

## **MEETING NOTICE**

TO: Webb County-City of Laredo Regional Mobility Authority Board Members

FROM: Mr. Ruben Soto, Chair

**SUBJECT: June 2015 Board Meeting**

The next meeting of the WCCL-RMA is scheduled as follows:

**DATE: Monday, June 15, 2015**

**TIME: 9:00 AM**

**PLACE: TxDOT – Laredo District Meeting Room**

1817 Bob Bullock Loop  
Laredo, Texas 78043  
Webb County

Enclosed are the agenda and other pertinent information for your review prior to the meeting. Should you have any questions, please call me at (956) 723-9841

**WEBB COUNTY-CITY OF LAREDO REGIONAL MOBILITY AUTHORITY (WCCL-RMA)  
BOARD OF DIRECTORS MEETING**

**Monday, June 15, 2015**

**9:00 A.M.**

**TxDOT – Laredo District Meeting Room**

1817 Bob Bullock Loop

Laredo, Texas 78043

Webb County

1. **Open Meeting, Establish Quorum, Welcome and Opening Remarks – Ruben Soto (WCCL-RMA Presiding Officer)**
2. **Action: Discussion/Action to Approve May 18, 2015 Meeting Minutes**
3. **Report: Discussion on the Development of a WCCL-RMA Strategic Plan**
4. **Action: Discussion and Possible Action Regarding Approval of Selected Portions of Policy Manual (Bylaws, Procurement, Conflicts of Interest)**
5. **Report: Update on Contributions From the City of Laredo and Webb County on Providing Funds for WCCL-RMA Non-Project Operating Expenses**
6. **Action: Discussion on Webb County Resolution of RMA's Project Sponsorship of Vallecillo Road**
7. **Action: Discussion and Possible Action to Approve the Vehicle Registration Fund Inter-local Agreement (ILA) with Webb County**
8. **Report: Update on Web site development**
9. **Report: Discussion on meeting with Landon Hairgrove and Ana Garcia from U.S. Sen. John Cornyn's office and I-69 update by Gerald Schwebel**
10. **Report: Updates on the status of the US 59/Loop 20/I-69 Projects – Melisa D. Montemayor (TxDOT Laredo District Administrator and Staff)**
11. **Report: Legislative Update (Brian Cassidy, Locke Lord, LLP, Legal Counsel)**
12. **Action: Discussion and Possible Action on Posting Temporary/Permanent Executive Director Position or Consultant; Job Description Re: Same; and Matters Related Thereto (Possible Closed Session – Texas Government Code Section 551.071)**
13. **Closed Session: Board will adjourn into closed session pursuant to the following sections of the Texas Open Meetings Act**
  - A. **551.071 Consultation with Board's Attorney**
    1. **RFP for Financial Advisor(s)**
    2. **RFQ for General Engineering Consultant(s)**

**14. Reconvene from Closed Session; the Board may take action on items, if necessary, as discussed in Closed Session**

- 1. Action: Discussion and Possible Action to Approve Issuance of a Request for Qualifications for General Engineering Consulting Services**
- 2. Action: Discussion and Possible Action to Approve Issuance of a Request for Proposals for Financial Advisory Services**

**15. Public Comments**

**16. Report: Date/Time/Location of the Next Regular Board Meeting**

**17. Action: Adjournment**

POSTED ON \_\_\_\_\_ May 2015 AT \_\_\_\_\_ A.M./P.M.

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**RUBEN SOTO, JR.**  
**CHAIR**

**CLOSED SESSION**

The Webb County-City of Laredo Regional Mobility Authority Board may retire into Executive Session pursuant to the Texas Government Code, Sections 551.071 - 551.088 to discuss any of the following: (The items listed below are matters of the sort routinely discussed in Executive Session, but the Board may move to Executive Session to discuss any of the items on this agenda, consistent with the terms of the Open Meetings Act, as amended.)

Section 551.071	CONSULTATION WITH ATTORNEY
Section 551.072	DELIBERATION REGARDING REAL PROPERTY
Section 551.073	DELIBERATION REGARDING PROSPECTIVE GIFTS
Section 551.074	PERSONNEL MATTERS
Section 551.076	DELIBERATION REGARDING SECURITY DEVICES

**COURTESY RULES**

Thank you for your presence. The WCCL RMA appreciates your interest. If you wish to address the RMA on any agenda item, Public Participation Forms will be available before the meeting. These forms must be filled out and turned in to the RMA Chair or Secretary *prior* to the time the agenda item in question is addressed by the RMA. You must be recognized by the Chair. (NOTE: Items will not necessarily be presented in the order they are posted.)

**OPEN COMMENT PERIOD**

At the conclusion of all other agenda items, the Board will allow an open comment period, **not to exceed one hour**, to receive public comment on any other matter that is under the jurisdiction of the Board. Public comment that does not relate to a specific agenda item must be made during the open comment period.

Each speaker will be allowed a **maximum of three (3) minutes**. Speakers must be signed up prior to the beginning of the open comment period. For subjects that are not otherwise part of the agenda for the meeting, Board members may neither comment nor question speakers during the open comment period, but may request the Chair, or a recognized committee, to investigate the subject further. No action will be taken on matters that are not part of the agenda for the meeting.

**NOTE**

Enumerated agenda items are assigned for ease of reference only, and will not necessarily be considered by the Board in that particular order. The Chair may rearrange the order in which agenda items are considered.

Presenters with audiovisual needs are requested to contact Raul Leal at (956) 712-7416 at least two working days prior to the meeting.

**ACCESSIBILITY STATEMENT FOR DISABLED PERSONS**

This meeting site is accessible to disabled persons as follows: wheelchair ramp at the main entrance to the Meeting. If any special assistance or accommodations are needed in order to attend this RMA meeting, please contact Raul Leal at (956) 712-7416 at least two working days prior to the meeting so that appropriate arrangements can be made.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, such as interpreters for person who are deaf or hearing impaired, and readers of large print or Braille, are requested to contact Raul Leal at (956) 712-7416 at least two working days prior to the meeting so that appropriate arrangements can be made.



# ENVIRONMENTAL STATUS OF THE US 59/LOOP 20/I-69W PROJECT

A Brief Overview As Of June 15, 2015

*Mike Graham – Laredo District Environmental Coordinator*



# Projects Locations & Design:

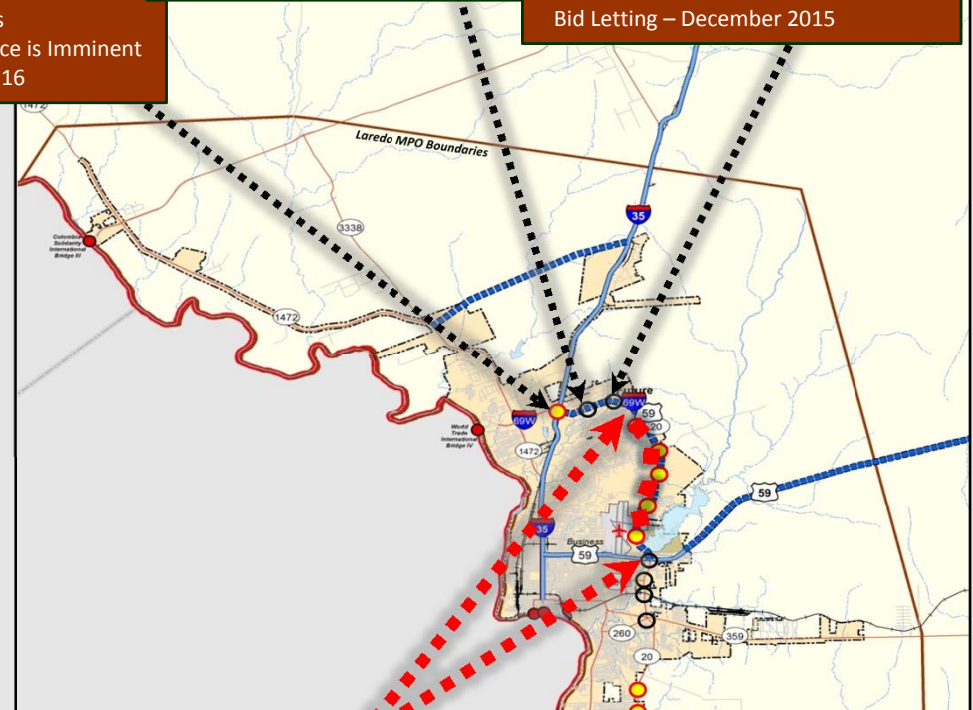
## Additional ROW Project:

- *International Blvd. to US 59/Saunders St.*
- *Includes 3-lane mainlanes  
3-lane frontage roads in each  
direction from Airport to the north*
- *Includes interchanges at Shiloh /  
Del Mar / University / Jacaman /  
Airport*
- *Includes an adjacent “multi-use”  
Hike & Bike Path on the east side  
from US 59 to International which  
is intended to integrate with the  
City’s Hike & Bike system*

**Funded**  
**US 59/Loop 20 Mainlanes Over  
 IH 35/U-P Railroad**  
 \$40 Million – CBI Funds  
 Environmental Clearance is Imminent  
 Bid Letting – August 2016

**Open To Traffic**  
**US 59/Loop 20 Mainlanes Over  
 McPherson Road**  
 \$14.1 Million  
 Opened to Traffic in 2014

**Funded**  
**US 59/Loop 20 Mainlanes Over  
 International Blvd.**  
 \$22.3 Million – Prop. 1 Funds  
 Environmental Clearance Is Imminent  
 Bid Letting – December 2015



**US 59/Loop 20/I-69W Unfunded Segment**  
**Construction Cost Estimates:**  
 Roadway (Frontage Roads & Mainlanes Between Interchanges) - \$68.3 Million  
 Shiloh Interchange - \$15.7 Million  
 Del Mar Interchange - \$15.7 Million  
 University Interchange - \$15.7 Million  
 Jacaman Interchange - \$15.7 Million  
 Airport Interchange - \$15.7 Million  
 High Mast Lighting - \$7 Million  
**Total Construction Estimate - \$153.8 Million**

## Preliminary Engineering & Environmental Relationship:

- Preliminary Schematic
  - *Underway and Concurrently Evaluating Alternatives based on Engineering and Environmental Constraints*
- Environmental Constraints Are Well Understood
  - *An Environmental Constraints Analysis Report Available*
- Geometric Schematic – *Preferred Alternative Still To Be Selected*
- Value Engineering – *Required for all projects on the NHS receiving Federal Assistance with:*
  - Estimated project cost of \$50 million or more.
  - All bridge projects with an estimated cost of \$40 million or more.
  - Anticipated to be held later this summer.
- Geometric Schematic Approval
  - *Approval is a requirement prior to the public hearing*

# Ongoing Environmental Work:

## Data Collection:

- Data is being compiled in a series of technical reports by the Laredo District and will be supplemented by information from the County's consultant (*e.g. Socio-Economics/Environmental Justice; Natural Resources; Noise Quality Impacts; Indirect/Cumulative Impacts Analysis; etc.*)
- Results of the technical reports will be summarized in an Environmental Assessment (EA) that would result in a Finding of No-Significant Impacts (FONSI)

## Public Outreach:

- The Project will have a Public Involvement Plan due to the project's cost, potential environmental impacts and the scale of the improvements
- Meetings with Affected Property/Business Owners  
– *Ongoing but in Early Stages*
- Public Meeting – *Summer 2015*
- Public Hearing – *Held in the final stages of the EA/FONSI process*



## Status of the Environmental Studies/Technical Reports/EA:

- **Socio-Economics/Environmental Justice** ..... 80%
- **Natural Resources (Biology & Water)** ..... 65%
- **Historical Resources** ..... 80%
- **Archeological Resources** ..... 75%
- **Section 4(f) Park Impacts** (*Golf Course/State Park*) ..... 50%
- **Noise Analysis** (*dependent on the ROW "Footprint" development*) ..... 0%
- **Right-of-Way/Displacements** (*Commercial/Governmental Anticipated*) ..... 75%
- **Indirect & Cumulative Impacts Analysis** ..... 50%
- **Public Outreach** ..... 20%
- **Tolling Impacts /Environmental Justice Analysis** ..... 0%
  
- **Environmental Assessment Document** ..... 35%

## **“Financially Constrained” & Environmental Document/FONSI:**

- The EA and environmental clearance (Finding of No Significant Impacts - FONSI) cannot be finalized until the Funding Plan (Program) is developed and eventually approved by the MPO/TxDOT/FHWA.
- The Project and the Funding Plan will need to be appropriately placed in the MTP/UTP/TIP/STIP planning documents.
- The Project’s Funding Plan can show construction phasing for segments. Each phase has to be logical and useable.
- I-69 federal legislation says that the I-69 components must be completed by 2035.

# Environmental Commitments & Permits:

## Anticipated Coordination w/Outside Agencies:

- U.S. Army Corp of Engineers (*potential wetland site on the Golf Course*)
- Texas Historical Commission
- Tribal Coordination (*archeological resources*)
- Texas Commission on Environmental Quality
- Texas Parks & Wildlife Department
- FEMA Administrator

## Applicable Permit Compliance:

- U.S. Army Corp of Engineers Nationwide Permit 14 with a Pre-Construction Notice
- Construction General Permit
- Laredo Municipal Separate Storm Sewer System (MS4) Permit

## Anticipated Commitments:

- Minimize impacts to the greatest extent possible
- Comply with all applicable permit requirements
- Acquisitions/Relocations will follow the Acquisitions Act\* requirements. Any “early acquisitions” by the local entities will be documented in the EA.

*\*Uniform Relocation Assistance and Real Property Acquisitions Act and TxDOT Guidelines*

# Bottom Line:

- The environmental studies are well underway.
- The FONSI will be issued by **TxDOT-Environmental Affairs Division** *(not the Laredo District or FHWA)*.
- The District's anticipates that a FONSI can be received within 1-year of the Funding Plan approval by the MPO/TxDOT/FHWA.

# Questions

**Mike Graham**

*Laredo District Environmental Coordinator*

*E-mail: [Mike.Graham@TxDOT.gov](mailto:Mike.Graham@TxDOT.gov)*

*(956) 712-7742*

THE STATE OF TEXAS     §

COUNTY OF WEBB         §

**INTERLOCAL AGREEMENT BETWEEN THE WEBB COUNTY-CITY OF LAREDO  
REGIONAL MOBILITY  
AUTHORITY AND THE COUNTY OF WEBB, TEXAS RELATING TO OPTIONAL  
VEHICLE REGISTRATION FEES**

**THIS INTERLOCAL AGREEMENT** (the “Agreement”) is entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between **WEBB COUNTY, TEXAS** (the “County”), and the **WEBB COUNTY-CITY OF LAREDO REGIONAL MOBILITY AUTHORITY** (the “Authority”), political subdivisions of the State of Texas (collectively, the “Parties”).

**RECITALS**

**WHEREAS**, the County is a county and a political subdivision of the State of Texas; and

**WHEREAS**, the Authority is a Regional Mobility Authority created pursuant to the joint request of the County of Webb and the City of Laredo and operating pursuant to Chapter 370 of the Texas Transportation Code (the “RMA Act”) and 43 TEX. ADMIN. CODE §§ 26.1 *et seq.* (the “RMA” Rules”), and is a body politic and corporate and political subdivision of the State; and

**WHEREAS**, Chapter 791 of the Texas Government Code provides that any one or more public agencies may contract with each other for the performance of governmental functions or services in which the contracting parties are mutually interested; and

**WHEREAS**, the 83<sup>rd</sup> Texas Legislature enacted HB 1198, which amends Section 502.402 of the Texas Transportation Code (the “Code”) and authorizes certain counties, including the County of Webb, to impose an additional fee, not to exceed \$10.00, for vehicles registered in the county (the “Optional Vehicle Registration Fee”, as further defined in Article I) to be used for long-term transportation projects; and

**WHEREAS**, on August 30, 2013, the Commissioners Court of the County considered and adopted an Optional Vehicle Registration Fee for vehicles registered in the County of \$10.00 pursuant to and in accordance with Section 502.402 of the Code as amended, as evidenced in the attached **Attachment “A”** (the “Order”); and

**WHEREAS**, Section 502.402 of the Code requires that, if adopted, the County remit the revenue from the Optional Vehicle Registration Fee to a regional mobility authority located in the County to fund long-term transportation projects; and

**WHEREAS**, the Parties desire the Authority to pursue development of potential long-term transportation projects in the County, as identified herein and as subsequently determined at a later date through one or more Project Agreements (as defined in Article I) which can benefit from the Optional Vehicle Registration Fee; and

**WHEREAS**, the Projects will benefit the County and its residents through improved mobility, increased safety, enhanced economic development, and expansion of the tax base which will result in increased revenues to support the County and the provision of services to its residents; and

**WHEREAS**, in order to further advance the Projects, the Authority may issue debt to obtain funding necessary to support the Projects; and

**WHEREAS**, in the event the Authority issues the RMA Debt (as defined in Article I), it may pledge the Optional Vehicle Registration Fee revenue in accordance with a Project Agreement with the County to secure the payment or repayment of the RMA Debt; and

**WHEREAS**, it is the intent and desire of the County and the Authority through this Agreement to provide a means by which the County may provide input on the Authority's use of the Optional Vehicle Registration Fees and provide oversight in accordance with agreements between the County and the Authority; and

**WHEREAS**, it is anticipated that the RMA Debt, if issued, will be a limited obligation of the Authority, payable solely from Optional Vehicle Registration Fee revenues and, at the Authority's option, other sources of revenue available to the Authority, and that absent an agreement otherwise by the County, the RMA Debt shall not be an obligation or payable from taxes or any other revenues of the County.

**NOW, THEREFORE**, in consideration of the respective promises and mutual covenants and benefits hereinafter set forth, the undersigned Parties agree as follows:

**ARTICLE I.**  
**DEFINITIONS**

A. **Definitions.** Throughout this Agreement, including the preceding recitals, the following terms and expressions shall have the meanings set forth below, unless the context clearly indicates otherwise:

“Debt Resolution” shall mean the resolution authorizing the issuance of the RMA Debt pursuant to a Project agreement for the development of one or more of the Projects.

“Optional Vehicle Registration Fee” shall mean the additional fee collected by the County of Webb on a vehicle pursuant to Texas Transportation Code Section 502.402. It shall not include any fees collected pursuant to Transportation Code Section 502.401.

“Vehicle Fee Revenues” shall mean the funds collected by the County and the State of Texas from the levy of the Optional Vehicle Registration Fee, pursuant to applicable law, without deduction, offset, or credit for any administrative charges or expenses incurred by the County or the Authority in connection with the levy and collection of the Optional Vehicle Registration Fee.

“Project or Projects” shall mean the design and/or construction of: (1) Loop 20 south of International Boulevard to US 59; (2) Vallecillo Road, from Mines Road to IH 35; (3) Loop 20 east and westbound mainlanes over IH 35; (4) the projects identified in the Amended Petition for Authorization to Form a Regional Mobility Authority dated January 27, 2014; and (5) any additional potential long-term transportation projects in the County as determined at a later date through a Project Agreement.

“Project Agreement” shall mean a written agreement between the County and the Authority detailing the specific terms and conditions under which one or more Projects shall be designed, engineered, financed and/or managed, the allocation and pledging of funds including the authorization to pledge funds to secure debt issued to support Project costs, and the respective duties and obligations of the Authority and the County with respect to the Project(s).

“RMA Debt” shall mean one or more series of bonds or other debt instruments issued by the Authority pursuant to this Agreement and a Project Agreement for the development of one or more of the Projects.

B. Interpretations. All terms defined and all pronouns used in this Agreement shall be deemed to apply equally to singular and plural and to all gender. The titles and headings of articles and sections of this Agreement have been inserted for convenience and shall not in any way modify or restrict any of the terms and provisions. This Agreement and all the terms and provisions shall be liberally construed to effectuate the purposes set forth in this Agreement.

## **ARTICLE II.**

### **OBLIGATIONS OF THE AUTHORITY**

A. Authority to Hold and Utilize Funds. The Authority shall receive and hold the Optional Vehicle Registration Fees to be used solely for long-term transportation projects. The Authority shall maintain the funds in the same manner as it holds other funds, in a segregated account(s) and subject to review and audit by the County. Interest on the account(s) shall be retained in the account for use for the same purposes as the principal funds in the account. Funds encumbered or pledged to support RMA Debt may be segregated and held pursuant to a trust indenture as required under the terms of the debt issuance; unencumbered funds will be held on behalf of the Authority and will remain available for use for other long-range transportation projects.

B. Issuance of RMA Debts. The Authority agrees to sell bonds or issue such other debt to fund the design and construction of one or more of the Projects, using the Optional



Vehicle Fee Revenues as all or a portion of the repayment source for such RMA Debt. The Authority agrees to use all or a portion of the proceeds of RMA Debt to finance the costs of one or more of the Projects, to pay the costs associated with issuing the RMA Debt, and to pay Authority costs and expenses to the extent permitted by law. The Debt Resolution shall provide that the RMA Debt issuance may be secured by a pledge of the Optional Vehicle Fee Revenues and any interest earned.

C. Project Development. The Authority shall in good faith and in coordination with the County develop a separate “Project Agreement” for each proposed Project other than those Projects specifically identified in Article I above. Project Agreements shall include the terms and conditions under which the Authority provides for the design, engineering and/or construction of a Project.

D. Construction of the Projects. The Authority agrees, directly or through an agreement with TxDOT, to develop the engineering plans, specifications, and/or other requirements necessary for the implementation of one or more Projects. The Authority further agrees to contract, directly or through an agreement with TxDOT, with all individuals or entities necessary to complete one or more Projects in accordance with the engineering plans, specifications and other construction documents developed by or for the Authority.

E. Limitations on Authority Obligations. Notwithstanding the foregoing, the Authority shall not be obligated to pursue or complete development of a Project if the funds available from the RMA Debt are not sufficient to pay all costs associated with the Project and the County fails to provide additional funding to cover the amount of any such deficiency.

### **ARTICLE III. OBLIGATIONS OF THE COUNTY**

A. Imposition, Collection and Remittance of Vehicle Fee. In accordance with Section 502.402 of the Texas Transportation Code and in consideration of the design and construction of the Projects by the Authority, the County covenants and agrees to take all steps necessary and authorized under all applicable laws to continuously impose, collect and remit, on a monthly basis, the Optional Vehicle Registration Fee during the term of this Agreement in the manner and to the extent permitted by applicable law and in accordance with this Agreement. The County also covenants and agrees that it will not cause a reduction, abatement or exemption in the Optional Vehicle Registration Fee or in the amount in which it is authorized to be collected if any proposed reduction, abatement or exemption would violate an existing bond covenant, loan agreement, or other project financing document. The County further covenants and agrees that, during the term of this Agreement, within thirty days of receipt from the County Tax Assessor of the portion of the Optional Vehicle Registration Fee Revenues the County collects, it will pay to the Authority the collected revenues, without demand, notice, counterclaim or offset, including any administrative charges or expenses incurred by the County in connection with the levy and collection of the Optional Vehicle Registration Fee, to be used as authorized under this Agreement.

B. Project Agreements. The County shall in good faith and in coordination with the Authority develop a separate Project Agreement for each proposed Project other than those specifically identified in Article I above. Project Agreements shall include the terms and conditions under which the Authority provides for the design, engineering and/or construction of a Project subject to the requirement to have an agreement in place.

C. Limitations to Rescind or Alter the Optional Vehicle Registration Fee. In the event the Authority shall issue RMA Debt on all or a portion of the Optional Vehicle Fee Revenues, the County shall not rescind the Order except to the extent that the County has otherwise provided for or assumed the debt obligations secured by the pledge of Optional Vehicle Fee Revenues. Nor shall the County modify the Order in any way that would adversely affect, the Authority's pledge of the Optional Vehicle Registration Fee revenues for a given Project or the holders of any associated RMA Debt, or adopt any other Order to take any other action to remove or rescind the Optional Vehicle Registration Fee, until the latest of: (1) the date on which all principal of, premium, if any, and interest on any RMA Debt is paid in full and the RMA Debt is no longer outstanding; (2) the date on which the RMA Debt matures, all principal of, premium, if any, and interest on the RMA Debt is paid in full, and all RMA Debt is no longer outstanding; or (3) December 31, 2023, but only if no RMA Debt secured by the Optional Vehicle Registration Fee revenues has been issued by that date or no other contractual commitment of all or a part of the Optional Vehicle Registration Fee revenues to advance a Project has been made. To the extent requested in connection with the issuance of RMA Debt or otherwise in relation to RMA Debt, the County shall affirm in writing that the Order remains valid and effective and no actions have been, or will be, taken which undermine or could adversely affect the imposition and collection of the Optional Vehicle Registration Fee.

D. Obligations of the County to be Absolute. The obligation of the County to make the payments set forth in this Agreement shall be absolute and unconditional. Until such time as the RMA Debt and any associated paying agent/registrar's fees, if any, have been fully paid or provision for payment thereof shall have been made in accordance with the Debt Resolution, the County will not suspend or discontinue any payments provided for in this Agreement and will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing: failure of the Authority to implement a Project at the cost estimated or in accordance with the final plans and specifications; any acts or circumstances that might constitute failure of consideration, eviction or constructive eviction; destruction of or damage to a Project; commercial frustration of purpose; or any failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement or related Agreements. Nothing contained in this section shall be construed to release the Authority from performance of any of the agreements on its part contained in this Agreement or related Agreements, and in the event the Authority shall fail to perform any such Agreement on its part, the County may institute such action against the Authority as the County may deem necessary to perform the acts required of the Authority in this Agreement or related Agreements.

**ARTICLE IV.**  
**MISCELLANEOUS**

A. Term. This Agreement shall be in full force and effect from the date first written above and may be terminated by the County or the Authority upon 45 calendar days written notice to the other party, but only if all principal of, premium if any, and interest on RMA Debt issued pursuant to the terms of this Agreement is paid in full; any other contractual commitment of all or a portion of the Optional Vehicle Registration Fee revenues has been satisfied or the County has made adequate provision therefore; and further provided that the Agreement may not be terminated prior to December 31, 2023.

B. Amendments and Supplements. This Agreement may be amended, supplemented or extended by mutual agreement of the Parties hereto, but not in such a manner as to impair the rights of the holders of the RMA Debt contemplated herein. No amendment, supplement, or extension to this Agreement shall be of any effect unless evidenced in writing and executed by the Authority and the County.

C. Merger. This Agreement embodies the entire understanding between the Parties hereto and there are no prior effective representations, warranties or agreements between the parties hereto.

D. Severability. The provisions of this Agreement are severable and if any provision or part of this Agreement or the application hereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons shall not be affected thereby.

E. Venue. Venue shall for any and all disputes arising under this Agreement or a Project Agreement shall be in Webb County, Texas.

