



Cameron County Regional Mobility Authority Policies and Procedures for the Procurement of Professional Services for use in State & Federally Funded Projects

The Authority will pursue both Federal and State forms of government aid for the development of transportation projects. The following policies and procedures for procurement of professional services shall be used when projects will be utilizing federal funds. These written procedures shall be maintained by the Authority and will not be implemented until receiving prior approval from the Texas Department of Transportation (TxDOT) for federally funded projects. The Authority follows the requirements prescribed in 23 CFR 172.5(c) for the procurement, management, and administration of engineering and design related services for the use of Federal Government Aid on its projects.

The Authority will be utilizing a multiphase process in which the Authority will issue a Request for Qualifications (RFQ) for the selection of multiple firms followed by the issuance of a Request for Proposals (RFP) for final selection. These processes are described in further detail below.

As per 23 CFR 172.5(c) the the Authority shall prepare and maintain written policies and procedures for the procurement, management, and administration of engineering and design related consultant services. These policies and procedures shall address, as appropriate for each method of procurement a the Authority purposes to use, the following items to ensure compliance with Federal and State laws, regulations, and the requirements of this part:

(1) Preparing a scope of work and evaluation factors for ranking/selection of a consultant;

RFQ

The Authority will solicit by providing general descriptions of transportation projects. The authority will include a general description, type of work, discipline of work needed and evaluation factors including their relative weight of importance and scoring methodology.

Evaluation criteria used for ranking and selection of a consultants' qualifications may include, but is not limited to:

- a. Management experience and approach serving as GEC
- b. Experience and expertise of key individuals in performing GEC duties and project development technical areas (including construction, engineering, and inspection services)
- c. Past Performance on similar GEC and project development assignments
- d. Approach to Quality Control/Quality Assurance in project development activities and construction phase engineering services serving as GEC

RFP

The Authority will prepare a clear, accurate, and detailed scope of work and evaluation factors defined in the Request for Proposals (RFP) for project specific purposes. The internal management of the Authority develops the overall procurement document outlining the purpose, services desired, project scope, requirements, content and overall scoring methodology. The scope of work should detail the following:

- a. Purpose and description of the project(s)
- b. Services to be performed
- c. Deliverables to be provided
- d. Estimated schedule for performance of the work
- e. Applicable standards, specifications and policies
- f. Type of contract

Selection team determines both the evaluation factors and scoring methodology in the context of the desired services to be procured and provides the necessary information to proposers within the procurement document outlining the evaluation factors and selection process. Evaluation criteria used for ranking and selection of consultants to perform engineering and design related services may include, but is not limited to

- a. Technical Approach
- b. Project Understanding
- c. Work Experience
- d. Specialized Expertise
- e. Professional Licensure
- f. Staff Capabilities
- g. Workload Capacity
- h. Past Performance

Selection Team shall develop the relative weight for each evaluation criteria. The weighted percentage for each evaluation criteria will be identified in the specific RFQ/RFP. Price and in-state or local preference shall not be used as a factor in the evaluation, ranking, and selection phase. The final factors with weights will be as shown in the RFQ and RFP.

The RFQ/RFP, as well as any forms or referenced exhibits, will be submitted to TxDOT for concurrence prior to advertising. If additional scope of work is added or modified (not in the original RFQ / RFP), the Authority will verify and check for compliance under the Brooks Act (qualified based selection). The Authority will submit changes and/or modifications to TxDOT for concurrence prior to revising the original scope per 23 CFR 172.9.e.

(2) Soliciting interests, qualifications, or proposals from prospective consultants;

The Authority provides these internal policies outlining the procedures for soliciting interests, qualifications, or proposals. Furthermore, the Authority provides within the specific procurement document outlining the requirements for said procurement. The Authority's Procurement Policies will be available online or upon request. The Authority will solicit interest in a manner to provide fair and reasonable opportunities for interested proposers to participate.

RFQ

Procurement procedures will be a multiphase process with the issuance of request for qualifications (RFQ) whereby prospective respondents are ranked solely based on qualifications and the ability of the firm to perform the work in a competent and responsible manner. The Authority will submit the notice to TxDOT for concurrence prior to advertisement. The solicitation process shall be made by public advertisement, after Board Approval. The Authority will place a notice seeking Statements of Qualifications from professional engineering firms in one newspaper for a minimum of two (2) consecutive weeks. The notice will also be posted on the Authority's website to allow a fair opportunity for in-state and out-of-state consultants to submit a packet in response to the RFQ .

The notice period will be a minimum of 14 days and will include;

- a. The Authority's website with the location of the source where RFQ packet may be obtained;
- b. RFQ number;
- c. Type of contract;
- d. General description of the type of project, work to be done which will include but not be limited to general transportation engineering services and location of the project located within the boundaries of Cameron County
- e. The due date for providers to send qualifications; and
- f. Addendums after solicitation has been advertised.

g. Name, address, and email address of the contact person.

RFP

A request for proposal (RFP) will be provided to selected pool of engineers / multiple firms, with the Authority selecting a minimum of three (3) firms and a maximum of eight (8) firms for the specific project. The Authority will then evaluate proposals based on the criteria established and published with the RFP and will notify the Board of Directors of the final ranking of the most highly qualified proposers.

RFP will have a minimum 14 days to respond depending on complexity of project and will include the following:

- a. Project Information
- b. Content of the response
- c. Scope of proposal
- d. Submittal instructions
- e. Delivery method-email, mail or hand delivered
- f. For non-responsive providers, address a notification to the provider advising no further consideration
- g. Addendums: after solicitation has been advertised
- h. Notification of addendums to providers who have submitted responses prior to deadline.
- i. The process for addressing questions from the providers addressed during the advertisement period. (CCRMA Team Member will be assigned to compile all questions).

