

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

**RESOLUTION NO. 03-20**

WHEREAS, Texas Transportation Code Section 361.003 authorizes the creation of a regional mobility authority for the purposes of constructing, maintaining, and operating one or more turnpike projects in a region of this state; and

WHEREAS, the Central Texas Regional Mobility Authority ("CTRMA") was created pursuant to the request of Travis and Williamson Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 46 Tex. Admin. Code § 26.01, *et. seq.* (the "RMA Rules"); and

WHEREAS, the Board of Directors of the CTRMA has been constituted in accordance with the Transportation Code and the RMA Rules; and

WHEREAS, via Resolution No. 03-13 the Board of Directors adopted policies and procedures to govern procurement of goods and services by the Authority (the "Procurement Policies"); and

WHEREAS, the Board of Directors desires to amend various aspects of the Procurement Policies; and


WHEREAS, the proposed revisions to the Procurement Policies are marked in the version of the policies attached hereto as Attachment "A".

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors of the CTRMA hereby approves and adopts the revisions to "Policies and Procedures Governing the Procurement of Goods and Services By the Central Texas Regional Mobility Authority," shown in Attachment "A"; and


BE IT FURTHER RESOLVED, that such policies and procedures may be further amended from time to time in accordance with the procedures set forth in the CTRMA's bylaws.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 30<sup>th</sup> day of April, 2003.

Submitted and reviewed by:

  
\_\_\_\_\_  
C. Brian Cassidy  
Legal Counsel for the Central  
Texas Regional Mobility Authority

Approved:

  
\_\_\_\_\_  
Robert E. Tesch  
Chairman, Board of Directors  
Resolution Number 03-20  
Date Passed 4/30/03

**POLICIES AND PROCEDURES GOVERNING**

**PROCUREMENTS OF GOODS AND SERVICES**

**BY THE**

**CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

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**POLICIES AND PROCEDURES GOVERNING PROCUREMENTS OF  
GOODS AND SERVICES BY THE  
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

**SECTION 1. STATEMENT OF GENERAL POLICY.**

It is the policy of the Central Texas Regional Mobility Authority (the "Authority") that all Authority procurements shall be based solely on economic and business merit in order to best promote the interests of the citizens of the counties served by the Authority.

**SECTION 2. CONFLICT OF INTEREST.**

2.1. 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) accept or solicit any gift, favor, or service that might reasonably tend to influence that Board member, employee or agent in the making of procurement decisions or that the Board member, employee or agent knows or should have known is being offered with the intent to influence the Board member's, employee's or agent's making of procurement decisions; or (c) accept other compensation that could reasonably be expected to impair the Board member's, employee's or agent's independence of judgment in the making of procurement decisions.

2.2 A bidder shall not be eligible to contract with the Authority if a Board member, employee or agent is related to the bidder within the second degree of consanguinity or affinity, as determined under Chapter 573, Government Code. A bidder shall be required to complete a conflict of interest disclosure statement disclosing any business or familial relationships with Board members, employees or agents of the Authority which may disqualify the bidder from consideration.

**SECTION 3. DISADVANTAGED BUSINESS PARTICIPATION; COMPLIANCE WITH POLICY.**

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

**SECTION 4. DEFINITIONS.**

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

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

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Authority: The Central Texas Regional Mobility Authority.

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

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

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

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

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

Board: The Board of Directors of the Authority.

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

Construction contract: A contract for the construction, reconstruction, maintenance, or repair of a segment of a turnpike project, including a contract let to preserve and prevent further deterioration of a turnpike 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. Consulting services do not include professional services as defined in this policy.

Counties of the Authority: Travis and Williamson Counties, as well as any counties which may subsequently join the Authority.

Emergency: Any situation or condition affecting a turnpike 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 turnpike project, including a contract let to preserve and prevent further deterioration of a turnpike 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.

Lowest best bidder: The lowest responsible bidder on a contract that complies with the Authority's criteria for such contract, as described in Section 5 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.

Professional services: Services which political subdivisions of the State must procure pursuant to the Professional Services Procurement Act, which are services defined by state law of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, 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.

