a disclosure of interest parties (Form 1295) to the Authority at the time the entity submits the signed contract to Authority as required by State; and

(d) an entity that enters into a contract with the Authority must provide any other disclosures required by state or federal law at the time of the contract.

SECTION 3. DISADVANTAGED BUSINESS PARTICIPATION; COMPLIANCE WITH POLICY.

3.1 DBEs. Disadvantaged Business Enterprises (“DBEs”) are encouraged to participate in the Authority’s procurement process. The purpose of the DBE program is to ensure nondiscrimination in the award and administration of federally funded projects. A DBE is defined as a small business that is at least 51% owned by socially or economically disadvantaged persons. The Authority has entered into an agreement with TxDOT adopting TxDOT’s DBE policy. See *Schedule 3*.

3.2 Hiring Preferences. The Authority may require contractors to use hiring preferences or goals for (i) people residing in high-poverty areas, (ii) disadvantaged communities (as defined by the Justice40 Initiative, OMB Memorandum M-21-28), (iii) high unemployment census tracts within Hidalgo County, or (iv) individuals with barriers to employment (as defined in section 3 of the Workforce Innovation and Opportunity Act, 29 USC 3102(24)). Hiring preferences or goals should be consistent with the policies and procedures of the Authority and, if applicable, TxDOT, and where federal funding is

applicable, must not prohibit interstate hiring.

SECTION 4. SUSPENSION AND DEBARMENT.

The Authority will verify suspension and debarment actions and eligibility status of consultants and sub-consultants prior to entering into an agreement or contract by searching:

- (a) System for Award Management (SAM) – U.S. government official website; and
- (b) Texas Comptroller of Public Accounts – List of vendors debarred from doing business with the State of Texas.

The Authority shall retain state and federal lists of vendors suspended and debarred from doing business with the US government and State of Texas, respectively, in accordance with the Authority's retention policies.

SECTION 5. DEFINITIONS.

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

Agent: A person, that is not an employee, or a consulting firm that is authorized by the Authority to act on behalf of the Authority, including consultants in management support roles.

ATC: Alternative technical concept.

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

Authority: The Hidalgo County 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. Unless otherwise authorized by the Board, 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; 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 DBEs, 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 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 or Board of Directors: The Board of Directors of the Authority.

Brooks Act: 40 U.S.C. 1101-1104, providing for a qualifications-based selection procedure.

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

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. Comprehensive Development Agreements are authorized under Sections 370.305-312, Texas Transportation Code, as may be amended from time to time.

Conflict of Interest: A situation in which an individual has competing interests or loyalties; a situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity. *Refer to the Authority's bylaws and Internal Ethics & Compliance Manual for the Authority's policy on conflict of interest.*

Construction: The supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of all costs incidental to the construction or reconstruction of Transportation Project, including the bond costs and other costs related to the issuance with the bonds or other debt financing instruments and costs incurred in performing state and federal project related audits.

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 in this policy.

Counties of the Authority: Hidalgo County, as well as any counties which may subsequently join the Authority.

DBE: Disadvantaged Business Entity as described in Section 3.

Design Build Agreement: An agreement with a private entity that provides for both the design and construction services for a Transportation Project and may also provide for the design, construction, financing, expansion, extension, related capital maintenance, rehabilitation, alteration or repair of a Transportation Project, but does not include a leasehold interest in the Transportation Project or the right to operate or retain revenue from the operation of the Transportation Project. Design Build Agreements are authorized under Subchapter K of Chapter 360, Texas Transportation Code, as may be amended from time to time.

Design Build Contractor: A partnership, corporation, or other legal entity or team that includes an engineering firm and construction contractor qualified to engage in the design and construction of Transportation Projects in the State and that is selected by the Authority in accordance with these Policies and Procedures.

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.

Liquidated Damages: The daily amount set forth in the contract to be deducted from the contract price to cover additional costs incurred by the Authority because of the contractor's failure to complete the contract work within the number of calendar days or workdays specified. The term may also mean the total of all daily amounts deducted under the terms of a particular contract.

Lowest bidder: The lowest responsible bidder on a contract that complies with the Authority's criteria for such contract, as described in Section 6 of 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 counties of the Authority. If there are multiple newspapers which are published in the counties of the Authority, the Board of Directors shall designate which one is the official newspaper of the Authority.

Open Meetings Act: Chapter 551 of the Texas Government Code, as amended from time to time.

Professional Services: Services which political subdivisions of the State must procure pursuant to the Professional Services Procurement Act, or, if federally funded, the Brooks Act, which are services defined by state law of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, interior decorator, or professional nursing, 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, or a registered nurse). 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 Information Act: Chapter 552 of the Texas Government Code, as amended from

time to time.

Public Utility Facility: A:

- (a) water, wastewater, natural gas, or 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.