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Ruben Soto, Jr.  
Chair  
Laredo Regional Mobility Authority

ATTEST:

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TANO E. TIJERINA  
Webb County Judge

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Margie Ramirez Ibarra

Webb County Clerk

APPROVED AS TO FORM:

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Marco A. Montemayor  
Webb County Attorney

**\*By law, the county attorney's office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).**

DRAFT

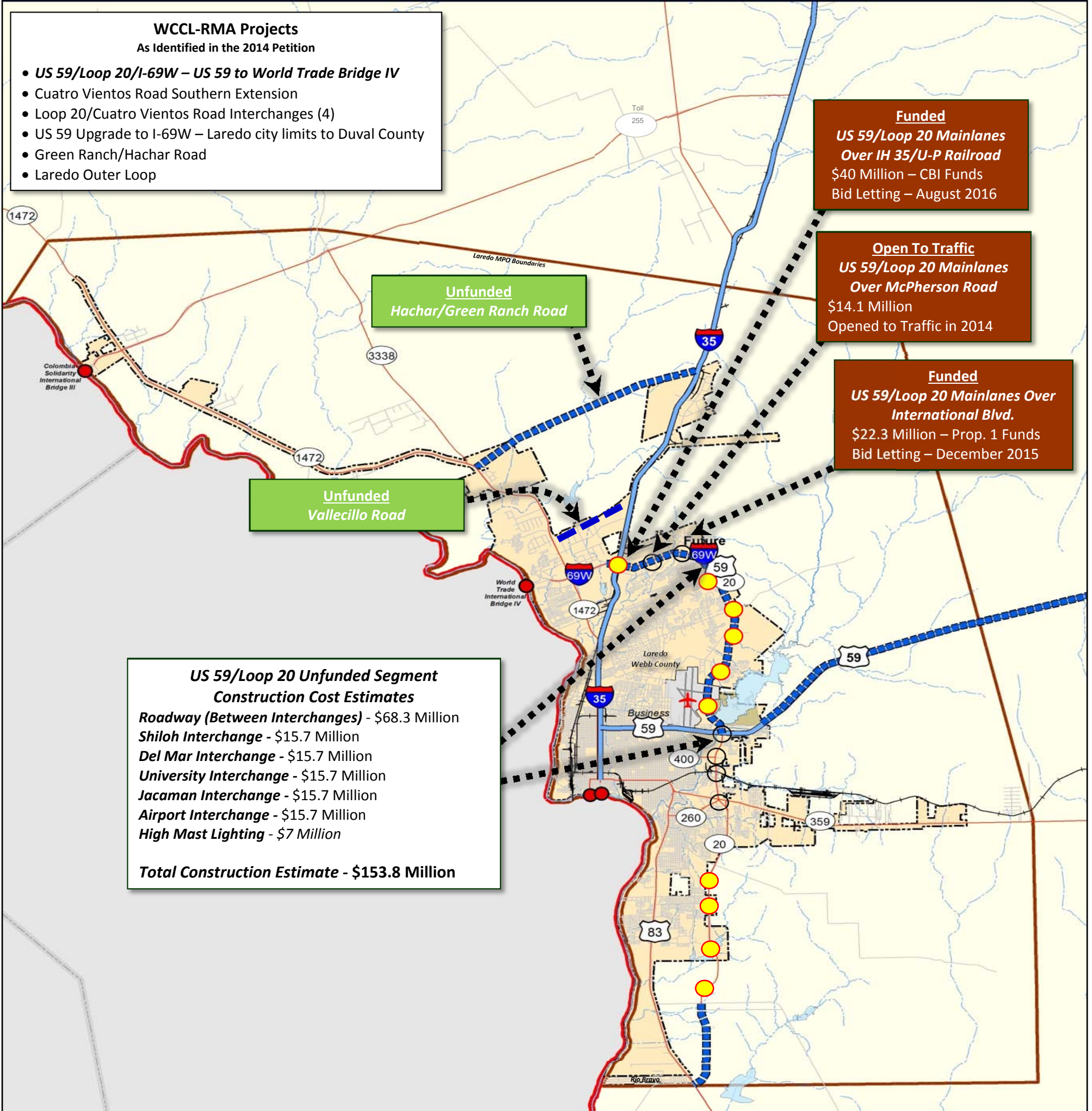
# Webb Co.-City of Laredo RMA Projects

As Presented in the January 2014 Webb County-City of Laredo RMA Petition

### WCCL-RMA Projects

As Identified in the 2014 Petition

- US 59/Loop 20/I-69W – US 59 to World Trade Bridge IV
- Cuatro Vientos Road Southern Extension
- Loop 20/Cuatro Vientos Road Interchanges (4)
- US 59 Upgrade to I-69W – Laredo city limits to Duval County
- Green Ranch/Hachar Road
- Laredo Outer Loop



**Funded**  
**US 59/Loop 20 Mainlanes Over IH 35/U-P Railroad**  
 \$40 Million – CBI Funds  
 Bid Letting – August 2016

**Open To Traffic**  
**US 59/Loop 20 Mainlanes Over McPherson Road**  
 \$14.1 Million  
 Opened to Traffic in 2014

**Funded**  
**US 59/Loop 20 Mainlanes Over International Blvd.**  
 \$22.3 Million – Prop. 1 Funds  
 Bid Letting – December 2015

**Unfunded**  
**Hachar/Green Ranch Road**

**Unfunded**  
**Vallecillo Road**

**US 59/Loop 20 Unfunded Segment Construction Cost Estimates**

**Roadway (Between Interchanges) - \$68.3 Million**

**Shiloh Interchange - \$15.7 Million**

**Del Mar Interchange - \$15.7 Million**

**University Interchange - \$15.7 Million**

**Jacaman Interchange - \$15.7 Million**

**Airport Interchange - \$15.7 Million**

**High Mast Lighting - \$7 Million**

**Total Construction Estimate - \$153.8 Million**

**WCCL-RMA Primary Project**  
**US 59 /Loop 20/I-69**  
**Upgrade to an Urban Interstate Expressway**  
**With Interchanges at Shiloh; Del Mar; University; Jacaman; Airport**

**Current Estimates:**

Additional Right-of-Way & Utility Relocations (175-ac.) – \$221.8 Million

Engineering Costs - \$15.8 Million

Construction Costs - \$153.8 Million

**Total Estimated Cost - \$391.4 Million**

**Currently Identified/Available WCCL-RMA Funding Sources:**

Coordinated Border Infrastructure (CBI) - \$2.6 Million

Transportation Reinvestment Zone (TRZ) – To Be Determined

Vehicle Registration Fees - \$1.8 Million/year (To be matched by TxDOT for 5 yrs.)

Other City Sources - \$89 Million (As identified in the 2014 WCCL-RMA Petition)





# A Report On The Environmental Status Of The US 59/Loop 20/I-69W Project

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From: Business US 59 (Saunders St.)  
To: International Blvd.

Compiled By: TxDOT – Laredo District

As Of June 15, 2015

## Current Status of the US 59/Loop 20/I-69W Project Business US 59 (Saunders Street) to International Blvd.

### The Proposed Project design consists of:

- Three mainlanes in each direction with three-lane frontage roads from just south of Airport Drive to International Blvd.
- Interchanges will be located at Shiloh, Del Mar, University, Jacaman and Airport.
- A shared use Hike & Bike trail will be located from US 59 to International that could integrate with the City's Hike & Bike systems.
- Approximately 174-acres of additional right-of-way would be needed with three relocations of government-related buildings.

### The project is in the schematic development and preliminary environmental studies phase. Current status of the preliminary engineering components of the project:

- Schematic – 50%
- Plans, Specifications & Estimates (PS&E) (to be undertaken when the project funding is assigned) – 0%

### Status of the Environmental Work by the TxDOT-Laredo District with supporting information from the County's consultant:

- Socio-Economics/Environmental Justice Report – 80%
- Natural Resources (Biology and Water) Report – 65%
- Historical Resources Report – 80%
- Archeological Resources Studies and Report – 75%
- Section 4(f) for Parklands (Golf Course and State Park) Process – 50%
- Noise Impacts Analysis/Report (dependent on the Schematic development) – 0%
- Determination of Additional Right-of-Way and Business/Residential Displacements – 75%
- Indirect and Cumulative Impacts Analysis and Report – 50%
- Public Outreach – 20%
  - Meetings with Affected Property Owners – Ongoing
  - Public Meeting – Summer 2015 (dependent on Schematic development)
  - Public Hearing – At the last stages of the EA/FONSI approval phase and when there is an approved Schematic
- Tolling Impacts/Environmental Justice Analysis and Report – 0%
- Environmental Assessment (EA) Document Development – 35%
- **Finding of No Significant Impacts (FONSI) – 0%**  
(to be approved by TxDOT-Environmental Affairs Division / not the TxDOT-Laredo District or FHWA).

- Based on the current status of the environmental studies and EA document, the District anticipates that the FONSI could be received within one year after the adoption of the Funding Plan by the MPO/TxDOT/FHWA.

#### Anticipated Coordination w/Outside Agencies:

- U.S. Army Corps of Engineers (potential wetland site on the Golf Course)
- Texas Historical Commission
- Tribal Coordination (for archeological resource impacts)
- Texas Commission on Environmental Quality
- Texas Parks & Wildlife Department
- FEMA Floodplain Administrator

#### Applicable Permit Compliance Anticipated:

- U.S. Army Corp of Engineers Nationwide Permit 14 with a Pre-Construction Notice.
- TCEQ Construction General Permit for impacts greater than 5-acres
- Laredo Municipal Separate Storm Sewer System (MS4) Permit

#### Anticipated Commitments:

- Minimize environmental impacts to the greatest extent possible
- Comply with all applicable permit requirements
- All Acquisitions/Relocations will follow the Acquisitions Act<sup>1</sup> requirements

#### “Financially Constrained” Requirements and the Environmental Document/FONSI:

- The environmental technical reports and Environmental Assessment (EA) document work can proceed even though the project is not formally “financially constrained” at this time. However, the environmental approval (Finding of No Significant Impacts – FONSI) cannot be approved until a Funding Plan (Program) is developed and eventually approved by the Laredo MPO/TxDOT/FHWA.
- The Project (and Funding Plan) will need to be appropriately placed in the MTP/UTP/TIP/STIP planning documents.
- The Project’s Funding Plan and EA/FONSI can show logically delineated construction phasing (i.e. each phase should be viable on its own).
- I-69 federal legislation says that the I-69 components must be completed by 2035.

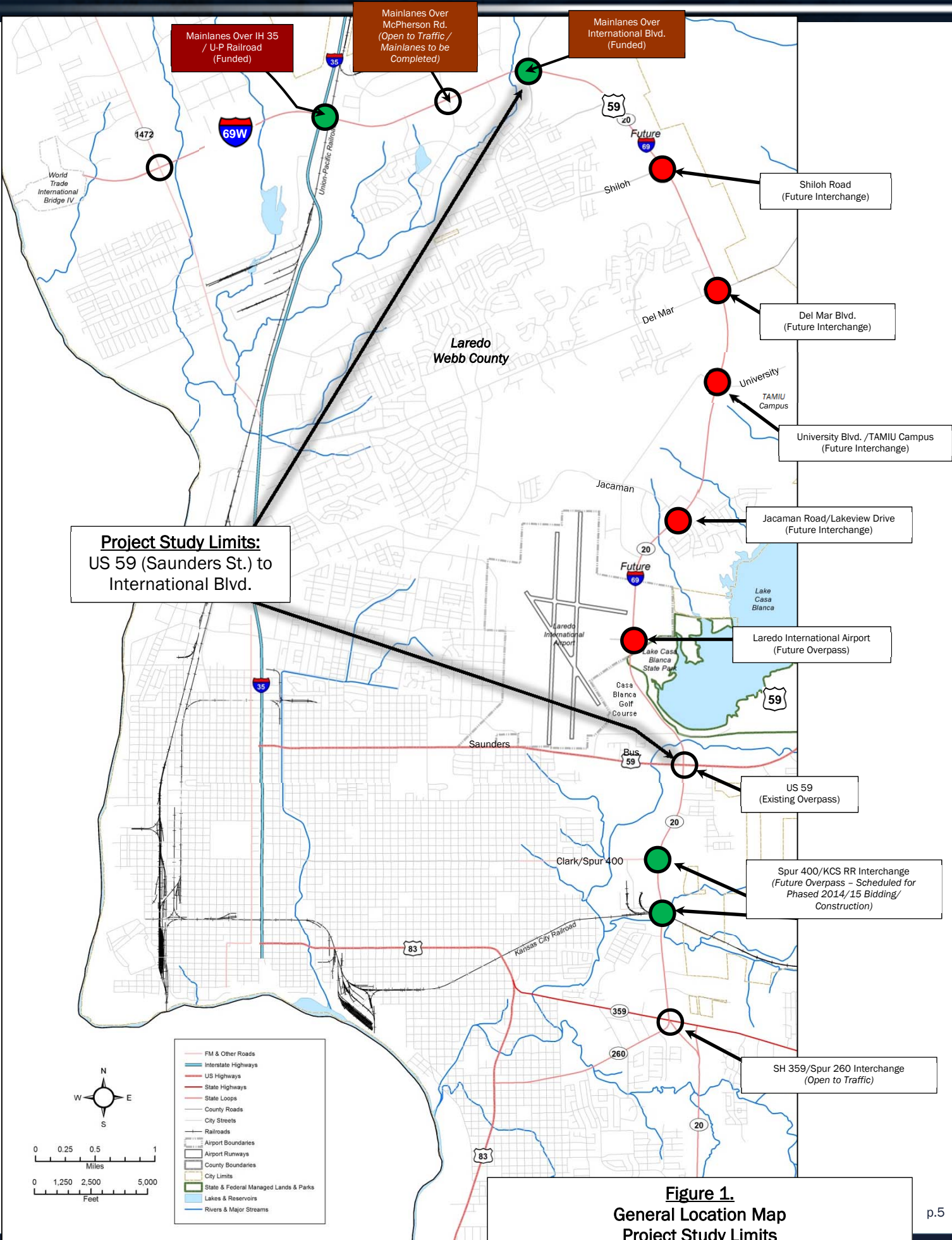
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<sup>1</sup> Uniform Relocation Assistance and Real Property Acquisitions Act



Bottom Line:

- The environmental studies are well underway.
- The FONSI would be issued by TxDOT- Environmental Affairs Division (*not the Laredo District or FHWA*).
- The District's anticipates that a FONSI can be received within 1-year after the approval of the Funding Plan.



**Figure 1.**  
**General Location Map**  
**Project Study Limits**

## **General Notes on the WCCL-RMA Strategic Plan**

*As described in the WCCL-RMA bylaws, the executive director shall be responsible for preparing a draft of the Strategic Plan for the authority's operations.*

*Each even numbered year, the authority shall issue a Strategic Plan of its operations covering the next five fiscal years, beginning with the next odd numbered fiscal year. A draft of each Strategic Plan shall be submitted to the board for review, approval, and, subject to revisions required by the board, adoption.*

DRAFT

## Webb County-City of Laredo Regional Mobility Authority Strategic Plan 2015

### Introduction

The importance of effective and efficient transportation infrastructure is a highly-regarded concern of governmental entities, transportation officials, business owners and residents within the Webb County-City of Laredo – Mexico border region. Texas is a major gateway for trade between the United States, Mexico and countries south. Even while it appears that the existing ports of entry along the Texas-Mexico border have become somewhat congested the Petitioners recognize that congestion and the resulting inefficiencies that continued growth have on the existing transportation infrastructure within Webb County and the City of Laredo quickly outpaces local, state and federal efforts to keep the region's transportation infrastructure well maintained and with sufficient capacity to provide efficient mobility.

The WCCL-RMA encompasses one of the nation's fastest growing Metropolitan Statistical Areas (MSA). Traffic data from the 2010-2035 Metropolitan Planning Organization (MPO) Laredo Urban Transportation Study Transportation Plan, as far back as December 1999 indicates that 2035-Build and No-Build will provide only level of service (LOS) E and F for the majority of roadway facilities in Webb County and the City of Laredo. The population of Webb County and the City of Laredo continues to grow at an accelerated rate. The 2010 Census population for Webb County was measured to be 250,304 and the population is expected to be 418,332 by 2030 as projected by the Texas Water Development Board (<http://www.twdb.state.tx.us/>). TxDOT's own "One-Stop Demographic Data Analysis Tool" indicates the 2030 population is expected to be 437,726. Therefore, improvements to transportation infrastructure within Webb County and the City of Laredo are vital to meet the demands resulting from this growth.

The formation of the Webb – Laredo RMA will allow an entity, under local control but working in cooperation with TxDOT, to develop road projects and provide support to other transportation improvement in the region which otherwise might depend solely on state or federal funding. Thus, badly needed transportation infrastructure can be delivered to the region more quickly than would be the case without a regional mobility authority. The Webb – Laredo RMA will benefit the State by relieving TxDOT of the burden of constructing certain transportation projects some of which are set forth in the following sections

The Webb County-City of Laredo Regional Mobility Authority (WCCL-RMA) is authorized by the Texas Legislature under the Transportation Code. Formed in 2014, the WCCL-RMA represents the Legislature's vision to give local communities greater flexibility to develop and implement innovative transportation programs. With the support and guidance of Webb

County and the City of Laredo, the WCCL-RMA is evolving into a vibrant, agile, highly effective organization.

### **Benefits**

The projects described in this strategic plan are important links to the border infrastructure within the City of Laredo and Webb County. The WCCL-RMA projects will benefit the ports of entry, governmental entities, transportation officials, import and export business, and commercial establishments in the community in general by having increased local control over projects and a more direct impact on transportation planning decisions. The region will also have the opportunity to benefit from any surplus revenues generated by the WCCL-RMA that may be used for other transportation projects in the region.

The traveling public will benefit by an improved system of roadways in the region which can be delivered sooner than would be possible under traditional methods of transportation funding and project development. Easing the traffic congestion which plagues the area encompassed by the WCCL-RMA will also enhance safety, air quality while decreasing travel time, and generally improving the quality of life of citizens of the region.

### **MOBILITY 2030 - The Strategic Plan Mission and Core Ideology**

#### **Mission Statement:**

The Webb County – City of Laredo RMA exists through a cooperative coalition of State, County, City and Private efforts with its sights on providing alternative solutions for securing financing resources that will be utilized in improving, facilitating, and constructing transportation and related projects that will improve the flow of traffic, commerce and quality of life for the citizens of Webb County.

#### **Core Ideology:**

The WCCL-RMA's core ideology describes our consistent identity that transcends all changes related to our relevant environment. Our core ideology consists of two notions:

- Core purpose (our reason for being) and
- Core values (the essential and enduring principles that guide our organization).

#### **Core Purpose:**

Be a provider of reliable high quality regional mobility services in Webb County.

#### **Core Values:**

- Integrity is demonstrated by honest communication, transparent transactions, ethical decisions and forthright behavior.

- Demonstrated Accountability in fiscal responsibility, commitment to our customers and constituents and collaboration with local and regional partners. Demonstrated Credibility will be an earned reputation for fairness, dependability and dedication to public service.
- Innovation is demonstrated in visionary leadership, entrepreneurial spirit and tolerance for honest mistakes.

### **Positioning for 2030**

Laredo is consistently one of the communities in the United States that has experienced tremendous growth in the past decades. There is no expectation that the vibrant Laredo/Webb County economy that is based on international trade will change anytime soon. The international ports of entry at Laredo are the number one inland port and the third of all ports in the U.S. This is due to this community's location on IH 35 and Highway 2, the Mexican interstate highway counterpart. This level of international trade presents unique challenges in relation to the roadway infrastructure due to the large percentage of trucks on the major streets and roadways. In addition to the IH 35 traffic, Laredo is designated as the western terminus of I-69 as it is developed over the next decades. Upgrading the I-69W corridor in and into Laredo will continue to be the primary objective of the WCCL-RMA.

In fact, the Webb County / Laredo area population is projected to grow from approximately 225,000 to 450,000 by 2030. With this level of sustained growth, the region has to anticipate, plan and implement a wide-range of integrated transportation solutions to ensure that our community retains and improves the quality of life currently enjoyed. Mobility is a key component for the region's future. In addition, it is important to recognize that mobility in general is facing a major transformation in the next 20 years. Not only will there be more people to serve, but every aspect of moving people and goods will change. An increasing percentage of the population will be retired and on fixed incomes. The gas tax, the primary source of funding for transportation, will continue to diminish. There will be tougher air quality requirements, and stricter environmental standards to comply. These are a few examples of factors the WCCL-RMA must consider in developing a long-term mobility strategy.

To frame this Strategic Plan, the WCCL-RMA desires to articulate an envisioned future that conveys a concrete, yet unrealized vision for the region's mobility by the year 2030. It consists of our positioning statement, which represents a clear and compelling catalyst that serves as a focal point for our effort, the intersection of what we are passionate about, what we do best and how we can marshal the resources to accomplish the vision. It also includes a visualization of what the year 2030 will be like when the vision is achieved.

**Positioning Statement.** The WCCL-RMA will be the driving force for significant improvement and sustainable mobility in Laredo and Webb County through the year 2030.

**Visualization. What does 2030 mobility look like?**

The following are descriptive statements of how the world could be different for key stakeholders as a result of the WCCL-RMA attaining its vision. These descriptions are classified by the WCCL-RMA's four strategic initiatives.

**Economic Vitality**

- Local businesses recognize greater efficiency and profitability due to greater reliability of the transportation network.
- South Texans benefit from a financially sustainable transportation system, which provides increased resources to meet mobility needs.
- Emergency services realize reduced response times and increase the health and welfare of Central Texas citizens.
- Travelers benefit from increased safety as they travel through South Texas.
- Drivers' benefit from reduced auto insurance rates directly attributed to less congestion, greater mobility and safety. Drivers benefit from reliable travel times, less congestion and greater mobility and safety.
- Citizens of south Texas enjoy a greatly enhanced quality of life as a result of certainty of travel times due to an improved roadway system.
- South Texans enjoy greater access to a wide range of transportation modes.

**Innovation**

- Transportation infrastructure users benefit from pioneering and innovative financing mechanisms.
- Implementing new technology and social media increases transportation choices, improves decision making and drives efficiency.
- Nationwide toll system interoperability improves mobility across the country.
- Residents of South Texas benefit from more efficient government services as a result of a collaborative and cooperative "business model."
- All individuals and organizations that interact with the WCCL-RMA and its contractors receive a prompt, courteous and forthright response that exceeds expectations.

## **Sustainability**

- The environment is protected through sustainable air and water quality initiatives and the proactive mitigation of congestion.
- Residents of South Texas benefit from the WCCL-RMA's use of sustainable materials and construction methods.
- Residents and businesses of South Texas have affordable choices for mobility due to financially sustainable construction and maintenance of facilities.

## **The 2015 Strategic Plan**

The following represents the WCCL-RMA's proposed long-term goals and objectives for the next five years. Set in context of four major strategic initiatives, achievement of these goals will move the WCCL-RMA towards realization of its purpose and vision.

### **Initiative: Economic Vitality**

A strong, reliable and efficient mobility network is a significant component to a successful regional economy. Residents and businesses alike will benefit with new opportunities for economic expansion while improving mobility in the area.

Goal: Develop projects and programs that support federal, state, regional and local economic development strategies.

- Objective: Adopt a process to evaluate projects based on their relative value in providing greater mobility given available resources.
- Objective: Develop programs that ensure consistent and predictable travel times.
- Objective: Develop transportation project priorities based on current and future housing and employment centers.

Goal: Lead regional efforts to increase transportation capacity and reliability particularly in congested areas and desired development zones.

- Objective: Develop transportation project priorities based on current and future housing, employment and international trade centers.
- Objective: Adopt an objective and transparent process to evaluate projects based on their relative value in providing greater mobility given the limited availability of resources.
- Objective: Develop programs that ensure consistent and predictable travel times.



Goal: Partner with regional entities to facilitate economic development initiatives driven by mobility and transportation.

- Objective: Continue involvement in regional planning activities with community partners.

**Initiative: Regional Integration**

The Webb County-City of Laredo RMA will benefit from greater access to a regionally integrated network of transportation modes that provide safe, reliable, efficient and affordable travel.

Goal: Advocate and/or develop reliable, efficient modes of regional multimodal transportation options.

- Objective: Develop a planning and financing process that results in the creation of a short and long-range Capital Improvement Program.
- Objective: Be on the forefront of utilizing existing and emerging technologies so as to implement more efficient modes of transportation to provide greater mobility options.

Goal: Provide highly reliable and appropriately maintained regional roadway network.

- Objective: Design and construct transportation facilities that provide for reliability and safety.
- Objective: Develop and implement reliable and efficient maintenance strategies that continue to protect the initial investment.
- Objective: Facilitate driver roadside assistance programs that preserve existing capacity.
- Objective: Identify opportunities and efficiencies to develop a consistent and seamless toll road network in Webb County Texas.
- Objective: Manage the transportation capacity available in the region through the use of technology including dynamic tolling and mobile applications.

**Initiative: Innovation**

The WCCL-RMA is a solution-oriented, regional transportation leader and service provider that fosters a high level of trust from the public, elected officials and users of the transportation system through its innovative practices, transparent processes and open communication.

Goal: Advocate for increased transportation management and funding options.

- Objective: Work closely with elected officials to educate and enact legislation that ensures flexible options to achieve regional mobility, including funding mechanisms and efficient construction methods.
- Objective: Explore and utilize public private partnership (P3) opportunities.
- Objective: Lead efforts to increase all levels of funding for regional mobility.
- Objective: Support and facilitate the start-up and success of Regional Mobility Authority's across the state.

Goal: Implement the most efficient and cost effective management of transportation facilities in South Texas while providing the best possible customer experience.

- Objective: Explore expansion of toll tag inter-operability and toll tag uses.
- Objective: Effectively increase use of technology to support traffic management.
- Objective: Maintain leadership in utilizing innovative and industry best practices.
- Objective: Preserve and maintain system assets to ensure long-term financial sustainability of the system

Goal: Enhance the customer experience through effective WCCL-RMA communication and accessibility.

- Objective: Proactively outreach to the community and engage the public in regional transportation issues.
- Objective: Enhance WCCL-RMA's financial and operations reporting.
- Objective: Develop and implement exceptional customer service practices and procedures.

**Initiative: Sustainability**

Central Texans will experience a better quality of life due resulting from to the Mobility Authority's planning, implementation, operations and maintenance of transportation facilities using use of efficient and environmentally sustainable methods.

Goal: Define, use and advocate for environmentally sound design and construction methods for WCCL-RMA projects.

- Objective: Identify and implement innovative techniques to encourage sustainable, cost effective design.
- Objective: Encourage and increase scientific advancements of material usage.
- Objective: Consider innovative land use and mitigation options.

Goal: Build, and maintain and operate assets for long-term preservation and reliability.

- Objective: Identify opportunities for and encourage increased use of sustainable materials and innovative environmentally responsible construction methods on all projects.
- Objective: Develop methods to analyze costs from a long-term sustainability perspective.
- Objective: Identify and implement strategies to increase efficiency of roadway, traffic and toll operations.

Goal: Increase public awareness of environmental benefits related to improved mobility systems.

- Objective: Include Advocate and promote environmental benefits in all presentations and communications regarding WCCL-RMA activities.
- Objective: Highlight Promote WCCL-RMA's sustainability achievements.

### **WCCL-RMA Project Updates**

Past TxDOT – Laredo District efforts, with the full cooperation of Webb County, the City of Laredo and the Laredo MPO, began early planning and conceptual studies to upgrade Loop 20 as it was then. For instance, in 2005-06 the Laredo District prepared the final designs to implement a 7.25-mile southern extension of Loop 20 (locally known as Cuatro Vientos Road) and the SH 359 Interchange, which started construction in 2010 and were opened to traffic in 2011 and 2013 respectively.

- The Mobility Authority's first project, constructing the US 59 (Loop 20) Mainlanes over IH 35/Union-Pacific Railroad Project, is slated to go to bid letting in August 2016. The WCCL-RMA will sponsor the funding for this project using approximately \$40 Million of the Coordinated Border Infrastructure (CBI) funds assigned to the WCCL-RMA by Webb County and the City of Laredo. This project will be constructed to urban interstate design standards and will integrate with the existing section of I-69W to the west of the project and the McPherson Road and International Boulevard interchange projects to the east. This project is anticipated to be opened to traffic within two years after construction starts.
- In partnership with TxDOT and Webb County, the studies on the upgrade of US 59 (Loop 20) from International Boulevard to the intersection of US 59 coming into Laredo are proceeding. It is anticipated that the Webb County sponsored schematic design and preliminary environmental studies are proceeding for completion in late 2015. A preliminary funding plan is being developed by TxDOT that will be the basis of the final funding plan to be used to acquire the needed right-of-way and to construct the project in phases. It is anticipated that the environmental clearance will be obtained approximately one year after the completion of the funding plan. After the environmental clearance is

obtained, right-of-way acquisitions will begin and the development of the plans, specification and estimates will be developed for each of the project phases.

- Other projects further south on Loop 20 that are under long-term consideration by the WCCL-RMA include:
  - The new location roadway extension of Loop 20 to US 83 or to the entrance of the proposed International Bridge V to be located south of the Rio Bravo township that is south of Laredo. This is a currently unscheduled project.
  - The construction of interchanges at the four arterial street intersections with Loop 20 between SH 359 and Mangana-Hein Road. These are currently unscheduled projects.
- Upgrading US 59 from the Laredo city limits to the Duval County line to I-69W design standards. This is a currently unscheduled project.
- The construction or upgrade to a four-lane divided roadway with frontage road of the Green Ranch (Hachar Road) Parkway between IH 35 and FM 1472. Webb County and the City of Laredo are working with the primary landowners and are anticipated to acquire the necessary rights-of-way and construct the initial lanes.
- The construction of the Laredo Outer Loop which would act as a bypass relief route around the eastern side of Laredo. This project would extend from approximately the Toll 255 roadway to Loop 20/US 83 at a point that leads to the future Laredo International Bridge V which would be constructed by others. This is a currently unscheduled, long-term project.