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

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

Surplus property: Personal property (including, without limitation, supplies, equipment, and vehicles) that is not currently needed by the Authority and is not required for the

Authority's foreseeable needs. The term includes used or new property that retains some usefulness for the purpose for which it was intended or for another purpose.

State: The State of Texas.

Turnpike Project: A toll highway constructed, maintained or operated by the Authority and any improvement, extension or expansion to the highway, including:

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

TxDOT: The Texas Department of Transportation.

## SECTION 5. CONSTRUCTION AND BUILDING CONTRACTS.

5.1. Competitive Bidding. A contract requiring the expenditure of public funds for the construction or maintenance of the Authority's turnpike 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 5. Bidding for procurements made by competitive bidding will be open and unrestricted, subject to the procedures set forth in this policy.

### 5.2. Qualification of Bidders.

A potential bidder must be qualified to bid on construction contracts of the Authority. Unless the Authority elects, in its sole discretion, to separately qualify bidders on a construction project, only bidders qualified by TxDOT to bid on construction or maintenance contracts of TxDOT will be deemed qualified by the Authority to bid on the Authority's construction contracts. At its election, the Authority may waive this subsection 5.2 with respect to bidders on building contracts.

### 5.3 Qualifying with the Authority.

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

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

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

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

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

### 5.4. Notice of Contract Letting.

(a) Each notice of contract letting must provide:

- (1) the date, time, and place where contracts will be let and bids opened;
- (2) the address and telephone number from which prospective bidders may request bid documents; and

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

(b) Notice for contracts estimated to be more than one-hundred thousand dollars (\$100,000.00) must be published once a week for at least two weeks before the date set for the letting of the contract in the officially designated newspaper of the Authority.

(c) Notice for contracts estimated to be less than one-hundred thousand dollars (\$100,000.00) but more than twenty-five thousand dollars (\$25,000.00) must be published in two successive issues of the officially designated newspaper of the Authority.

(d) 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.

5.5. Bid Documents. The Authority will prepare a set of bid documents for each construction or building contract to be let through the procedures of this section 5.

5.6. Issuance of Bid Documents.

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

(a) to a bidder qualified by TxDOT, if the estimated cost of the project is within that bidder's available bidding capacity as determined by TxDOT;

(b) to a bidder qualified by the Authority, if the estimated cost of the project is within that bidder's available bidding capacity as determined by the Authority; and

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

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

(a) the bidder is suspended or debarred from contracting with TxDOT or the Authority;

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



(c) the bidder has not fulfilled the requirements for qualification under this policy, unless the bidder has substantially complied with the requirements for qualification, as determined by the Authority;

(d) the bidder is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits, and the contract is for a federal-aid project; or

(e) the bidder or its subsidiary or affiliate has received compensation from the Authority to participate in the preparation of the plans or specifications on which the bid or contract is based.

#### 5.8. Completion and Submission of Bid Documents.

(a) At the option of the Authority, a pre-bid conference may be held before opening bids to allow potential bidders to seek clarification regarding the procurement and/or the bid documents. Alternatively, bidders may submit written requests for clarification.

(b) Bidders shall complete all information requested in bid documents by typing, printing by computer printer, or printing in ink. The bidder shall submit a unit price, expressed in numerals, for each item for which a bid is requested (including zero dollars and zero cents, if appropriate), except in the case of a regular item that has an alternate bid item. In such case, prices must be submitted for the base bid or with the set of items of one or more of the alternates. Unit prices shown on acceptable computer printouts will be the official unit prices used to tabulate the official total bid amount and used in the contract if awarded.

(c) Each set of bid documents shall be executed in ink in the complete and correct name of the bidder making the bid and shall be signed by the person or persons authorized to bind the bidder.

(d) If required by the bid documents, the bidder must submit a bid guaranty with the bid. The bid guaranty shall be in the amount specified in the bid documents, shall be payable to the Authority, and shall be in the form of a cashier's check, money order, or teller's check issued by a state or national bank, savings and loan association, or a state or federally chartered credit union (collectively referred to as "bank") and payable at or through a branch of the issuing bank located in Travis County or Williamson County. The Authority will not accept cash, credit cards, personal checks or certified checks, or other types of money orders. Bid bonds may be accepted at the sole discretion of the Authority. Failure to submit the required bid guaranty in the form set forth in this subsection shall disqualify a bidder from bidding on the project described in the bid documents.