(3) Preventing, identifying and mitigating conflicts of interest for employees of both the Authority and consultants and promptly disclosing in writing any potential conflict to the STA and FHWA, as specified in 2 CFR 200.112 and 23 CFR 1.33, and the requirements of this part.

No employee, officer, or agent of the Authority shall participate in selection or in the award or administration of a contract supported by Federal-aid funds if a conflict of interest, real or apparent, would be involved. Such a conflict arises when there is a financial or other interest in the consultant selected for award by:

- a. The employee, officer or agent
- b. Any member of his or her immediate family;
- c. His or her partner; or

d. An organization that employs or is about to employ any of the above

The Authority's Board of Directors, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from consultants, potential consultants, or parties to sub agreements.

- 23 CFR 1.33 rules specifically prohibit all proposers, developers, consultants, and subconsultants as well as their affiliates from offering, giving, or agreeing to give a "gift or benefit" to a member of the Board of Directors, or to any employee of the Authority or former employee of the Authority who has any involvement in the procurement or the administration of the project.
- It shall be a breach of ethics to offer, give or agree to give any employee or former employee of the Authority, or for any employee or former employee of the Authority to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal, therefore, pending before this government.
- Employees of the Authority who participate in the procurement, management, or administration of Federal Aid Highway Program (FAHP) funded contracts or subcontracts shall not have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract, or any financial or other personal interest in any real property acquired for the project, as specified in 23 CFR 1.33. It shall be a breach of ethics to attempt to realize personal gain through public employment with the Authority by any conduct inconsistent with the proper discharge of the employee's duties.
- No director or employee of the Authority who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract as specified in 23 CFR 1.33.
- No engineer, attorney, appraiser, title company, surveyor, geotechnical engineer, inspector or other person performing services for the Authority in connection with a project shall have, directly or indirectly, a financial or other personal interest other than his employment or retention by the Authority in any contract or subcontract in connection with such project as specified in 23 CFR 1.33.

In addition, the Authority has prescribed within its Procurement Policies under section 2 Conflict of Interest the understanding and requirements regarding Conflict of Interest disclosure to prevent, identify, and mitigate conflict of interests. The Authority requires within the specific procurement documents for any proposer including sub consultants to provide a response to the CCRMA Conflict of Interest disclosure forms in order to provide a project

specific measure to mitigate and prevent conflicts of interest including any provider having a personal interest in any real property acquired by an Authority project.

Mitigation- Conflict of Interests

To mitigate the potential conflict of interest for the Authority employees, employees who participate in the procurement, management, or administration of FAHP funded contracts or subcontracts will execute a inner-office No Conflict Disclosure Form that will be made a part of the permanent procurement file.

In accordance with 2 CFR 200.319a, and to mitigate potential conflict of interest, ensure objective contractor performance, and eliminate unfair competitive advantage, engineers, engineering firms, and/or a subsidiary, affiliate, or a consultant of engineer or engineering firm who has received compensation from the Authority, that assist in the development of, or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals, will be excluded from competing for such procurements (i.e....subsequent construction engineering/management and/or inspection/testing) for all other phases of the project. **A firm participating as part of the design team may provide low level services (i.e., utility identification, construction staking, ground water monitoring, or other drilling and testing associated with geotechnical or environmental monitoring) as a subconsultant to a construction oversight consultant where the Authority determines the relationship will not impair the subcontractor's objectivity in performing the work and where the subconsultant provides a mitigation plan accepted by the Authority. The mitigation plan must provide, at a minimum: (1) separation of personnel working for the contractor vs. the Authority, (2) steps to avoid access to and sharing of project related data, whether physical or digital, and (3) a requirement to provide prompt notice to the Authority when the subconsultant recognizes a potential conflict may exist related to the subconsultant's work.**

To comply with Texas Government Code Section §2252.908 and the rules issued by the Texas Ethics Commission found in Title 1, Section 46.1, 46.3 and 46.5 of the Texas Administrative Code, the awarded firm(s) must complete and file Form HB1295 – Certificate of Interested Parties with the Texas Ethics Committee. The Authority cannot enter a contract until the Form HB1295 has been executed and filed with the Texas Ethics Commission.

A participant who becomes aware of facts that require the conflict of interest (CIQ) form to be filed must do so with the CCRMA within seven (7) days after becoming aware of the necessity to file the form. Failure to comply may result in the termination of services.

No local public official shall have an interest in a contract awarded hereunder except in accordance with Texas Local Government Code Chapter 171.

All exhibits and forms are part of the complete RFQ/RFP and will be submitted to TxDOT for review and concurrence prior to issuance of project packets. Any change or modification of exhibits will be submitted to TxDOT for review and concurrence prior to change or modification.