RFDP: Request for detailed proposals.

RFI: Request for information.

RFP: Request for proposal.

RFQ: Request for qualifications.

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.

Specialty Items: Work items identified in the contract which are not normally associated with highway construction and require highly specialized knowledge, abilities or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract; in general, these items are to be limited to minor components of the overall contract.

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.

Time and Materials Contracts: A contract whose cost is the sum of the actual cost of materials, and the direct labor hours charged at fixed hourly rates, general and administrative expenses, and profit; provided such contract has a ceiling price that the contract exceeds at its own risk.

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) bridge;
- (e) ferry;
- (f) airport, other than an airport that on September 1, 2005, was served by one (1) 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;
- (g) pedestrian or bicycle facility;
- (h) intermodal hub;
- (i) automated conveyor belt for the movement of freight;
- (j) border crossing inspection station, including (i) a border crossing inspection station located at or near an international border crossing; and (ii) a border crossing inspection station located at or near a border crossing from another state of the United States and not more than fifty (50) miles from an international border;
- (k) air quality improvement initiative;
- (l) public utility facility;
- (m) a transit system;
- (n) a parking area, structure, or facility, or a collection device for parking fees;
- (o) improvements in a transportation reinvestment zone designated under Texas Transportation Code, Subchapter E, Chapter 222; and
- (p) port security, transportation, or facility projects eligible for funding under Texas Transportation Code, Section 55.002.

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.

VAC: Value added concept.

VECP: Value engineering change order process.

SECTION 6. CONSTRUCTION AND BUILDING CONTRACTS.

6.1 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 6. Bidding for procurements made by competitive bidding will be open and unrestricted, subject to the procedures set forth in this policy, or in the alternative, subject to the procedures set forth in the Local Government Project Procedures Manual promulgated by TxDOT; provided, however, that such procedures are adopted by the Authority's Board of Directors in separate action. Any notice of contract letting shall specify which procedures apply to the procurement.

6.2 Qualification of Bidders.

6.2.1 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.

At its election, the Authority may waive this Subsection 6.2.1 with respect to bidders on building contracts.

6.2.2 To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids must be excluded from competing on those procurements.

6.3 Qualifying with the Authority.

6.3.1 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:

6.3.1.1 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;

6.3.1.2 the bidder's current audited financial statement in form and substance acceptable to the Authority; and

6.3.1.3 a reasonable fee to be specified by the Authority to cover the cost of evaluating the bidder's application.

6.3.2 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.

6.3.3 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).

6.3.4 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.

6.4 Notice of Contract Letting.

6.4.1 Each notice of contract letting must provide:

6.4.1.1 the date, time, and place where contracts will be let and bids opened;

6.4.1.2 the address and telephone number from which prospective bidders may request bid documents; and

6.4.1.3 a general description of the type of construction, services or goods being sought by the Authority.

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

6.4.3 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.

6.4.4 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.

6.4.5 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.

6.4.6 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.

6.5 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 6. The Authority shall maintain records sufficient to detail the history of each procurement, including the rationale for the procurement method, contract type selection, contractor selection or rejection, and the basis for the contract price.

6.6 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:

6.6.1 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;

6.6.2 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

6.6.3 to a bidder who has substantially complied with the Authority's requirements for qualification, as determined by the Authority.

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

6.7.1 the bidder is suspended or debarred from contracting with TxDOT or the Authority;

6.7.2 the bidder is prohibited from rebidding a specific project because of default of the first awarded bid;

6.7.3 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;

6.7.4 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

6.7.5 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.

6.8 Completion and Submission of Bid Documents.

6.8.1 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.

6.8.2 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.

6.8.3 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.

6.8.4 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.

6.8.5 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 (3)-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.

6.8.6 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.

6.9 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.

6.10 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.

6.11 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:

6.11.1 the bid is submitted by an unqualified bidder;

6.11.2 the bid is in a form other than the official bid documents issued to the bidder;

6.11.3 the form and content of the bid do not comply with the requirements of the bid documents and/or Subsection 6.8;

6.11.4 the bid, and if required, federal-aid project certification, are not signed;

6.11.5 the bid was received after the time or at some location other than specified in the notice or as may have been extended;

6.11.6 the bid guaranty, if required, does not comply with Subsection 6.8;

6.11.7 the bidder did not attend a specified mandatory pre-bid conference, if required under the bid documents;

6.11.8 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;

6.11.9 the bidder was not authorized to be issued a bid under this policy;

6.11.10 the bid did not otherwise conform with the requirements of this policy; or

6.11.11 more than one (1) bid involves a bidder under the same or different names.

6.12 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 (2) 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 may select either the regular bid item or items or the alternative.

