



**CENTRAL TEXAS
Regional Mobility Authority**

AGENDA ITEM #7 SUMMARY

Amend the Policy Code relating to criteria for qualification of potential bidders and the award of a construction contract by the Mobility Authority.

Strategic Plan Relevance: Regional Mobility

Department: Engineering and Law

Associated Costs: None

Funding Source: None

Board Action Required: Yes

Description of Matter: Bidders on construction contracts awarded by the Mobility Authority generally must be qualified by the Texas Department of Transportation to bid on TxDOT construction contracts. Sec. 401.036 (Qualifying with the Authority) of the Policy Code authorizes the Mobility Authority to establish its own, independent standards for bidder qualification on Mobility Authority projects where TxDOT pre-qualification is not otherwise required. The proposed Policy Code amendment would revise and strengthen the Mobility Authority's qualification standards so potential bidders who do not meet those standards are identified and prevented from bidding on Mobility Authority projects where TxDOT pre-qualification standards may not apply. Section 401.046 is also revised to establish and refine additional, discretionary criteria the Board may use to identify the lowest best bidder in a construction contract.

Attached documentation for reference: Redlined text showing Policy Code changes
Draft Resolution

Contact for further information: Andrew Martin, General Counsel

401.036 Qualifying with the Authority.

(a) If, ~~in its sole discretion,~~ the authority elects under Sec. 401.035 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 to include:~~

(1) a ~~confidential~~ questionnaire in a form prescribed by the authority, which may ~~include certain~~ require the potential bidder to provide information concerning ~~the bidder's that bidder's:~~

~~(A) ability, capacity, equipment, skill, experience, references as well as and financial condition~~ resources needed to perform the contract or provide the services required;

~~(B) ability to perform the contract or provide the services in the time prescribed without delay or interference;~~

~~(C) character, responsibility, integrity, and reputation;~~

~~(D) quality of performance in previous contracts or services, including references; and~~

~~(E) previous and existing compliance with laws relating to the contract or services;~~

(2) the bidder's current audited financial statement in form and substance acceptable to the authority; and

(3) a reasonable fee to be specified by the authority to cover the cost of evaluating the bidder's application.

~~(b) Information submitted by a potential bidder to the authority under this section is confidential to the extent that an exception to disclosure of such information is authorized by the Public Information Act, Chapter 552, Government Code, or other applicable law.~~

~~(c)~~ 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.

~~(d)~~ Upon the recommendation of the executive director and with the concurrence of the board, 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).~~

(~~e~~) 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 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~~. 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.

401.046 — Award of Contract.

~~(a) — Except as otherwise provided in this article, if the authority does not reject all bids, it will award the contract to the lowest best bidder.~~

~~(b) — In determining the lowest best bidder, in addition to price the authority shall consider:~~

~~(1) — the bidder's ability, capacity, and skill to perform the contract or provide the service required;~~

~~(2) — the bidder's ability to perform the contract or provide the service promptly, or in the time required, without delay or interference;~~

~~(3) — the bidder's character, responsibility, integrity, reputation, and experience;~~

~~(4) — the quality of performance by the bidder of previous contracts or services;~~

~~(5) — the bidder's previous and existing compliance with laws relating to the contract or service; and~~

~~(6) — the sufficiency of the bidder's financial resources and ability to perform the contract or provide the service.~~

401.046 Award of Contract.

(a) Except as otherwise provided in this article, if the authority does not reject all bids, it will award the contract to the lowest best bidder.

