



**CENTRAL TEXAS  
Regional Mobility Authority**

## AGENDA ITEM #8 SUMMARY

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Amend the Policy Code provisions for procurements of general goods and services using a competitive sealed proposal and authorize procurements under that process for contracts to provide roadway maintenance services.

Strategic Plan Relevance: Regional Mobility

Department: Law, Engineering

Associated Costs: Not Applicable

Funding Source: Not Applicable

Board Action Required: Yes

Description of Matter: This proposed policy amends the procurement policies for purchasing general goods and services using a competitive sealed proposal (“best value”) process. It uses as a model Texas statutes that authorize this type of procurement for use by other political subdivisions. The proposal also amends definitions of “construction contract” to remove “maintenance” from its scope. With Board approval of the procurement, this allows staff to process the upcoming procurement for roadway maintenance services by using a competitive sealed proposal to identify and recommend for Board approval the “best value/best of final offers” proposal.

This draft amendment establishes general policies and reserves the Board’s authority to decide if specific procurement for a general goods and services contract that exceeds \$50,000 (including a maintenance contract) will use competitive bidding (“low bid”) or a competitive sealed proposal (“best value”).

Reference documentation: Redline draft of proposed amendments to Policy Code  
Draft Resolution with Policy Code amendments

Contact for further information: Wesley M. Burford, P.E., Director of Engineering

# MOBILITY AUTHORITY POLICY CODE

## 401.016 Competitive Sealed Proposals.

~~(a) Request for Proposals.~~ The authority may solicit offers for provision of general goods and services under this section by issuing a request for proposals (“RFP”) to identify the proposer who provides the goods or services at the best value for the authority. If a contract for goods and services must be approved by the board, the board must approve issuance of the RFP under this section.

(b) Each RFP shall contain the following information:

(1) the authority's specifications for the goods or services to be procured, stating that the contract may be awarded to the proposer who provides the goods or services at the best value for the authority;

(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;

~~(5)(6) the relative importance of price and other evaluation factors;~~ and

(7) the authority's goals regarding the participation in the contract or in subcontracts let under the contract by Disadvantaged Business Enterprises.

~~(b)(c)~~ The authority shall give public notice of an RFP in the manner provided for requests for competitive bids for general goods and services.

~~(e)(d) Opening and Filing of Proposals; Public Inspection.~~ The authority shall avoid disclosing the contents of each proposal on opening the proposal and during negotiations, if any, with competing ~~proposers~~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.

~~(e) Revision of Proposals.~~ The authority shall evaluate each proposal received in response to an RFP based on the criteria and relative importance of price and other evaluation factors identified in the RFP.

~~(d)(f) In the sole discretion of the authority, a~~ After receiving ~~evaluating~~ 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 proposers who

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~~are determined to be reasonably qualified for the award of the contract offerors to assess an offeror's proposer's ability to meet the solicitation requirements established in the RFP. The authority may not disclose information derived from proposals submitted from competing proposers/offerors. The authority shall provide fair and equal treatment to each proposer offeror an equal opportunity to discuss and revise proposals with respect to any opportunity for discussion and revision of proposals. A proposer may revise a proposal after submission and before award for the purpose of offering a proposal that establishes the proposer's best and final offer.~~

~~401.016 — Refusal of All Proposals. The authority shall refuse all proposals if none of those submitted is acceptable.~~

~~(f) — 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.~~

### 401.017 Award Under Competitive Sealed Proposals.

~~(a) The authority may award a contract for general goods and services procured using competitive sealed proposals to the proposer whose final proposal provides goods or services at the best value for the authority.~~

~~(b) In determining the best value proposal for the authority, the authority may consider:~~

~~(1) the purchase price;~~

~~(2) the reputation of the proposer and of the proposer's goods or services;~~

~~(3) the quality of the proposer's goods or services;~~

~~(4) the extent to which the good or service meets the authority's needs;~~

~~(5) the proposer's past relationship with the authority;~~

~~(6) the impact on the ability of the authority to comply with applicable laws and rules relating to contracting with Disadvantaged Business Enterprises;~~

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~~(7) the total long-term cost to the authority to acquire the proposer's goods or services; and~~

~~(8) any relevant criteria specifically listed in the RFP.~~

~~(c) The authority may refuse all proposals if none of those submitted is acceptable.~~

~~(d) The authority may submit a written contract to the proposer whose proposal is the most advantageous to the authority, considering price and the evaluation factors in the RFP (the "first-choice candidate"). The terms of the contract shall incorporate the terms set forth in the RFP and the best and final offer 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 proposer whose proposal is the next most favorable to the authority ("second-choice candidate"). If agreement is not reached with the second choice candidate, the process may be continued with other proposers in like manner, but the authority shall have no obligation to submit a contract to the next highest-ranked proposer 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.~~

~~401.017(c) In accordance with Subchapter A, Chapter 2252, Government Code, 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.~~

**Subsection (9) of Section 401.022 (Definitions) of the Policy Code is amended to read as follows:**

(9) 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.

**Section 401.034 (Competitive Bidding) of the Policy Code is amended to read as follows:**

**401.034 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 article. Bidding for procurements made by competitive bidding will be open and unrestricted, subject to the procedures set forth in this article.