6.13 Award of Contract. Except as otherwise provided in this Section 6, if the Authority does not reject all bids, it will award the contract to the lowest best bidder who is a responsible contractor. In determining the lowest best bidder (responsible contractor), in addition to price the Authority shall consider:

6.13.1 the bidder's ability, capacity, and skill to successfully perform the contract or provide the service required under the terms and conditions of the proposed contract;

6.13.2 the bidder's ability to perform the contract or provide the service promptly, or in the time required, without delay or interference, including financial and technical resources;

6.13.3 the bidder's character, responsibility, integrity, reputation, and experience, including public policy compliance;

6.13.4 the quality of performance by the bidder of previous contracts or services;

6.13.5 the bidder's previous and existing compliance with laws relating to the contract or service, including the proper classification of employees (see the Fair Labor Standards Act, 29 USC 201, chapter 8); and

6.13.6 the sufficiency of the bidder's financial resources and ability to perform the contract or provide the service.

6.14 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:

6.14.1 there is reason to believe collusion may have existed among the bidders;

6.14.2 the low bid is determined to be both mathematically and materially unbalanced;

6.14.3 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

6.14.4 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.

No preference for local hiring will be applied to any federal-aid contracts (including invitations for bids or requests for proposal documents) and all such contracts and bid documents will contain specific provisions which state that such preferences are not applicable to contracts funded by the Federal Highway Administration.

6.15 Bid Protests. This Subsection 6.15 applies to bid protests as relate to construction and building contracts, as well as to bid protests as relate to professional services as described in Section 7, general goods and services as described in Section 8, consulting services as described in Section 9, and design build contracts as described in Section 10.

6.15.1 There are three types of protests to Authority bids and solicitations.

6.15.1.1 A pre-bid or solicitation phase protest shall be received prior to the scheduled bid opening or proposal due date.

6.15.1.2 A pre-award protest is protest against making an award and is received after receipt of proposals or bids, but before award of a contract.

6.15.1.3 A post-award protest is a protest received after the award of contract and must be received within five (5) business days of the referenced award.

6.15.2 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 in accordance with the deadlines above. Protests may be delivered in hard copy, with a return receipt, or electronic copy, with a read receipt. The address and email for the Executive Director are provided on the Authority's website. Each protest must include the following:

6.15.2.1 the name and address of the protester, and the vendor it represents, if different;

6.15.2.2 the identification number, reference number, or other identifying criteria specified in the bid documents to identify the procurement in question;

6.15.2.3 a statement of the grounds for protest; and

6.15.2.4 all documentation supporting the protest.

6.15.3 A decision and response to the protest, including each substantive issue raised, will be prepared by the Executive Director within a reasonable time after receipt of a properly prepared written protest.

6.15.4 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. However, if facts change, new data becomes available, or an error in law or regulation was found in a previous ruling, the Board may allow for reconsideration of a protest by the Executive Director or reconsideration of an appeal to the Board.

6.15.5 Where state or federal funding is applicable to a project where a bid protest has been properly filed, the Authority shall notify TxDOT or FHWA as required.

6.16 Contract Execution; Submission of Ancillary Items.

6.16.1 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.

6.16.2 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:

6.16.2.1 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; and

6.16.2.2 a certificate of insurance on a form acceptable to the Authority 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.

6.17 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.

6.18 Bid Guarantee. For contracts exceeding the simplified acquisition threshold, the Authority shall require a bid guarantee from each bidder equal to five percent (5%) of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying the bid as assurance that the bidder will, upon acceptance of the bid, execute any required contractual documents within the specified time frame. Not later than seven (7) days after bids are opened, the Authority will mail the bid guarantee of all bidders to the address specified on each bidder's bid documents, except that the Authority will retain the bid guarantee 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 6.16 the bid guarantee 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 6.16. A bidder who forfeits a bid guarantee 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 guarantee 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.

6.19 Progress Payments; Retainage and Liquidated Damages.

6.19.1 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.

6.19.2 Unless otherwise stated in the procurement, retainage shall be in the amount of five percent (5%) of the contract price until the entire work has been completed and accepted. 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:

6.19.2.1 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;

6.19.2.2 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;

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

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

6.19.3 Without limiting the Authority's right to require any other contract provisions, the Authority, at its sole discretion, may elect to include a contract provision which compensates the contractor a certain amount of money for each day identified critical work is completed ahead of schedule and assess a deduction for each day the contractor overruns the incentive/disincentive time. The amounts are based upon estimates of such items as traffic safety, traffic maintenance, and road user delay costs.

6.19.4 Without limiting the Authority's right to require any other contract provision, the Authority, in its sole discretion, may elect to require that a Liquidated Damages provision be made a part of any contract it enters into.

6.20 Performance Bond. The Authority shall require a performance bond on the contractor's part for one hundred percent (100%) of the contract price. A performance bond is a bond executed in connection with a contract to secure the fulfillment of all of the contractor's requirements under a contract.