(e) A bid on a federal-aid project shall include, in a form prescribed by the Authority, a certification of eligibility status. The certification shall describe any suspension, debarment, voluntary exclusion, or ineligibility determination actions by an agency of the federal government, and any indictment, conviction, or civil judgment involving fraud or official misconduct, each with respect to the bidder or any person associated therewith in the capacity of

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

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

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

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

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

- (a) the bid is submitted by an unqualified bidder;
- (b) the bid is in a form other than the official bid documents issued to the bidder;
- (c) the form and content of the bid do not comply with the requirements of the bid documents and/or subsection 5.8;
- (d) the bid, and if required, federal-aid project certification, are not signed;
- (e) the bid was received after the time or at some location other than specified in the notice or as may have been extended;

(f) the bid guaranty, if required, does not comply with subsection 5.8;

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

(h) the proprietor, partner, majority shareholder, or substantial owner is thirty (30) or more days delinquent in providing child support under a court order or a written repayment agreement;

(i) the bidder was not authorized to be issued a bid under this policy;

(j) the bid did not otherwise conform with the requirements of this policy; or

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

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

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

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

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

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

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

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

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

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

(a) there is reason to believe collusion may have existed among the bidders;

(b) the low bid is determined to be both mathematically and materially unbalanced;

(c) the lowest best bid is higher than the Authority's estimate and the Authority determines that re-advertising the project for bids may result in a significantly lower low bid or that the work should be done by the Authority; or

(d) the Board of Directors, acting on the recommendation of the Executive Director, determines, for any reason, that it is in the best interest of the Authority to reject all bids.

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

5.15. Bid Protests.

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

(1) the name and address of the protester, and the vendor it represents, if different;

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

(3) a statement of the grounds for protest; and

(4) all documentation supporting the protest.

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

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

5.16. Contract Execution; Submission of Ancillary Items.

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

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

(1) a performance bond and a payment bond, if required and as required by Texas Government Code, Chapter 2253, with powers of attorneys attached, each in the full amount of the contract price, executed by a surety company or surety companies authorized to execute surety bonds under and in accordance with state law;

(2) a certificate of insurance on form ACORD-27 showing coverages in accordance with contract requirements; provided, however, that a successful bidder on a routine construction contract will be required to provide the certificate of insurance prior to the date the contractor begins work as specified in the Authority's order to begin work.

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

5.18. Bid Guaranty. Not later than seven (7) days after bids are opened, the Authority will mail the bid guaranty of all bidders to the address specified on each bidder's bid documents, except that the Authority will retain the bid guaranty of the apparent lowest best bidder, second-lowest best bidder, and third-lowest best bidder, until after the contract has been awarded, executed, and bonded. If the successful bidder (including a second-lowest best bidder or third-lowest best bidder that ultimately becomes the successful bidder due to a superior bidder's failure to comply with these rules or to execute a contract with the Authority) does not comply with subsection

5.16 the bid guaranty will become the property of the Authority, not as a penalty but as liquidated damages, unless the bidder effects compliance within seven (7) days after the date the bidder is required to submit the bonds and insurance certificate under subsection 5.16. A bidder who forfeits a bid guaranty will not be considered in future bids for the same work unless there has been a substantial change in the design of the project subsequent to the forfeiture of the bid guaranty.

5.19 Progress Payments; Retainage and Liquidated Damages.

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

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

- (1) retained funds must be deposited under the terms of a trust agreement with a state or national bank domiciled in Texas and approved by the Authority;
- (2) all expenses incident to the deposit and all charges made by the escrow agent for custody of the securities and forwarding of interest shall be paid solely by the contractor;
- (3) the Authority may, at any time and with or without reason, demand in writing that the bank return or repay, within 30 days of the demand, the retainage or any investments in which it is invested; and
- (4) any other terms and conditions prescribed by the Authority as necessary to protect the interests of the Authority.