To build on our previous success and continue to plan strategically for the region's mobility future, the following strategic plan represents the WCCL-RMA's long-term vision, initiatives, goals and objectives as it continues to evolve as a leading regional mobility provider in the State.

### **Project Funding Tools**

It is recognized that a variety of funding tools will need to be utilized for the WCCL-RMA and its local and state partners (Webb County, the City of Laredo, TxDOT and FHWA) to meet the goal of upgrading the Laredo and Webb County roadways in a timely manner. It is the objective of the WCCL-RMA to fully investigate these funding tools which are discussed below.

- "Traditional" funding – These federal and state funds will be utilized as much and as efficiently as possible with the objective of using local funding to leverage these funds as much as possible.
- Vehicle Registration Funds (VRF) – The \$20 VRF payments have been collected by Webb County for every vehicle registered in the County starting in 2014. To compliment these funds, TxDOT has committed to match at least the first five years

of the VRF collections. Approximately \$1.1 Million was collected in 2014 vehicle registrations; approximately this amount is anticipated for the next four years.

- Transportation Re-Investment Zone funds – The City of Laredo is on a path to develop a TRZ analysis that will lead to a dedication of a portion of the property taxes collected within a zone surrounding a transportation project (i.e. the US 59/Loop 20/I-69W Upgrade). This dedication of property tax funds to transportation uses will not change the amount of taxes paid by property owners but will allow for an acceleration of much needed transportation projects that will improve the quality of life in the TRZ area.
- Other City Funding – The City of Laredo has identified approximately \$89 Million that could be used by the WCCL-RMA for transportation uses.
- “Indirect Tolling” – State law allows for what is a “pass-through” payment agreement with TxDOT where a governmental entity would finance and build a transportation project on the state roadway system with repayments by TxDOT based on traffic levels over a specified timeframe. Currently, this program is not active; however, the WCCL-RMA would investigate the use of this program if it is re-activated by the State and TxDOT.
- Direct Tolling – Tolling funds paid for by drivers for the use of an improved roadway would be an option to consider by the WCCL-RMA after a full review of the pertinent factors, a determination of its viability and after public outreach is conducted.

### **Other WCCL-RMA Commitments**

The WCCL-RMA is committed to operating in a straight forward and transparent manner in developing and funding transportation projects in Laredo and Webb County. As part of this commitment, the WCCL-RMA will fulfill all environmental requirements with a comprehensive public outreach program. As such, the WCCL-RMA will adopt and begin implementing a set of standard operating procedures that will cover all facets of the WCCL-RMA’s operations.

As such, the Webb County – City of Laredo Regional Mobility Authority is committed to improving roadway system in our community for the citizens of Webb County, the south Texas region, the state of Texas, the United States as well as for our counterparts and partners in Mexico.

## End-notes:

Measures of success or desired results:

- Positive customer surveys, increased employment and an increased job base that matches population growth.
- Less congestion as measured by average commute times and time saved.
- Appraised property value changes
- Zoning changes
- Decreased response times for emergency services
- Decreased number of accidents and injuries/fatalities
- Roadside assistance measures, number of projects constructed, environment and energy savings and positive impacts to long-term maintenance cost
- Legislative success, funding options developed, projects started and completed in scheduled timeframes, awards and recognitions, customer satisfaction

**WEBB COUNTY-CITY OF LAREDO  
REGIONAL MOBILITY AUTHORITY  
POLICY CODE**

DRAFT

CURRENT AS OF JUNE \_\_\_, 2015

# WEBB COUNTY-CITY OF LAREDO RMA POLICY CODE

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## Chapter 1: GOVERNANCE (BYLAWS)

### Article 1. MISSION STATEMENT

The mission of the Webb County-City of Laredo Regional Mobility Authority (the “WC-CL RMA”) is to assist the establishment of a comprehensive transportation system to directly benefit the traveling public within Webb County-City of Laredo region through the development of additional transportation alternatives within the region.

### Article 2. WEBB COUNTY-CITY OF LAREDO REGIONAL MOBILITY AUTHORITY

These Bylaws are made and adopted for the regulation of the affairs and the performance of the functions of the WC-CL RMA, a regional mobility authority authorized and existing pursuant to Chapter 370 of the Texas Transportation Code, as may be amended from time to time (the “RMA Act”), as well as rules adopted by the Texas Department of Transportation (“TXDOT”), as may be amended from time to time, concerning the operation of regional mobility authorities, located at Title 43 Texas Administrative Code, Rule 26.01, *et seq.* (the “RMA Rules”).

- a. The WC-CL RMA was created pursuant to Texas Transportation Commission (the “Commission”) Minutes Order Number 113851 dated February 27, 2014.
- b. The WC-CL RMA is a political subdivision of the State of Texas.

### Article 3. PRINCIPAL OFFICE

The principal office of the WC-CL RMA shall be in the City of Laredo, Webb County, Texas.

### Article 4. GENERAL POWERS

The activities, property, and affairs of the WC-CL RMA will be managed by its Board of Directors (the “Board”). The general powers of the WC-CL RMA shall be as permitted by the Constitution and statutes of the State of Texas, included but not limited to the RMA Act, the RMA Rules, and these Bylaws, each as may be amended from time to time.

### Article 5. INITIAL BOARD OF DIRECTORS

- A. The initial Board of the WC-CL RMA shall be composed of nine (9) Directors, appointed as follows:
  1. The Governor shall appoint one (1) Director, who shall serve as the presiding officer of the Board. The Governor’s Appointee must be a resident of Webb County.
  2. The Commissioners Court of Webb County shall appoint four (4) Directors, each for two (2)-year terms.



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- a) To stagger the replacement of Directors, the initial County Directors shall draw for terms, two of the initial County appointees shall serve for one (1) year terms and two of the initial County appointees shall serve for two (2) year terms.
  - b) The Webb County Commissioners shall initially appoint one (1) member residing in Precinct 1, one (1) member residing in Precinct 2, one (1) member residing in Precinct 3, and one (1) member residing in Precinct 4.
3. The City of Laredo shall appoint four (4) Directors, each for two (2)-year terms.
- a) To stagger the replacement of Directors, the initial City Directors shall draw for terms, two of the initial City appointees shall serve for one (1) year terms and two of the initial City appointees shall serve for two (2) year terms.
  - b) The City of Laredo shall initially appoint one (1) member residing in City Council Districts 1 or 2, one (1) member residing in City Council Districts 3 or 4, one (1) member residing in City Council Districts 5 or 6, and one (1) member residing in City Council Districts 7 or 8.
- B. The terms of the initial Directors of the WC-CL RMA shall begin from the date the board is established through February 1 of the year in which the term of each initial Director expires.
- C. Directors may be reappointed at the discretion of the entity which appointed them. No Director shall serve on the board for more than eight consecutive years.
- D. Each initial Director shall serve until his or her successor has been duly appointed and qualified or until his or her death, resignation, or removal from office in accordance with these Bylaws.

### **Article 6. SUBSEQUENT DIRECTORS**

- A. When the term of an initial Director of the WC-CL RMA expires, and thereafter, when the term of each Director subsequently appointed expires, the entity that appointed the Director whose term is expiring shall appoint a successor to that Director using the same geographic criteria initially applied for the appointment.
- B. Subject to Article 8 of these Bylaws, each successor to an initial Director, and each Director thereafter appointed, shall be appointed for a two (2)-year term commencing on February 2 of the year of appointment and expiring on February 1 two (2) years later. Each Director shall serve until his or her successor has been duly appointed and qualified or until his or her death, resignation, or removal from office in accordance with these Bylaws or provisions of state law.
- C. Upon the admission of a new entity to the WC-CL RMA, the number of Directors may be increased in accordance with any then-applicable laws and regulations.

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- D. In the event that the addition or withdrawal of an entity to the WC-CL RMA, or subsequent appointment of a Director pursuant to subsection (c) above, results in an even number of directors on the Board, the Governor shall appoint an additional director.
- E. Directors qualified to serve under applicable law and these Bylaws may be reappointed following the expiration of their terms.

## Article 7. QUALIFICATIONS OF DIRECTORS

- A. All Directors will have and maintain the qualifications set forth in this Article 7 and in the RMA Act or RMA Rules.
- B. All Directors shall be appointed without regard to disability, sex, religion, age, or national origin.
- C. Each Director must be a resident of Webb County at the time of his or her appointment.
- D. An elected official is not eligible to serve as a Director.
- E. An employee of a city, county, or other governmental entity located wholly or partly within the boundaries of the WC-CL RMA is not eligible to serve as a Director. An employee of TxDOT is not eligible to serve as a Director.
- F. A person who is an officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation or aviation, or whose spouse is an officer, manager, or paid consultant of a Texas trade association in the aforementioned fields, is not eligible to serve as a Director or as the WC-CL RMA's Executive Director.
- G. A person who owns an interest in real property that will be acquired for a WC-CL RMA project is not eligible to serve as a Director, if it is known at the time of the person's proposed appointment that the property will be so acquired.
- H. A person is not eligible to serve as a Director or as the WC-CL RMA's Executive Director if the person or the person's spouse:
  - 1. is employed by or participates in the management of a business entity or other organization, other than a governmental entity, that is regulated by or receives money from TxDOT, the WC-CL RMA, the City of Laredo, or Webb County, unless the Commission approves an exception;
  - 2. owns or controls, directly or indirectly, more than a ten (10) percent interest in a business entity or other organization that is regulated by or receives money from TxDOT, the WC-CL RMA, the City of Laredo, or Webb County, other than compensation for acquisition of highway right-of-way;

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3. uses or receives a substantial amount of tangible goods, services, or money from TxDOT or the WC-CL RMA;
  4. is an officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, or aviation; or
  5. is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of TxDOT, the WC-CL RMA, the City of Laredo, or Webb County.
- I. A person is not ineligible to serve as a Director or Executive Director of the WC-CL RMA if the person has received funds from TxDOT for acquisition of highway right-of-way, unless the acquisition was for a project of the Authority.
- J. All Directors shall annually certify to the Secretary of the Board that he or she is qualified to serve as a Director of the WC-CL RMA, pursuant to and in accordance with these bylaws, the RMA Act, and the RMA Rules, as may be amended. Such certification shall be made in a form as provided by the Authority; provided, however, that the submission to the Secretary of any similar certifications required by the State of Texas shall satisfy this requirement.
- K. It is also strongly recommended that WC-CL RMA Directors possess the following characteristics:
1. Significant financial expertise;
  2. Experience in business;
  3. Educational achievement;
  4. Moral and Ethical Character;
  5. Integrity;
  6. Transportation knowledge;
  7. Availability (an appointment will require a significant commitment of time) and;
  8. Strong desire for public service.

### **Article 8. VACANCIES, RESIGNATION, AND REMOVAL OF DIRECTORS**

A. Vacancy. A vacancy on the Board shall be filled promptly by the entity that made the appointment. Any Director appointment to fill a vacancy shall be appointed only for the period remaining in the unexpired term. However, reappointment to a full term is permitted thereafter.

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B. Resignation. A Director may resign at any time upon giving written notice to the WC-CL RMA and the entity that appointed that Director.

C. Removal. A Director may be removed from the Board if the Director does not possess at the time the Director is appointed, or does not maintain such qualifications as required by the RMA Act, the RMA Rules, or these Bylaws. In addition, a Director who cannot discharge the Director's duties for a substantial portion of the term for which he or she is appointed because of illness or disability, or a Director who, without an excuse approved by a vote of the Board, is absent from more than half of the regularly scheduled Board meetings during a given calendar year or three regularly scheduled Board meetings in a row, may be removed. If the Executive Director of the WC-CL RMA knows that a potential ground for removal of a Director exists, the Executive Director shall notify the Chair and Vice-Chair such potential grounds for removal. The Chair then shall notify the entity that appointed such Director of potential ground for removal in writing. Additionally, the Webb County Commissioners Court (or the Commissioners Court of another county appointing a Director) or the Laredo City Council, may respectively remove a Director appointed by that entity for just cause pursuant to state law. A Director shall be removed only after receiving written notice of such removal from the appointing entity.

## **Article 9. COMPENSATION OF DIRECTORS**

Directors shall serve without compensation, but will be reimbursed for their actual expenses of attending each meeting of the Board and for such other expenses as may be reasonably incurred in their carrying out the duties and functions of a Director of the Board.

## **Article 10. CONFLICT OF INTEREST; ETHICS AND COMPLIANCE**

A. A Director or employee of the WC-CL RMA shall not:

1. accept or solicit any gift, favor, or service that might reasonably tend to influence that Director or employee in the discharge of official duties on behalf of the WC-CL RMA or that the Director or employee knows or should know is being offered with the intent to influence the Director's or employee's official conduct;
2. accept other employment or engage in a business or professional activity that the Director or employee might reasonably expect would require or induce the Director or employee to disclose confidential information acquired by reason of the official position;
3. accept other employment or compensation that could reasonably be expected to impair the Director's or employee's independence of judgment in the performance of the Director's or employee's official duties;
4. make personal investments, including investments of a spouse, that could reasonably be expected to create a substantial conflict between the Director's or employee's private interest and the interest of the WC-CL RMA or that could impair the ability of the Director or employee to make independent decisions;

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5. intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the Director's or employee's official powers or performed the Director's or employee's official duties in favor of another;
  6. have a personal interest in an agreement executed by the WC-CL RMA; or
  7. contract with the WC-CL RMA or be directly or indirectly interested in a contract with the Authority or the sale of property to the WC-CL RMA.
- B. Directors shall familiarize themselves and comply with all applicable laws regarding conflicts of interest, including Chapters 171 or 176 of the Texas Local Government Code and any conflict of interest policy adopted by the Board.
- C. The Authority shall adopt a written internal compliance and ethics program within the first anniversary of its creation. The ethics and compliance program shall:
1. Be designed to detect and prevent violations of the law, including regulations, and ethical standards applicable to the entity or its officers or employees; and
  2. Provide that:
    - a) High-level personnel are responsible for oversight of compliance with the program's standards and procedures;
    - b) Reasonable steps are being taken to achieve compliance by using monitoring and auditing systems reasonably designed to detect noncompliance and providing and publicizing a system for reporting noncompliance without fear of retaliation;
    - c) Consistent enforcement of compliance standards and procedures is administered through appropriate disciplinary mechanisms;
    - d) Reasonable steps are taken to respond appropriately to detected offenses and to prevent future offenses; and
    - e) A written code of conduct for employees is adopted to address record retention, fraud, equal opportunity employment, sexual harassment and misconduct, conflicts of interest, personal use of Authority property, and gifts and honoraria.

### **Article 11. ADDITIONAL OBLIGATIONS OF DIRECTORS**

Directors shall comply with additional requirements provided by the RMA Act and RMA Rules, including:

- a. The requirement to file an annual personal financial statement with the Texas Ethics Commission as provided by §370.2521 of the RMA Act;

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- b. The requirement to complete training on the RMA's responsibilities under the Open Meetings Act and the Public Information Act as provided by §§551.005 and 552.012 of the Texas Government Code;
- c. The nepotism laws under Chapter 573, Texas Government Code;
- d. The WCCL-RMA Ethics and Compliance Program as adopted by the Board under Title 43 of the Texas Administrative Code, Rule 10.51;
- e. Adopt policies and procedures governing the procurement of goods and services on behalf of the RMA; and
- f. Adopt resolutions necessary for conducting the business of the RMA and providing the Executive Director directives.

### Article 12. MEETING OF THE BOARD

- A. Regular Meetings. All regular meetings of the Board shall be held in the City of Laredo, at a specific site, date, and time to be determined by the Chair. The Board shall have no less than four (4) regular meetings per calendar year. The Chair may postpone any regular meeting if it is determined that such meeting is unnecessary or that a quorum will not be achieved.
- B. Special Meetings. Special meetings and emergency meetings of the Board may be called, upon compliance with all applicable notice requirements, at any time by the Chair or at the request of any three (3) Directors. Special meetings and emergency meetings shall be held at such time and place as is specified by the Chair, if the Chair calls the meeting, or by the three (3) Directors, if they call the meeting.
- C. Agendas. The Chair shall set the agendas for meetings of the Board, except that agenda items called for by three (3) Directors must be added to any agenda. Agendas of meetings called by three (3) Directors, and not by the Chairman, shall be set by those three (3) Directors, with additional agenda items added if requested by any three (3) Directors.
- D. Meetings by Telephone. Pursuant to and in accordance with the RMA Act, the Board, committees of the Board, staff, or any combination thereof, may participate in and hold open or closed meetings by means of teleconference or other electronic communications equipment by which all persons participating in the meeting can communicate with each other and at which public participation is permitted by a speaker telephone or other electronic communications equipment at a conference room of the Authority or other facility in a county of the WC-CL RMA that is accessible to the public. Such meetings are subject to the notice requirements set forth in §§551.125(c) – (f) of the Texas Open Meetings Act, however they are not subject to the additional requirements of §§551.125(b) of the Act. The notice must state the location where members of the public can attend to hear those portions of the meeting open to the public. Participation in a meeting pursuant to this Article 12 constitutes being present in person at such meeting, except that a Director

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will not be considered in attendance when the Director appears at such a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened as generally provided under Article 12(E) of these Bylaws. Each part of a meeting conducted by telephone conference call or other electronic means that by law must be open to the public shall be accessible to the public at the location specified in the notice and shall be tape-recorded and documented by written minutes. On conclusion of the meeting, the tape recording and the written minutes of the meeting shall be made available to the public within a reasonable period of time.

- E. Procedure: All meetings of the Board and its committees shall be conducted generally in accordance with Robert's Rules of Order pursuant to statutorily proper notice of meeting posted as provided by law. The Chair at any time may change the order of items to be considered from that set forth in the notice of meeting, provided that all agenda items that require a vote by the Board shall be considered at the meeting for which they have been posted. To the extent procedures prescribed by applicable statutes, the RMA Rules or these Bylaws conflict with Robert's Rules of Order, the statutes, the RMA Rules, or these Bylaws shall govern.

## Article 13. VOTING; QUORUM

- A. Voting. Each Director, including the Chairman, has equal voting status and may vote on WC-CL RMA matters.
- B. Quorum. A majority of the Directors constitutes a quorum, and the vote of a majority of the Directors present at a meeting at which a quorum is present will be necessary for any action to be taken by the Board. No vacancy in the membership of the Board will impair the right of a quorum to exercise all of the rights and to perform all of the duties of the Board. Therefore, if a vacancy occurs, a majority of the Directors then serving in office will constitute a quorum.

## Article 14. COMMITTEES

- A. Executive Committee. The WC-CL RMA shall establish an Executive Committee, consisting of the officers of the Authority as identified in Article 16, and such other members as the Chair may direct. Meetings of the Executive Committee shall be conducted on no less than three (3) days notice to the Executive Committee members. A majority of the members of the Executive Committee constitutes a quorum of the Committee, and the vote of a majority of the members present at a meeting at which a quorum is present will be necessary for any action taken by the Executive Committee. Minutes shall be kept of all meetings of the Executive Committee.
- B. Ad Hoc and Standing Committees. The Chair at any time may designate from among the Directors or non-Directors to one (1) or more ad hoc or standing committees, each of which shall be comprised of three (3) or more Directors or non-Directors, and may designate one (1) or more Directors or non-Directors as alternate members of such committees, who may, subject to any limitations imposed by the Chair, replace absent or disqualified members at

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any meeting of that committee. The Chair serves as an ex-officio member of each committee.

- C. Authority of Committees. If approved by resolution and passed by a majority vote of the Board, a committee shall have and may exercise all of the authority of the Board, to the extent provided in such resolution and subject to the limitations imposed by applicable law; provided that no Committee shall be authorized to enter into or approve any contract, nor authorize the expenditure of funds on behalf of the WC-CL RMA. All contracts and expenditures of the WC-CL RMA shall be made by the Board of Directors.
- D. Committee Members. The Board Chair shall appoint the chair of each committee, as well as Directors or non-Directors to fill any vacancies in the membership of the committees. At the next regular meeting of the Board following the Chair's formation of a committee, the Chair shall deliver to the Directors and the Secretary a written description of the committee, including (a) the name of the committee, (b) whether it is an ad hoc or standing committee, (c) its assigned function(s) and/or task(s), (d) whether it is intended to have a continuing existence or to dissolve upon the completion of a specified task and/or the occurrence of certain events, (e) the Directors or non-Directors designated as members and alternate members to the committee, and its Chair, and (f) such other information as requested by any Director. The Secretary shall enter such written description into the official records of the WC-CL RMA. The Chair shall provide a written description of any subsequent changes to the name, function, task, term, or composition of any committee in accordance with the procedure described in the preceding two sentences. A committee also may be formed by a majority vote of the Board, which vote (and not the Chair acting independently) also shall specify the committee's chairman and provide the descriptive information otherwise furnished by the Chair in accordance with the preceding three sentences.
- E. Committee Meetings. A meeting of any committee formed pursuant to this Article 15 may be called by the Chair, the Chair of the applicable committee, or by any two members of the committee. All committees comprised of a quorum of the Board shall keep regular minutes of their proceedings and report to the Board as required. The designation of a committee of the Board and the delegation thereto of authority shall not operate to relieve the Board, any Director, or any non-Director of any responsibility imposed upon the Board or the individual Director by law. To the extent applicable, the provisions of these Bylaws relating to meetings, quorums, meetings by telephone, and procedure shall govern the meetings of the Board's committees.

### **Article 15. NOTICE OF MEETINGS; WAIVER OF NOTICE; ATTENDANCE AS WAIVER**

- A. Notice of Meetings. Notice of each meeting of the Board shall be posted in accordance with the Texas Open Meetings Act and notice of each meeting of the Board shall be sent by mail, electronic mail, or facsimile to all Directors entitled to vote at such meeting. If sent by mail, such notice will be deemed delivered when it is deposited in the United States mail with sufficient postage prepaid. If sent by electronic mail or facsimile, the notice will be deemed delivered when transmitted properly to the correct email address or number. Such notice of meetings also may be given by telephone, provided that any of the Chairman, Executive



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Director, Secretary, or their designee speaks personally to the applicable Director to give such notice.

- B. Waiver of Notice. Whenever any notice is required to be given to any Director by statute or by these bylaws, a written waiver of such notice signed by the person or persons entitled to such notice, whether before or after the time required for such notice, shall be deemed equivalent to the giving of such notice.
- C. Attendance as Waiver. Attendance of a Director at a meeting of the Board or a committee thereof will constitute a waiver of notice of such meeting, except that a Director will not be considered in attendance when the Director appears at such a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

### **Article 16. OFFICERS OF THE BOARD; ELECTION AND TERM OF OFFICERS; REMOVAL AND VACANCIES**

- A. The officers of the Authority shall consist of a Chair, a Vice-Chair, a Secretary, and a Treasurer. The offices of Secretary and Treasurer may be held simultaneously by the same Director. The Directors elected as officers shall not be compensated for their service as officers. However, officers shall be reimbursed for all expenses incurred in conducting proper WC-CL RMA business and for travel expenses incurred in the performance of their duties.
- B. Election and Term of Office. Except for the office of Chair, which is filled by the Governor's appointment, officers will be elected by the Board for a term of one (1) year, subject to Article 16(C) of these Bylaws. The election of officers to succeed officers whose terms have expired shall be by a vote of the Directors of the WC-CL RMA at the first meeting of the Authority held after February 1 of each year or at such other meeting as the Board determines.
- C. Removal and Vacancies of Officers. Each officer shall hold office until a successor is chosen and qualified, or until the officer's death, resignation, or removal, or, in the case of a Director serving as an officer, until such officer ceases to serve as a Director. Any officer, except the Chair, may resign at any time upon giving written notice to the Board. The Chair may resign at any time upon giving written notice to the Board and the Governor. Any officer except the Chair may be removed from service as an officer at any time, with or without cause, by the affirmative vote of a majority of the Directors of the WC-CL RMA. The Directors of the WC-CL RMA may at any meeting vote to fill any vacated officer position except the Chair position due to an event described in this Article 16 for the remainder of the unexpired term.
- D. Board Chair. The Board Chair is appointed by the Governor and is a Director of the Authority. The Chairman shall appoint all committees of the Board as specified in these Bylaws (except as otherwise provided in Article 14 of these Bylaws), call all regular meetings of the Board, and preside at and set the agendas for all meetings of the Board (except as provided in the concluding sentence of Article 12 of these Bylaws). The Chair shall further

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review and approve all requests for reimbursement of expenses sought by the Executive Director. The Chair will be the sole spokesperson on behalf of the WCCL-RMA and any other director(s) as authorized by the Chair.

- E. Vice Chair. The Vice Chair must be a Director of the WC-CL RMA. During the absence or disability of the Chair, upon the Chair's death (and pending the Governor's appointment of a successor new Chair), or upon the Chair's request, the Vice Chair shall perform the duties and exercise the authority and powers of the Chair.
- F. Secretary. The Secretary need not be a Director of the WC-CL RMA, The Secretary shall:
1. keep true and complete records of all proceedings of the Directors in books provided for that purpose and shall assemble, index, maintain, and keep up-to-date a book of all of the policies adopted by the WC-CL RMA;
  2. attend to the giving and serving of all notices of meetings of the Board and its committees and such other notices as are required by the office of Secretary and as may be directed by the RMA Act, any trust indenture binding on the WC-CL RMA, Directors of the WC-CL RMA, or the Executive Director;
  3. seal with the official seal of the WC-CL RMA (if any) and attest all documents, including trust agreements, bonds, and other obligations of the WC-CL RMA that require the official seal of the WC-CL RMA to be impressed thereon;
  4. execute, attest, and verify signatures on all contracts in which the total consideration equals or exceeds an amount established in resolutions of the Board, contracts conveying property of the Authority, and other agreements binding on the Authority which by law or Board resolution require attestation;
  5. certify resolutions of the Board and any committee thereof;
  6. maintain custody of the corporate seal, minute books, accounts, and all other official documents and records, files and contracts that are not specifically entrusted to some other officer or depository; and
  7. hold such administrative offices and perform such other duties as the Directors or the Executive Director shall require.
- G. Treasurer. The Treasurer need not be a Director of the Authority. The Treasurer shall:
1. execute all requisitions to the applicable bond trustee for withdrawals from the construction fund, unless the Board designates a different officer, Director, or employee of the WC-CL RMA to execute any or all of such requisitions;
  2. execute, and if necessary attest, any other documents or certificates required to be executed and attested by the Treasurer under the terms of any trust agreement or supplemental trust agreement entered into by the WC-CL RMA;

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3. maintain custody of the WC-CL RMA's funds and securities and keep a full and accurate account of all receipts and disbursements, and endorse, or cause to be endorsed, in the name of the WC-CL RMA and deposit, or cause to be deposited, all funds in such bank or banks as may be designated by the WC-CL RMA as depositories;
4. render to the Directors at such times as may be required an account of all financial transactions coming under the scope of the Treasurer's authority;
5. give a good and sufficient bond, to be approved by the WC-CL RMA, in such an amount as may be fixed by the WC-CL RMA;
6. invest such of the Authority's funds as directed by resolution of the Board, subject to the restrictions of any trust agreement entered into by the WC-CL RMA; and
7. hold such administrative offices and perform such other duties as the Directors of the WC-CL RMA or the Executive Director shall require. If, and to the extent that, the duties or responsibilities of the Treasurer and those of any administrator conflict and are vested in different persons, the conflicting duties and responsibilities shall be deemed vested in the Treasurer.