6.21 Payment Bond. The Authority shall require a payment bond on the contractor's

part for one hundred percent (100%) of the contract price. A payment bond is a bond executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for under a contract.

6.22 Value Engineering. When practical, the Authority shall use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering means analyzing each contract item or task to ensure its essential function is provided at the overall lowest cost.

6.23 Value Engineering Change Order Process. The Authority may authorize a Value Engineering Change Order Process ("VECP") for any project through the bid documents; provided that the VECP is aligned with (i) federal guidelines provided in 23 CFR Part 627 and 23 USC 106, as may be amended from time to time, and (ii) TxDOT's VECP policy. As of the date of this policy, TxDOT has determined in its Local Government Project Management Guide (dated May 20, 2024) that it does not have VECP policies or procedures in place.

6.24 Federally required contract terms. All contracts subject to federal funds, shall include the contract terms identified in Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts under Federal Awards. (See Schedule 6.24 attached hereto.)

SECTION 7. PROFESSIONAL SERVICES.

7.1 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. Where federal funds are applied to a contract, the Authority shall follow the Brooks Act, and/or other applicable federal law.

7.2 Request for Qualifications. In order to evaluate the demonstrated competence and qualifications of prospective providers of professional services, the Authority shall solicit interest in a single step process and invite prospective providers of professional services to submit their qualifications to provide such services as specified in a Request for Qualifications ("RFQ")¹ issued by the Authority.

7.3 Notice of RFQs.

7.3.1 Notice of the issuance of an RFQ for engineering and design related professional services must provide:

7.3.1.1 the contact or location from which prospective engineering and

¹ Title 23 CFR Section 172.7 refers to the single-step process of solicitation as a request for proposal (RFP).

design related providers may request the RFQ;

7.3.1.2 provide a clear, accurate, and detailed description of the scope of work, technical requirements, and qualifications necessary for the services to be rendered. To the extent practicable, the scope of work should detail the purpose and description of the project, services to be performed, deliverables to be provided, estimated schedule for performance of the work, and applicable standards, specifications, and policies;

7.3.1.3 identify the evaluation factors along with their relative weight of importance that will be used in the evaluation, ranking, and selection of providers. Evaluation factors may include, but not limited to, technical approach, work experience, specialized expertise, professional licensure, staff capabilities, workload capacity, and past performance;

7.3.1.4 qualifications to perform the type of work requested;

7.3.1.5 specify the contract type and method(s) of payment;

7.3.1.6 identify any special provisions or contract requirements associated with the solicited services; and

7.3.1.7 enough time for firms to submit a proposal.

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 an 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 experience, qualifications, and competence of the potential provider of engineering and design related services.

7.3.2 The Authority does not require or accept concealed cost proposals as part of the RFQ process.

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

7.3.4 The Authority may also publish notice of the issuance of an RFQ, or the content of the RFQ itself, in an issue of the *Texas Register*, or any newspaper, trade journal, or other such location as the Authority determines will enhance competition for the provision of services.

7.3.5 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.

7.4 Evaluation, Ranking, and Selection.

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 demonstrated competence and qualifications to perform the service, including pre-certification by TxDOT; and ability to perform the services for a fair and reasonable price. Cost shall not be a factor in the procurement process, nor shall there be any preference for state or local firms.

7.4.1 The Authority shall select qualified providers of professional services by first submitting all responses to a selection committee assigned by the Executive Director or the Board for scoring of the responses based on the criteria published in the RFQ.

7.4.2 Based on the committee's review and scoring, three (3) or more firms may be short-listed based on ranking for further consideration and may be required to submit supplemental information. In determining whether to short-list firms, the committee should take into consideration, the total number of submittals and the range of scores, including any natural or obvious breaks in scoring. In instances where less than three (3) qualified consultants respond to the solicitation, the Authority may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements that arbitrarily limited competition. Alternatively, the Authority may pursue procurement following the non-competitive method when competition is determined to be inadequate, and it is determined to not be feasible or practical to re-compete under a new solicitation.

7.4.3 After scoring, the committee shall have the option of submitting a short-list of providers to the Board or submitting all of the respondents to the Board along with the Committee's score sheets and recommendations. The selected firms may be required to make a formal presentation before the Board of Directors if the Authority determines it is needed based on size and complexity of the project.

7.4.4 After receipt and review of the committee's scoring and recommendations, if formal presentations are made to the Board, the board members shall individually rate and score each respondent based on both written and presented qualifications. The individual scoring sheets will then be compiled by legal counsel, or a staff member and the final ranking reviewed by a separate staff member. The highest-ranking consultant is recommended to be awarded the contract. If formal presentations are not made to the Board, the Board shall

approve the committee's ranking.