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

SECTION 6. PROFESSIONAL SERVICES.

6.1 General. The Authority shall procure all professional services governed by the Professional Services Procurement Act in accordance with the requirements of that Act. In the event of any conflict between these policies and procedures and the Act, the Act shall control.

6.2 Selection of Provider; Fees

(a) The Authority may not select a provider of professional services or a group or

association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award based on the provider's:

- (1) demonstrated competence and qualifications to perform the services; and
- (2) ability to perform the services for a fair and reasonable price.

(b) The professional fees under the contract:

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

### 6.3 Contract for Professional Services

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

- (1) first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and
- (2) then attempt to negotiate with that provider a contract at a fair and reasonable price.

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

- (1) formally end negotiations with that provider;
- (2) select the next most highly qualified provider; and
- (3) attempt to negotiate a contract with that provider at a fair and reasonable price.

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

## SECTION 7. GENERAL GOODS AND SERVICES.

7.1 Approval of Board. Every procurement of general goods and services costing more than twenty-five thousand dollars (\$25,000.00) shall require the approval of the Board, evidenced by a resolution adopted by the Board. A large procurement may not be divided into smaller lot

purchases to avoid the dollar limits prescribed herein.

7.2. Purchase Threshold Amounts. The Authority may procure general goods and services costing twenty-five thousand dollars (\$25,000.00) 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 twenty-five thousand dollars (\$25,000.00) shall be procured using competitive bidding or competitive sealed proposals. A large procurement may not be divided into smaller lot purchases to avoid the dollar limits prescribed herein.

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

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

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

(c) in addition to advertisement of the procurement as set forth in subsection 5.4, the Authority may solicit bids by direct mail, telephone, 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 in the officially designated newspaper of the Authority; and

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

7.4. Award Under Competitive Bidding.

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

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

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

(b) In accordance with Texas Government Code, Chapter 2252, Subchapter A, the Authority will not award a contract to a nonresident bidder unless the nonresident underbids the lowest best bid submitted by a responsible resident bidder by an amount that is not less than the



amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

#### 7.5. Competitive Sealed Proposals.

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

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

(b) Opening and Filing of Proposals; Public Inspection. The Authority shall avoid disclosing the contents of each proposal on opening the proposal and during negotiations with competing offerors. The Authority shall file each proposal in a register of proposals, which, after a contract is awarded, is open for public inspection unless the register contains information that is excepted from disclosure as public information.

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

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

(e) Contract Execution. The Authority shall submit a written contract to the offeror (the "first-choice candidate") whose proposal is the most advantageous to the Authority, considering price and the evaluation factors in the RFP. The terms of the contract shall incorporate the terms set forth in the RFP and the proposal submitted by the first choice candidate, but if the proposal

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

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

## SECTION 8. CONSULTING SERVICES.

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

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

8.3. Contract Amounts. The Authority may procure consulting services anticipated to cost no more than twenty-five thousand dollars (\$25,000.00) 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 twenty-five thousand dollars (\$25,000.00) pursuant to a "single-source contract," if the Executive Director determines that only one prospective consultant possesses the demonstrated competence, knowledge, and qualifications to provide the services required by the Authority at a reasonable fee and within the time limitations required by the Authority. Consulting services anticipated to cost more than twenty-five thousand dollars (\$25,000.00) shall be procured by the Authority's issuance of a Request for Qualifications ("RFQ").

8.4. Request for Qualifications. Each RFQ prepared by the Authority shall invite prospective consultants to submit their qualifications to provide such services as specified in the RFQ. Each RFQ shall describe the services required by the Authority and shall describe the composition of the team that will review the responses to the RFQ.

8.5. Notice of RFQs.

(a) Notice of the issuance of an RFQ must provide (1) the date, time, and place where responses to the RFQ will be opened, (2) the address and telephone number from which prospective proposers may request the RFQ, 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 itself in lieu of publishing a notice of issuance of an RFQ. 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. All responses, including those received before an extension is made, must be opened at the same time.