### **Article 17. WEBB COUNTY-LAREDO RMA STAFF AND ADMINISTRATORS**

- A. Administrators. The chief administrator of the Authority shall be the Executive Director. Other administrators may be appointed by the Executive Director with the consent of the Board. All such administrators, except for the Executive Director, shall perform such duties and have such powers as may be assigned to them by the Executive Director or as set forth in Board Resolutions. Any administrator may be removed, with or without cause, at any time by the Executive Director. All administrators will be reimbursed for expenses incurred in performance of their duties as approved by the Executive Director and the Executive Director's expense reimbursements shall be approved by the Executive Committee.
- B. Executive Director. The Executive Director shall be selected by the Board and shall serve at the pleasure of the Board, performing all duties assigned by the Board and implementing all resolutions adopted by the Board.
  1. The Executive Director's duties shall include, but not be limited to, the following functions:
    - a. shall be responsible for general management, hiring and termination of employees, and day-to-day operations of the WC-CL RMA;
    - b. shall be responsible for preparing a draft of the Strategic Plan for the WC-CL RMA's operations as described in Article XIX of these Bylaws;

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- c. shall be responsible for preparing a draft of the WC-CL RMA's written Annual Report, as described in Article XIX of these Bylaws;
- d. at the invitation of the Webb County Commissioners Court or of the Laredo City Council, shall appear, with representatives of the Board, before the inviting body to present the WC-CL RMA's Annual Report and respond to questions and receive comments regarding the Report or the WC-CL RMA's operations;
- e. may execute inter-agency and interlocal contracts and service contracts approved by the Board;
- f. may execute contracts, contract supplements, contract change orders, and purchase orders not exceeding amounts established in Resolutions of the Board; and
- g. shall have such obligations and authority as may be described in one or more Resolutions enacted from time to time by the Board.

The Executive Director may delegate the foregoing duties and responsibilities as the Executive Director deems appropriate; provided such delegation does not conflict with applicable law or any express direction of the Board.

- C. Interim Executive Director. The Board may designate an Interim Executive Director to perform the duties of the Executive Director during such times as the position of Executive Director is vacant. The Interim Executive Director need not be an employee of the WC-CL RMA.

### Article 18. INDEMNIFICATION

- A. Indemnification. Any person made a party to or involved in any litigation, including any civil, criminal or administrative action, suit or proceeding, by reason of the fact that such person is or was a Director, officer, or administrator of the WC-CL RMA or by reason of such person's alleged negligence or misconduct in the performance of his or her duties as such Director, officer, or administrator shall be indemnified by the WC-CL RMA, to the extent funds are lawfully available and subject to any other limitations that exist by law against liability and the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him or her in connection with any action therein, except in relation to matters as to which it is adjudged that such Director, officer, or administrator is liable for gross negligence or willful misconduct in the performance of his or her duties.
- B. Exception. In the event of a conviction for an offense involving the conduct for which the Director, officer, or administrator was indemnified, the officer, Director, or administrator shall be liable to the Webb County-City of Laredo RMA for the amount of indemnification paid, with interest at the legal rate for interest on a judgment from the date the indemnification was paid, as provided by §370.258 of the RMA Act. A conviction or judgment entered in connection with a compromise or settlement of any such litigation shall

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not by itself be deemed to constitute an adjudication of liability for such gross negligence or willful misconduct.

- C. Right to be Paid. The right to indemnification will include the right to be paid by the WC-CL RMA for expenses incurred in defending a proceeding in advance of its final disposition in the manner and to the extent permitted by the Board in its sole discretion. In addition to the indemnification described above that the WC-CL RMA shall provide a Director, officer or administrator, the WC-CL RMA may, upon approval of the Board in its sole discretion, indemnify a Director, officer, or administrator under such other circumstances, or may indemnify an employee, against liability and reasonable expenses, including attorneys' fees, incurred in connection with any claim asserted against him or her in said party's capacity as a Director, officer, administrator, or employee of the WC-CL RMA, subject to any limitations that exist by law. Any indemnification by the Authority pursuant to this Article shall be evidenced by a resolution of the Board.
- D. Expenses Subject to Indemnification. As used herein, the term "expenses" includes fines or penalties imposed and amounts paid in compromise or settlement of any such litigation only if:
1. independent legal counsel designated by a majority of the Board, excluding those Directors who have incurred expenses in connection with such litigation for which indemnification has been or is to be sought, shall have advised the Board that, in the opinion of such counsel, such Director, officer, administrator, or other employee is not liable to the WC-CL RMA for gross negligence or willful misconduct in the performance of his or her duties with respect to the subject of such litigation; and
  2. a majority of the Directors shall have made a determination that such compromise or settlement was or will be in the best interest of the Authority.
- E. Procedure for Indemnification. Any amount payable by way of indemnity under these bylaws may be determined and paid pursuant to an order of or allowance by a court under the applicable provisions of the laws of the State of Texas in effect at the time and pursuant to a resolution of a majority of the Directors, other than those who have incurred expenses in connection with such litigation for which indemnification has been or is to be sought. In the event that all the Directors are made parties to such litigation, a majority of the Board shall be authorized to pass a resolution to provide for legal expenses for the entire Board.
- F. Additional Indemnification. The right of indemnification provided by these bylaws shall not be deemed exclusive of any right to which any Director, officer, administrator, or other employee may be entitled, as a matter of law, and shall extend and apply to the estates of deceased Directors, officers, administrators, and other employees.

## Article 19. REPORTS

The Executive Director shall direct that all reports required under State law, the RMA Act, the RMA Rules or requested by TxDOT shall be prepared and delivered. At the time of the adoption of these "Bylaws, the required reports include:

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- A. Strategic Plan. Each even-numbered year, the WC-CL RMA shall issue a Strategic Plan of its operations covering the next five (5) fiscal years, beginning with the next odd-numbered fiscal year. A draft of each Strategic Plan shall be submitted to the Board for review, approval, and, subject to revisions required by the Board, adoption.
- B. Annual Report. Under the direction of the Executive Director (or in the absence of an Executive Director, the Chairman), the staff of the Webb County-City of Laredo RMA shall prepare a draft of an Annual Report on the WC-CL RMA'S activities during the preceding year and describing all revenue bond issuances anticipated for the coming year, the financial condition of the WC-CL RMA, all project schedules, and the status of the WC-CL RMA'S performance under the most recent Strategic Plan. The draft shall be submitted to the Board not later than January 30th for review, approval, and, subject to revisions required by the Board, adoption. Not later than March 31 following the conclusion of the preceding fiscal year, the WC-CL RMA shall file with the Webb County Commissioners Court and the Laredo City Council the Authority's Annual Report, as adopted by the Board.
- C. Financial Reports. The WC-CL RMA shall submit to Webb County and the City of Laredo (i) its annual operating and capital budgets for each fiscal year, along with any amended or supplemental operating or capital budget, within ninety (90) days of the beginning of the fiscal year; (ii) its annual financial information and notice of material events required to be disclosed under Rule 15c2-12 of the United States Securities and Exchange Commission, within thirty (30) days after disclosure; and (iii) a statement of any surplus revenue held by the WC-CL RMA and a summary of how the WC-CL RMA intends to use such surplus, within ninety (90) days of the beginning of the fiscal year. Such financial reports must be approved by the Board and certified as correct by the chief administrative officer of the WC-CL RMA.
- D. Annual Audit. The WC-CL RMA shall submit annual audit, conducted by an independent certified public accountant in accordance with generally accepted auditing standards (as modified by the governor's Uniform Grant Management Standards, or the standards of the Office of Management and Budget A-133, Audits of States, Local Governments, and Non-profit Organizations, as applicable) to Webb County and the City of Laredo within one hundred twenty (120) days after the end of the fiscal year.
- E. Investment Reports. Within thirty (30) days' of acceptance of an independent auditor's report, the WC-CL RMA shall submit to Webb County and the City of Laredo an independent auditor's review of the annual reports of investment transactions prepared by the Webb County-City of Laredo RMA'S investment officers. Such investment reports must be approved by the Board and certified as correct by the chief administrative officer of the WC-CL RMA.
- F. Project Report. Not later than December 31 of year, the WC-CL RMA shall submit to the Commission a written report that describes the progress made during that year on each transportation project or system of projects of the WC-CL RMA, including the initial project for which the WC-CL RMA was created.

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- G. Presentation of Reports. At the invitation of the Webb County Commissioners Court or of the Laredo City Council, representatives of the Board and the Executive Director shall appear before the inviting body to present the Annual Report, provide any other information requested, and respond to questions and receive comments.
- H. Notice of Debt. The WC-CL RMA shall give ninety (90) days notice to the Webb County Commissioners Court and the Laredo City Council of the date of issuance of revenue bonds.
- I. Compliance Report. Within one hundred fifty (150) days after the end of the fiscal year, in the form required by TxDOT, the WC-CL RMA shall submit to TxDOT's Executive Director a report that lists each duty the WC-CL RMA is required to perform under Title 43 Texas Administrative Code Chapter 26(G) that indicates the WC-CL RMA has performed the requirements for the fiscal year. The Compliance Report must be approved by the Board and certified as correct by the chief administrative officer of the WC-CL RMA.

### Article 20. AMENDMENTS TO BYLAWS

Except as may be otherwise provided by law, these Bylaws may be amended, modified, altered, or repealed in whole or in part, at any regular meeting of the Board after ten (10) days advance notice has been given by the Chairman to each Director and to the City and the County of the proposed change. These Bylaws may not be amended at any special or emergency meeting of the Board.

### Article 21. DISSOLUTION OF THE WEBB COUNTY - CITY OF LAREDO RMA

#### A. Voluntary Dissolution

- 1. The WC-CL RMA may not be dissolved unless the dissolution is approved by the Commission. The Board may submit a request to the Commission for approval to dissolve.
- 2. The Commission may approve a request to dissolve only if:
  - a. all debts, obligations, and liabilities of the WC-CL RMA have been paid and discharged or adequate provision has been made for the payment of all debts, obligations and liabilities;
  - b. there are no suits pending against the WC-CL RMA, or adequate provision has been made for the satisfaction of any judgment, order or decree that may be entered against it in any pending suit; and
  - c. the WC-CL RMA has commitments from other governmental entities to assume jurisdiction of all WC-CL RMA transportation facilities.

#### B. Involuntary Dissolution

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1. The Commission by order may require the Authority to dissolve if the Commission determines that the Authority has not substantially complied with the requirements of a Commission Rule or an agreement between the department and the Authority and the Commission has given the Board thirty (30) days' written notice of its intention to adopt such an order.
2. The Commission may not require dissolution unless:
  - a. The Conditions described in Section 44(a)(2)(A) and (B) have been met; and
  - b. The holders of any indebtedness have evidenced their agreement to the dissolution.

### Article 22. GENERAL PROVISIONS

- A. Procurement, Contracts and General Purchases. All procurements, contracts and purchases on behalf of the WC-CL RMA shall be entered into and made in accordance with rules of procedure prescribed by the Board and applicable state and federal laws and rules of the State of Texas and its agencies.
- B. Sovereign Immunity. Unless otherwise required by law, the WC-CL RMA will not by agreement or otherwise waive or impinge upon its sovereign immunity.
- C. Employees. Employees of the WC-CL RMA shall be employees at will unless they are a party to an employment agreement with the Authority executed by the Chair upon approval by the Board. Employees may be terminated at any time, with or without cause, by the Executive Director subject to applicable law and the policies in place at the time of termination.
- D. Rates and Regulations. The Board shall, in accordance with all applicable trust agreements, the RMA Act, the RMA Rules, or other law, establish toll rates and fees, weight restrictions, designate speed limits, establish fines for toll violators, and adopt rules and regulations for the use and occupancy of said project
- E. Seal. The official seal of the WC-CL RMA shall consist of the embossed impression of a circular disk with the words "Webb County–City of Laredo Regional Mobility Authority, 2014" on the outer rim, with a star in the center of the disk.
- F. Fiscal Year. The fiscal year for the WC-CL RMA shall be identical to the City of Laredo's fiscal year.
- G. Public Access Policy. The WC-CL RMA shall maintain an access policy to be adopted by the Board that provides the public with a reasonable opportunity to appear before the Board to speak on any issue under the jurisdiction of the WC-CL RMA.
- H. Appeals Procedure. The WC-CL RMA shall maintain an appeals procedure to be adopted by the Board and amended from time to time that sets forth the process by which parties may



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bring to the attention of the WC-CL RMA their questions, grievances, or concerns and may appeal any action taken by the Authority.

## Chapter 2: PROCUREMENT OF GOODS AND SERVICES

### Article 1. GENERAL

#### 201.001 Statement of General Policy.

It is the policy of the Webb County-City of Laredo Regional Mobility Authority (the “WC-CL RMA” or “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 area served by the authority.

#### 201.002 Definitions.

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

- (1) Available bidding capacity: Bidding capacity less uncompleted work under a construction or building contract.
- (2) Bid or quote: The response to a request for the pricing of products, goods, or services (other than professional services or certain consulting services) that the authority proposes to procure.
- (3) 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:
  - (A) the location and description of the proposed work;
  - (B) an estimate of the various quantities and kinds of work to be performed and/or materials to be furnished;
  - (C) a schedule of items for which unit prices are requested;
  - (D) the time within which the work is to be completed;
  - (E) any special provisions and special specifications; (vi) the amount of bid guaranty, if any, required; and
  - (F) 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.

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- (4) 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.
- (5) Bidder: An individual, partnership, limited liability company, corporation or any combination submitting a bid or offer of goods or services.
- (6) 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.
- (7) Building contract: A contract for the construction or maintenance of an authority building, toll plaza, or appurtenant facilities.
- (8) Comprehensive Development Agreement: An agreement entered into and subject to the requirements of Subchapter B, Article 7 of this chapter.
- (9) Construction contract: A contract for the construction, reconstruction, or repair of a segment of a transportation project, including a contract let to preserve and prevent further deterioration of a transportation project.
- (10) Consulting service: The service of advising or preparing studies or analyses for the authority under a contract that does not involve the traditional relationship of employer and employee. Except in connection with comprehensive development agreements consulting services may not be procured under a construction or building contract. Consulting services are not professional services or general goods and services as defined by this chapter.
- (11) Emergency: Any situation or condition affecting a transportation project resulting from a natural or man-made cause, which poses an imminent threat to life or property of the traveling public or which substantially disrupts or may disrupt the safe and efficient flow of traffic and commerce or which has caused unforeseen damage to machinery, equipment or other property which would substantially interfere with or prohibit the collection of tolls in accordance with the authority's bonding obligations and requirements.
- (12) 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.
- (13) Federal-aid project: The construction, reconstruction, maintenance, or repair of a segment of a transportation project, including a contract let to preserve and prevent further deterioration of a transportation project, funded in whole or in part with funds provided by the government of the United States or any department thereof.
- (14) 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

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are not procured under a construction or building contract or that are not consulting services or professional services as defined by this chapter.

- (15) Highway: A road, highway, farm-to-market road, or street under the supervision of a state or political subdivision of the State.
- (16) Intermodal hub: A central location where cargo containers can be easily and quickly transferred between trucks, trains and airplanes.
- (17) Jurisdiction of the authority: The City of Laredo and Webb County, as well as any counties or cities which may subsequently join the authority.
- (18) Lowest best bidder: The lowest responsible bidder on a contract that complies with the authority's criteria for such contract, as described in this chapter.
- (19) 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.
- (20) 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.
- (21) Official newspaper of the authority: A general circulation newspaper published in the jurisdiction of the authority. If there are multiple newspapers which are published in the jurisdiction of the authority, the board shall designate which one is the official newspaper of the authority.
- (22) 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. Except in connection with a comprehensive development agreement professional services may not be procured under a construction or building contract.
- (23) Professional Services Procurement Act: Subchapter A, Chapter 2254. Government Code, as amended from time to time.

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- (24) Public Utility Facility: A
- (A) water, wastewater, natural gas, or petroleum pipeline or associated equipment;
  - (B) an electric transmission or distribution line or associated equipment; or
  - (C) telecommunications information services, or cable television infrastructure or associated equipment, including fiber optic cable, conduit and wireless communications facilities.
- (25) 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.
- (26) Surplus personal 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.
- (27) Surplus real property: Real property, including transportation project right-of-way, that is not currently needed by the authority and is not required for the authority's foreseeable needs.
- (28) State: The State of Texas.
- (29) System: A transportation project or a combination of transportation projects designated as a system by the board in accordance with Section 370.034, Transportation Code.
- (30) Transportation Project: Includes a(n):
- (A) turnpike project;
  - (B) system;
  - (C) passenger or freight rail facility, including (i) tracks; (ii) a rail line; (iii) switching, signaling, or other operating equipment; (iv) a depot; (v) a locomotive; (vi) rolling stock; (vii) a maintenance facility; and (viii) other real and personal property associated with a rail operation.
  - (D) roadway with a functional classification greater than a local road or rural minor collector;
  - (D-1) a bridge;
  - (E) ferry;
  - (F) airport, other than an airport that on September 1, 2005, was served by one or more air

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carriers engaged in scheduled interstate transportation, as those terms were defined by 14 C.F.R. Section 1.1 on that date;

(G) pedestrian or bicycle facility;

(H) intermodal hub;

(I) automated conveyor belt for the movement of freight;

(J) border crossing inspection station, including; (i) a border crossing inspection station located at or near an international border crossing; and (ii) a border crossing inspection station located at or near a border crossing from another state of the United States and not more than 50 miles from an international border;

(K) air quality improvement initiative;

(L) public utility facility;

(M) a transit system;

(M-1) a parking area, structure, or facility, or a collection device for parking fees;

(N) projects and programs listed in the most recently approved state implementation plan for the area covered by the authority, including an early action compact;

(O) improvements in a transportation reinvestment zone designated under Subchapter E, Chapter 222, Texas Transportation Code; and

(P) port security, transportation, or facility projects eligible for funding under Section 55.002, Texas Transportation Code.

(31) Turnpike Project: A highway of any number of lanes, with or without grade separations, owned or operated by the authority and any improvement, extension or expansion to the highway, including:

(A) an improvement to relieve traffic congestion or promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, service road, ramp, or service station;

(C) an administration, storage, or other building the board considers necessary to operate the project;

(D) property rights, easements and interests the board acquires to construct or operate the project;

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(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.

(32) TxDOT: The Texas Department of Transportation.

### **201.003 Conflict of Interest.**

(a) In addition to any other requirements or restrictions imposed by state law, a director or an employee or agent of the authority shall not:

- (1) 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;
- (2) accept or solicit any gift, favor, or service that might reasonably tend to influence that director, employee or agent in the making of procurement decisions or that the director, employee or agent knows or should have known is being offered with the intent to influence the director's, employee's or agent's making of procurement decisions; or
- (3) accept other compensation that could reasonably be expected to impair the director's, employee's or agent's independence of judgment in the making of procurement decisions.

(b) A bidder shall not be eligible to contract with the authority if a director, employee or agent is related to the bidder within the third degree by consanguinity or within the second degree by 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 directors, employees or agents of the authority which may disqualify the bidder from consideration.

### **201.004 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.

### **201.005 Dispute Resolution Procedures**

The authority shall have the general ability and authority, when negotiating the terms and conditions of any contract to be entered into with any entity, to negotiate for the inclusion of dispute resolution procedures in such contract. Such dispute resolution procedures may vary from contract to contract, provided that, at a minimum, the procedures require that a meeting of principles, mediation, and/or formal alternative dispute resolution procedures be followed before any party may file suit against,

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or initiate an arbitration proceeding against, the authority for an alleged breach of contract claim.

## **201.006 Emergency Procurements**

(a) 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.

(b) 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.

(c) To be eligible to bid on an emergency construction and building projects, a contractor must be qualified to bid on TxDOT construction or maintenance contracts or be pre-qualified by the authority to bid on authority construction or building contracts.

(d) A bidder need not be qualified or pre-qualified by the authority to be eligible to bid on emergency non-construction or non-building projects.

(e) 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 sections of this chapter as required to procure construction or goods and services, as the case may be.

## **201.0061 Discretionary Exemptions**

A contract to purchase general goods or services that may be exempted under Section 262.024, Local Government Code, from competitive bidding or competitive proposal requirements otherwise made applicable to a county by the County Purchasing Act may be exempted from competitive bidding or competitive proposal requirements established by Article 3 of this chapter if the board exempts the contract by motion or resolution.



**Article 2. STATE COOPERATIVE PURCHASING PROGRAMS AND INTERGOVERNMENTAL AGREEMENTS**

**201.007 State of Texas CO-OP Purchasing Program.**

Pursuant to and in accordance with Section 2155.204, Government Code, and Subchapter D, Chapter 271, Local Government Code, the authority may request the Texas Comptroller of Public Accounts to allow the authority to participate on a voluntary basis in the program established by the comptroller by which the comptroller performs purchasing services for local governments.

**201.008 Catalog Purchase of Automated Information Systems.**

Pursuant to and in accordance with Chapter 2157, Government Code, the authority may utilize the catalogue purchasing procedure established by the comptroller with respect to the purchase of automated information systems.

**201.009 Cooperative Purchases.**

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

**201.010 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.

**201.011 Effect of Procurements under this Article.**

Purchases made through the comptroller, a cooperative program or by interlocal agreement shall be deemed to have satisfied the procurement requirements of this chapter and shall be exempted from a procurement requirement contained in another article of this chapter.

**Article 3. GENERAL GOODS AND SERVICES**

**201.012 Approval of Board.**

(a) Every procurement of general goods and services costing more than \$25,000 shall require the approval of the board, evidenced by a resolution adopted by the board.

(b) A large procurement may not be divided into smaller lot purchases to avoid the dollar limits prescribed herein.

**201.013 Purchase Threshold Amounts.**

(a) The authority may procure general goods and services costing \$25,000 or less by such method and on such terms as the executive director determines to be in the best interests of the authority.

(b) General goods and services costing more than \$25,000 shall be procured using competitive bidding or competitive sealed proposals.

(c) A large procurement may not be divided into smaller lot purchases to avoid the dollar limits prescribed herein.

**201.014 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:

- (1) with respect to a particular procurement, the executive director may waive the qualification requirements for all prospective bidders;
- (2) the executive director may waive the submission of payment or performance bonds (or both) and/or insurance certificates by the successful bidder if not otherwise required by law;
- (3) notice of the procurement shall be published once at least two weeks before the deadline for the submission of responses in the official newspaper of the authority, as well as on the authority's website ([www.webbrma.com](http://www.webbrma.com)).
- (4) in addition to advertisement of the procurement as set forth in subsection 201.014(3) above, the authority may solicit bids by direct mail, telephone, Texas Register publication, advertising in other locations, or via the Internet. If such solicitations are made in addition to newspaper advertising, the prospective bidder may not be solicited by mail, telephone and internet or in any other manner, nor may the prospective bidder receive bid documents until such time that the advertisement has appeared on the authority's website ([www.webbrma.com](http://www.webbrma.com)); and

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

### **201.015 Award Under Competitive Bidding.**

(a) A contract for general goods or services procured using competitive bidding shall be awarded to the lowest best bidder based on the same criteria used in awarding a construction contract, 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 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 a nonresident bidder to obtain a comparable contract in the state in which the nonresident bidder's principal place of business is located.

(c) In any procurement the authority is not required to award a contract and may reject all bids.

### **201.016 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;

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- (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.

### **201.017 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;

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- (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.

### **201.017 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.

## **Article 4. CONSULTING SERVICES**

### **201.018 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.

### **201.019 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.

### **201.020 Contract Amounts.**

(a) The authority may procure consulting services anticipated to cost no more than \$25,000 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 \$25,000 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.

(b) Consulting services anticipated to cost more than \$25,000 shall be procured by the authority's issuance of either a Request for Qualifications (“RFQ”) or a Request for Proposals (“RFP”) as the authority deems appropriate.

### **201.021 Request for Qualifications.**

Each RFQ prepared by the authority shall invite prospective consultants to submit their qualifications to provide such services as specified in the RFQ. Each RFQ shall describe the services required by the authority, the criteria used to evaluate proposals, and the relative weight given to the criteria. In procuring consulting services through issuance of a RFQ, the authority shall follow the notices set forth in Section 201.0326 of this chapter.

### **201.022 Request for Proposals.**

- (a) Each RFP shall contain the following information:
- (1) the authority's specifications for the service to be procured;
  - (2) an estimate of the various quantities and kinds of services to be performed;
  - (3) a schedule of items for which unit prices are requested;

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- (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 a RFP in the manner provided for requests for competitive bids for general goods and services.

(b) In procuring consulting services through issuance of a RFP, the authority shall follow the notices set forth in Section 201.014 for the procurement of general goods and services.

### **201.023 Notice of RFQs and RFPs.**

(a) Notice of the issuance of a RFQ or RFP must provide:

- (1) the date, time, and place where responses to the RFQ or RFP will be opened,
- (2) the address and telephone number from which prospective proposers may request the RFQ or RFP, and
- (3) a general description of the type of services being sought by the authority.

(b) Alternatively, the authority may publish and otherwise distribute, in accordance with these procedures, the RFQ or RFP itself in lieu of publishing a notice of issuance of a RFQ or RFP.

(c) The authority shall publish the notice of issuance of a RFQ or RFP on its website and shall either:

- (1) publish notice of the issuance of a RFQ or RFP, or the content of the RFQ or RFP itself, in an issue of the Texas Register; or
- (2) publish in the official newspaper of the authority notice of the issuance of a RFQ or RFP, or the content of the RFQ or RFP itself, once at least two weeks before deadline for the submission for responses in the official newspaper of the authority.

(d) The authority may, but shall not be required to, solicit responses to a RFQ or RFP by direct mail, telephone, advertising in trade journals or other locations, or via the Internet. With regard to RFPs, if such solicitations are made in addition to the required publications, the prospective bidder may not be solicited by mail, telephone and internet or in any other manner, nor may the prospective bidder receive bid documents until such time that notice of the RFP has been made available on the authority's website.

(e) The date specified in the RFQ or RFP as the deadline for submission of responses may be extended if the executive director determines that the extension is in the best interest of the

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authority.

## **201.024 Opening and Filing of Responses; Public Inspection.**

The authority shall avoid disclosing the contents of each response to a 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.

## **201.025 Contract Negotiation and Execution.**

(a) With regard to consulting services procured through issuance of a RFQ, the authority shall submit a written contract to the respondent (the “first choice candidate”) whose response best satisfies the authority’s selection criteria. If the authority and the first choice candidate cannot agree on the terms of a contract, the authority may terminate negotiations with the first choice candidate, and, at the exclusive option of the authority, the authority may enter into contract negotiations with the respondent (“second choice candidate”) whose response is the next most favorable to the authority. If agreement is not reached with the second choice candidate, the process may be continued with other respondents in like manner, but the authority shall have no obligation to submit a contract to the next highest-ranked respondent if the authority determines that none of the remaining responses is acceptable or that continuing with the procurement is not within the best interest of the authority.

(b) With regard to consulting services procured through issuance of a RFP, 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.

## **201.026 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 a RFQ or RFP. Provided, however,



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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 \$25,000. If the anticipated cost of services does not exceed \$25,000, 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.

### **201.027 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.

### **201.028 Mixed Contracts.**

This article applies to a contract that involves both consulting and other services if the primary objective of the contract is the acquisition of consulting services.

## **Article 5. PROFESSIONAL SERVICES**

### **201.029 General.**

Except as otherwise permitted by Chapter 370, Transportation Code, 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 Professional Services Procurement Act, that Act shall control.

### **201.030 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 service, including pre-certification by TxDOT; 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.

### **201.031 Request For Qualifications.**

(a) In order to evaluate the demonstrated competence and qualifications of prospective providers of professional services, the authority shall invite prospective providers of professional services to submit their qualifications to provide such services as specified in a Request for Qualifications ("RFQ") issued by the authority.

(b) Each RFQ for professional services shall describe the services required by the authority, the criteria used to evaluate proposals, and the relative weight given to the criteria.

### **201.032 Notice of RFQs.**

(a) Notice of the issuance of a RFQ for professional services must provide:

- (1) the date, time, and place where responses to the RFQ will be opened,

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- (2) the contact or location from which prospective professional service providers may request the RFQ, and
- (3) a general description of the type of professional services being sought by the authority.

(b) Alternatively, the authority may publish or otherwise distribute, in accordance with these procedures, the RFQ itself in lieu of publishing a notice of RFQ. Neither a notice of a RFQ for professional services, nor any RFQ itself shall require the submission of any specific pricing information for the specific work described in the RFQ, and may only require information necessary to demonstrate the experience, qualifications, and competence of the potential provider of professional services.

(c) The authority shall publish on its website ([www.webbrma.com](http://www.webbrma.com)) all notices of the issuance of a RFQ and/or the entirety of the RFQ itself at least two weeks prior to the deadline for the responses.