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

**RESOLUTION NO. 14-\_\_\_**

**AMENDING THE POLICY CODE PROVISIONS FOR PROCUREMENTS OF  
GENERAL GOODS AND SERVICES USING A COMPETITIVE SEALED PROPOSAL  
AND AUTHORIZE PROCUREMENTS UNDER THAT PROCESS FOR CONTRACTS  
TO PROVIDE ROADWAY MAINTENANCE SERVICES.**

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, the Policy Code authorizes the Mobility Authority to solicit competitive sealed proposals for a contract for general goods and services, and to evaluate and award a contract to the proposer who submits the “best value” proposal based on the relative importance of price and other evaluation factors identified in the request for proposals; and

WHEREAS, the Executive Director recommends amending the Policy Code to more closely track language used in Texas statutes that authorize other political subdivisions to use a competitive sealed proposal process and identify the “best value” proposal most advantageous to the entity awarding the contract; and

WHEREAS, the Executive Director also recommends amending the Policy Code to allow use of the competitive sealed proposal process to procure a maintenance service contract for Mobility Authority roadways, subject to future Board approval for that procurement.

NOW THEREFORE, BE IT RESOLVED, that the Board hereby amends those sections of the Policy Code listed in Exhibit 1 to this resolution to read as listed in Exhibit 1.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 19<sup>th</sup> day of November, 2014.

Submitted and reviewed by:

Approved:

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Andrew Martin  
General Counsel for the Central  
Texas Regional Mobility Authority

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Ray A. Wilkerson  
Chairman, Board of Directors  
Resolution Number: 14-\_\_\_  
Date Passed: 11/19/2014

**EXHIBIT 1 TO RESOLUTION NO. 14-**

**Section 401.016 of the Policy Code is amended to read as follows:**

**401.016 Competitive Sealed Proposals.**

(a) The authority may solicit offers for provision of general goods and services under this section by issuing a request for proposals (“RFP”) to identify the proposer who provides the goods or services at the best value for the authority. If a contract for goods and services must be approved by the board, the board must approve issuance of the RFP under this section.

(b) Each RFP shall contain the following information:

- (1) the authority's specifications for the goods or services to be procured, stating that the contract may be awarded to the proposer who provides the goods or services at the best value for the authority;
- (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;
- (6) the relative importance of price and other evaluation factors; and
- (7) the authority's goals regarding the participation in the contract or in subcontracts let under the contract by Disadvantaged Business Enterprises.

(c) The authority shall give public notice of an RFP in the manner provided for requests for competitive bids for general goods and services.

(d) The authority shall avoid disclosing the contents of each proposal on opening the proposal and during negotiations, if any, with competing proposers. 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.

(e) The authority shall evaluate each proposal received in response to an RFP based on the criteria and relative importance of price and other evaluation factors identified in the RFP.

(f) In the sole discretion of the authority, after evaluating a proposal the authority may discuss acceptable or potentially acceptable proposals with proposers who are determined to be reasonably qualified for the award of the contract to assess a proposer’s ability to meet the requirements

established in the RFP. The authority may not disclose information derived from proposals submitted from competing proposers. The authority shall provide fair and equal treatment to each proposer with respect to any opportunity for discussion and revision of proposals. A proposer may revise a proposal after submission and before award for the purpose of offering a proposal that establishes the proposer's best and final offer.

**401.017 Award Under Competitive Sealed Proposals.**

- (a) The authority may award a contract for general goods and services procured using competitive sealed proposals to the proposer whose final proposal provides goods or services at the best value for the authority.
- (b) In determining the best value proposal for the authority, the authority may consider:
  - (1) the purchase price;
  - (2) the reputation of the proposer and of the proposer's goods or services;
  - (3) the quality of the proposer's goods or services;
  - (4) the extent to which the good or service meets the authority's needs;
  - (5) the proposer's past relationship with the authority;
  - (6) the impact on the ability of the authority to comply with applicable laws and rules relating to contracting with Disadvantaged Business Enterprises;
  - (7) the total long-term cost to the authority to acquire the proposer's goods or services; and
  - (8) any relevant criteria specifically listed in the RFP.
- (c) The authority may refuse all proposals if none of those submitted is acceptable.
- (d) The authority may submit a written contract to the proposer whose proposal is the most advantageous to the authority, considering price and the evaluation factors in the RFP (the "first-choice candidate"). The terms of the contract shall incorporate the terms set forth in the RFP and the best and final offer 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 proposer whose proposal is the next most favorable to the authority ("second-choice candidate"). If agreement is not reached with the second choice candidate, the process may be continued with other proposers in like manner, but the authority shall have no obligation to submit a contract to the next

highest-ranked proposer 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.

(e) In accordance with Subchapter A, Chapter 2252, Government Code, 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.

**Subsection (9) of Section 401.022 (Definitions) of the Policy Code is amended to read as follows:**

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**Section 401.034 (Competitive Bidding) of the Policy Code is amended to read as follows:**

**401.034 Competitive Bidding.**

A contract requiring the expenditure of public funds for the construction 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 article. Bidding for procurements made by competitive bidding will be open and unrestricted, subject to the procedures set forth in this article.