(4) Verifying suspension and debarment actions and eligibility of consultants, as specified in 2 CFR part 1200 and 2 CRF part 180;

Consultants, sub consultants, contractors and their principals (i.e. sub-contractors, material suppliers, vendors etc..) are not allowed to participate in Federally Funded projects if they are presently suspended or debarred or have been convicted within the past three (3) years of certain types of offenses or had a civil judgement rendered within the past three (3) years for certain types of offenses. In accordance with 2 CFR 1200 and 2 CFR part 180; the Authority will verify the suspension and debarment actions and eligibility of consultants by;

- a. Including a Certification Regarding Debarment, Suspension, and Ineligibility and Voluntary Exclusion Form as an exhibit included in the RFQ/RFP acknowledging that the consultants, sub consultants, contractors and their principals (i.e. sub-contractors, material suppliers, vendors etc..) are presently debarred or suspended by any Federal department or agency from participation in this transaction pursuant to Federal Regulation 45 CFR Part 76.;
- b. Require each respondent submit a copy of their status with SAM.gov, if not a current member, they must register and submit a copy of the registration form with their submittal; and
- c. Staff will verify through a search for respondent status at through the Federal Government System for Award Management (SAM) and the Texas Comptroller the representations made on certificates are accurate and attach a printed copy of search results.
- d. Staff will notify respondents in writing if they are determined to be debarred or not eligible and will be removed from further consideration.

The Federal and State programs for Disadvantaged Business Enterprises (DBE), Historically Underutilized Business (HUB), and Small Business Enterprises (SBE) have been developed to encourage participation in the construction industry by a wide variety of contractors and therefore expand diversity in the industry.

The Cameron County Regional Mobility Authority adopted TxDOT's DBE Program by signing a Memorandum of Understanding (MOU) on April 12, 2012. The DBE Program as authorized by 49 CFR, Part 26 ensures nondiscrimination in the award and administration of United States Department of Transportation contracts.

Respondents/Contractors are required to comply with the TxDOT DBE Program.

DBE goals submitted by the apparent qualified respondent will be reviewed and approved by the Authority and submitted to TxDOT for concurrence.

(5) Evaluating interest, qualifications, or proposals and the ranking/selection of a consultant per 23 CFR 172.7.a.1.iii-iv;

The selection team of the Authority develops the overall procurement document outlining the purpose, services desired, project scope, requirements, content, and overall scoring methodology. Selection Team determines both the evaluation factors and scoring methodology in the context of the desired services to be procured and provides the necessary information to proposers within the procurement document outlining the evaluation factors and selection process. The Authority will evaluate and score proposals and provide a ranking and recommendation to the Board of Directors for selection.

Selection team will be participating in the RFQ and the RFP and will follow an organized, efficient, fair, and effective selection process.

- Designated lead member for the selection team will be assigned to assist with the entire process
- A kick-off meeting with the selection team will be held to ensure that all members are knowledgeable of type of work, familiar with conflict of interest, determine the availability of each member, knowledgeable with the scoring methodology, and address any questions.
- Each team member must demonstrate independent judgement and make appropriate decisions individually.
- Team members will limit communication with providers during process
- Notification of the ranking and selection will be provided to respondent by receiving written notification and shown on CCRMA website.
- In the event that interviews are needed, the Selection Team will prepare a list of questions internally, to assist in making a decision for the selection of a consultant. The questions will be sent to TxDOT for concurrence prior to the interview.
- Deliberation of the scoring for RFQ & RFP.

The evaluation/grading/scoring committee will be comprised of at least three internal management staff with general knowledge in the subject field. In the event that one of the internal management staff members cannot participate with an evaluation, the Authority will assign an alternate evaluator from within the Authority's staff to participate with the evaluation. The Authority will utilize a qualification-based selection process which requires evaluation of the qualifications of both the consultant and any subconsultants identified within the proposal. Request for Qualifications (RFQ) will be reviewed and scored based on the established evaluation factors as stated in the request for qualifications and scoring system.

The provider will not be awarded a contract based on competitive bids. Qualifications will be ranked based on the scoring system provided in the request for proposals.

- The evaluation committee will select a minimum of three (3) and a maximum of eight (8) firms based on qualifications
- In the instances where only two (2) qualified consultants respond to the solicitation, the Authority may extend the solicitation in order to allow time to receive the minimum of three (3) qualified respondents if prudent; otherwise, the Authority will proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements that arbitrarily limited the competition. All respondents will be advised in writing if the solicitation is extended;
- The evaluation committee will then issue a notification to proceed to Request for Proposals (RFP) to all selected firms;
- The final score/grade of the RFQ by the evaluation committee will be presented to the Board of Directors for approval. The Authority will select the pool of firms and negotiate rates and execute a contract with all selected firms;
- The final score/grade of the RFP by the evaluation committee will be presented to the Board of Directors for approval to begin negotiations with the highest ranked respondent.

Evaluations/scores/grades/ranking documents will be submitted to TxDOT for concurrence prior to action by the Board of Directors. TxDOT will review the contract and fees for the contract before negotiations are finalized with the highest ranked firm.

(6) Determining, based upon State procedures and the size and complexity of a project, the need for additional discussions following RFP submission and evaluation;

The Authority (Board of Directors) will reserve the right to conduct interviews for either the RFQ or RFP stage if deemed necessary. Should an interview be deemed necessary the following conditions will be met:

- The interview process shall be consistent and fair to all selected respondents.
- The Authority shall provide adequate organization to conduct an interview and assign all roles and responsibilities (i.e. questioner, facilitator, timekeeper, etc...).
- The Authority shall provide the interview formats to all relevant consultants (for both RFQ and RFP) including guidance for consistency on starting interview (including but not limited to introducing members, reviewing the interview format with the providers, identifying and discussing any guidelines and restrictions, time restrictions, etc...).

- The Authority will provide guidance on the format of presentations (number of topics allowed, no interruptions or Q&A during the presentation, slides, no handouts, etc...).
- The Authority will maintain guidelines for taking notes (who will be responsible for compiling and destroying notes, what will be kept on file, etc...).
- The Authority will develop the questions and scoring system. The questions will be read aloud at the time of the interview, after the presentations are made. No question shall be provided prior to the interview.
- The questions shall be consistent and related to the selection topic. Examples will be:
 - Questions must stay within the same criteria
 - Questions must be posed clearly (not subject to interpretations)
 - Questions should be open ended
 - Questions should not be leading or yes or no.
 - Questions should not be related to costs.