(b) Notice of the issuance of an RFQ, or the content of the RFQ itself, shall be published in the officially designated newspaper of the Authority and, if required under this Policy, in any other newspapers of general circulation published in one or more counties of the Authority, as described below. In addition, the Authority may, but shall not be required to, solicit responses to an RFQ by direct mail, telephone, or via the internet.

(c) Notice of the issuance of an RFQ, or the RFQ itself, for a contract estimated to be more than one-hundred thousand dollars (\$100,000.00) must be published once a week for at least two weeks before the deadline for the submission of responses in the officially designated newspaper of the Authority.

(d) Notice of the issuance of an RFQ, or the RFQ itself, for a contract estimated to be less than one-hundred thousand dollars (\$100,000.00) but more than fifty thousand dollars (\$25,000.00) must be published in two successive issues of the officially designated newspaper of the Authority.

8.6 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.

8.7 Contract Negotiations. 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.

8.8. Single-Source Contracts. If the Executive Director determines that only one prospective consultant possesses the demonstrated competence, knowledge, and qualifications to provide the services required by the Authority at a reasonable fee and within the time limitations required by the Authority, consulting services from that consultant may be procured without issuing an RFQ. 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 twenty-five thousand dollars (\$25,000.00). If the anticipated cost of services is less than twenty-five thousand dollars (\$25,000.00), the Executive Director, with the prior approval of the Executive Committee, may enter into a contract for services and shall submit the justification to the Board at its next regularly scheduled board meeting.

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

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

## SECTION 9. UNSOLICITED PROPOSALS

9.1 Detailed or Conceptual Proposals. Private entities may submit unsolicited proposals to the Authority proposing private participation in a turnpike project or the provision of services related to a turnpike project. Such unsolicited proposals shall be designated by the proposer as a "Detailed Proposal" or a "Conceptual Proposal," and shall be processed according to the following procedures.

### 9.2 Detailed Proposals.

(a) A detailed proposal proposing private participation in a turnpike project or the provision of services related to a turnpike project shall be filed with the Authority and must include the following information:

- (1) the name, address, and professional designation of each member of the proposer's management team and of other key employees or consultants;
- (2) the description, scope and location of the project or services;

- (3) the results expected from the proposed project or services and the critical factors for the implementation of the proposal;
- (4) all studies previously completed concerning the proposal;
- (5) if for turnpike project development, a general conceptual plan which includes, at a minimum, all proposed interconnections with other transportation facilities and information responsive to the evaluation criteria listed in Section 9.4 below;
- (6) complete information concerning the experience, expertise and qualifications of the proposer and of each member of the proposer's management team and of other key employees or consultants;
- (7) a description of all federal, state and local permits and approvals, together with documentation of support by appropriate public entities required for the project, and a schedule and methodology for obtaining said permits, approvals, and support;
- (8) a specific description of the level and nature of participation sought from the Authority;
- (9) if for turnpike project development, a detailed financial plan;
- (10) if for turnpike project development, a listing of anticipated opponents and a description of potential social, economic and environmental impacts, and potentially competing facilities;
- (11) if for services related to a turnpike project, a schedule setting forth the time frame for provision of the services;
- (12) if for services related to a turnpike project, an explanation of the Authority's need for the services;
- (13) other information of probable interest to Authority; and
- (14) a proposal review fee of \$20,000.00 for a proposal for turnpike project development or \$5,000.00 for a proposal for the provision of services related to a turnpike project.

(b) Any detailed proposal properly filed with the Authority in accordance with subsection (a)(1) above and accompanied by the proper proposal review fee will be reviewed by the Authority staff. During the course of that review staff may request additional information from the proposer. Based on its review, staff will make an initial recommendation to the Board (or designated committee thereof) as to whether the Authority should further evaluate the proposal. That recommendation shall be based on whether the proposed project or services:

(1) are compatible with (or, for services, related to) existing and planned transportation facilities; and (2) further state, regional and local transportation plans, programs, and policies and goals. The recommendation shall also consider the proposal's responsiveness to such other evaluation criteria as the Authority deems relevant.