(d) The authority may also publish notice of the issuance of a RFQ, or the content of the RFQ itself, in an issue of the *Texas Register*, and in newspapers, trade journals, or other such locations as the authority determines will enhance competition for the provision of services.

(e) 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.

### **201.033 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.

## Article 6. CONSTRUCTION AND BUILDING CONTRACTS

### 201.034 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.

### 201.035 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 section with respect to bidders on building contracts.

### 201.036 Qualifying with the Authority.

(a) If the authority elects under Sec. 201.035 to separately qualify bidders on a construction project, the authority will require each potential bidder to submit to the authority an application for qualification to include:

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

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application.

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

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

(d) Upon the recommendation of the executive director and with the concurrence of the board, the authority may waive the requirement that a bidder's financial statement be audited if the estimated amount of the contract is \$1,000,000.00 or less. A bidder with no prior experience in construction or maintenance shall not receive a bidding capacity of more than \$100,000.00.

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

## **201.037 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) The authority shall post a notice of contract letting and any addenda to a notice on its website ([www.webbrma.com](http://www.webbrma.com)) for at least two weeks before the date set for letting of a contract.

(c) Notice of a contract letting for a federal-aid project shall also be published in the official newspaper of the authority no later than three weeks before the date set for letting of the contract.

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(d) The authority may also publish notice of contract lettings in the Texas Register, trade publications, or such other places that the authority determines will enhance competition for the work.

(e) 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.

## **201.038 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 article.

## **201.039 Issuance of Bid Documents.**

(a) Except as otherwise provided in this article, 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.

(b) A request for bid documents for a federal-aid project must be submitted in writing and must include a statement in a form prescribed by the authority certifying whether the bidder is currently disqualified by an agency of the federal government as a participant in programs and activities involving federal financial and non-financial assistance and benefits.

(c) A request for bid documents for any other construction or building contract may be made orally or in writing.

(d) Unless otherwise prohibited under this article, the authority will, upon receipt of a request, issue bid documents for a construction contract as follows:

- (1) to a bidder qualified by TxDOT, if the estimated cost of the project is within that bidder's available bidding capacity as determined by TxDOT;
- (2) to a bidder qualified by the authority, if the estimated cost of the project is within that bidder's available bidding capacity as determined by the authority; and
- (3) to a bidder who has substantially complied with the authority's requirements for qualification, as determined by the authority.

## **201.040 Withholding Bid Documents.**

The authority will not issue bid documents for a construction contract if:

- (1) the bidder is suspended or debarred from contracting with TxDOT or the authority;

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- (2) the bidder is prohibited from rebidding a specific project because of default of the first awarded bid;
- (3) the bidder has not fulfilled the requirements for qualification under this article, unless the bidder has substantially complied with the requirements for qualification, as determined by the authority;
- (4) the bidder is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits, and the contract is for a federal-aid project; or
- (5) the bidder or its subsidiary or affiliate has received compensation from the authority to participate in the preparation of the plans or specifications on which the bid or contract is based.

### **201.041 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"). 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

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exclusion, or ineligibility determination actions by an agency of the federal government, and any indictment, conviction, or civil judgment involving fraud or official misconduct, each with respect to the bidder or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director/supervisor, manager, auditor, or a position involving the administration of federal funds; such certification shall cover the three-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.

### **201.042 Revision of Bid by Bidder.**

(a) A bidder may change a bid price before it is submitted to the authority by changing the price and initialing the revision in ink.

(b) 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.

(c) The authority will not accept a request by telephone, telegraph, or electronic mail, but will accept a properly signed facsimile request. The revised bid must be resubmitted prior to the time specified for the close of the receipt of bids.

### **201.043 Withdrawal of Bid.**

(a) 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.

(b) The authority will not accept telephone, telegraph, or electronic mail requests, but will accept a properly signed facsimile request.

### **201.044 Acceptance, Rejection, and Reading of Bids.**

(a) 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.



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(b) The authority, acting through the executive director or the executive director's designee, will not accept and will not read a bid if:

- (1) the bid is submitted by an unqualified bidder;
- (2) the bid is in a form other than the official bid documents issued to the bidder;
- (3) the form and content of the bid do not comply with the requirements of the bid documents and/or subsection 201.041;
- (4) the bid, and if required, federal-aid project certification, are not signed;
- (5) the bid was received after the time or at some location other than specified in the notice or as may have been extended;
- (6) the bid guaranty, if required, does not comply with subsection 201.041;
- (7) the bidder did not attend a specified mandatory pre-bid conference, if required under the bid documents;
- (8) the proprietor, partner, majority shareholder, or substantial owner is 30 or more days delinquent in providing child support under a court order or a written repayment agreement;
- (9) the bidder was not authorized to be issued a bid under this article;
- (10) more than one bid involves a bidder under the same or different names.

### **201.045 Tabulation of Bids.**

(a) 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.

(b) 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.

(c) 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

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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.

### **201.046 Award of Contract.**

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

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

- (1) ability, capacity, and skill to perform the contract or provide the services under the conditions prescribed in the procurement and contract documents; and
- (2) sufficiency of financial resources to perform the contract or provide the services.

(c) As an alternative to awarding a contract under subsection (a), the authority may award a contract to:

- (1) the lowest best bidder; or
- (2) a local bidder, provided that:
  - (A) the bid from the local bidder is no more than three percent (3%) higher than the bid of the lowest best bidder, and
  - (B) the lowest best bidder is not a local bidder.
- (3) In this subsection, a "local bidder" means a bidder whose principal place of business is located within the Jurisdiction of the authority, and the "principal place of business" means the bidder's designated headquarters, where most of the important functions and full responsibility for managing and coordinating the bidder's business activities take place.

(d) The authority may not award a contract to a local bidder under subsection (c) unless the board determines by resolution that awarding the contract to the local bidder offers the authority the best combination of contract price, technical competence, and economic development opportunities for residents in the Jurisdiction of the authority.

(e) The authority may not award a contract under subsection (c) if the authority uses funds from a federal, state, or other source as any payment for the contract and the award of the contract under subsection (c) would violate federal or state law or regulations, or if the funding source prohibits or restricts the award of the contract under subsection (c).

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(f) Notwithstanding this section, the authority is not required to award a contract and may reject all bids.

### **201.047 Rejection of Bids; Nonresident Bidders.**

(a) The authority, acting through the executive director or his designee, may reject any and all bids opened, read, and tabulated under this article. It will reject all bids if:

- (1) there is reason to believe collusion may have existed among the bidders;
- (2) the low bid is determined to be both mathematically and materially unbalanced;
- (3) the lowest best bid is higher than the authority's estimate and the authority determines that re-advertising the project for bids may result in a significantly lower low bid or that the work should be done by the authority; or
- (4) the board, 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.

(b) 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.

### **201.048 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 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.

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(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, within ten 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.

### **201.049 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 Chapter 2253, Government Code, 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.

### **201.050 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.

### **201.051 Bid Guaranty.**

(a) Not later than seven 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.

(b) If the successful bidder (including a second-lowest best bidder or third-lowest best bidder

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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 section 201.049 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 days after the date the bidder is required to submit the bonds and insurance certificate under section 201.049.

(c) 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 and the board, upon request made in writing by bidder and received at such time that the board may consider the request at a regularly scheduled board meeting prior to the due date for the bids approves of the submission of a bid by the bidder.

### **201.052 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 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.

**Article 7. DESIGN-BUILD CONTRACT; COMPREHENSIVE  
DEVELOPMENT AGREEMENT**

**Subchapter A. DESIGN-BUILD PROCUREMENT**

**201.300 Design-Build Contract for a Transportation Project**

(a) The authority may use the design-build method to procure the design, construction, financing, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a transportation project. In using the design-build method and in entering into a contract for the services of a design-build contractor, the authority and the design-build contractor shall follow the procedures and requirements of this subchapter.

(b) The authority may enter into not more than two design-build contracts in any fiscal year.

(c) A design-build contract under this subchapter may not grant to a private entity:

- (1) a leasehold interest in the transportation project; or
- (2) the right to operate or retain revenue from the operation of the transportation project.

**201.301 Definitions**

In this subchapter:

- (1) “Design-build contractor” means a partnership, corporation, or other legal entity or team that includes an engineering firm and a construction contractor qualified to engage in the construction of transportation projects in this state.
- (2) “Design-build method” means a project delivery method by which the authority contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a transportation project.

**201.302 Procurement Process**

- (a) The authority must solicit proposals for a design-build contract under this subchapter.
- (b) The Professional Services Procurement Act, Chapter 2254, Government Code, does not apply to a design-build contract.

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## **201.303 Use of Engineer or Engineering Firm and Other Professional Services**

(a) The authority must select or designate an engineer or a qualified engineering firm that is independent of the design-build contractor to act as the authority's representative during the procurement of a design-build contract.

(b) The engineer representative selected or designated under this section may be:

- (1) an engineer that is an employee of the authority;
- (2) the authority's general engineering consultant, if any; or
- (3) a qualified engineer or engineering firm hired by the authority pursuant to the Professional Services Procurement Act, Chapter 2254, Government Code.

(c) The authority must provide or contract for, independently of the design build contractor, the following services as necessary for acceptance of the transportation project by the authority:

- (1) inspection services;
- (2) construction materials engineering and testing; and
- (3) verification testing services.

(d) The authority shall ensure that the engineering services contracted for under this section are selected based on demonstrated competence and qualifications, in accordance with applicable law.

## **201.304 Requests for Qualifications**

(a) The authority must solicit proposals for a design-build contract by issuing a Request for Qualifications ("RFQ").

(b) The authority shall publish a notice advertising the issuance of the RFQ in the *Texas Register* and on the authority's website, and shall publish the RFQ on the authority's website.

(c) An RFQ issued under this subchapter shall include:

- (1) information regarding the proposed project's location, scope, and limits;
- (2) information regarding funding that may be available for the project and a description of the financing to be requested from the design-build contractor, as applicable;
- (3) criteria that will be used to evaluate the proposals, which must include a proposer's qualifications, experience, technical competence, and ability to develop the project;

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- (4) the relative weight given to the criteria; and
- (5) the deadline by which proposals must be received by the authority.

## **201.305 Withdrawal of an RFQ**

The authority may withdraw an RFQ at any time.

## **201.306 Evaluation of Responses to an RFQ**

- (a) If the authority receives only one responsive proposal to an RFQ, the authority shall terminate the procurement.
- (b) The authority shall evaluate each qualifications statement received in response to an RFQ based on the criteria identified in the request.
- (c) The authority may interview responding proposers.
- (d) Based on the evaluation of qualifications statements and interviews, if any, the authority shall qualify or short-list at least two, but no more than five, proposers to submit detailed proposals.

## **201.307 Requests For Detailed Proposals**

- (a) The authority shall issue a request for detailed proposals (“RFDP”) to proposers qualified or short-listed under Section 201.306.
- (b) Before issuing an RFDP under this section, the authority may issue a draft RFDP to the proposers eligible under Subsection (a) for purposes of receiving their input.
- (c) An RFDP must include:
  - (1) information on the overall project goals;
  - (2) the authority’s cost estimates for the design-build portion of the work;
  - (3) materials specifications;
  - (4) special material requirements;
  - (5) a schematic design approximately 30 percent complete;
  - (6) known utilities, provided that the authority is not required to undertake an effort to locate utilities;
  - (7) quality assurance and quality control requirements;



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- (8) the location of relevant structures;
- (9) notice of authority rules or goals relating to awarding contracts to disadvantaged businesses;
- (10) available geotechnical or other other information related to the project;
- (11) the status of any environmental review of the project;
- (12) detailed instructions for preparing the technical proposal required by Section 201.309, including a description of the form and level of completeness of drawings expected;
- (13) the relative weighting of the technical and cost proposals required by this section and the formula by which the proposals will be evaluated and ranked, provided that the formula shall allocate at least 70 percent of the weighting to the cost proposal;
- (14) the criteria and weighting for each element of the technical proposal;
- (15) the risks and costs that should be assumed by the design-build contractor, including
  - (A) all risks and costs associated with:
    - (i) scope changes and modifications, as requested by the authority;
    - (ii) unknown or differing site conditions;
    - (iii) environmental clearance and other regulatory permitting for the project; and
    - (iv) natural disasters and other force majeure events; and
  - (B) all costs associated with property acquisition, excluding costs associated with acquiring a temporary easement or work area associated with staging or construction for the project;
- (16) a general form of the design-build contract that the authority proposes if the terms of the contract may be modified as a result of negotiations prior to contract execution; and
- (17) the deadline established by Section 201.310 by which responses to the RFDP must be received.

### **201.308 Alternative Technical Concepts**

- (a) The authority may provide for the submission of alternative technical concepts by a proposer in the response to the RFDP.
- (b) If the authority provides for the submission of alternative technical concepts, the authority must prescribe the process for notifying a proposer whether the proposer's alternative technical concepts are approved for inclusion in a technical proposal.

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## **201.309 Separate Technical and Cost Proposals**

(a) Each response submitted to an RFDP shall include a sealed technical proposal and a separate sealed cost proposal.

(b) The technical proposal must address:

- (1) the proposer's qualifications and demonstrated technical competence, provided that the proposer shall not be requested to resubmit any information that was submitted and evaluated pursuant to Section 201.304;
- (2) the feasibility of developing the project as proposed, including identification of anticipated problems;
- (3) the proposed solutions to anticipated problems;
- (4) the ability of the proposer to meet schedules;
- (5) the conceptual engineering design proposed; and
- (6) any other information requested by the authority.

(c) The cost proposal must include:

- (1) the cost of delivering the project;
- (2) the estimated number of days required to complete the project; and
- (3) any terms for financing for the project that the proposer plans to provide.

## **201.310 Deadline for Response to RFDP**

The authority shall establish a time, date, and location for submittal of a response to an RFDP, which deadline shall be no later than the 180<sup>th</sup> day after the RFDP is issued to each proposer qualified or short-listed under Section 201.306.

## **201.311 Withdrawal of an RFDP**

(a) The authority may withdraw a RFDP at any time prior to the submission deadline for detailed proposals. In such event the authority shall have no liability to the entities chosen to submit detailed proposals.

(b) If the authority provides for the submission of Alternative Technical Concepts (“ATCs”) and/or Value Added Concepts (“VACs”), the authority shall establish a process for submission and review of ATCs and/or VACs prior to submission of a technical proposal. Only those ATCs and/or

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VACs approved by the authority may be included in an entity's technical proposal. The authority shall notify a proposer whether its ATCs and/or VACs are approved for inclusion in the technical proposal.

(c) The authority may conduct meetings with or interview proposers submitting a response to an RFDP.

### **201.312 Unapproved Changes to Team**

The authority may reject as nonresponsive a proposal from a proposer qualified or short-listed under Section 201.306 that makes a significant change to the composition of the proposer's design-build team as initially submitted if that change was not approved by the authority as provided in the RFQ.

### **201.313 Evaluation and Ranking of Responses to an RFDP**

(a) The authority shall first open, evaluate, and score each responsive technical proposal submitted on the basis of the criteria described in the RFDP and assign points on the basis of the weighting specified in the request for detailed proposals.

(b) After completing the scoring required by Subsection (a), the authority shall subsequently open, evaluate, and score each cost proposal based on criteria set forth in the RFDP and assign points on the basis of the weighting specified in the request for detailed proposals. The authority shall rank the proposers in accordance with the formula provided in the request for detailed proposals.

(c) The authority shall then rank the proposers in accordance with the formula provided in the RFDP.

### **201.314 Stipend for Unsuccessful Proposers**

(a) Pursuant to the provisions of the RFDP, the authority shall pay an unsuccessful proposer that submits a responsive proposal to the RFDP a stipend for work product contained in the proposal. The stipend must be specified in the initial RFDP in an amount of at least two-tenths of one percent of the contract amount, but may not exceed the value of the work product contained in the proposal to the authority. In the event the authority determines that the value of the work product is less than the stipend amount, the authority must provide the proposer with a detailed explanation of the valuation, including the methodology and assumptions used in determining value.

(b) After payment of the stipend, the authority may make use of any work product contained in the unsuccessful proposal, including the techniques, methods, processes, and information contained in the proposal.

(c) The use by the authority of any design element contained in an unsuccessful proposal is at

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the sole risk and discretion of the authority and does not confer liability on the recipient of the stipend under this section.

(d) The authority may provide in the RFDP for the payment of a partial stipend in the event a procurement is terminated prior to securing project financing and execution of a design-build contract.

## **201.315 Contract Negotiations**

(a) After ranking the proposers under Section 201.313, the authority shall first attempt to negotiate a contract with the highest-ranked proposer.

(b) If the authority is unable to negotiate a satisfactory contract with the highest-ranked proposer, the authority shall, formally and in writing, end all negotiations with that proposer and proceed to negotiate with the next proposer in the order of the selection ranking until a contract is reached or negotiations with all ranked proposers end.

(c) If the authority has committed in the RFDP to paying a stipend to unsuccessful proposers in accordance with Section 201.314, the authority may include in the negotiations alternative technical concepts proposed by other proposers.

(d) The authority may establish a deadline for the completion of negotiations with a proposer for a design-build contract. If a design-build contract has not been executed by that deadline, the authority may terminate the negotiation under Subsection (b) or, at its discretion, may extend the deadline for negotiating a design-build contract with that proposer.

(e) Notwithstanding the foregoing, the authority may terminate the procurement process at any time upon a determination that continuation of the process or development of a project through a design-build contract is not in the authority's best interest. If the procurement process is terminated after the deadline for responses to the RFDP under Section 201.310, the authority shall have no liability to any proposer other than paying the stipend in accordance with the terms of Section 201.314.

## **201.316 Performance and Payment Security**

(a) The authority shall require a design-build contractor to provide:

- (1) a performance and payment bond;
- (2) an alternative form of security; or
- (3) a combination of a performance and payment bond and alternative security.

(b) Except as provided by Subsection (c), a performance and payment bond, alternative form of

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security, or combination of the forms of security shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If the authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the authority shall set the amount of the security.

(d) A performance and payment bond is not required for the portion of a design-build contract that includes design services only.

(e) The authority may require one or more of the following alternative forms of security:

- (1) a cashier's check drawn on a financial entity specified by the authority;
- (2) a United States bond or note;
- (3) an irrevocable bank letter of credit drawn from a federal or Texas chartered bank; or
- (4) any other form of security determined suitable by the authority.

## Subchapter B. COMPREHENSIVE DEVELOPMENT AGREEMENTS

### **201.350 Comprehensive Development Agreement Allowed**

(a) The authority may enter into a comprehensive development agreement (a "CDA") for a transportation project authorized by state law in accordance with requirements and procedures established by this subchapter.

(b) The authority may enter into a CDA with a private entity that, at a minimum:

- (1) provides for the design and construction of a transportation project;
- (2) may provide for the financing, acquisition, maintenance, or operation of a transportation project; and
- (3) entitles the private entity to:
  - (A) a leasehold interest in the transportation project; or
  - (B) the right to operate or retain revenue from the operation of the transportation project.

(c) The authority may negotiate provisions relating to professional and consulting services provided in connection with a CDA.

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## **201.351 Confidentiality of Negotiations for a CDA**

(a) The authority shall use its best efforts to protect the confidentiality of information made confidential by Sections 370.307 and 371.052(d), Transportation Code, as established by state law and detailed in Subsection (b).

(b) The following information in the possession of the authority or its agents is confidential, is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed CDA project is entered into:

- (1) all or part of a proposal submitted by a private entity for a CDA, except:
  - (A) information regarding the proposed transportation project's location, scope, and limits; and
  - (B) information regarding the proposing private entity's qualifications, experience, technical competence, and capability to develop the project;
- (2) supplemental information or material submitted by a private entity in connection with a proposal submitted under this subchapter; and
- (3) information created or collected by an authority or its agent during consideration of a proposal submitted under this subchapter, including without limitation financial forecasts and traffic and revenue reports prepared by or for the authority before the authority enters into a CDA.

(c) After the authority completes its final ranking of proposals under Section 201.358, the final rankings of each proposal under each of the published criteria are not confidential.

(d) After the authority enters into a CDA, financial forecasts and traffic revenue reports prepared by or for the authority before it entered into the CDA are public information.

## **201.352 Competitive Procurement Process for a CDA**

(a) The authority may consider an unsolicited proposal to enter into a CDA or may solicit proposals for a CDA in accordance with this subchapter.

(b) The competitive bidding requirements for highway projects as specified under Chapter 223, Transportation Code, and Chapter 2254, the Texas Professional Services Procurement Act, Government Code, do not apply to a CDA.

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## **201.353 Filing an Unsolicited Proposal for a CDA**

- (a) An unsolicited proposal for a CDA filed with the authority shall comply with the requirements and procedures established by this section.
- (b) An unsolicited proposal filed with the authority must include a \$20,000.00 non-refundable review fee payable to the authority.
- (c) An unsolicited proposal must also include the following information:
  - (1) the proposed transportation project location, scope, and limits;
  - (2) information regarding the proposing private entity's qualifications, experience, technical competence, and capability to develop the project;
  - (3) a proposed financial plan for the proposed project that includes, at a minimum:
    - (A) projected project costs;
    - (B) proposed sources of funds; and
  - (4) the name and business address of each person and business entity with a substantial interest in the business entity that is the proposing private entity filing the unsolicited proposal, as the terms “business entity” and “substantial interest” are defined under Chapter 171, Government Code, and the name and business address of each consultant or subconsultant the private entity anticipates using if the private entity develops the proposed project.

## **201.354 Review of an Unsolicited Proposal**

- (a) An unsolicited proposal shall be reviewed by the executive director, who may interview, and who may request additional information from, the proposing private entity. Based on that review, the executive director shall make a recommendation to the board on whether the board should consider further evaluation of the unsolicited proposal.
- (b) If the board authorizes further evaluation of an unsolicited proposal, then the board shall direct the executive director to issue an RFQ under Section 201.355.

## **201.355 Authority Solicitation of Requests for Qualifications**

- (a) Under this subchapter, the authority may solicit proposals for a CDA to develop a transportation project or for competing proposals to an unsolicited proposal filed with the authority by issuing an RFQ relating to the transportation project.
- (b) The authority shall publish a notice advertising the issuance of the RFQ in the *Texas Register*

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and on the authority's website, and shall publish the RFQ on the authority's website.

(c) An RFQ issued under this section shall include the following:

- (1) a description of the project;
- (2) the information a private entity must provide in response to the RFQ regarding:
  - (A) the private entity's qualifications, experience, technical competence, and capability to develop the project;
  - (B) the private entity's proposed financial plan for the proposed project that includes, at a minimum:
    - (i) projected project costs; and
    - (ii) proposed sources of funds; and
- (3) the criteria to be used by the authority to evaluate proposals received in response to the RFQ;
- (4) the relative weight given to the criteria; and
- (5) the deadline by which proposals must be received by the authority.

(d) A proposal submitted in response to an RFQ issued under this section must include, at a minimum, the information required to be submitted under Subsection (c)(2), and, if the RFQ solicits competing proposals to an unsolicited proposal filed under Section 201.353, the fee required by Section 201.353(b).

(e) The authority may withdraw the RFQ at any time, and may then publish a new RFQ for a CDA in accordance with this section.

### **201.356 Evaluation of the Responses to a Request for Qualifications**

(a) The executive director shall review each response received to an RFQ issued under Section 201.355 based on the criteria and relative weighting established in the RFQ. The executive director may include an interview as part of the review process.

(b) After completing the review, the executive director shall make a recommendation to the board on whether the board should consider further evaluation of a CDA for the project.

(c) If the board decides to proceed with further evaluation of a CDA for the project, the board shall direct the executive director to issue a request for detailed proposals (an "RFDP") under Section 201.357.



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(d) If the authority has received and reviewed more than one proposal from a private entity under Section 201.353, Section 201.355, or both, the board shall qualify at least two private entities to respond to the RFDP issued under Section 201.357.

(e) If only one private entity has filed a proposal with the authority under this subchapter, the board may request a response from the sole private entity to an RFDP issued under Section 201.357.

### **201.357 Request for Detailed Proposals**

(a) Before issuing an RFDP, the authority may solicit input from all private entities qualified under Section 201.356 and from any other person.

(b) The authority shall issue an RFDP to all private entities qualified under Section 201.356. The authority shall mail or hand deliver the RFDP directly to the private entity.

(c) The RFDP must contain the following information:

- (1) instructions for preparing the proposal and the items included therein;
- (2) the criteria to be used by the authority to evaluate the detailed proposals, including factors related to:
  - (A) oversight of the toll project;
  - (B) maintenance and operations costs of the toll project;
  - (C) the structure and rates of tolls;
  - (D) economic development impacts of the toll project;
  - (E) benefits and impacts of the toll project; and
  - (F) any other factors the authority determines appropriate;
- (3) the relative weight to be given to the criteria;
- (4) a stipulated amount to be paid to unsuccessful proposers subject to Section 201.362, if any, including any terms and conditions relating to payment of the stipulated amount;
- (5) the general form of a CDA sought by the authority, including any matters relating to the CDA the authority considers advantageous to the authority; and
- (6) the date and time by which the detailed proposal must be received by the authority.

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(d) An RFDP under this subchapter may require the private entity to provide additional information relating to:

- (1) the private entity's qualifications and demonstrated technical competence;
- (2) the feasibility of developing the project as proposed;
- (3) detailed engineering or architectural designs;
- (4) the private entity's ability to meet schedules;
- (5) costing methodology; and
- (6) any other information the authority considers relevant or necessary to fully assess the private entity's proposal.

(e) The RFDP may require a responding private entity to submit a sealed technical proposal and a separate, sealed cost proposal.

(f) The authority may withdraw an RFDP at any time. In such event the authority shall have no liability to a private entity chosen to submit a detailed proposal, except as may be specified in the RFDP regarding a stipulated amount offered under Subsection (c)(4) and Section 201.362.

(g) After the authority has issued an RFDP under this section, the authority may solicit input regarding alternative technical concepts.

### **201.358 Evaluation and Ranking of Detailed CDA Proposals**

The authority shall evaluate and rank each detailed proposal received based on the criteria described in the RFDP and shall identify the private entity whose proposal offers the best value to the authority. The authority may interview the private entities as part of its evaluation process.

### **201.359 Post-Submissions Discussions**

(a) After the authority has evaluated and ranked the detailed proposals in accordance with Section 201.358, the authority may enter into discussions with the private entity whose proposal offers the apparent best value provided, The discussions under this section shall be limited to:

- (1) incorporation of aspects of other detailed proposals for the purpose of achieving the overall best value for the authority;
- (2) clarifications and minor adjustments in scheduling, designs, operating characteristics, cash flow, and similar items; and
- (3) other matters that have arisen since the submission of the detailed proposal.

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(b) If at any point in discussions under Subsection (a), it appears to the authority that the highest ranking proposal will not provide the authority with the overall best value, the authority may end discussions with the highest-ranking private entity and enter into discussions with the private entity submitting the next-highest ranking proposal.

(c) The authority may withdraw a request issued under Section 201.357 at any time. The authority may then publish a new request for competing proposals and qualifications under Section 201.355.

### **201.360 Negotiations for CDA**

(a) Subsequent to the discussions conducted pursuant to Section 201.359 and provided the authority has not terminated or withdrawn the procurement, the authority and the highest-ranking proposer shall attempt to negotiate the specific terms of a CDA.

(b) The authority shall prescribe the general form of the CDA and may include any matter therein considered advantageous to the authority.

(c) The authority may establish a deadline for the completion of negotiations for a CDA. If an agreement has not been executed within that time, the authority may terminate the negotiations, or, at its discretion, may extend the time for negotiating an agreement.

(d) In the event an agreement is not negotiated within the time specified by the authority, or if the parties otherwise agree to cease negotiations, the authority may commence negotiations with the second-ranked proposer or it may terminate the process of pursuing a CDA for the project which is the subject of the procurement process.

(e) Notwithstanding the foregoing, the authority may terminate the procurement process, including the negotiations for a CDA, at any time upon a determination that continuation of the process or development of a project through a CDA is not in the authority's best interest. In such event, the authority shall have no liability to any proposer other than paying the stipend in accordance with the terms of Section 201.362 if detailed proposals have been submitted to the authority.