7.5 Fees and Negotiations.

7.5.1 The Authority shall attempt to negotiate a contract with the most highly qualified firm. If the Authority is unable to negotiate a satisfactory contract with the firm, the Authority shall formally terminate negotiations and then undertake negotiations with the next most qualified of the selected process. The Authority shall continue the process 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.

7.5.2 The professional fees under the contract 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 may not exceed any maximum provided by law. The Authority may use TxDOT pricing guidance for comparative purposes.

7.5.3 The Authority shall prepare an independent estimate breakdown of the work or labor hours, types of classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work, which shall serve as the basis for negotiation.

7.5.4 The Authority shall establish indirect cost rates, direct salary or wage rates, fixed fee, and other direct costs separately to ensure services are obtained at a fair and reasonable cost.

7.5.5 The Authority shall retain documentation of negotiation activities as required by applicable law.

7.6 Termination of Procurement. The Authority may terminate a procurement of professional services pursuant to this Section 7 at any time upon a determination that a continuation of the process is not in the Authority's best interest.

7.7 Selection Disputes. Protests related to solicitations or contract awards shall be made and resolved in the manner described in Subsection 6.15.

SECTION 8. GENERAL GOODS AND SERVICES

8.1 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. Board approval is

not required when making a purchase that the Executive Director deems necessary because of an emergency, including unforeseen damage to public machinery, equipment, or property, provided the emergency is certified in compliance with Section 12 below.

8.2 Purchase Threshold Amounts. The Authority may procure general goods and services costing one hundred thousand dollars (\$100,000.00) 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 one hundred thousand dollars (\$100,000.00) 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.

8.3 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:

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

8.3.2 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;

8.3.3 notice of the procurement shall be published 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;

8.3.4 in addition to advertisement of the procurement as set forth in Subsection 8.3.3 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

8.3.5 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.

8.4 Award Under Competitive Bidding.

8.4.1 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:

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

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

8.4.2 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.

8.4.2.1 No preference for local hiring will be applied to any federal-aid contracts (including invitations for bids or requests for proposal documents) and all such contracts and bid documents will contain specific provisions which state that such preferences are not applicable to contracts funded by the Federal Highway Administration.

8.5 Competitive Sealed Proposals.

8.5.1 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:

8.5.1.1 the Authority's specifications for the good or service to be procured;

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

8.5.1.3 a schedule of items for which unit prices are requested;

8.5.1.4 the time within which the contract is to be performed;

8.5.1.5 any special provisions and special specifications; and

8.5.1.6 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 an RFP in the manner provided for requests for competitive bids for general goods and services.

8.5.2 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.

8.5.3 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.

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

8.5.5 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.

8.6 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 (1) 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 9. CONSULTING SERVICES.

9.1 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.

9.2 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.

9.3 Approval of Board. Every procurement of consulting 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 components to avoid the dollar limits prescribed herein. Board approval is not required when contracting for consulting services that the Executive Director deems necessary because of an emergency, including unforeseen damage to public machinery, equipment, or property, provided the emergency is certified in compliance with Section 12 below.

9.4 Contract Amounts. The Authority may procure consulting services anticipated to cost no more than one hundred thousand dollars (\$100,000.00) 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 one hundred thousand dollars (\$100,000.00) pursuant to a "single-source contract," if the Executive Director determines that only one (1) 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 one-hundred thousand dollars (\$100,000.00) 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. A service may not be divided or reduced to avoid the solicitation requirement that would otherwise apply to a service that would cost over one hundred thousand dollars (\$100,000).

9.5 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 an RFQ, the Authority shall follow the notices set forth in Section 7 of these policies for the procurement of professional services.

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

9.6.1 the Authority's specifications for the service to be procured;

9.6.2 an estimate of the various quantities and kinds of services to be performed;

9.6.3 a schedule of items for which unit prices are requested;

9.6.4 the time within which the contract is to be performed;

9.6.5 any special provisions and special specifications; and

9.6.6 the Authority's goals regarding the participation in the contract or in subcontracts let under the contract by DBEs. The Authority shall give public notice of an RFP in the manner provided for requests for competitive bids for general goods and services.

In procuring consulting services through issuance of an RFP, the Authority shall follow the notices set forth in Section 8 of these policies for the procurement of general goods and services.

9.7 Notice of RFQs and RFPs.

9.7.1 Notice of the issuance of an 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 an RFQ or RFP.

9.7.2 The Authority shall publish the notice of issuance of an RFQ or RFP on its website and shall either (1) publish notice of the issuance of an 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 an 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.

9.7.3 The Authority may, but shall not be required to, solicit responses to an 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 or 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.

9.7.4 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.

9.8 Opening and Filing of Responses; Public Inspection. The Authority shall avoid disclosing the contents of each response to an 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.

9.9 Contract Negotiation and Execution.

9.9.1 With regard to consulting services procured through issuance of an 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.