Questions from respondents may be submitted via email to the Cameron County Regional Mobility Authority Procurement email address at procurement@ccrma.org, attention Executive Director. The contact information, as well as the email address, will be noted in the RFQ/RFP packet.

RFQ – Inquiries Prior to Submittal of Packet:

The deadline for questions prior to submittal of the packet, as well as responses, will be provided in the RFQ and the RFP. All RFI's must be submitted in writing on or before the date of the deadline listed in the RFQ. Responses to RFI's for the Request for Qualifications (RFQ) will be distributed to the project participation list by the deadline date indicated in the packet.

RFP – Inquiries/Concerns Post Submission/Evaluation of Packet by Respondent:

Respondents will be allowed seven (7) working days from the RFP opening date to submit in writing questions or concerns to the Authority regarding the project. The Authority will respond to inquiries in writing within three (3) working days. A copy of all the questions received as well as the responses to inquiries will be sent to all parties who have received a Request for Proposal packet.

(7) Preparing an independent agency estimate for use in negotiation with the selected consultant per 23 CFR 172.7.a.1.v;

Prior to receipt or review of the most highly qualified consultant's cost proposal, the Authority will prepare detailed independent estimates for project assignments based off its experience, complexity and scope of work, current industry environment, and any geographical and economic constraints. Once the estimate is prepared, the Authority will use this as a basis for negotiations in accordance with 40 U.S Code § 1104(b).

The estimate will include;

- a. An appropriate breakdown of the work or labor hours;
- b. Types or classifications of labor required; and
- c. Other direct costs and consultant's fixed fee for the defined scope of work.

The independent estimate will serve as the basis for negotiation of a contract with the highest qualified firm. The Authority will retain documentation of negotiation activities and resources used in the analysis of fair and reasonable costs in accordance with federal cost principles. The documentation shall include the original cost proposal, subsequent submittals, final cost proposal, pre-negotiation audit, audit reports, and responses to the pre-negotiation audit.

The independent agency estimate will be submitted to TxDOT for concurrence prior to negotiations.

(8) Selecting the appropriate contract type, payment method, and terms and incorporating required contract provision, assurances, and certification in accordance with 23 CFR§172.9;

A. Contract Types

CCRMA will include the contract type and any pertinent information in the RFQ

The Authority shall use the following types of contracts:

- (1) Project-specific. A contract between the Authority and consultant for the performance of services and defined scope of work related to a specific project or projects.
- (2) Multiphase. A project-specific contract where the solicited services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses.

(3) On-call or indefinite delivery/indefinite quantity (IDIQ). A contract for the performance of services for a number of projects, under task or work orders issued on an as-needed or on-call basis, for an established contract period. The solicitation and contract provisions shall address the following requirements:

- i. Specify a reasonable maximum length of contract period, including the number and period of any allowable contract extensions, which shall not exceed 5 years;
- ii. Specify a maximum total contract dollar amount that may be awarded under a contract;
- iii. Include a statement of work, requirements, specifications, or other description to define the general scope, complexity, and professional nature of the services; and
- iv. If multiple consultants are to be selected and multiple on-call or IDIQ contracts awarded through a single solicitation for specific services;
 - (A) Identify the number of consultants that may be selected or contracts that may be selected or contracts that may be awarded from the solicitation; and
 - (B) Specify the procedures the Authority will use in competing and awarding task or work orders among the selected, qualified consultants. Task or work orders shall not be competed and awarded among the selected, qualified consultants on the basis of costs under on-call or IDIQ contracts for services procured with competitive negotiation procedures. Under competitive negotiation procurement, each specific task or work order shall be awarded to the selected, qualified consultants;
 - (1) Through an additional qualifications-based selection procedure, which may include, but does not require, a formal RFP in accordance with §172.5(a)(1)(ii)

The Authority will submit a draft of the contract to TxDOT for concurrence of the contract and verification of said clause.

B. Payment Methods

The Payment Method shall be specified in the RFP

The Authority shall use the following payment methods:

A. The method of payment to the consultant shall be set forth in the original solicitation, contract, and in any contract modification thereto. The methods of payment shall be: Lump sum, cost plus fixed fee, cost per unit of work, or specific rates of compensation. A single contract may contain different payment methods as appropriate for compensation of different elements of work.

B. The cost plus a percentage of cost and percentage of construction cost methods of payment

shall not be used.

C. The lump sum payment method shall only be used when the Authority has established the extent, scope, complexity, character, and duration of the work to be required to a degree that fair and reasonable compensation, including a fixed fee, can be determined at the time of negotiation.

D. When the method of payment is other than lump sum, the contract shall specify a maximum amount payable which shall not be exceeded unless adjusted by a contract modification.

E. The specific rates of compensation payment method provides for reimbursement on the basis of direct labor hours at specified fixed hourly rates, including direct labor costs, indirect costs, and fee or profit, plus any other direct expenses or costs, subject to an agreement maximum amount. This payment method shall only be used when it is not possible at the time of procurement to estimate the extent or duration of the work or to estimate costs with any reasonable degree of accuracy. This specific rates of compensation payment method should be limited to contracts or components of contracts for specialized or support type services where the consultant is not in direct control of the number of hours worked, such as construction engineering and inspection. When using this payment method, the Authority shall manage and monitor the consultant's level of effort and classification of employees used to perform the contracted services.