### **201.361 Property Subject to a CDA**

(a) A transportation project (excluding a public utility facility) that is the subject of a CDA is public property and belongs to the authority.

(b) The authority may lease rights-of-ways, grant easements, issue franchises, licenses, permits or any other lawful form of use to enable a private entity to construct, operate, and maintain a transportation project, including supplemental facilities. At the termination of any such agreement, the transportation project shall be returned to the authority in a state of maintenance deemed

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adequate by the authority and at no additional cost to the authority.

## **201.362 Payment by Authority for Submission of Detailed CDA Proposal**

(a) The authority may pay an unsuccessful private entity that submits a response to an RFDP issued under Section 201.357 a stipulated amount of the final contract price for any costs incurred in preparing that proposal. A stipulated amount may not exceed the value of any work product contained in the proposal that can, as determined by the authority, be used by the authority in the performance of its functions. The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipulated amount under this section.

(b) After payment of a stipulated amount under Subsection (a):

- (1) the authority owns the exclusive rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, and information contained in the project design; and
- (2) the work product contained in the proposal becomes the property of the authority.

## **201.363 Performance and Payment Security**

(a) The authority shall require any private entity entering into a CDA under this subchapter to provide a performance and payment bond or an alternative form of security in an amount sufficient to:

- (1) insure the proper performance of the agreement; and
- (2) protect:
  - (3) the authority; and
  - (4) payment bond beneficiaries who have a direct contractual relationship with the private entity and subcontractors of the private entity who supply labor or materials.

(b) A performance and payment bond or alternative form of security shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If the authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the authority shall set the amount of the bonds or alternative form of security.

(d) A performance and payment bond or alternative form of security is not required for the portion of a CDA that includes only design or planning services, the performance of preliminary

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studies, or the acquisition of real property.

(e) The amount of the payment security must not be less than the amount of the performance security.

(f) If the authority prescribes requirements for alternative forms of security, in addition to performance and payment bonds the authority may require the following alternative forms of security:

- (1) a cashier's check drawn on a financial entity specified by the authority;
- (2) a United States bond or note;
- (3) an irrevocable bank letter of credit; or
- (4) any other form of security determined suitable by the authority.

## **201.364 Review by Attorney General**

(a) The authority may not enter into a CDA unless the Texas Attorney General reviews the proposed agreement and determines the CDA is legally sufficient, in accordance with Subchapter B, Chapter 371, Transportation Code.

(b) The authority may require the private entity who intends to enter into a CDA with the authority to pay the examination fee assessed by the attorney general for the legal sufficiency review required by Section 371.051, Transportation Code.

## **Article 8. BUSINESS OPPORTUNITY PROGRAM AND POLICY**

### **201.067 Purpose**

In accordance with state and federal law, the authority is required to facilitate and assure the participation of disadvantaged and small businesses in the authority's procurement process. The authority is also generally required to procure its goods and services and construction contracts through a competitive bid process. To facilitate compliance with federal and state laws regarding disadvantaged businesses and competitive bid procurement, the board adopted Resolution No. 03-60, which establishes the Disadvantaged Business Enterprise ("DBE") Policy Statement and this Business Opportunity Program and Policy ("BOPP"). The BOPP incorporates the policies and objectives of state and federal laws, and establishes goals that attempt to monitor and encourage disadvantaged and small businesses to participate in the process and award of governmental contracts. The BOPP will consist of two separately administered programs: (1) the DBE Program; and (2) the Small Business Enterprise (SBE) Program.

### **201.068 Applicability**

The policies, procedures and contract clause(s) established under the BOPP apply to authority procurements, bidders and recipients of contracts, and to related subcontracts, to the extent that these provisions are not inconsistent with state or federal law or other rules and regulations.

### **201.069 Policy Statement and Objectives Of Business Opportunity Program**

(a) It is the policy of the authority to ensure that disadvantaged businesses, as defined in 49 C.F.R. Part 26 and under this BOPP, have an equal opportunity to receive and participate in contracts. It is the policy of the authority never to exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, or national origin. In administering its BOPP, the authority will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of federal and state law with respect to individuals of a particular race, color, sex, or national origin. In implementing these policies and objectives, the authority will strive to ensure that the DBE Program is narrowly tailored in accordance with applicable law.

(b) This program shall also incorporate any DBE Policy Statement adopted by the board.

### **201.070 Administration of Business Opportunity Program**

The DBE and SBE programs will be administered through and in accordance with the BOPP. All authority departments, personnel, and/or consultants having or sharing responsibility for awarding contracts and/or making procurements, will support and assist in promoting and carrying out this BOPP. Examples of such departments, or consultant services, include Administration, Engineering,

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Information Technology, Maintenance, Contract Management, Legal, and Purchasing.

## **201.071 BOPP Liaison Officer**

The executive director will appoint a BOPP Liaison Officer who will report directly to the executive director regarding the implementation, status and compliance with the BOPP. The BOPP Liaison Officer's duties for this BOPP include, but are not limited to, the following:

- (1) implementing, coordinating, administering and monitoring the BOPP;
- (2) developing and presenting annual and other reports as may be requested by the executive director or board;
- (3) coordinating and conducting outreach efforts with other authority departments, TxDOT, FHWA and other agencies;
- (4) educating and advising the staff as necessary for effective implementation of the BOPP, and the DBE and SBE programs;
- (5) developing and maintaining procedures to ensure that disadvantaged businesses are afforded an equitable opportunity to compete on all contracts by providing assistance and opportunities through workshops and trade fairs, distributing handbooks, conducting pre-bid/pre-proposal conferences, and assuring timely dissemination of bid/contract information;
- (6) developing, administering and enforcing policies, standards, definitions, criteria and procedures to govern the implementation, interpretation, and application of the BOPP in a manner that is designed to achieve its purposes;
- (7) assuring that listings or directories of SBEs are developed, maintained and available to persons seeking to do business with the authority;
- (8) receiving and reviewing inquiries and making recommendations concerning the DBE and/or SBE programs, including concerns about violations and/or abuse of the DBE and/or SBE programs;
- (9) making recommendations for resolution of any issues or concerns and taking appropriate steps to enforce the BOPP, including deciding and imposing appropriate sanctions for violations and/or abuse of the program;
- (10) considering and evaluating whether efforts for DBE and SBE utilization by contractors satisfy the good faith requirements of the BOPP;
- (11) recommending, in cooperation with other departments, appropriate DBE and/or SBE goals and any program changes, which may be appropriate to improve the overall effectiveness of

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the BOPP;

- (12) ensuring that appropriate provisions of the DBE and/or SBE Program are included in bid proposals and contract specifications;
- (13) periodically reviewing applicable insurance and bonding requirements with a view toward determining, if prudent and feasible, whether established risk/exposure limits may be changed to allow business enterprises, particularly DBEs and SBEs, to bid more competitively on all contracts;
- (14) compiling information to determine the level of DBE and/or SBE utilization; and
- (15) reviewing contracting requirement and recommending modification of requirements, where appropriate, that may tend to create barriers for minority, women owned and small businesses.

## **201.072 Departmental Responsibilities**

All authority departments, and consultants, when applicable, will cooperate with the BOPP Liaison Officer in the implementation of the goals and intent of this BOPP. However, certain departments and consultants will have particular responsibilities because of their procurement activity. Examples of such departments and consultant services include Engineering, Information Technology, Maintenance and Purchasing. These responsibilities for this BOPP include, but are not limited to, the following:

- (1) assisting the BOPP Liaison Officer in gathering information to determine the availability of qualified disadvantaged businesses, as defined in this BOPP;
- (2) assisting and participating in workshops, trade fairs, outreach seminars, and other similar programs designed to identify and increase the participation of disadvantaged businesses in authority projects;
- (3) working with the BOPP Liaison and other departments and coordinating with TxDOT, where appropriate, in establishing BOPP goals;
- (4) maintaining appropriate records to keep track of compliance with the BOPP and to be able to present reports concerning the DBE/SBE programs;
- (5) ensuring that applicable provisions of the DBE and/or SBE programs are included in bid proposals and specifications and in contracts awarded;
- (6) assisting in evaluating whether there are opportunities to present bid packages and requests for proposal in a manner that provides DBEs and/or SBEs a maximum opportunity for competitive participation; and



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- (7) ensuring that purchasing procedures are consistent with the BOPP.

## **201.073 Outreach**

The authority will maintain and participate in outreach programs that are designed to maximize the opportunities for disadvantaged and small businesses to contract with the authority. The outreach efforts will include, but not be limited to, one or more of the following:

- (1) **Website:** The authority's official website will include information about its procurement process and how to do business with the authority.
- (2) **Notice Of Bidding Opportunities:** The authority will advertise bidding opportunities in accordance with the Procurement Policy. The authority may advertise in newspapers or other publications that target small, minority-owned, and/or woman-owned businesses. The authority will take reasonable steps to include disadvantaged and small businesses on its mailing lists for the receipt of bid documents.
- (3) **Assistance In Bidding Process:** Upon request, the authority will assist small, minority-owned, and woman-owned businesses by providing them information regarding bid specifications, contracting opportunities, and prerequisites for bidding on authority contracts.
- (4) **Structure Of Bidding Opportunities:** When determined to be feasible, the authority will structure its solicitations for bid proposals so that they include bidding opportunities for businesses of varying sizes and delivery schedules and encourage opportunities for disadvantaged and small businesses.
- (5) **Simplification Or Reduction Of Bonding Requirements:** When determined to be feasible, the authority will simplify or reduce bonding and financing requirements to encourage disadvantaged and small business participation.
- (6) **Directory For Prime Contractors:** The authority will utilize and refer contractors to the DBE participant directories developed and maintained by TxDOT, to directories maintained by other agencies, and may prepare and maintain one or more of its own directories of disadvantaged and small businesses. The authority will make the directory(ies) available to its prime contractors and known potential prime contractors, and encourage prime contractors to subcontract with the disadvantaged and small businesses.
- (7) **Encouragement Of Joint Ventures:** The authority may encourage joint ventures between and with businesses that qualify as disadvantaged and small businesses by providing access to it directories.
- (8) **Use Of Financial Institutions:** The authority will make reasonable efforts to use small, woman-owned or minority-owned financial institutions. The authority will encourage prime

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contractors to use such institutions.

- (9) TxDOT/FHWA Programs: The authority will use and cooperate with programs administered by TxDOT in its DBE Program.

## **201.074 Program Monitoring**

The authority will keep track of disadvantaged and small business participation in contracts, including those with and without specific contract goals. "Participation" by disadvantaged and small businesses for this purpose means that payments have actually been made to the disadvantaged and/or small business. The record will show the commitments and attainments as required by 49 C.F.R. § 27.37. The BOPP Liaison Officer will monitor the authority's progress toward its annual overall goal as may be required by law or the executive director. Progress toward the federal DBE Program goal will be calculated in accordance with 49 C.F.R. § 26.55.

## **201.075 Program Inquiries**

Any questions about the Programs or Policies, including allegations about possible violation and/or abuse of the Programs or Policies, must be submitted to the BOPP Liaison Officer.

## **201.076 Directories and Designations of Disadvantaged Businesses**

As part of the authority's efforts to identify and ensure participation of disadvantaged and small businesses on projects, the authority will rely on listings (directories) of certified small, woman-owned and minority-owned businesses maintained by TxDOT and other entities and governmental units that satisfy the authority's certification requirements, including the Texas Unified Certification Program for Federal DBE Certification, as administered through TxDOT, or any other recognized certification that the authority finds acceptable.

## **201.077 General Requirements of Contractors/Vendors:**

(a) Good Faith Efforts/Waiver: Contractors/vendors who propose to perform a contract with the authority that is subject to the DBE Program, using their own work force, and without the use of subcontractors will be required to demonstrate good-faith efforts by submitting information (when requested by the authority) sufficient for the authority to determine the following to effectuate a waiver of applicable BOPP requirements:

- (1) That it is a normal business practice of the contractor/vendor to perform the elements of the contract with its own work forces without the use of subcontractors;
- (2) That the technical nature of the proposed project does not facilitate subcontracting nor any significant supplier opportunities in support of the project; and/or;
- (3) That the contractor/vendor in fact has demonstrated its capabilities to perform the elements

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of the contract with its own work forces without the use of subcontracts.

(b) The authority may also require the same demonstration by contractors/vendors who propose to perform a contract with the authority that is subject to the SBE Program.

(c) **Payment Of Subcontractors In A Timely Manner:** Each contract the authority signs with a prime contractor/vendor will also contain provisions with regard to the timely payment of subcontractors as required by 49 C.F.R. § 26.29. The following language is an example of the type of language to be included, however, such language may be subject to modification and approval by TxDOT:

The contractor agrees to pay its subcontractors for satisfactory performance of their contracts no later than 30 days from its receipt of payment from the authority. The contractor shall also promptly return any retainage payments to subcontractors within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the authority. This clause applies to payments to all subcontractors.

(d) **Reasonable Efforts To Use Local DBE/SBE Financial Institutions:** Prime contractors subject to the DBE Program will also be encouraged to make reasonable efforts to identify and use financial institutions owned and controlled by socially and economically disadvantaged individuals in their communities pursuant to 49 C.F.R. § 26.27.

(e) **Approval For Replacement of DBE:** A contractor must obtain approval from the authority to substitute another firm for a DBE firm listed on an approved commitment and demonstrate written justification for the substitution, for example, that the original firm is unable or unwilling to carry out the terms of the contract.

## **201.078 DBE Program**

The authority is required, as a condition of receiving federal financial assistance for transportation projects, to provide certain assurances that it will comply with 49 C.F.R. Part 26, which requires the creation of a DBE Program that applies to contracts, including roadway construction contracts and related purchases, funded in whole or in part with federal funds received from the United States Department of Transportation ("DOT"), including funds received through the Federal Highway Administration ("FHWA"), or funded in whole or in part with such federal funds received by the authority through TxDOT. To comply with the federal regulations, the authority may elect to adopt the federally approved TxDOT DBE Program pursuant to 49 C.F.R. § 26.45(c)(4) and the Recreational Trails Program Guidance (Revised 2 June 2000) of the DOT. The authority may agree to a Memorandum of Understanding ("MOU") between the authority, TxDOT and the FHWA concerning the authority's adoption and operation of its DBE program under TxDOT's DBE program for contracts involving federal assistance.

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## 201.079 Definitions

The following are definitions of terms used in this article based primarily on definitions found in 49 C.F.R. § 26.5:

- (1) Aspirational Goal: A level of SBE participation that the authority will strive to achieve which may be based upon a numeric formula or other milestones.
- (2) Availability: The calculated estimate of qualified small business enterprises in a particular trade and/or profession. In defining availability of small business enterprises, a common sense approach with respect to geographical basis, customs that apply to firms and logistics of timely completion of work orders are taken into consideration.
- (3) Bidder/Proposer: Any person, firm, partnership, corporation, association or joint venture as herein provided seeking to be awarded an contract, award or lease by a competitive process.
- (4) Business Enterprise: Any legal entity which is organized to engage in lawful commercial transactions and is actively engaged in such transactions as a means of livelihood, such as a sole proprietorship, partnership or corporation, but not a joint venture except as hereinafter provided.
- (5) Commercially Useful Function: Means the DBE/SBE is responsible for a distinct element of the work of a contract and actually manages, supervises, and controls the materials, equipment, employees, and all other business obligations related to the satisfactory completion of the contracted work.
- (6) Contract: An award by the authority whereby the authority expends or commits the expenditure of its funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing.
- (7) Contractor: One who participates through a contract or subcontract in a transportation construction project.
- (8) DBE Goal: A flexible target determined by the authority and/or TxDOT, in accordance with the requirements and formulas set forth in 49 C.F.R. Part 26, and applicable rules promulgated thereunder, based on estimates of the availability of qualified and certified disadvantaged business enterprises (“DBEs”) in the applicable marketplace, and known circumstances and conditions. In no case will a goal be construed as constituting a quota.
- (9) Disadvantaged Business: A minority-owned, woman-owned, or otherwise economically disadvantaged small business in general, used in this BOPP to refer to both DBEs and SBEs, as may be more particularly defined by certifying agencies.
- (10) Disadvantaged Business Enterprise (“DBE”): A for-profit small business enterprise:

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(A) which is at least 51.0 percent owned, as defined herein, by one or more Socially and Economically Disadvantaged Individual(s), or, in the case of any publicly owned business, at least 51.0 percent of the stock of which is owned by one or more Socially and Economically Disadvantaged Individual(s); and

(B) whose management and daily business operations are controlled, as defined herein, by one or more of the Socially and Economically Disadvantaged Individual(s) who own it; and

(C) which receives appropriate certification status through the appropriate federally-designated or approved DBE certification agency.

The Texas Unified Certification Program, administered by TxDOT, is the certifying agency for businesses within the state of Texas.

- (11) Good Faith Efforts: Efforts to achieve a goal or other requirements that, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the BOPP.
- (12) Joint Venture: An association of two or more persons, partnerships, corporations or any combination thereof, founded to carry on a single business activity, which is limited in scope and duration. The degree to which a joint venture may satisfy the stated DBE goal cannot exceed the proportionate interest of the DBE as a member of the joint venture in the work to be performed by the joint venture. For example, a joint venture for which the DBE contractor is to perform 50.0 percent of the contract work itself shall be deemed equivalent to having DBE participation of 50.0 percent of the work. DBE member(s) of the joint venture must have financial, managerial, or technical skills in the work to be performed by the joint venture.
- (13) Minority Business Enterprise (MBE): A business enterprise that is owned and controlled by one or more minority person(s). Minority persons include the ethnic categories listed under the definition of “Socially and Economically Disadvantaged Individuals” in this section. The MBE must also satisfy the owned and controlled provisions set forth in the definitions of “Disadvantaged Business Enterprise” and “Socially and Economically Disadvantaged Individuals.”
- (14) Prime Contractor: Any person, firm, partnership, corporation, association, or joint venture as herein provided which has been awarded an contract or agreement.
- (15) Professional Services: Those Services as defined by Chapter 2254, Professional Services Procurement Act, Government Code.
- (16) Race-and-Gender Conscious: Describes a measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.
- (17) Race-and-Gender Neutral: Describes a measure or program that is, or can be, used to assist all

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small businesses.

- (18) Small Business Concern: As defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business shall not include any business or group of businesses controlled by the same Socially and Economically Disadvantaged Individual(s) which has annual average gross receipts in excess of the standards established by the Small Business Administration's regulation under 13 C.F.R. Part 121 for a consecutive three-year period. However, no firm is considered small if, including its affiliates, it averages annual gross receipts in excess of \$16.6 million per year over the previous three fiscal years. The definition of "Small Business Concern" applies only to federal DBE certification, and not to the authority state SBE program set forth in Section 201.087.
- (19) Small Business Enterprise: A business is considered a "Small Business Enterprise" for purposes of the BOPP if it meets the definition of "small business concern" as set forth in Section 3 of the U.S. Small Business Act. This provision defines a "small business concern" as any business concern (including those limited to enterprises engaged in the business of production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries) which is independently owned and operated and which is not dominant in its field of operation. 13 C.F.R. § 121.201 sets forth the "size standards, " in either number of employees or average annual receipts, that define the maximum size that a concern, together with all of its affiliates, may be to be eligible for federal small business programs. The Small Business Administration organizes these specific size standards according to North American Industry Classification System (NAICS) Codes, as published in the Small Business Administration's "Table of Small Business Size Standards."
- (20) Socially and Economically Disadvantaged Individuals: As included in 49 C.F.R. Part 26, individuals who are citizens of the United States (or lawfully admitted permanent residents), and who are Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act, or individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. There shall be a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged, and DBE Program officials may also determine, on a case-by-case basis, that individuals who are not members of one of the following groups are socially and economically disadvantaged :
- (A) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

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- (B) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;
- (C) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
- (D) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma, Vietnam, Laos, Cambodia, Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, and the U.S. Trust Territories of the Pacific Islands, the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (E) “Subcontinent Asian Americans,” which include persons whose origins are from India, Pakistan and Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
- (F) “Women;” and
- (G) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- (21) Subcontractor: Any named person, firm, partnership, corporation, association or joint venture as herein provided identified as providing work, labor, services, supplies, equipment, materials or any combination of the foregoing, under contract with a prime contractor on a contract.
- (22) Vendor: One who participates in contracts with and/or procurements by the authority in a transportation construction project.
- (23) Women Business Enterprise (WBE): A business enterprise that is owned and controlled by one or more females. The WBE must also satisfy the owned and controlled provisions under the definition of “Disadvantaged Business Enterprise” in .

### **201.080 DBE Program Adoption.**

(a) This DBE Program is created pursuant to 49 C.F.R. Part 26 and applies only to procurements that are federally-assisted and only until such time that all funds from DOT have been expended. As a sub-recipient of federal funds through TxDOT, the authority may establish a distinct federal DBE Program, or may comply with the federal regulations by adopting the federally approved TxDOT DBE Program.

(b) In order to facilitate the administration of the federal DBE requirements, the authority, and TxDOT may enter into a Memorandum of Understanding (MOU) to establish the obligations and responsibilities of the authority, TxDOT and FHWA in each agency’s collective efforts to abide by and implement the policies and objectives of the federal DBE regulations. Should the authority

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adopt the TxDOT DBE Program, it will conduct its DBE Program in accordance with the MOU that is adopted by the board and incorporated herein for all purposes pursuant to 49 C.F.R. § 26.45(c)(4). If the MOU requirements are inconsistent with the DBE Program requirements, the MOU will govern.

## **201.081 DBE Certification**

The authority will ensure that only businesses certified as DBEs are allowed to participate as DBEs in its DBE Program. To be certified as a DBE, a business must meet the definition of Disadvantaged Business Enterprises as set forth in Section 201.079 and the certification standards set forth at 49 C.F.R. Part 26, Subpart D. The authority will recognize DBE certification by TxDOT, the Texas Unified Certification Program, and other agencies, to the extent approved by TxDOT to process applications for DBE certification.

## **201.082 DBE Goal Setting/DBE Annual Goal :**

(a) Process For Establishing DBE Goal: The authority will establish a DBE participation goal following the process set forth in 49 C.F.R. § 26.45 or the MOU. The authority will not use quotas in any way in the administration of this article.

(b) Race- and Gender-Neutral And Race- and Gender-Conscious Participation: The authority will meet the maximum feasible portion of its overall goal by using race- and gender-neutral efforts of facilitating DBE participation. The authority will adjust the estimated percentage of race- and gender-neutral and race- and gender-conscious participation as needed to reflect actual DBE participation and will track and report race- and gender-neutral and race- and gender-conscious participation separately. For reporting purposes, race- and gender-neutral DBE participation is defined in this BOPP.

(c) Race- and Gender-Neutral Efforts To Achieve Annual DBE Goals: Race-and gender-neutral DBE participation exists when a DBE:

- (1) wins a prime contract through customary competitive procurement procedures;
- (2) is awarded a subcontract on a prime contract that does not carry a DBE goal; or
- (3) is awarded a subcontract on a prime contract that carries a DBE goal if the prime contractor awarded the subcontract without regard to DBE status.

## **201.083 DBE Contract Goals**

Contract goals may be established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the authority's overall DBE goal that is not projected to be met through the use of race- and gender-neutral efforts. Contract goals may be set only if the authority determines that it will not meet its annual overall DBE participation goal by race and



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gender neutral efforts, and that the contract at issue will have subcontracting opportunities. In this event, contract goals shall be set in accordance with 49 C.F.R. § 26.51(e), (f) and (g) and race- and gender-neutral efforts shall be increased to achieve the overall goal. If a contract goal is set, the contract must include provisions requiring the contractor to make good faith efforts to achieve the contract goal and may only be awarded to a bidder who agrees to do so. The authority need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBE's to perform the particular type of work). The authority will express its DBE contract goals as a percentage of the total contract, including both federal and any other funds; however, for purposes of reporting to the U.S. DOT, emphasis will be placed on the percentage of federal funds that were ultimately paid to DBEs.

## **201.084 Good Faith Effort**

The authority will make a good faith effort to meet or exceed the goal of this DBE Program, using good faith efforts and the race- and gender-neutral methods described in this article. Contractors will be required to make good faith efforts to obtain DBE participation as described in Appendix A to 49 C.F.R. Part 26 and the TxDOT DBE Program, if applicable. The authority will grant no preferences to DBEs in the bidding/contracting process.

## **201.085 DBE Contractor/Vendor Obligations**

(a) Potential prime contractors on projects involving federal funds will be notified of this section and must meet the following standards:

(b) Compliance With This Program: Authority contracts that involve federal financial assistance will include a contract provision requiring the contractor:

- (1) to encourage the use of DBEs in subcontracting and material supply activities;
- (2) to prohibit discrimination against DBEs; and
- (3) to provide a method of reporting race-and gender neutral DBE participation.

## **201.086 Adherence To Equal Opportunity**

When federal financial assistance is involved, each contract the authority signs with a contractor and each subcontract between a prime contractor and a subcontractor will include the following assurance as required by 49 C.F.R. § 26.13:

The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this

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contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

### **201.087 SBE Program**

(a) The SBE Program is created pursuant to Section 370.183, Transportation Code, and applies to all contracts and procurements that do not involve federal financial assistance (i.e. contracts and procurements funded strictly by state, local or private means, or any combination thereof).

(b) The SBE Program applies to contracts and procurements that do not involve federal financial assistance. In accordance with Section 370.183, Transportation Code, the Procurement Policy, and consistent with general law, the authority will:

- (1) set goals for the award of contracts to disadvantaged and small businesses and attempt to meet the goals;
- (2) attempt to identify disadvantaged and small businesses that provide or have the potential to provide supplies, materials, equipment, or services to the authority; and
- (3) give disadvantaged and small businesses full access to the authority's contract bidding process, inform the businesses about the process, offer the businesses assistance concerning the process, and identify barriers to the businesses' participation in the process.

### **201.088 SBE Certification**

(a) The authority will require SBEs to be certified according to its standards, which may vary from the DBE certification. The authority will recognize as certified SBEs certifications for small, minority-owned, women-owned, historically underutilized, and disadvantaged business enterprises. Such certifications may be provided by one or more of the following agencies or entities: TxDOT; the Texas Unified Certification Program for Federal DBE Certification; the Texas Building and Procurement Commission's Historically Underutilized Business ("HUB") Program Certification; or any other recognized certification that the authority finds acceptable.

(b) Firms that desire or are required by the authority to be certified for SBE participation must complete and submit a SBE Status Certification Affidavit which identifies the status certification and the group providing the certification. The MWSBE status certification is effective for as long as it is effective with the certifying entity, unless terminated earlier by the authority.

### **201.089 SBE Goals**

(a) The authority will identify overall SBE aspirational goals for the construction, professional services, consulting services and other goods and services procurements. The aspirational goal may generally establish a level of participation that the authority will strive to achieve. The aspirational goal may be based upon a numeric formula and/or based on other factors. During the process of

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developing SBE goals, the authority may review and consider information on the availability of SBEs in the authority's applicable marketplace, as well as any other information and data which the authority believes is pertinent to goal setting.

(b) The overall SBE aspirational goal(s) may be established or reaffirmed on an annual basis and will reflect the authority's commitment to facilitate opportunities for the participation of small business enterprises in the authority procurement process and awards.

(c) The goals may be expressed as a broad and general aspiration, as a percentage of the total estimated dollar amount of all contracts and subcontracts to be awarded during the applicable fiscal year, or as a specific percentage of the dollar amount on a given contract. The goal may reflect the authority's estimate of overall SBE participation that is attainable given available authority SBE resources and the performance of the authority in its efforts to achieve previous goals under the Program.

(d) If contract-specific goals are established, no contract will be executed until the lowest responsible bidder/proposer has achieved or demonstrated an acceptable good-faith effort toward achievement of the SBE goal. If goals are established and are not met, no sanctions will be recommended or imposed provided the successful bidder/proposer can fully demonstrate that he/she made an acceptable good-faith effort, as defined by the authority, to achieve the goals.