9.9.2 With regard to consulting services procured through issuance of an RFP, the Authority shall submit a written contract to the offeror (the "first choice candidate") whose proposal is 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 (the "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 in the best interest of the Authority.

9.10 Single-Source Contracts. If the Executive Director determines that only one (1) 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 an 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 one- hundred thousand dollars (\$100,000.00). If the anticipated cost of services one hundred thousand dollars (\$100,000.00) or less,

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.

9.11 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 (2) 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.

9.12 Mixed Contracts. This Section 9 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 10. DESIGN BUILD AND DESIGN BUILD FINANCE AGREEMENTS.

10.1 Design-Build and Design-Build-Finance Agreements Allowed. The Authority may use the design-build or design-build-finance method to procure the design, construction, financing, expansion, extension, related capital maintenance, rehabilitation, alternation, or repair of a Transportation Project. The Authority may not, however, enter into more than two (2) design-build or design-build-finance agreements in any fiscal year.

10.2 Competitive Procurement Process For Design-Build and Design-Build-Finance Agreements. The Authority must solicit proposals for a design-build or design-build-finance agreement in accordance with this Section 10. The Professional Services Procurement Act does not apply to a design-build or design-build-finance agreement. The design-build or design-build-finance procurement process may also provide for the submission of alternative technical concepts (“ATCs”) and value-added concepts (“VACs”) from proposers.

10.3 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 design-build contractor to act as the Authority’s representative during the procurement of a design-build or design-build-finance 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. Additionally, the Authority must provide for (through existing engineering resources), or contract for, inspection services, construction materials engineering and testing, and verification testing services independent of the design build contractor. Any engineer or firm selected pursuant to this

Subsection 10.3 must be selected in accordance with the Professional Services Procurement Act and this Policy.

10.4 Requests for Qualifications. The Authority must solicit proposals for a design-build or design-build-finance agreement by issuing a Request for Qualifications (“RFQ”). The Authority shall publish the RFQ (or notice of availability of the RFQ) in the *Texas Register* and post it on the Authority’s website.

10.4.1 An RFQ issued by the Authority shall include the following information: (1) information regarding the proposed project’s location, scope, and limits; (2) information regarding funding that may be available for the project and a description of the financing to be requested from the design-build contractor, as applicable; (3) the criteria that will be used to evaluate the proposals, which must include the proposer’s qualifications, experience, technical competence, and ability to develop the project; (4) the relative weight given to the criteria; and (5) the deadline by which proposals must be received by the Authority.

10.4.2 The Authority may withdraw an RFQ at any time and may then publish a new RFQ in accordance with this Subsection 10.4.

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

10.5.1 The Authority shall review responses to an RFQ submitted in accordance with Section 11.4 based on the criteria described in the RFQ. The Authority shall evaluate all proposals received and shall determine which proposers qualify to submit detailed proposals in accordance with the requirements of Subsection 10.6. The Authority may include an interview as part of its evaluation process.

10.5.2 The Authority must qualify at least two (2) but no more than five (5) private entities to submit detailed proposals in accordance with the procedures under Subsection 10.6, unless the Authority does not receive more than one (1) proposal in response to an RFQ. If only one (1) entity responds to an RFQ the Authority shall terminate the procurement process.

10.6 Requests for Detailed Proposals.

10.6.1 The Authority shall issue a request for detailed proposals (“RFDP”) to all proposers qualified or short-listed in accordance with Section 10.5 above. The Authority shall provide an RFDP directly to the proposer, and such RFDP must contain the following information: (1) information on the overall project goals; (2) the Authority’s cost estimates for the design-build portion of the work; (3) materials specifications; (4) special material requirements; (5) a schematic design approximately thirty percent (30%) complete; (6) known utilities; (7) quality assurance and quality control requirements; (8) the location of relevant structures;

(9) notice of the Authority rules or goals related to awarding of contracts to disadvantaged businesses; (10) available geotechnical or other detailed instructions for preparing the information related to the project; (11) the status of the environmental review process; (12) detailed instructions for preparing the technical proposal, including a description of the form and level of completeness of drawings expected; (13) the relative weighting of the technical and cost proposals and the formula by which the proposals will be evaluated and ranked; (14) the criteria and weighting for each element of the technical proposal; (15) any risks or costs to be assumed by the design-build contractor and associated with scope changes and modifications, unknown or differing site conditions, environmental clearance and other regulatory permitting, and natural disasters and other force majeure events; (16) a general form of the design-build or design-build-finance agreement; and (17) the deadline by which proposals must be received, which shall be no more than one hundred eighty (180) days after the issuance of the final RFDP.