(b) In determining the lowest best bidder, in addition to price the authority ~~shall~~may consider the bidder's:

(1) ~~the bidder's~~ ability, capacity, and skill to perform the contract or provide the services required under the conditions prescribed in the procurement and contract documents; and

~~(2) the bidder's ability to perform the contract or provide the service promptly, or in the time required, without delay or interference;~~

~~(3) the bidder's character, responsibility, integrity, reputation, and experience;~~

~~(4) the quality of performance by the bidder of previous contracts or services;~~

~~(5) the bidder's previous and existing compliance with laws relating to the contract or service; and~~

~~(6) the 2 sufficiency of the bidder's financial resources and ability to perform the contract or provide the services.~~

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 14-___

**AMENDING THE POLICY CODE RELATING TO CRITERIA FOR
QUALIFICATION OF POTENTIAL BIDDERS AND THE AWARD OF A
CONSTRUCTION CONTRACT BY THE MOBILITY AUTHORITY.**

WHEREAS, by Resolution No. 12-016 adopted February 29, 2012, the Board adopted the Mobility Authority Policy Code (“Policy Code”) as a non-substantive codification of all policy resolutions adopted by the Board since 2003; and

WHEREAS, under the Policy Code, bidders must be qualified to bid on certain contracts awarded by the Mobility Authority; and

WHEREAS, bidders qualified by the Texas Department of Transportation (“TxDOT”) to bid on construction or maintenance contracts for TxDOT are generally deemed qualified to bid on Mobility Authority construction contracts; and

WHEREAS, the Mobility Authority may elect to separately qualify bidders on a construction contract, applying criteria established by the Policy Code; and

WHEREAS, the Executive Director recommends amending the Policy Code to establish additional criteria used by the Mobility Authority when it separately qualifies bidders and to refine additional discretionary criteria for the award of a contract to the lowest best bidder for a construction contract, to protect the public interest in awarding contracts to qualified bidders.

NOW THEREFORE, BE IT RESOLVED, that the Board hereby amends Section 401.036 (Qualifying with the Authority) and Section 401.046 (Award of Contract) of the Policy Code to read as set forth in Exhibit 1 to this resolution.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 21st day of May, 2014.

Submitted and reviewed by:

Approved:

Andrew Martin
General Counsel for the Central
Texas Regional Mobility Authority

Ray A. Wilkerson
Chairman, Board of Directors
Resolution Number: 14-___
Date Passed: 5/21/2014

EXHIBIT 1 TO RESOLUTION NO. 14-

Section 401.036 of the Policy Code is amended to read as follows:

401.036 Qualifying with the Authority.

(a) If the authority elects under Sec. 401.035 to separately qualify bidders on a construction project, the authority will require each potential bidder to submit to the authority an application for qualification to include:

- (1) a questionnaire in a form prescribed by the authority, which may require the potential bidder to provide information concerning that bidder's:
 - (A) ability, capacity, equipment, skill, experience, and financial resources needed to perform the contract or provide the services required;
 - (B) ability to perform the contract or provide the services in the time prescribed without delay or interference;
 - (C) character, responsibility, integrity, and reputation;
 - (D) quality of performance in previous contracts or services, including references; and
 - (E) previous and existing compliance with laws relating to the contract or services;
- (2) the bidder's current audited financial statement in form and substance acceptable to the authority; and
- (3) a reasonable fee to be specified by the authority to cover the cost of evaluating the bidder's application.

(b) Information submitted by a potential bidder to the authority under this section is confidential to the extent that an exception to disclosure of such information is authorized by the Public Information Act, Chapter 552, Government Code, or other applicable law.

(c) 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.

(d) Upon the recommendation of the executive director and with the concurrence of the board, the authority may waive the requirement that a bidder's financial statement be audited if the estimated amount of the contract is \$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 \$100,000.00.

(e) 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 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. 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.

Section 401.046 of the Policy Code is amended to read as follows:

401.046 Award of Contract.

- (a) Except as otherwise provided in this article, if the authority does not reject all bids, it will award the contract to the lowest best bidder.
- (b) In determining the lowest best bidder, in addition to price the authority may consider the bidder's:
 - (1) ability, capacity, and skill to perform the contract or provide the services under the conditions prescribed in the procurement and contract documents; and
 - (2) sufficiency of financial resources to perform the contract or provide the services.