F. The Authority may withhold retainage from payments in accordance with prompt pay requirements, as specified in 49 CFR 26.29. When retainage is used, the terms and conditions of the contract shall clearly define agency requirements, including periodic reduction in retention and the conditions for release of retention.

The Authority will ensure that all contracts include required provisions by referencing or physical incorporation as applicable.

The following provisions as per §172.9.a.3.c.i are:

- Administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and provide for such sanctions and penalties as may be appropriate;
- Notice of the Authority requirements and regulations pertaining to reporting;
- Requirements and regulations pertaining to copyrights and rights of data;
- Access by government entities to all documents related to the project for the purpose of making audit, examination, excerpts, and transcriptions;
- Retention of all records requirements;
- Standard DOT Title VI Assurance (DOT Order 1050.2);
- Disadvantage Business Enterprise (DBE) assurance as specified in 49 CFR 26.13
- Prompt pay requirements as specified in 49 CFR 26.29 and in accordance with the MOU DBE program;
- Determination of allowable costs in accordance with federal cost principles;

- Requirements of Consultant's errors and omissions;
- Requirements of pertaining to conflict of interest as specified in the 23 CFR 1.33;
- Termination for cause and termination for convenience by the Authority;

All contract/payment/work authorizations, as well as exhibits to the contract, will be sent to TxDOT for review/approval/concurrence prior to execution of the contract.

(9) Negotiating a contract with the selected consultant including instructions for proper disposal of concealed cost proposals of unsuccessful bidders;

The Authority will designate a negotiating committee, whose role will be to negotiate with the selected respondents effectively and fairly. A scoping meeting with the selected consultant and the Authority's designated negotiating committee (for both the general contract and each WA) shall be scheduled prior to negotiations to discuss the proposed services. The Authority staff may include the responsible person in charge, and administrative personnel. The meeting should include discussions of the following: policies, manuals to be used, contract in draft form, method of payment, procedures for invoicing, standard forms to be used, and items or services to be provided by the Authority. A representative of the Authority will keep minutes of the scoping meeting. After the understanding of the scope of the RFQ by all parties has been confirmed, the CCRMA will negotiate fee rates for the general contract (based on engineering disciplines as per solicitation). During the RFP phase, the specific scope will be refined to be project specific and inclusive of all tasks solicited in the RFP. After the understanding of the scope of each RFP/WA, the Authority will begin a fee negotiation phase with the most qualified firm. A cost proposal from that firm will be requested at the time of negotiating the fees. All negotiations will be documented and maintained by the Authority's negotiating committee.

Any concealed cost proposals submitted with the RFP will not be opened. A cost proposal for a selected consultant may be considered when the negotiations are initiated. Any concealed cost proposal from unsuccessful consultants will be filed unopened in project records.

TxDOT will review the contract and the negotiated fees before execution of the contract.

(10) Establishing elements of contract costs, accepting indirect cost rates for application to contracts, and assuring consultant compliance with the Federal cost principles in accordance with §172.11;

The Authority shall establish the elements of contract costs as per 23 CFR 172.11.b.1-4. The Authority requires within the specific procurement document, certain eligibility requirements to be provided with responses. One of these requirements is for evidence of a FAR approved indirect or overhead rate. Proposers are required to provide the most recent audited rate and documentation

for the Prime Proposer including any Sub Consultants to substantiate the rate as an attachment to the procurement document. Any proposal that does not provide this information is considered ineligible to participate in the solicitation. In addition, the Authority will approve all service tasks to be paid from Federal Government Aid prior to work commencing to ensure they comply with Federal Cost Principles. Within the contract terms, consultants are required to ensure costs in which Federal Government Aid is being used must comply with Federal Cost Principles in order to be eligible for payment in accordance with 23 CFR172.11 and 23 CFR 172.9.c.1.ix.

A. Allowable costs.

- a. Costs or prices based on estimated costs for contracts shall be eligible for Federal-aid reimbursement only to the extent that costs incurred, or cost estimates included in negotiated prices are allowable in accordance with the Federal cost principles.
- b. Consultants shall be responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with Federal cost principles. Allowable costs must be necessary, reasonable and allocable.

a. Elements of contract costs.

The following requirements shall apply to the establishment of the specified elements of contract costs:

a. Indirect cost rates.

- i. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles.
- ii. The Authority shall accept a consultant's or subconsultant's indirect cost rate(s) established for a 1-year applicable accounting period by a cognizant agency that has:
 1. Performed an audit in accordance with generally accepted government auditing standards to test compliance with the requirements of the Federal cost principles and issued an audit report of the consultant's indirect cost rate(s); or
 2. Conducted a review of an audit report and related workpapers prepared by a certified public accountant and issued a letter of concurrence with the related audited indirect cost rate(s).
- iii. When the indirect cost rate has not been established by a cognizant agency in accordance with paragraph 172.11.b .1.ii of this section, a STA or other recipient shall perform an evaluation of a consultant's or subconsultant's indirect cost rate prior to acceptance and application of the rate to contracts administered by the

recipient or its subrecipients . The evaluation performed by STAs or other recipients to establish or accept an indirect cost rate shall provide assurance of compliance with the Federal cost principles and may consist of one or more of the following:

- a. Performing an audit in accordance with generally accepted government auditing standards and issuing an audit report;
 - b. Reviewing and accepting an audit report and related workpapers prepared by a certified public accountant or another STA;
 - c. Establishing a provisional indirect cost rate for the specific contract and adjusting contract costs based upon an audited final rate at the completion of the contract; or
 - d. Conducting other evaluations in accordance with a risk- based oversight process as specified in paragraph (c)(2) of this section and within the agency's approved written policies and procedures, as specified in CFR §172.5(c).
- iv. A lower indirect cost rate may be accepted for use on a contract if submitted voluntarily by a consultant; however, the consultant's offer of a lower indirect cost rate shall not be a condition or qualification to be considered for the work or contract award.
- v. Once accepted in accordance with paragraphs 172 .11. b .1. ii through (iv) of this section, contracting agencies shall apply such indirect cost rate for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and the indirect cost rate shall not be limited by administrative or de facto ceilings of any kind.
- vi. A consultant's accepted indirect cost rate for its 1-year applicable accounting period shall be applied to contracts; however, once an indirect cost rate is established for a contract, it may be extended beyond the 1-year applicable period, through the duration of the specific contract provided all concerned parties agree. Agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or contract award.
- vii. Disputed rates
If an indirect cost rate established by a cognizant agency in paragraph 172.11.b.1.ii of this section is in dispute, the Authority does not have to accept the rate. The Authority may perform its own audit or other evaluation of the consultant's indirect cost rate for application to the specific contract, until or unless the dispute is resolved. The Authority may alternatively negotiate a provisional indirect cost rate for the specific contract and adjust contract costs based upon an audited final rate. Only the consultant and the parties involved in performing the indirect cost audit may dispute the established indirect cost rate. If an error is

discovered in the established indirect cost rate, the rate may be disputed by the Authority.

viii. Direct salary or wage rates

1. Compensation for each employee or classification of employee must be reasonable for the work performed in accordance with the Federal cost principles.
2. To provide for fair and reasonable compensation, considering the classification, experience, and responsibility of employees necessary to provide the desired engineering and design related services, contracting agencies may establish consultant direct salary or wage rate limitations or "benchmarks" based upon an objective assessment of the reasonableness of proposed rates performed in accordance with the reasonableness provisions of the Federal cost principles.
3. When an assessment of reasonableness in accordance with the Federal cost principles has not been performed, contracting agencies shall use and apply the consultant's actual direct salary or wage rates for estimation, negotiation, administration, and payment of contracts and contract modifications.

ix . Fixed fee

1. The determination of the amount of fixed fee shall consider the scope, complexity, contract duration, degree of risk borne by the consultant, amount of subcontracting, and professional nature of the services as well as the size and type of contract.
2. The establishment of fixed fee shall be contract or task order specific.
3. Fixed fees in excess of 15 percent of the total direct labor and indirect costs of the contract may be justified only when exceptional circumstances exist.

x. Other direct costs

The Authority shall use the Federal cost principles in determining the reasonableness, allowability, and allocability of other direct contract costs.

xi. Oversight

1. Agency controls. The Authority shall provide reasonable assurance that consultant costs on contracts reimbursed in whole or in part with FAHP funding are allowable in accordance with the Federal cost principles and consistent with the contract terms considering the contract type and payment method. The Authority written policies, procedures, contract documents, and other controls, as specified in CFR §§172.5(c) and 172.9 shall address the establishment, acceptance, and administration of contract costs to assure compliance with the Federal cost principles and requirements of this section.
2. Risk-based analysis. The STAs or other recipient may employ a risk-based oversight process to provide reasonable assurance of consultant compliance with Federal cost principles on FAHP funded contracts administered by the

recipient or its subrecipients. If employed, this risk-based oversight process shall be incorporated into STA or other recipient written policies and procedures, as specified in CFR §172.5(c). In addition to ensuring allowability of direct contract costs, the risk-based oversight process shall address the evaluation and acceptance of consultant and subconsultant indirect cost rates for application to contracts. A risk-based oversight process shall consist of the following:

- a. Risk assessments. Conducting and documenting an annual assessment of risks of noncompliance with the Federal cost principles per consultant doing business with the agency, considering the following factors:
 - i. Consultant's contract volume within the Authority;
 - ii. Number of States in which the consultant operates;
 - iii. Experience of consultant with FAHP contracts;
 - iv. History and professional reputation of consultant;
 - v. Audit history of consultant;
 - vi. Type and complexity of consultant accounting system;
 - vii. Size (number of employees or annual revenues) of consultant;
 - viii. Relevant experience of certified public accountant performing audit of consultant;
 - ix. Assessment of consultant's internal controls;
 - x. Changes in consultant organizational structure; and
 - xi. Other factors as appropriate.

- b. Risk mitigation and evaluation procedures. Allocating resources, as considered necessary based on the results of the annual risk assessment, to provide reasonable assurance of compliance with the Federal cost principles through application of the following types of risk mitigation and evaluation procedures appropriate to the consultant and circumstances:
 - i. Audits performed in accordance with generally accepted government audit standards to test compliance with the requirements of the Federal cost principles;
 - ii. Certified public accountant or other STA workpaper reviews;
 - iii. Other analytical procedures;
 - iv. Consultant cost certifications in accordance with paragraph (c)(3) of this section; and
 - v. Consultant and certified public accountant training on the Federal cost principles.

- c. Documentation. Maintaining supporting documentation of the risk-based analysis procedures performed to support the allowability and acceptance of consultant costs on FAHP funded contracts.