10.6.2 An RFDP under this Section 10.6 shall require proposers to submit a sealed technical proposal and a separate sealed cost proposal. The cost proposal shall be weighted at least seventy percent (70%) in the formula for evaluating and ranking proposals. A technical proposal under this Section 10.6 must address the following: (1) the proposer's qualifications and demonstrated technical competence (exclusive of information included in the proposer's response to the RFQ); (2) the feasibility of developing the project as proposed, including identification of anticipated problems and proposed solutions, the ability of the proposer to meet deadlines, and the conceptual engineering design proposed. A cost proposal under this Section 10.6 must include: (1) the cost of delivering the project; (2) the estimated number of days required to complete the project; and (3) any terms for financing for the project that the proposer plans to provide.

10.6.3 The Authority may withdraw an 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.

10.6.4 In developing and preparing to issue an RFDP in accordance with Subsection 10.6.1, the Authority may solicit input from entities qualified under Section 10.5 or any other person.

10.6.5 If the Authority provides for the submission of ATCs and/or VACs, the Authority shall establish a process for submission and review of ATCs and/or VACs prior to submission of a technical proposal. Only those ATCs and/or VACs approved by the Authority may be included in an entity's technical proposal. The Authority shall notify a proposer whether its ATCs and/or VACs are approved for inclusion in the technical proposal.

10.6.6 The Authority may conduct meetings with or interview proposers submitting a response to an RFDP.

10.7 Evaluation and Ranking of Detailed Design-Build and Design-Build-Finance Proposals. The Authority shall first open evaluate, and score each responsive technical proposal based on criteria set forth in the RFDP. The Authority shall subsequently open, evaluate, and score each cost proposal based on criteria set forth in the RFDP. The Authority shall then rank the proposers in accordance with the formula provided in the RFDP.

10.8 Unapproved Changes to Team. The Authority may reject as nonresponsive a proposal that makes a significant change to the composition of the proposer's design-build team as initially submitted that was not approved by the Authority.

10.9 Contract Negotiations.

10.9.1 After the Authority has evaluated and ranked the detailed proposals in accordance with Section 10.7, the Authority shall first attempt to negotiate a contract with the highest-ranked proposer. If the Authority is unable to negotiate a satisfactory contract with the highest-ranked proposer, the Authority shall, formally and in writing, end negotiations with that proposer and proceed to negotiate with the next proposer in the order of the selection ranking until a contract is reached or negotiations with all ranked proposers end.

10.9.2 If the RFDP provides for payment of a stipend to unsuccessful proposers, the Authority may include in the negotiations ATCs and/or VACs approved for inclusion in RFDP responses of other proposers.

10.9.3 The Authority may establish a deadline for the completion of negotiations for a design-build or design-build-finance agreement. 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.

10.9.4 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 design-build or design build-finance agreement for the project which is the subject of the procurement process.

10.9.5 Notwithstanding the foregoing, the Authority may terminate the procurement process at any time upon a determination that continuation of the process or development of a project through a design-build or design-build-finance agreement 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 10.9 if detailed proposals have been submitted to the Authority.

10.10 Payment for Submission of Detailed Design-Build or Design-Build-Finance Proposals.

10.10.1 Pursuant to the provisions of an RFDP, the Authority shall pay an unsuccessful proposer that submits a detailed proposal in response to an RFDP a stipend for work product contained in the proposal. The stipend must be specified in the RFDP and must be at least two-tenths of one percent (.002) of the contract amount, provided that the stipend shall not exceed the value of the work product contained in the proposal to the Authority.

10.10.2 After payment of the stipend, the Authority may make use of any work product contained in the detailed proposal, including techniques, methods, processes, and information contained in the proposal. In addition, the work product contained in the proposal becomes the property of the Authority.

10.11 Confidentiality of Negotiations for Design-Build and Design-Build-Finance Agreements. 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 design-build or design-build-finance 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 design-build or design-build-finance agreement is the subject of a Public Information Act request received by the Authority.

10.12 Performance and Payment Security.

10.12.1 The Authority shall require a design-build 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.

10.12.2 A payment or performance bond or alternative form of security is not required for that portion of a design-build or design-build-finance agreement that includes only design services only.

10.12.3 Alternative forms of security may be permitted or required in the following forms:

10.12.3.1 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 11. PARTICIPATION IN STATE AND COOPERATIVE PURCHASE PROGRAMS; INTERGOVERNMENTAL AGREEMENTS.

11.1 Strategic Sourcing. Voluntary GSC 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 Building and Procurement Commission ("TBPC") to allow the Authority to participate on a voluntary basis in the program established by TBPC by which the TBPC performs purchasing services for local governments.

11.2 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 TBPC with respect to the purchase of automated information systems.

11.3 Cooperative Purchases. Pursuant to and in accordance with Subchapter F, Chapter 271 of the Local Government Code, the Authority may participate in one (1) or more cooperative purchasing programs with local governments or local cooperative programs.