(c) If the initial staff recommendation is that the Authority further evaluate its requested participation in the applicable turnpike project and the Board (or designated committee thereof) approves that recommendation, the Authority staff shall publish notice of that decision and provide an opportunity for the submission of competing proposals as provided in this subsection. The Authority will publish a notice in the *Texas Register* and in one or more newspapers of general circulation in the counties of the Authority. The notice will state that the Authority has received an unsolicited proposal, that it intends to evaluate the proposal, that it may negotiate a contract with the proposer based on the proposal, and that it will accept for simultaneous consideration any competing proposals that the Authority receives within forty-five (45) days of the initial publication of the notice in the *Texas Register*. The notice will summarize the proposal, identify the proposed location of the project (or the nature of the proposed services), and provide other information that the Authority staff deems appropriate to fairly inform potential competing proposers of the nature of the proposal.

(d) Failure by a prospective proposer to submit a competing proposal, together with the proper proposal review fee, within the 45-day period shall preclude such proposal from consideration by the Authority unless and until the Authority terminates consideration of, or negotiations on, the original unsolicited proposal and any and all competing proposals received within such 45-day period. The Authority will not grant requests to extend the 45-day period; and the receipt of one or more competing proposals during such period will not trigger the posting or publication of a new notice or the commencement of any new 45-day period.

(e) The Authority recognizes that it may receive proposals which have certain characteristics in common with the original unsolicited proposal, yet differ in other material respects. In such cases, the Authority reserves the right, in its sole discretion, to treat any such proposal as either a competing proposal or a noncompeting proposal. Because of the consequences to a proposer of failing to submit within the 45-day period a proposal which the Authority could later deem a competing proposal, prospective proposers are strongly urged to monitor the Authority's notices of unsolicited proposals received, and to be prepared to submit within such 45-day period if they perceive that a proposal they are considering or are preparing bears certain similarities to, or has characteristics in common with, an unsolicited proposal which is the subject of a notice.

(f) Upon the expiration of the 45-day period, the Authority will subject the original unsolicited proposal, together with any and all properly submitted competing proposals, to the following single-phase evaluation and selection process. If one or more properly submitted competing proposals are received, the Authority shall review and rank said proposal(s), together with the original unsolicited proposal, utilizing the evaluation criteria set forth in Section 9.4 and the information specified in subsection (a)(1) of this Section 9.2. The proposers will be notified of the Authority's rankings, and the process will proceed in the manner described in Section 9.4.

If no properly submitted competing proposal is received, the Authority may, but is not required, to negotiate an agreement with the proposer.

### 9.3 Conceptual Proposals.

A conceptual proposal proposing private participation in a turnpike project or the provision of services related to a turnpike project must be filed with the Authority and be accompanied by a \$5,000.00 proposal review fee. At a minimum, a conceptual proposal must include a general description of the proposed project or services, anticipated costs associated with the proposal, the expected level of Authority participation, and a designated contact for the proposer. Conceptual proposals shall be reviewed by the Authority staff. The staff may request additional information from the proposer. Based on its review, the staff will make an initial recommendation to the Board (or a designated committee thereof) as to whether the Authority should request that the proposer submit a follow-up proposal containing the information described in Section 9.2(a) above. If the recommendation is that the Authority request that the proposer submit a follow-up proposal and the Board (or designated committee thereof) approves that recommendation, the Authority staff shall notify the proposer in writing of the request. The proposer shall have such time as the staff designates in the written notification in which to submit the follow-up proposal, which must be accompanied by a proposal review fee in the amount of \$15,000.00 for a proposal for turnpike project development, or \$5,000.00 for a proposal for the provision of services related to a turnpike project. Once received, the follow-up proposal shall be considered as a detailed proposal and shall be processed in accordance with the procedures set forth in Section 9.2 above.