3. Consultant cost certification.
 - a. Indirect cost rate proposals for the consultant's 1-year applicable accounting period shall not be accepted and no agreement shall be made by the Authority to establish final indirect cost rates, unless the costs have been certified by an official of the consultant as being allowable in accordance with the Federal cost principles. The certification requirement shall apply to all indirect cost rate proposals submitted by consultants and subconsultants for acceptance by a STA or other recipient. Each consultant or subconsultant is responsible for certification of its own indirect cost rate and may not certify the rate of another firm.
 - b. The certifying official shall be an individual executive or financial officer of the consultant's organization at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has the authority to represent the financial information utilized to establish the indirect cost rate proposal submitted for acceptance.
 - c. The certification of final indirect costs shall read as follows:

Certificate of Final Indirect Costs - This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

- i. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) of title 48, Code of Federal Regulations (CFR), part 31; and
- ii. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR of 48 CFR part 31.

Firm: _____
 Signature: _____
 Name of Certifying Official: _____
 Title: _____
 Date of Execution: _____

4. Sanctions and penalties. The Authority written policies, procedures, and contract documents, as specified in CFR§172.5(c) and 172.9(c), shall address the range of administrative, contractual, or legal remedies that may be assessed in accordance with Federal and State laws and regulations where consultants violate or breach contract terms and conditions. Where consultants knowingly charge unallowable costs to a FAHP funded contract:

- a. The Authority shall pursue administrative, contractual, or legal remedies and provide for such sanctions and penalties as may be appropriate; and
 - b. Consultants are subject to suspension and debarment actions as specified in 2 CFR part 1200 and 2 CFR part 180, potential cause of action under the False Claims Act as specified in 32 U.S. C. 3729-3733, and prosecution for making a false statement as specified in 18 U.S.C. 1020.
5. Prenotification; confidentiality of data. FHWA, recipients, and subrecipients of FAHP funds may share audit information in complying with the recipient's or subrecipient's acceptance of a consultant's indirect cost rates pursuant to 23 U.S.C. 112 and this part provided that the consultant is given notice of each use and transfer. Audit information shall not be provided to other consultants or any other government agency not sharing the cost data, or to any firm or government agency for purposes other than complying with the recipient's or subrecipient's acceptance of a consultant's indirect cost rates pursuant to 23U.S.C. 112 and this part without the written permission of the affected consultants. If prohibited by law, such cost and rate data shall not be disclosed under any circumstance; however, should a release be required by law or court order, such release shall make note of the confidential nature of the data.

(11) Ensuring consultant costs billed are allowable in accordance with the Federal cost principles as contained in 48 CFR part 31 and consistent with the contract terms as well as the acceptability and progress of the consultants' work per 23 CFR 172.9(d) and 23 CFR 172.11

Costs incurred by the Consultant should be in accordance with the contract rate schedule. Invoices shall be reviewed by the Authority to ensure the Consultant's billing coincides with the contract's progress according to Federal Cost Principles. Therefore, the Consultant's progress must be measurable, cost incurred, or invoices submitted are not a sufficient indicator of the Consultant's progress. The Consultant will be required to provide a written progress report with its invoices for each calendar month or other contract period as designated in the contract during which work is in progress. The progress report shall describe the work performed during the period covered by the invoice. The prime consultant will also report sub-consultant payments with each invoice. Any deliverables for the reporting period must be submitted at the time of the invoice/progress report submittal as part of a single complete invoice package.

The Authority shall review and approve the invoices prior to submitting to TxDOT for reimbursement. All costs associated with the invoice must pertain to the solicited work. The

submittal to TxDOT shall include all documentation for each invoice and shall include proof of payment.

If the Authority believes the requested payment exceeds the contractor's progress, an explanation should be requested prior to the approval of the invoice. Payment should be withheld pending member review. The Authority has the responsibility to protect its interests and under appropriate circumstances, it may be necessary to withhold Consultant's payments. Examples of these circumstances include a material breach of contract by the Consultant, errors in the invoice, unsupported or undocumented costs, to remedy previous overpayments on the same contract and Consultant's performance is non-conforming or unacceptable.

(12) Monitoring the consultants' work and compliance with the terms, conditions, and specification of the contract;

A full-time, employee of the Authority qualified to ensure that the work delivered under contract is complete, accurate, and consistent with the terms, conditions, and specifications of the contract shall be in responsible charge of each contract or project. While an independent consultant may be procured to serve in a program or project management support role, or to provide technical assistance in review and acceptance of engineering and design related services performed and products developed by other consultants, the Authority shall designate an employee as being in responsible charge. The employee may serve in responsible charge of multiple projects and contracting agencies may use multiple public employees to fulfill monitoring responsibilities. The term responsible charge is intended to be applied only in the context defined within this regulation. It may or may not correspond to its usage in State laws regulating the licensure and/or conduct of professional engineers. The public employee's responsibilities shall include:

- a. Administering inherently governmental activities including, but not limited to, contract negotiation, contract payment, and evaluation of compliance, performance, and quality of services provided by consultant;
- b. Being familiar with the contract requirements, scope of services to be performed, and products to be produced by the consultant;
- c. Being familiar with the qualifications and responsibilities of the consultant's staff and evaluating any requested changes in key personnel;
- d. Scheduling and attending progress and project review meetings, commensurate with the magnitude, complexity, and type of work, to ensure the work is progressing in accordance with established scope of work and schedule milestones;
- e. Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;
- f. Evaluating and participating in decisions for contract modifications; and
- g. Documenting contract monitoring activities and maintaining supporting contract records, as specified in 2 CFR 200.333.