### **201.090 SBE Contractor/Vendor Obligations**

All contracts and specification packages and requests for bids or proposals will incorporate the following provisions specifically or by reference :

- (1) It is the policy of the board that disadvantaged and small businesses will have the maximum practicable opportunity to participate in the awarding of contracts and related subcontracts.
- (2) The bidder, proposer, contractor or vendor agrees to employ good-faith efforts to carry out this policy through award of subcontracts to small or disadvantaged business enterprises to the fullest extent consistent with the efficient performance of the contract, and/or the utilization of SBE suppliers where feasible. Authority contractors are expected to make a good faith effort to solicit bids for subcontractors/suppliers from available SBEs.
- (3) The bidder, proposer, contractor or vendor specifically agrees to comply with all applicable provisions of the SBE Program, and to include federal requirements when applicable.
- (4) The contractor/vendor will maintain records, as specified in his/her contract, showing:
  - (A) subcontract/supplier awards, specifically to small business enterprises;
  - (B) specific efforts to identify and award such contracts to small business enterprises; and,

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- (C) submit, when requested, copies of executed contracts to establish actual SBE participation and how much DBEs were paid.
- (5) The contractor/vendor agrees to submit periodic reports of subcontract and/or supplier awards to small business enterprises in such form and manner, and at such time, as the authority shall prescribe and will provide access to books, records and accounts to authorized officials of the authority, state or federal agencies for the purpose of verifying SBE participation and good-faith efforts to carry out this SBE policy. All contractors may be subject to a post-contract SBE audit. Audit determination(s) may be considered and have a bearing in the evaluation of a contractor's good-faith efforts on future contracts.
  - (6) The contractor/vendor will appoint an official or representative knowledgeable as to this Policy and Program to administer and coordinate the contractor's efforts to carry out this SBE policy.
  - (7) Where possible and/or practical, all vendors and/or contractors will make good-faith efforts to subcontract and meet the SBE goal. Contractors may be required to provide documentation demonstrating that they have made good-faith efforts, as defined by the authority, in attempting to do so by submitting an acceptable SBE Utilization Statement. Bidders are required to satisfy applicable SBE Program requirements prior to the award of contract. Bidders that fail to meet these requirements will be considered non-responsive or in non-compliance.
  - (8) Vendors or contractors will report any changes in proposed or actual SBEs, and will make good-faith efforts to replace SBE subcontractors or subconsultants unable to perform on the contract with another SBE.
  - (9) Failure or refusal by a bidder, proposer, contractor or vendor to comply with the SBE provisions herein or any applicable provisions of the SBE Program, either during the bidding process or at any time during the term of the contract, shall constitute a material breach of contract whereupon the contract, at the option of the authority, may be canceled, terminated or suspended in whole or in part; and, the contractor may be debarred from further contracts with the authority as a non-responsible contractor.

### **201.091 Compliance With Program**

The BOPP Liaison Officer will monitor compliance by all prime contractors with the requirements under these Programs, implement appropriate mechanisms to ensure compliance by all program participants, and verify that the work committed to disadvantaged and small businesses is actually performed by the disadvantaged and/or small business.

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## **201.092 Claims of Program Violations**

(a) Allegations about violations and/or abuse should be made in writing and identify the person making the allegation. The BOPP Liaison Officer will review the information presented and take whatever steps he or she determines to be appropriate under the circumstances to resolve the issues raised by the allegation. The BOPP Liaison Officer may conduct an investigation of the allegations. The authority cannot assure complete confidentiality in conducting its investigation, which may require the disclosure of information to other governmental agencies or affected third parties. Allegations that are made anonymously or verbally will be reviewed as is deemed appropriate. It may not be possible to investigate an issue if insufficient information is provided.

(b) Notification of TxDOT, DOT and Other Agencies: The authority will notify TxDOT, FHWA, the DOT and other appropriate agencies of any false, fraudulent, or dishonest conduct in connection with the federal DBE Program, so that TxDOT and/or DOT can take the necessary steps to investigate the alleged conduct as provided in 49 C.F.R. § 26.109.

## **201.093 Compliance And Severability Clause**

(a) It is the intent of the authority to comply with all applicable federal and state laws and regulations and to comply with the TxDOT DBE Program, where applicable. The BOPP will not apply to contracts that are subject to overriding state or federal laws, regulations, policies or guidelines, including those regarding small, minority-owned, or woman-owned businesses. In the event that an apparent conflict arises between the language contained in this Program and federal, state or local law or ordinance, the language will be construed so as to comply with the federal, state or local law or ordinance.

(b) Nothing in this Business Opportunity Program or Policy should be construed as requiring a set-aside or mandatory quota. Any questions regarding the authority's Business Opportunity Program should be directed to the BOPP Liaison Officer.

## **201.094 Effective Date**

This Business Opportunity Program and Policy (BOPP) shall become effective on November 5, 2003, and apply to any contract or procurement executed thereafter. The authority shall approve any amendment, modification, or replacement of this BOPP by resolution, with such resolution including either an explicit repeal of specific sections and provisions of this BOPP, or a replacement of this BOPP with entirely new provisions.

## **Article 9. SOLICITATION OF EMPLOYEE APPLICANTS**

### **201.095 Solicitation Of Employee Applicants**

In conjunction with efforts to solicit applicants for available employment positions with the authority, authority staff shall follow the solicitation and application guidelines set forth in this article in order to

- (1) provide notice of the employment position opening,
- (2) provide a method of allowing potential applicants to receive detailed information regarding particular criteria and requirements for the individual employment position, and
- (3) provide information related to any application deadlines or extensions of deadlines.

### **201.096 Solicitation of Applicants for Professional or Managerial Positions.**

(a) In order to reach the largest potential pool of qualified applicants for employment positions that are either professional or managerial in nature, authority staff shall post information regarding potential employment opportunities, detailed position descriptions, and requirements for applications for professional or managerial staff positions in the following manner:

(b) Notice of employment position openings with the authority shall be published on the authority's website, and shall include:

- (1) employment position title;
- (2) a general description of position duties and responsibilities;
- (3) educational and prior work experience requirements;
- (4) the statement that the authority is an equal opportunity employer;
- (5) materials required to be submitted for position applications;
- (6) the physical mailing address and/or e-mail address for submitting application materials; and
- (7) the telephone number for questions regarding the employment position description and/or application process.

(c) Notice of employment position openings with the authority may be published in the official newspaper of the authority, the Texas Register, trade journals, and other sources that the authority determines are appropriate for contacting potentially qualified applicants. In addition, the authority may, but shall not be required to, solicit potential applicants by direct mail, telephone, or via the Internet.

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(d) The application deadline specified in the notice of employment position opening may be extended if the executive director determines that the extension is in the best interest of the authority.

### **201.097 Solicitation of Administrative or Clerical Applicants.**

(a) Authority staff shall post information regarding potential employment opportunities, detailed position descriptions, and requirements for application for administrative or clerical staff positions in the following manner:

- (1) Notice of employment position openings with the authority shall be published on the authority's website, and shall include:
- (2) employment position title;
- (3) a general description of position duties and responsibilities;
- (4) educational and prior work experience requirements;
- (5) the statement that the authority is an equal opportunity employer;
- (6) materials required to be submitted for position applications;
- (7) the physical mailing address and/or e-mail address for submitting application materials; and
- (8) the telephone number for questions regarding the position description or application process. authority staff may include any and all of the required information listed in (1)-(7) above in a standard employment application form issued by the authority.
- (9) Notice of employment position openings with the authority may be published in the official newspaper of the authority and in such other places that the authority determines are appropriate for contacting potentially qualified applicants. In addition, the authority may, but shall not be required to, solicit potential applicants by direct mail, telephone, or via the Internet.

(b) The application deadline specified in the notice of employment position opening may be extended if the executive director determines that the extension is in the best interest of the authority.

**Article 10. DISPOSITION OF SALVAGE OR SURPLUS PERSONAL PROPERTY**

**201.098 Sale by Bid or Auction.**

The authority may periodically sell the authority's salvage or surplus personal property by competitive bid or auction. Salvage or surplus personal property may be offered as individual items or in lots at the authority's discretion.

**201.099 Trade-In for New Property.**

Notwithstanding subsection 201.098, the authority may offer salvage or surplus personal 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.

**201.100 Heavy Equipment.**

If the salvage or surplus personal 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).

**201.101 Sale to State, Counties, etc.**

Notwithstanding subsection 201.098 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 personal property for sale at auction or by competitive bidding.

**201.102 Failure to Attract Bids.**

If the authority undertakes to sell property under subsection 201.098. 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.

**201.103 Terms of Sale.**

All salvage or surplus personal 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



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discretion.

## **201.104 Rejection of Offers.**

The authority or its designated representative conducting a sale of salvage or surplus personal 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.

## **201.105 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 official newspaper of the authority, or any other newspaper of general circulation in the Jurisdiction 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.

## **Article 11. DISPOSITION OF SURPLUS REAL PROPERTY**

### **201.106 Authority to Sell or Transfer Real Property.**

The authority may sell or transfer any interest in real property, including project right-of-way, in accordance with this article 11. Real property may be sold or transferred only if the authority's Board of Directors determines that 1) the property is no longer needed for authority purposes; 2) the sale of the property will not negatively impact the safe and efficient operation or maintenance of authority facilities; and 3) the sale of the property will not impair the preservation of the authority's real property for existing or future transportation-related uses planned or identified by the authority. All sales of surplus real property under this article 11 must be approved by the Board of Directors.

### **201.107 Determination of Fair Market Value.**

The authority's Board of Directors must determine, with input from authority staff and consultants, the fair market value of surplus real property. The Board of Directors may not approve a sale under this article 11 unless the authority receives compensation at least equal to the fair market value of the property, except as provided in subsection 201.108 and 201.113.

### **201.108 Sale to a Governmental Entity.**

Before offering surplus real property for sale to the public, the authority shall offer one or more governmental entities with authority to condemn the property in whose jurisdiction the real property is located the first opportunity to purchase the property for use for a public purpose. The authority shall send a letter to one or more governmental entities with authority to condemn the property in whose jurisdiction the real property is located, along with a sketch or map of the property, advising the governmental entity that it has the first opportunity to purchase the right of way for use for a public purpose and informing it that it has thirty (30) days to notify the authority in the event of its intent to purchase the property. Notwithstanding subsection 201.107 the authority may waive all or a portion of payment for real property transferred to a governmental entity under this section if:

- (a) the estimated cost of future maintenance on the property equals or exceeds the fair market value of the property; or
- (b) the property is a project right-of-way and the governmental entity assumes or has assumed jurisdiction, control, and maintenance of the right-of-way for public road purposes; provided, however, that the grant transferring the property must contain a reservation providing that if property ceases to be used for public road purposes, that real property shall immediately and automatically revert to the authority.

### **201.109 Sale to Abutting Landowner.**

If a one or more governmental entities with authority to condemn the property in whose jurisdiction the real property is located does not express an intent to purchase the property within thirty (30) days of receipt of the letter required under subsection 201.108, the authority shall offer the real property for sale to the abutting landowner(s) by sending the landowner(s) a letter advising them of

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their opportunity to purchase the property and informing them that they have thirty (30) days to notify the authority in the event of their intent to purchase the property. If more than one abutting landowner expresses an interest in purchasing the property, the authority shall sell the property to the landowner who offers the highest price.

### **201.110 Sale to General Public.**

If the abutting land owner(s) do not express their intent to purchase the surplus real property within thirty (30) days of receipt of the letter required under subsection 201.109, the authority may offer the real property for sale to the public by sealed bid or public auction. If real property is sold by sealed bid:

- (a) The authority may require that each bidder pay to the authority a bid deposit in an amount and form determined by the authority.
- (b) The authority shall apply the bid deposit to the purchase price of the property for the bid accepted by the authority.
- (c) If for any reason the bidder fails to complete the purchase before the 61st day after the date on which the bidder receives written notice that the authority is ready to complete the sale, the bid deposit is forfeited.
- (d) The authority shall refund the bid deposit if the authority is unable to complete the sale.

### **201.111 Public Notices of Sale.**

The authority shall publish notice of a sale of real property to the general public in a newspaper of general circulation in the county in which the property is located once a week for three consecutive weeks, with the final publication occurring not later than the 20th day before the date of the sale. The authority may, but shall not be required to, provide additional notices of a sale by direct mail, telephone, or via the internet.

### **201.112 Acceptance of Offers.**

If the Executive Director recommends to the Board of Directors that the highest conforming bid be accepted for a sale under section 201.110, the Board of Directors will either accept or reject the bid. If the Board of Directors accepts the bid, the Executive Director shall be authorized to execute a proper instrument conveying the authority's interest in the real property.

### **201.113 Rejection of Offers.**

The authority may reject any offer to purchase real property if the Executive Director or the Board of Directors finds, in their sole discretion, the rejection to be in the best interests of the authority.

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### **201.114 Property Acquired by Eminent Domain.**

Notwithstanding the other requirements of this article 11, the disposition of property acquired by the authority through eminent domain is subject to state law, including but not limited to the requirements of Chapter 21 of the Texas Property Code.

### **201.115 Rights of Public Utility or Common Carrier.**

If the authority sells, conveys, or surrenders possession of real property that is being used by a public utility or common carrier having a right of eminent domain for right-of-way and easement purposes, the sale, conveyance, or surrender of possession of the real property is subject to the right and continued use of the public utility or common carrier.

### **201.116 Expenses.**

A person requesting the sale of an interest in property or the grantee in a deed issued under this article 11 shall pay expenses incurred by the authority, including handling, appraising, advertising the sale, or recording of documents. The authority may not process a request or deliver a deed until the expenses under this subsection 201.116 are paid.

## Article 12. LEASE OF TRANSPORTATION PROJECT ASSETS

### 201.117 Transportation Project Asset.

For purposes of this article 12, “transportation project asset” means an interest in real property that is held or controlled by the authority for an authority purpose.

### 201.118 Lease Authority.

- (a) The authority may lease a transportation project asset, part of a right-of-way, or airspace above or underground space below a transportation project if the authority determines that the interest to be leased will not be needed for an authority purpose during the term of the lease.
- (b) The lease may be for any purpose that is not inconsistent with applicable transportation project use.
- (c) The authority shall charge not less than fair market value for the transportation project asset, payable in cash, services, tangible or intangible property, or any combination of cash, services, or property.
- (d) The authority may authorize exceptions to the charges under subsection (c) for:
  - (1) the lease of a transportation project asset to a governmental entity;
  - (2) the lease of a transportation project asset to a public utility provider; or
  - (3) a lease for a social, environmental, or economic mitigation purpose;

### 201.119 Method of Awarding Lease.

- (a) Leases will be awarded on a sealed bid basis with the authority having the right to reject all bids.
- (b) Notwithstanding subsection (a), the authority may, in its sole discretion, negotiate a lease of a transportation project asset directly with another governmental entity.
- (c) When a lease is awarded on a sealed bid basis, notice of the proposed lease will be advertised at least 20 days prior to the bid opening. The notice will be published once a week for three consecutive weeks prior to bid opening in a newspaper of general circulation in the county in which the transportation project asset is located.

**Chapter 3: Conflict of Interest for Policy for Consultants and Financial Team Members**

**Subchapter A. CONFLICT OF INTEREST POLICY FOR CONSULTANTS**

**301.001 Purpose**

The authority anticipates utilizing outside consultants for a significant portion of the work necessary to plan, study, and develop transportation projects. The authority also anticipates developing projects through a variety of means, including through private sector involvement and contracts which combine various elements of the work necessary for design, construction, financing, operation and/or maintenance of projects. The authority recognizes that many of the same individuals and firms that provide services to it may also have, or previously have had, some business relationship with individuals and firms seeking to do business with the authority. To assure that any such relationships are fully disclosed and so as to assure that the impartiality of the individuals and firms working for the authority is not compromised, individuals and firms working for the authority, and those seeking to do business with the authority, must adhere to the following procedures:

**301.002 Key Personnel and Firms**

The authority shall maintain, on its website and in the records of the authority, a list of key personnel and firms performing work for the authority. Any individual or firm receiving more than \$10,000 in compensation for goods and services rendered to the authority during the preceding 12 months, as well as any newly hired individual or firm expected to be paid more than \$10,000 in a 12 month period, shall be included on that list.

**301.003 Disclosure of Business Relationship**

(a) Any individual, firm, or team, including individual team members, submitting a proposal, including an unsolicited proposal and a response to a solicited proposal, to the authority to perform work for the authority shall disclose in its submittal the existence of any current or previous (defined as one terminating within 12 months prior to submission of the proposal) business relationship with any of the authority's key personnel. The disclosure shall include information on the nature of the relationship, the current status, and the date of termination or expected termination, if known, of the relationship. Failure to make the disclosure required in this subsection is grounds for rejection of the proposal and disqualification from further consideration for the project or work which is the subject of the proposal.

(b) Separate and apart from the disclosure required to be made by proposers under subsection (a), any key personnel of the authority who are requested to participate in any way in the review of a proposal, the procurement of goods and services leading to a proposal, or the supervision of work

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to be performed pursuant to a proposal, must disclose the existence of any current or previous business relationship with any individual, firm, or team, including team members, making a proposal to provide goods or services or a proposal to perform work to be supervised. Failure to make the disclosure required in this subsection is grounds for termination of work by the key personnel failing to make the disclosure. Disclosures required under this subsection shall be made within three business days of receipt of information concerning the identity of a proposer to the authority's general counsel in accordance with Section 301.005, unless the disclosure is required of the general counsel, in which case disclosure shall be made to the executive director.

### **301.004 Submittal of Form**

For any disclosures required under Section 301.003, the affected key personnel shall complete and submit the form attached hereto as Appendix 1. (Submittal of such form shall be sufficient to constitute the disclosure required under Section 301.033.) Completion of the required information is necessary to provide the authority with information to assess the nature of the prior or current business relationships, the role of individuals and firms involved, internal safeguards which may be implemented by the key personnel to protect against access to, or disclosure of, information, and the potential for the prior or current business relationship to compromise the independence of the affected key personnel.

### **301.005 Executive Committee Decision**

The authority's general counsel shall be responsible for compiling and presenting to the Executive Committee information concerning all conflict of interest disclosures (e.g., those contained in proposals and those made by key personnel). The Executive Committee shall determine whether to permit the affected key personnel to continue its work on the proposal or the work giving rise to the conflict, and if such work is permitted to continue, the safeguards to be implemented as a condition of the continuation. If continuation of work is approved subject to the implementation of safeguards, failure to implement and maintain those measures is grounds for termination of that work and any further work for the authority. If the Executive Committee does not approve of the continuation of work by the key personnel, the key personnel shall immediately cease any work and shall turn over all records concerning such work to the authority.

### **301.006 Amendments**

These policies and procedures may be amended or modified at any time by action of the board. Key personnel and proposers seeking to do business with the authority are responsible for complying with these policies and procedures as amended from time to time.

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## Subchapter B. CONFLICT OF INTEREST POLICY FOR FINANCIAL TEAM MEMBERS

### **301.007 Purpose**

The authority anticipates utilizing outside consultants for a significant portion of the work necessary to develop financial plans for the financing of specific authority projects and for advice concerning the overall management of the authority's financial affairs. The authority also anticipates developing projects through a variety of means, including through private sector involvement and contracts which combine various elements of the work necessary for design, construction, financing, operation and/or maintenance of projects. The authority recognizes that many of the same individuals and firms that provide financial planning and advisory services to it may also have, or previously have had, some business relationship with individuals and firms seeking to do business with the authority. To assure that any such relationships are fully disclosed and so as to assure that the impartiality of the individuals and firms working for the authority on financial matters is not compromised, individuals and firms working for the authority, and those seeking to do business with the authority, must adhere to the procedures established by this subchapter.

### **301.008 Key Financial Personnel and Firms**

The authority shall maintain, on its website and in the records of the authority, a list of key financial personnel and firms performing work for the authority. At a minimum, this group will include the authority's financial advisor(s), bond counsel, accountants and auditors, and investment banking firms which are part of an underwriting syndicate for any authority project. Other individuals or firms may be classified as authority key financial personnel at the sole discretion of the authority.

### **301.009 Disclosure by Proposers**

Any individual, firm, or team (including individual team members) submitting a proposal (including an unsolicited proposal and a response to a solicited proposal) to the authority to perform work for the authority shall disclose in its submittal the existence of any current or previous (defined as one terminating within 12 months prior to submission of the proposal) business relationship with any of the authority's key financial personnel. The disclosure shall include information on the nature of the relationship, the current status, and the date of termination, or expected termination, if known, of the relationship. Failure to make the disclosure required in this section is grounds for rejection of the proposal and disqualification from further consideration for the project or work which is the subject of the proposal.

### **301.010 Disclosure by Key Financial Personnel**

Separate and apart from the disclosure required to be made by proposers under Section 301.009, any key financial personnel of the authority must disclose the existence of any current or previous



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business relationship with any individual, firm, or team, including team members, making a proposal to provide goods or services or a proposal to perform work to be supervised. Failure to make the disclosure required in this section is grounds for termination of work by the key financial personnel failing to make the disclosure. Disclosures required under this section shall be made to the authority's general counsel within three business days of receipt of information from the authority concerning the identity of a proposer, including its team members and known subconsultants. Disclosures shall be made in accordance with Section 301.011.

### **301.011 Form for Disclosure**

For any disclosures required under this subchapter, the affected key financial personnel shall complete and submit the form attached hereto as Appendix 2. Submittal of such form shall be sufficient to constitute the disclosure required under Section 301.010. Completion of the required information is necessary to provide the authority with information to assess the nature of the prior or current business relationships, the role of individuals and firms involved, internal safeguards which may be implemented by the key financial personnel to protect against access to, or disclosure of, information, and the potential for the prior or current business relationship to compromise the independence of the affected key financial personnel.

### **301.012 Participation Ineligibility**

Except for investment banking firms, key financial personnel shall not be permitted to be part of a team (as a partner, subconsultant, or in any other capacity) proposing or competing to develop a transportation project through a comprehensive development agreement. Investment banking firms shall not be permitted to participate in a syndicate of firms designated by the authority to participate in the financing of a project and also be part of a team (as a partner, subconsultant, or in any other capacity) proposing or competing to develop that same project (or a variation of that project). Investment banking firms may be part of a team proposing or competing to develop a project for which they have not been designated as part of the underwriting syndicate for that project by the authority. These prohibitions are intended to preclude key financial personnel from working both for the authority and for (or with) entities seeking to do business with the authority in a manner which would result in or create the appearance of conflicting loyalties in financial matters.

### **301.013 Executive Committee Decision**

The authority's general counsel shall be responsible for compiling and presenting to the Executive Committee information concerning all conflict of interest disclosures (e.g., those contained in proposals and those made by key financial personnel). The Executive Committee shall determine whether to permit the affected key financial personnel to continue its work on the proposal or the work giving rise to the conflict, and if such work is permitted to continue, the safeguards to be implemented as a condition of the continuation. If continuation of work is approved subject to the implementation of safeguards, failure to implement and maintain those measures is grounds for

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termination of that work and any further work for the authority. If the Executive Committee does not approve of the continuation of work by the key financial personnel, the key financial personnel shall immediately cease any work and shall turn over all records concerning such work to the authority.

### **301.014 Amendment**

These policies and procedures may be amended or modified at any time action of the board. Key financial personnel and proposers seeking do business with the authority are responsible for complying with these policies and procedures as amended from time to time.

WEBB COUNTY-CITY OF LAREDO RMA POLICY CODE

301.015 APPENDICES

APPENDIX 1: CONFLICT OF INTEREST DISCLOSURE FORM FOR CONSULTANTS

DISCLOSURE STATEMENT FORM

This Disclosure Statement outlines potential conflicts of interest as a result of a previous or current business relationship between the undersigned individual (and/or the firm for which the individual works) and an individual or firm submitting a proposal or otherwise under consideration for a contract associated with \_\_\_\_\_. Section I of this Disclosure Statement Form describes the potential conflicts of interest. Section II of this Disclosure Statement Form describes the proposer’s management plan for dealing with the potential conflicts of interest as described in Section I of this form. This Disclosure Statement is being submitted in compliance with the Webb County-City of Laredo Regional Mobility Authority’s Conflict of Interest Policy for Consultants. The undersigned acknowledges that approval of the proposed management plan is within the sole discretion of the Webb County-City of Laredo Regional Mobility Authority.

SECTION I. Description of Potential Conflicts of Interest.

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SECTION II. Management Plan for Dealing with Potential Conflicts of Interest.

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SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME AND TITLE: \_\_\_\_\_

REPRESENTING: \_\_\_\_\_

**APPROVED BY THE WEBB COUNTY-CITY OF LAREDO REGIONAL MOBILITY AUTHORITY:**

WEBB COUNTY-CITY OF LAREDO RMA POLICY CODE

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME AND TITLE: \_\_\_\_\_

**APPENDIX 2: CONFLICT OF INTEREST DISCLOSURE FORM FOR  
KEY FINANCIAL PERSONNEL**

**DISCLOSURE STATEMENT FORM**

This Disclosure Statement outlines potential conflicts of interest as a result of a previous or current business relationship between the undersigned individual (and/or the firm for which the individual works) and an individual or firm submitting a proposal or otherwise under consideration for a contract associated with \_\_\_\_\_.

Section I of this Disclosure Statement Form describes the potential conflicts of interest. Section II of this Disclosure Statement Form describes the proposer's management plan for dealing with the potential conflicts of interest as described in Section I of this form. This Disclosure Statement is being submitted in compliance with the Webb County-City of Laredo Regional Mobility Authority's Conflict of Interest Policy for Financial Team Members. The undersigned acknowledges that approval of the proposed management plan is within the sole discretion of the Webb County-City of Laredo Regional Mobility Authority.

**SECTION I. Description of Potential Conflicts of Interest.**

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**SECTION II. Management Plan for Dealing with Potential Conflicts of Interest.**

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SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME AND TITLE: \_\_\_\_\_

REPRESENTING: \_\_\_\_\_

**APPROVED BY THE WEBB COUNTY-CITY OF LAREDO REGIONAL MOBILITY  
AUTHORITY:**

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME AND TITLE: \_\_\_\_\_

# **WEBB COUNTY-CITY OF LAREDO REGIONAL MOBILITY AUTHORITY**

## **REQUEST FOR PROPOSALS TO PROVIDE FINANCIAL ADVISORY SERVICES**

RFP Issue Date: June 15, 2015

Responses Due: 3:00 p.m. C.S.T. July 24, 2015  
Webb County-City of Laredo Regional Mobility Authority  
c/o Juan Cruz & Associates, LLC  
216 W. Village Blvd., Suite 202  
Attn: Juan Cruz

**WEBB COUNTY-CITY OF LAREDO  
REGIONAL MOBILITY AUTHORITY  
REQUEST FOR PROPOSALS  
TO PROVIDE  
FINANCIAL ADVISORY SERVICES**

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**WEBB COUNTY-CITY OF LAREDO  
REGIONAL MOBILITY AUTHORITY  
REQUEST FOR PROPOSALS TO PROVIDE  
FINANCIAL ADVISORY SERVICES**

**I. INTRODUCTION**

The Webb County-City of Laredo Regional Mobility Authority (the “WC-CL RMA”), a regional mobility authority and political subdivision of the State of Texas governed by the provisions of Texas Transportation Code, Chapter 370 (the “RMA Act”), is requesting information from qualified firms interested in providing financial advisory services to the WC-CL RMA.

Certain information is necessary to evaluate each interested firm's ability to provide the desired services. As a result, interested firms are asked to submit a response setting forth their qualifications for the anticipated work, and may, at the WC-CL RMA’s sole option, be asked to make an oral presentation. All firms providing a response to this Request for Proposals (“RFP”) are hereinafter collectively referred to as the “Proposers” or, individually, as a “Proposer.”

**II. DESCRIPTION OF THE WC-CL RMA AND TERM OF AGREEMENT**

The WC-CL RMA is an independent governmental agency created by the Texas Transportation Commission pursuant to the joint request of Webb County and the City of Laredo. Its formation was approved in February 27, 2014. The WC-CL RMA is governed by a nine member Board of Directors, with four members of the board being appointed by the Webb County Commissioners Court, four members of the board being appointed by the Laredo City Council, and the presiding officer being appointed by the Governor. The WC-CL RMA’s purpose is to provide the City of Laredo and Webb County with opportunities to accelerate needed transportation projects which will improve mobility, enhance safety, support economic development, and improve the quality of life for residents of the region, under the direction of a local board making local choices about local mobility priorities.