9.4 Processing of Proposals. (a) In addition to considering the information contained in an unsolicited proposal and the responsibilities of the proposal to the criteria set forth above, the proposals will be evaluated by the Authority as to some or all of the following depending on the nature of the proposal: feasibility (including the reasonableness of the financial plan, realistic time frame, assumptions (including those related to ownership, legal liability, law enforcement and operation of the project), forecasts, financial exposure and benefit to the Authority, compatibility of the proposed project (or the project to which proposed services relate) with other planned or existing transportation facilities, likelihood of obtaining necessary approvals and other support, cost and pricing, toll rates and projected usage, scheduling, environmental impact, manpower availability, use of technology, governmental liaison, and project coordination, with attention to efficiency, quality of finished product and such other criteria, including conformity with Authority policies, guidelines and standards, as may be deemed appropriate by the Authority to maximize the overall benefits of the proposed project or services to the Authority and the residents within the counties of the Authority.

(b) For each unsolicited proposal for which competing proposals are solicited, the initial proposer and each competing proposer will be evaluated to determine its financial condition, management stability, technological capability, experience, staffing, organizational structure, project commitment, and such other qualities that the Authority considers relevant to the successful completion of the project or proposed services.

(c) Based on the review described above, the Authority will rank all proposals which are complete and in conformance with these policies. The proposers will be notified of the Authority's rankings.

(d) The Authority will attempt to negotiate a contract with the top ranked proposer for the subject matter of the proposal. If a contract satisfactory to the Authority cannot be negotiated with that proposer, the Authority shall formally end negotiations with that proposer and, in its sole discretion, either (1) reject all proposals, (2) terminate or suspend the evaluation of all proposals, or (3) proceed to the next most highly ranked proposal and attempt to negotiate a contract with that party in accordance with these procedures.

9.5. Confidentiality of Proposals. The Authority will endeavor to maintain the confidentiality of any portion of an unsolicited proposal or competing proposal which may constitute proprietary, competitive, or trade secret information until such time as a contract is awarded or the procurement process is terminated. Notwithstanding the foregoing, the Authority may, in its sole discretion, determine the amount of information to include in the notice provided for in Section 9.2(c). In the event that a request for disclosure of all or part of an unsolicited proposal or a competing proposal is received under the Public Information Act, Tex. Gov't Code § 552.001, *et seq.*, prior to the award of a contract or the termination of the procurement, the Authority shall notify the entity whose proposal has been requested. If that entity notifies the Authority within three (3) business days that it objects to its release of the requested information, the Authority shall request an opinion from the Office of the Attorney General as to whether disclosure is required. In such event the proposer whose information is requested is encouraged to submit information to the Office of the Attorney General, pursuant to rules established by the OAG, setting forth why the requested information is exempt from disclosure. If the entity fails to timely notify the Authority that it objects to release of the requested information the Authority may release that information.

9.6. Anti-Lobbying Prohibition. The Authority may include, in any notice provided under Section 9.2(c), that proposers may not contact members of the Authority's Board of Directors concerning the procurement. Any such prohibition shall extend to the initial proposer as well. Any firm violating an anti-lobbying prohibition may be disqualified from consideration in the procurement.

## SECTION 10. PARTICIPATION IN STATE AND COOPERATIVE PURCHASING PROGRAMS; AND INTERGOVERNMENTAL AGREEMENTS.

10.1. 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.

10.2. 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.

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

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

10.5 Effect of Procurements Under Section 10. 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 11. EMERGENCY PROCUREMENTS

11.1 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, building, facilities, bridges, toll collection systems and other Authority property; clearing debris or deposits from the roadway or in drainage courses within the right of way; removal of hazardous materials; restoration of stream channels outside the right of way in certain conditions; temporary traffic operations; and mowing to eliminate safety hazards.

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

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

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

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

## SECTION 12. DISPOSITION OF SALVAGE OR SURPLUS PROPERTY.

12.1. 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.

12.2. Trade-In for New Property. Notwithstanding subsection 12.1, 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.

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

12.4. Sale to State, Counties, etc. Notwithstanding subsection 12.1 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.

12.5. Failure to Attract Bids. If the Authority undertakes to sell property under subsection 12.1. 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.

12.6. 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.

12.7. 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.

12.8. Public Notices of Sale. The Authority shall publish the address and telephone number from which prospective consultants may request information concerning an upcoming sale in at least two issues of the officially designated newspaper of the Authority, or any other newspaper of general circulation in each 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.