(13) Preparing a consultants' performance evaluation when services are completed and using such performance data in future evaluation and ranking of a consultant to provide similar services;

The Authority shall designate an Evaluation Committee whose job will be to prepare an evaluation summarizing the consultant's performance on a contract after all services are rendered. The Evaluation Committee shall provide a fair and balanced performance evaluation. The performance evaluation should include, but not be limited to, an assessment of the timely completion of work, adherence to contract scope and budget, and quality of the work conducted. The Authority shall provide the consultant a copy of the performance evaluation and an opportunity to provide written comments to be attached to the evaluation. The Authority shall prepare additional interim performance evaluations based on the scope, complexity, and size of the contract as a means to provide feedback, foster communication, and achieve desired changes or improvements. Completed performance evaluations shall be archived for consideration as an element of past performance in the future evaluation of the consultant to provide similar services.

(14) Closeout of contract;

The Authority will:

- Adequately demonstrates process for final acceptance, final invoice, and record retention
- Understands that LG initiates final request for payment and is responsible for notifying TxDOT upon completion.
- Confirms that all required documentation is in place. (records should support acceptance)
- Ensures no outstanding claims, unfinished work, and pending issues.

At the completion of the contract, the Authority will coordinate with consultants' project manager and TxDOT to ensure that the project scope has been completed according to the Advance Funding Agreement (AFA) and the contract is acceptable to TxDOT. The AFA will contain project-specific information on the audit requirements. Any outstanding issues or disputes will be resolved prior to final payment. The Authority will provide TxDOT with all necessary project documentation for review. The federal awarding agency (FHWA) or passthrough entity (TxDOT) should complete all closeout actions for Federal awards no later than one year after receipt and acceptance of all required final reports per 2 CFR 200.343(g). Per 2 CFR 200.333, the Authority will ensure that all contract project files are complete and stored securely to protect the file of record until the legal document retention requirements are met. TxDOT will maintain cost data throughout the project and will determine the actual shared cost at the conclusion of the work.

(15) Retaining supporting programmatic and contract records, as specified in 2 CFR 200.333 and the requirements of this part;

All supporting programmatic and contract records shall be retained in accordance with 2 CFR 200.333.

The Authority will retain all project records for no less than three (3) years after the final payment. The records will be retained until all litigation, claims, or audit findings have been resolved and final action was taken.

The Authority shall provide accessibility to TxDOT and Federal Agencies for the purpose of audits and reviewing project records.

(16) Determining the extent to which the consultant, which is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors and omissions in the work furnished under its contract;

The Authority's contracts for professional services include standard provisions that address the consultant's responsibility for error and omissions. The Authority will monitor consultant's work for quality and compliance with state/federal standards and specifications and determine the extent to which the consultant may be liable for design errors and omissions. The Authority shall perform QC/QA on the consultant's submittals. Consultants are subject to these provisions before, during, and after the construction of a project, as well as before and after contract termination. When a dispute arises under one of those contracts regarding apparent errors or omissions in the work provided to the Authority, every effort will be made to resolve that dispute in a way ensuring that the public receives the services for which it has paid and that the consultant is treated with respect and fairness.

As soon as an apparent error or omission is identified in work provided by a consultant, the Authority will;

- A. Notify the consultant of the problem in writing; and
- B. Involve the consultant in efforts to resolve the problem.

These efforts must include consideration of the totality of relevant facts, including the level of services provided, the consultant's overall performance, the cost to the Authority of the services provided and of the apparent error or omission, and the value of the services provided. The consultant will be given an opportunity to submit a response within 5 business days and propose a resolution before any final action is taken per 23 CFR 172.9.c.x. Authority will notify the consultant in writing if corrective action was addressed properly and accepted or not.

(17) Assessing administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and providing for such sanctions and

penalties as may be appropriate;

Consultants are subject to suspension and debarment actions as specified in 2 CFR part 1200 and 2 CFR part 180, potential cause of action under False Claims Act as specified in 32 U.S.C. 3729-3733, and prosecution for making a false statement as specified in 18 U.S.C. 1020.

Upon failure of the consultant to fulfill obligations set forth in the contract in a satisfactory manner as determined by the Authority and in the sole opinion of the Authority, the Authority will issue a written notice of such failure. The consultant will be allowed thirty (30) days to correct such failure. If the consultant does not correct the failure within thirty (30) days, the Authority may take over the project and prosecute the work to completion. In such case, the consultant may be liable to the Authority for any additional cost occasioned by the Authority.

Throughout the project, consultant agrees to maintain an insurance policy listing the Authority as an additional insured in the amounts required by the Authority. Should the consultant fail to maintain an insurance policy in the minimum requirements identified by Authority the consultant will be considered to be in breach of contract.

(18) Resolution disputes in the procurement, management, and administration of engineering and design related consultant services;

The Authority and Consultant shall negotiate all disputes between them in good faith for a period of (30) days from the date of notice of dispute. All disputes will be brought to the attention of the RPIC as they arise. The RPIC will gather appropriate documentation regarding the alleged dispute and will schedule a conference with all parties involved within seven (7) working days to implement corrective action.

The Authority ' s Responsible Person in Charge shall invite the consultant to discuss and clarify disputes. The Authority may perform other steps in resolving disputes such as

- Telephoning and e-mailing the consultant to clarify any misinterpretation.
- Writing a letter to the consultant citing areas of non-compliance, providing instructions for corrective action, and acknowledging that payment will be withheld until corrective action is taken.
- Hosting meetings with the consultant to resolve misinterpretation regarding specifications or design standards.

The RPIC will make every effort to resolve disputes/misinterpretations in a mutually beneficial agreement and will be responsible to document.

If the parties fail to resolve a dispute through negotiation, then either or both parties may exercise their rights at law.

Approval:

Cameron County Regional Mobility Authority

By: Franky Fuller

Date: 9/3/20.

Texas Department of Transportation

By: Edwards King

Date: 08/30/2020