11.4 Interlocal Agreements. Subject to limitations imposed by State law, the Authority may enter into inter-local agreements with TxDOT, Hidalgo County, and other governmental entities to procure goods and services from or through them and/or utilize their established certifications and registries.

11.5 Effect of Procurements Under Section 11. Purchases made through the TBPC, a cooperative program or by interlocal agreement shall be deemed to have satisfied the procurement requirements of the policy and shall be exempted from the procurement requirements contained in this policy.

SECTION 12. EMERGENCY PROCUREMENTS.

12.1 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, buildings, 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.

12.1.1 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.

12.1.2 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.

12.1.3 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.

12.1.4 After an emergency is certified, if there are three (3) 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 (3) 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 13. DISPOSITION OF SALVAGE OR SURPLUS PROPERTY.

13.1 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.

13.2 Trade-In for New Property. Notwithstanding Subsection 13.1, 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.

13.3 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 13.1.

13.4 Sale to State, Counties, etc. Notwithstanding Subsection 13.1 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.

13.5 Failure to Attract Bids. If the Authority undertakes to sell property under Subsection 13.1 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.

13.6 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.

13.7 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.

13.8 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 (2) issues of the officially designated newspaper of the Authority, or any other newspaper of general circulation in each county 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.

13.9 Use of Excess and Surplus Federal Property. When it is feasible and reduces project costs, the Authority shall use excess and surplus federal property rather than purchasing new equipment and property.

* * *

REQUIRED CERTIFICATIONS

- Section 1. DISCLOSURE OF OWNERSHIP INTERESTS. Pursuant to Executive Order GA48 (November 19, 2024) any company that submits a bid or proposal with respect to a contract for goods or services shall be required to certify to the Authority that the company and, if applicable, any of its holding companies or subsidiaries is not:
- a. Listed in Section 889 of the 2019 National Defense Authorization Act (NDAA); or
 - b. Listed in Section 1260H of the 2021 NDAA; or
 - c. Owned by the government of a country on the US Department of Commerce's foreign advisories list under 15 CFR Section 791.4; or
 - d. Controlled by any governing or regulatory body located in a country on the US Department of Commerce's foreign adversaries list under 15 CFR Section 791.4.
- Section 2. DISCLOSURE OF CERTAIN RELATIONSHIPS. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any supplier or person doing business with a local government entity disclose in the Questionnaire Form CIQ, the supplier or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the Records Administrator of the HCRMA not later than the 7th business day after the date the supplier or person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.
- Section 3. ANTI-BOYCOTT VERIFICATION. Pursuant to Section 2271.002, Texas Government Code, to the extent this Agreement is a contract for goods or services, Contractor hereby represents that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not Boycott Israel and, subject to or as otherwise required by applicable Federal law, Contractor agrees not to Boycott Israel during the term of this Agreement. For purposes of this Section, "Boycott Israel" shall have the meaning given such term in Section 808.001, Texas Government Code. Contractor understands "affiliate" for this Section 4.07 to mean an entity that controls, is controlled by, or is under common control with Contractor and exists to make a profit.
- Section 4. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN ENERGY COMPANIES. Pursuant to Section 2274.002, Texas Government Code, to the extent this Agreement is a contract for goods or services, Contractor hereby represents that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, does not boycott energy companies, and

will not boycott energy companies during the term of the contract. For purposes of this Section, "Boycott Energy Company" shall have the meaning given such term in Section 809.001, Texas Government Code.

Section 5. PROHIBITION ON CONTRACTS WITH COMPANIES THAT DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES. Pursuant to Section 2274.003, Texas Government Code, to the extent this Agreement is a contract for goods or services, Contractor hereby represents that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. For purposes of this Section, "discriminate against a firearm entity or firearm trade association" shall have the meaning given such term in Section 2274.001, Texas Government Code.

Section 6. PROHIBITION ON CONTRACTS WITH CERTAIN COMPANIES. Contractor and the person or persons executing the contract or contract amendment on behalf of Contractor, or representing themselves as executing the contract or contract amendment on behalf of Contractor (collectively, the "Signing Entities"), hereby acknowledge that (i) the Signing Entities do not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) the Signing Entities are not named on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of the Comptroller's website:

- <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>
- <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>
- <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>

Schedule 2.4(a)

FORM CIQ CONFLICTS OF INTEREST QUESTIONNAIRE
FOR VENDOR AND OTHER PERSONS DOING BUSINESS WITH LOCAL GOVERNMENTAL ENTITY

Schedule 2.4(b)

FORM CIS LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

SCHEDULE 3

MEMORANDUM OF UNDERSTANDING REGARDING THE ADOPTION OF THE TEXAS DEPARTMENT OF TRANSPORTATION'S FEDERALLY APPROVED DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

SCHEDULE 6.24
(as of September 23, 2025)

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.323.

(K) See § 200.216.

(L) See § 200.322.

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