The WC-CL RMA is requesting statements of interest and qualifications from professional financial advisory firms to provide financial advisory services to the Authority. Firms responding must demonstrate a history of providing expert advice to governmental agencies, including but not limited to investment of available assets in legally permissible interest-yielding accounts and paper, issuance and servicing of tax-exempt debt, analysis of the financial feasibility of potential transportation projects (as defined in the RMA Act), and previous involvement in financing of transportation infrastructure.



The resulting agreement with the financial advisor shall provide for a five (5) year term, subject to the WC-CL RMA's periodic review, approval and satisfaction with the financial advisor's performance, and will be subject to termination by the WC-CL RMA at any time upon a stipulated notice period, or extended upon agreement of both parties.

### **III. REQUIREMENTS AND DEADLINES**

This RFP details the information that will enable the WC-CL RMA to properly evaluate the abilities of each Proposer. Responses should be limited to not more than thirty (30) pages, and only respond directly to the material requested.

Questions arising from the RFP must be directed (via email or in writing) to:

Webb County-City of Laredo Regional Mobility Authority  
c/o Locke Lord LLP  
600 Congress Avenue, Suite 2200  
Austin, Texas 78701  
Attn: Brian Cassidy  
Email: bcassidy@lockelord.com

Questions must be received by 5:00 p.m., C.S.T. on July 15, 2015.

Responses to the RFQ should be delivered by 3:00 PM C.S.T. on July 24, 2015 as follows:

7 copies (and 1 additional copy on CD-ROM or flash drive) to:

Webb County-City of Laredo Regional Mobility Authority  
c/o Juan Cruz & Associates, LLC  
216 W. Village Blvd., Suite 202  
Attn: Juan Cruz

One copy of the response shall be marked original and bear all original signatures. The other six (6) may be copies.

### **IV. RESPONSE CONTENT**

The issues which follow request information that a selection committee will utilize to evaluate responses to provide financial advisory services to the WC-CL RMA. Each issue should be specifically addressed. The length of entire response shall be limited to thirty (30) pages, single-spaced. Additional support, such as resumes, schedules, charts, and tables may be provided as attachments in addition to the thirty (30) pages allowed for the response, however, brevity is requested:

A. Specific Issues

1. Name, address, telephone number, fax number, e-mail address, and title of the firm's principal contact for purposes of this RFP to whom questions or requests for additional information should be directed.
2. A brief description of the firm and its history.
3. A description of the firm's experience and qualifications to provide financial advisory services with emphasis on transportation financings, including toll facilities. Include in the response the assigned individuals previous experience with transportation infrastructure financing (full resumes may be included as appendix material).
4. A description of the firm's local and Texas offices, including a summary of resources that would be assigned to the WC-CL RMA. If a Proposer does not have an office located in Webb County, describe the impact this will have on the firm's ability to respond to issues, as well as the impact on the cost to perform the necessary services.
5. Provide a summary of the firm's experience in serving as a Financial Advisor in connection with the issuance of transportation bond financing for the past five years. Also include a description of the firm's experience with other transportation funding mechanisms, including Transportation Infrastructure Finance and Innovation Act (TIFIA) loans, State Infrastructure Bank (SIB) loans, TxDOT loans, Transportation Reinvestment Zones (TRZs), Optional Vehicle Registration Fees ("VRF") under Section 502.402, Transportation Code, and other sources of funding.
6. Describe the firm's quantitative capabilities including technology resources and the number of professionals that will be assigned to the WC-CL RMA. Explain your capability to address the following: (1) quantitative capability to structure complicated financings involving multiple sources of funding to include federal and state funds, toll revenue, and VRF proceeds; (2) technical experience and capability to incorporate IRS, legal, and market considerations into the quantitative output; (3) ability to develop long-term plans of finance; (4) experience and ability to incorporate statistics and financial risk management assessments and values into a plan of finance; and (6) ability to apply optimization modeling to multiple sources of funding.
7. Provide a brief description of the firm's capital structure to include total capital, equity, net capital and excess capital. Explain material changes that have occurred within the firm over the last three (3) years regarding staffing, capital, and organizational structure, as well as planned future

changes related to mergers, acquisitions, or change in ownership. Provide a copy of the firm's most recent audited financial statements.

8. Identify key personnel to be assigned to this engagement, with the anticipated role of each person, including brief biographies of each individual and brief descriptions of previous experience with transportation infrastructure financing (full resumes may be included as appendix material).
9. Provide a summary of the firm's experience in serving as a Financial Advisor in connection with the issuance of bonds for public entities and/or political subdivisions in the State of Texas for the past five (5) years.
10. Identify public entities and/or political subdivisions that have appointed the firm as Financial Advisor on their issues in the last five (5) years, with particular emphasis on regional mobility authorities and/or other transportation agencies.
11. Provide three (3) public sector references, with telephone and email contact information.
12. Identify any litigation (including any formal administrative proceedings) in which the firm is currently involved or has been involved in the last five (5) years resulting from the firm's services as a Financial Advisor. Indicate the current status or disposition of such litigation or proceedings.
13. Identify any litigation, complaint or filing against the firm in the last five (5) years regarding equal employment, discrimination, or sexual harassment and the disposition of any such complaint.
14. Disclose any prior or existing relationships between the responding firm and the WC-CL RMA, any member of the WC-CL RMA Board of Directors, or any entity that provides services to the WC-CL RMA. For a list of WC-CL RMA Board members and individuals and entities providing services to the WC-CL RMA, please refer to the WC-CL RMA Designation of Key Personnel at [www.webbrma.com](http://www.webbrma.com).
15. Disclose any prior or existing relationship with TxDOT, Webb County, the City of Laredo, or any governmental entity operating within the WC-CL RMA's jurisdiction.
16. Provide a statement indicating whether the firm is a qualified Historically Underutilized Business ("HUB") or Disadvantaged Business Enterprise ("DBE"). If it is, provide supporting documentation including letters of certification.
17. Provide a description of the efforts made or the efforts that will be made to encourage HUB and/or DBE participation if the firm is selected.

18. Provide a summary of the firm's affirmative action program and current firm profile.
19. Provide a fee structure based on a bond issuance and/or financing transaction that could include various types of bonds, i.e., current interest bonds, capital appreciation bonds, variable rate bonds; direct placement loan(s), and equity. The aforementioned is not intended to be exhaustive but informative as to the complexity that may be involved with the development and successful execution of a financial transaction that utilizes multiple sources of funding and multiple types of debt and/or equity instruments.

B. Executive Summary

Based on the items listed under Section IV.A. above, provide an executive summary (no longer than one page in length) identifying the key components of the Proposer's qualifications. The Executive Summary does not count against the thirty page limit.

**V. EVALUATION AND SELECTION**

Qualifications filed with the WC-CL RMA will be reviewed by a selection committee to identify those most qualified and experienced respondents who may best serve the WC-CL RMA on specific assignments. The final financial advisor selection, if any, will be made by the WC-CL Board of Directors following completion of the review of responses, and firm interviews (if necessary).

The criteria for selection will be weighted using the following factors:

<u>Criteria</u>	<u>Weighting</u>
1. Experience	45%
2. Staffing and Resources (including HUB/DBE participation)	35%
3. Familiarity with Texas/Local Market	20%

Some or all of the firms being considered for the services may, at the sole discretion of the WC-CL RMA, be asked to appear for interviews. The interviews, if required, shall be conducted so as to elicit information to enable the WC-CL RMA to evaluate the capability of the Proposers to provide the desired services. If the WC-CL RMA notifies a Proposer that an interview is required, the WC-CL RMA will inform that Proposer of the schedule, order and procedure for the presentation, including its content, time limits, identity of the presenters, and use of handouts and visual aids. The WC-CL RMA may tape record and/or videotape any presentations. The Board of Directors may consider the oral presentations, if any, when selecting the best-qualified firm to provide the financial advisory services.

Notwithstanding the foregoing, the WC-CL RMA emphasizes that it may elect to forego oral presentations for all or some Proposers. Consequently, all responses should be comprehensive and clear on their face, and no Proposer should rely upon the opportunity to present additional or clarifying information at a later time.

## VI. MISCELLANEOUS

- A. Public Information Act. All responses to this RFP shall be deemed to be the property of the WC-CL RMA. Responses may be subject to public disclosure under the Texas Public Information Act (“PIA”). Any material believed by the Proposer to be proprietary, confidential, or otherwise exempt from disclosure under the PIA should be clearly marked as such. If the WC-CL RMA receives a request for public disclosure of all or any portion of a response, the WC-CL RMA will use reasonable efforts to notify the Proposer of the request and give the Proposer an opportunity to assert, in writing to the Office of the Attorney General, a claimed exception under the PIA or other applicable law within the time period allowed under the PIA.
- B. Cost of Responses. All costs directly or indirectly related to preparation of a response to this RFP and in any oral presentation required to supplement and/or clarify the RFP shall be the sole responsibility of, and shall be borne by, the responding firm.
- C. Proposer’s Acknowledgment. By submitting a response to this RFP, each Proposer unequivocally acknowledges that the Proposer has read and fully understands this RFP, and that the Proposer has asked questions and received satisfactory answers from the WC-CL RMA regarding any provisions of this RFP with regard to which the Proposer desired clarification.

All written and electronic correspondence, printed material, exhibits, appendices, photographs, and reports submitted in response to all sections of this RFP process are, upon their receipt by the WC-CL RMA, the property of the WC-CL RMA and may not be returned.

- D. Anti-Lobbying Prohibition. During the pendency of this procurement, except as provided herein, prospective respondents may not contact the WC-CL RMA Board of Directors, staff, WC-CL RMA consultants, and evaluation committee members (as posted on the WC-CL RMA website) concerning this procurement. All contact with the WC-CL RMA is to be through the WC-CL RMA contact designated in the Section III above. Any firm violating the anti-lobbying prohibition may be disqualified from consideration in this procurement.

# **WEBB COUNTY-CITY OF LAREDO REGIONAL MOBILITY AUTHORITY**

## **REQUEST FOR QUALIFICATIONS TO PROVIDE GENERAL ENGINEERING CONSULTANT SERVICES**

RFQ Issue Date: June 15, 2015

Responses Due: 3:00 p.m. C.S.T. July 24, 2015  
Webb County-City of Laredo Regional Mobility Authority  
c/o Juan Cruz & Associates, LLC  
216 W. Village Blvd., Suite 202  
Attn: Juan Cruz

**WEBB COUNTY-CITY OF LAREDO  
REGIONAL MOBILITY AUTHORITY  
REQUEST FOR QUALIFICATIONS  
TO PROVIDE  
GENERAL CONSULTING CIVIL ENGINEERING SERVICES**

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**EXHIBITS**

<b>A</b>	<b>WC-CL RMA PROJECTS</b>
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**WEBB COUNTY-CITY OF LAREDO  
REGIONAL MOBILITY AUTHORITY  
REQUEST FOR QUALIFICATIONS TO PROVIDE  
GENERAL ENGINEERING CONSULTANT SERVICES**

**I. INTRODUCTION**

The Webb County-City of Laredo Regional Mobility Authority (the “WC-CL RMA”), a regional mobility authority and political subdivision of the State of Texas governed by the provisions of Texas Transportation Code, Chapter 370 (the “RMA Act”), is requesting information from qualified engineering firms interested in providing general engineering consultant services to the WC-CL RMA.

Certain information is necessary to evaluate each interested firm's ability to provide the desired services. As a result, interested firms are asked to submit a response setting forth their qualifications to perform the anticipated work, and may, at the WC-CL RMA’s sole option, be asked to make an oral presentation. The anticipated work is described herein and shall generally be referred to as the “services”. All firms providing a response to this RFQ are hereinafter collectively referred to as the “Proposers” or, individually, as a “Proposer.”

**II. DESCRIPTION OF THE WC-CL RMA**

The WC-CL RMA is an independent governmental agency created by the Texas Transportation Commission pursuant to the joint request of Webb County and the City of Laredo. Its formation was approved in February 27, 2014. The WC-CL RMA is governed by a nine member Board of Directors, with four members of the board being appointed by the Webb County Commissioners Court, four members of the board being appointed by the Laredo City Council, and the presiding officer being appointed by the Governor. The WC-CL RMA’s purpose is to provide the City of Laredo and Webb County with opportunities to accelerate needed transportation projects which will improve mobility, enhance safety, support economic development, and improve the quality of life for residents of the region, under the direction of a local board making local choices about local mobility priorities.

The WC-CL RMA intends to select one or more General Engineering Consultant(s) (“GEC”) which will operate as an extension of, and in complete coordination with, the WC-CL RMA’s Board, staff, and consultants with respect to all current or future projects studied, constructed or operated by the WC-CL RMA, including, without limitation, those identified on Exhibit A attached hereto. To that end, the GEC shall be expected to represent and pursue the interests of the WC-CL RMA throughout all aspects and phases of the WC-CL RMA's activities and shall, when and as requested by the WC-CL RMA, fully support the WC-CL RMA in its dealings with contractors and suppliers, the Texas Department of Transportation (“TxDOT”), engineers and other consultants, the WC-CL RMA's legal counsel and accountants, traffic and revenue advisors, rating agencies and underwriters, governmental entities and the public, all in accordance with the highest



professional standards. As more specifically described in this RFQ, the GEC shall be expected to commit the personnel and resources required to respond promptly and fully to the responsibilities and tasks assigned by the WC-CL RMA throughout the term of the GEC's performance of the services.

### **III. SCOPE OF CONSULTANT SERVICES**

Without limiting the provisions of Article II above, the required services will encompass the numerous facets of feasibility evaluation, conceptual design, planning, financing, management, coordination, and liaison necessary to produce complete conceptual plans, typical specifications, and estimate documents required for transportation projects as defined in the RMA Act. The WC-CL RMA also anticipates that the GEC may be asked to prepare detailed designs and construction plans as well as oversee other consultant firms' design activities. The GEC should also be prepared, either in-house or through a sub-provider, to manage and perform construction oversight, including inspection, testing, record keeping, and change orders, for work performed by construction contractors. Further, the GEC may be required to prepare project-wide typical standard designs, pavement designs, standard typical sections, and standard retaining wall design options as may be required on some or all future transportation projects. The GEC may also be asked to provide website design assistance and support for marketing and public education and outreach efforts. In addition, the GEC will be responsible for coordinating the operation and maintenance activities for future WC-CL projects that are opened.

### **IV. LENGTH OF CONSULTANT SERVICES AND ASSIGNMENT OF WORK**

The resulting agreements with one or more GECs (the "Agreement") shall provide for a five (5) year term, subject to the WC-CL RMA's periodic review, approval and satisfaction with the GEC's performance, and will be subject to termination by the WC-CL RMA at any time upon a stipulated notice period, or extended upon agreement of both parties.

During the contract term, the WC-CL RMA may request services on an as-needed basis through the issuance of work authorizations.

### **V. CONTRACT PROVISIONS**

The following information is furnished to the Proposers for consideration during the preparation of their response to this Request for Qualifications ("RFQ"). This information is representative of certain provisions which the WC-CL RMA expects to incorporate into the Agreement for GEC services:

- 5.1 **PROFESSIONAL LIABILITY**: The firm selected to perform the desired services must have professional liability insurance coverage of not less than \$5,000,000. If the present coverage is insufficient, the selected firm must obtain additional coverage prior to the initiation of the work. The coverage must extend a minimum of three (3) years beyond the completion of the services.

- 5.2 SUBCONSULTANT SERVICES: Services assigned to subconsultants must be approved in advance by the WC-CL RMA. The subconsultants must be qualified to perform all work assigned to them. Responsibility for sublet, assigned, or transferred work shall remain with the GEC.
- 5.3 INSPECTION OF BOOKS AND RECORDS: The WC-CL RMA, or any duly authorized representative of the WC-CL RMA, may at all reasonable times inspect and examine the books and records of the GEC for the purpose of: (a) checking the salary costs and other expenses described and/or contemplated in the Agreement; or (b) otherwise confirming the GEC's compliance with the terms of the Agreement. The GEC shall maintain said books and records and other evidence pertaining to costs, and shall make such materials available at its office, during the term of the Agreement and for a period of three (3) years after the date of final payment thereunder.
- 5.4 OWNERSHIP OF PLANS: Notwithstanding any provision in the Agreement or in common law or statute to the contrary, all of the plans, tracings, computer records, discs, and tapes, proposals, sketches, diagrams, charts, calculations, correspondence, memoranda, logs, survey notes, test procedures, test data, recommendations, reports, and other data and materials, and any part thereof, compiled or to be compiled by or on behalf of the GEC, together with all materials and data furnished to it by the WC-CL RMA, shall at all times be and remain the property of the WC-CL RMA and shall not be subject to any restriction or limitation on their further use by or on behalf of the WC-CL RMA.
- 5.5 TxDOT FINANCIAL ASSISTANCE: The WC-CL RMA anticipates that it will receive financial assistance for some or all of its projects from TxDOT. To the extent that TxDOT makes such assistance available on a cost reimbursement basis, the GEC will be obligated to assure that all work performed (and costs incurred) on a project receiving financial assistance are reimbursable and that proper documentation of the costs associated with the work is made available to TxDOT on a timely basis. Payment by the WC-CL RMA to the GEC for work which is subject to reimbursement by TxDOT will be contingent on the authority receiving the funds from TxDOT.

## **VI. CONTENT OF THE RESPONSE**

Each Proposer should submit a detailed response to this RFQ, including sufficient information to enable the WC-CL RMA to fully evaluate the capabilities of the Proposer and its approach to providing the specified services. Responses are subject to the page limit set forth in Section 6.6.1. Responses should specifically address the issues raised, and provide the information requested, under Sections 6.1 through 6.4 below and should utilize and follow the order of the headings and subheadings employed under those Sections.

## 6.1 EXPERIENCE OF FIRM

### 6.1.1 History and Description of Firm

Each Proposer should provide a brief history and general description of its firm.

### 6.1.2 Overall Project Experience

The Proposer should provide a representative listing of relevant projects, with particular emphases on GEC projects, accomplished within the past five (5) years, including the following information:

1. Project name.
2. Project location.
3. Project manager(s) and key staff.
4. A brief description of the project and the work performed by Proposer, including the project's size and complexity.
5. Name, address, telephone number, and e-mail address of client contact to serve as reference.

By submitting a response and the foregoing information, the Proposer unconditionally authorizes the WC-CL RMA to contact and confer with the indicated client contact(s) and other current or past employees of that client.

### 6.1.3 Experience Relevant to Transportation Projects

The Proposer should specifically identify and describe the firm's experience related to transportation projects, with a particular emphasis on tolled and non-tolled highway projects. Specifically, each Proposer should provide a description of its experience for the five (5) years preceding Calendar Year 2015 in performing typical GEC services on relevant projects, and briefly identify those projects. The same information should also be provided (but separately stated) for detailed design work and oversight services provided for relevant projects. Project information previously provided in response to Section 6.1.2 should be summarized or incorporated by reference, rather than repeated in whole.

### 6.1.4 Texas Experience

The Proposer should include information relative to the capabilities and resources of its Texas offices, and a listing of its Texas office resident

personnel by discipline. The Proposer should summarize any relevant experience working with transportation agencies and other governmental bodies operating in the South Texas region and/or with which the WC-CL RMA would regularly work or interact, including TxDOT, the Federal Highway Administration (“FHWA”), the Environmental Protection Agency, the United States Corps of Engineers, Webb County, or the City of Laredo.

#### 6.1.5 Experience Providing Trust Agreement Services

The Proposer should summarize its experience providing certifications, issuing reports, providing evaluations and otherwise performing services similar to those required for “Consulting Engineers” under anticipated Trust Agreements.

#### 6.1.6 Management and Coordination Experience

The Proposer should describe its experience providing management and coordination services similar to the services expected of the GEC. This description should specifically address the Proposer’s record in delivering completed projects on time and on budget. Once again, project information previously furnished in response to Section 6.1.2 should be summarized or incorporated by reference, rather than repeated in whole.

#### 6.1.7 Disputes

The Proposer should provide the following:

1. A list and a brief description of all instances since January 1, 2010, involving projects in which the proposer was (i) determined, pursuant to a final determination in a court of law, arbitration proceeding or other dispute resolution proceeding, to be liable for a material breach of contract or (ii) terminated for cause. For each instance, identify an owner's representative with a current phone and fax number.
2. A list and a brief description (including the resolution) of each arbitration, litigation, dispute review board and other dispute resolution proceeding occurring since January 1, 2010, involving the proposer and involving an amount in excess of \$200,000 related to performance of general engineering services for transportation projects.
3. A description of any project involving the Proposer which resulted in assessment of liquidated damages or stipulated damages in excess of \$25,000 since January 1, 2010. Describe the causes of the delays and the amounts assessed. For each instance, identify an owner's representative with a current phone and fax number (and e-mail if

available). The WC-CL RMA requests that proposers report liquidated damages or stipulated damages assessments at any time during a project, not just final completion penalties. However, if such damages were assessed but not paid through settlement or negotiations with the project owner, they need not be included. Note that unresolved instances of assessed liquidated or stipulated damages (i.e., currently subject to negotiations or challenge, etc.) should be included.

## 6.2. APPROACH TO THE SERVICES

### 6.2.1 Proposed Approach - Quality, Schedule and Budget

The Proposer should present the proposed approach for providing the desired services in a manner which maximizes efficiencies in the delivery of projects and makes the most effective use of available funds. The efficient use of manpower and materials will be considered. The Proposer should demonstrate the firm's quality control program, and the policies and procedures followed to assure a complete, accurate, and quality product. The Proposer should also describe any innovative approaches to assisting the WC-CL RMA. As the GEC will be expected to operate independently from the WC-CL RMA and without extensive oversight and direction, methods to accomplish that end should be discussed. Also, additional innovative approaches for providing the services should be addressed.

### 6.2.2 Coordination

The Proposer should discuss in detail the manner in which proper coordination and information exchange will be guaranteed among the WC-CL RMA, other governmental bodies, sub-consultants, other consultants, contractors and, if the work is proposed to be done in more than one location, its own offices.

### 6.2.3 Schedule Development and Utilization

The Proposer should submit a suggested sample project schedule showing major activities/events and the proposed time-frames required to develop a typical tolled project from concept to construction letting. The GEC's proposed use of the schedule should be discussed. The Proposer should demonstrate that it can perform critical path modeling using a recognized industry software package or software authorized or supported by the WC-CL RMA. The Proposer should also demonstrate ability to monitor and manage other consultants' and contractors' conformance to their schedules.

## 6.3 STAFFING

### 6.3.1. Project Team Matrix and Staffing Plan

The Proposer should submit a project team matrix which clearly illustrates the key elements of the organizational structure proposed to accomplish the management, technical, and administrative services required. The Proposer should identify the senior project manager with respect to the services, as more particularly described under Section 6.3.2 below. Project management and key technical personnel within each discipline should be identified and addressed, as more particularly described under Section 6.3.3 below.

The Proposer should identify by role specific individuals and backups that will be used to staff the project. For each identified individual provide current office location, current assignment, and date and level of expected availability and identify any outstanding proposals where the individual is included and his/her proposed role and level of commitment. Identify if the individual is a full time employee, is on retainer, or is a part time employee. A one-page resume for each individual should be included in the Appendix.

Initially, the GEC will be required to establish a field office within the service area of the WC-CL RMA with managers and core staff to provide the following services, as required by project-specific needs:

1. Contract Support
2. Administrative Assistance
3. Advanced Project Development
4. PS&E Management
5. Management and Coordination of Maintenance Services
6. Operations

### 6.3.2 Senior Project Manager

The Proposer should identify and provide relevant information concerning the senior project manager it intends to assign to the services for the duration of the Agreement. The Agreement will restrict the ability of the GEC to substitute individuals for the senior project manager without the WC-CL RMA's express approval. The Proposer should discuss what steps it intends to take in order to enhance continuity in this and other key staff positions. The senior project manager must be a Texas licensed

professional engineer or hold a similar license in another state and be capable of obtaining a license in Texas within six (6) months of the date a written response to the RFQ is submitted.

#### 6.3.3 Key Staff

The Proposer should identify and provide relevant information concerning the remainder of the Proposer's intended project management and key technical personnel.

#### 6.3.4 Sub-consultants

The Proposer should address the use of sub-consultant services in meeting its obligations under the Agreement. Where sub-consultant services are proposed, the information specified in the first paragraph of Section 6.3.1 should also be furnished for the subconsultant firm(s).

Proposers shall not include any Sub-consultants to furnish Traffic and Revenue Engineering Services.

#### 6.3.5 Historically Underutilized Business ("HUB") and Disadvantaged Business Enterprise ("DBE") Participation

It is the intent of the WC-CL RMA to encourage the participation of HUBs and DBEs in all facets of the WC-CL RMA's activities. To that end, the Proposer should provide the following:

1. A statement indicating whether the firm and its proposed subcontractors are a qualified HUB or DBE. If it is, provide supporting documentation including letters of certification.
2. A description of the efforts made or the efforts that will be made to encourage HUB and/or DBE participation if the firm is selected.
3. A summary of the firms' affirmative action program and current firm profile.

#### 6.4 CONFLICTS OF INTEREST

1. Disclose any prior or existing relationships between the Proposer and the WC-CL RMA, any member of the WC-CL RMA Board of Directors, or any entity that provides services to the WC-CL RMA. For a list of WC-CL RMA Board members and individuals and entities providing services to the WC-CL RMA, please refer to the WC-CL RMA Designation of Key Personnel at [www.webbrma.com](http://www.webbrma.com).

2. Disclose any prior or existing relationship with TxDOT, Webb County, the City of Laredo, or any other governmental entity operating within any of the WC-CL RMA's jurisdiction.

## 6.5 OTHER APPROPRIATE INFORMATION

Other information demonstrating the ability and experience of the Proposer in providing the specified services may be included in the response. The Proposer is cautioned, however, to carefully consider the relevance of said additional data, particularly in light of the 30-page limit described in Section 6.6.1, so as to not omit or unduly abbreviate information specifically requested under Sections 6.1 through 6.3.

## 6.6 SUBMITTAL

### 6.6.1 Format

The response should be submitted in bound volumes on standard 8½" x 11" paper. Charts and exhibits may be of a larger size, but must be folded to the standard size. All information must be assembled and indexed in the order indicated in Sections 6.1 through 6.4, together with an Appendix containing the items described below. The response should be limited to thirty (30) pages, single-sided and inclusive of typed text, graphics, charts and photographs (except when found on section dividers and not referenced in the text). Minimum type or font size for text shall be 12-point. The minimum for non-text portions, such as graphics and charts, shall be 10-point. Foldout pages count as one page but the response shall be limited to two foldout pages.

The page count shall not include:

- Cover Letter (one page).
- Front and back cover and section dividers (bindings and covers will be at the discretion of the Proposer).
- Disputes information described in Section 6.1.7 of this RFQ, which shall be part of the Appendix.
- The generic schedule (not more than 1 page in length) as required under Section 6.2.3 of this RFQ, which shall be part of the Appendix.
- Key staff resumes (not more than 1 page in length per person) described in Section 6.3.1 through 6.3.3 of this RFQ, which shall be part of the Appendix.



- Company brochure (not more than one item), which shall be part of the Appendix.

#### 6.6.2 Due Date

Seven (7) copies of the written response and one (1) CD/DVD containing the full response in MS Word, Excel, or PDF format must be received by the WC-CL RMA before 3:00 p.m. C.S.T., July 24, 2015. One copy of the response shall be marked original and bear all original signatures. The other six (6) may be copies. The response package shall be submitted to:

Webb County-City of Laredo Regional Mobility Authority  
c/o Juan Cruz & Associates, LLC  
216 W. Village Blvd., Suite 202  
Attn: Juan Cruz

### **VII. QUESTIONS CONCERNING THE RFQ**

All questions (including all technical, contract or administrative questions) regarding the services required or the procurement process should be submitted in writing or via email, and addressed to:

Webb County-City of Laredo Regional Mobility Authority  
c/o Locke Lord LLP  
600 Congress Avenue, Suite 2200  
Austin, Texas 78701  
Attn: Brian Cassidy  
Email: bcassidy@lockelord.com

The deadline for receipt of questions is 5:00 p.m. (CST), on July 15, 2015. Questions (edited as deemed appropriate by WC-CL RMA) and answers may be made available to all interested parties via website or written distribution. Proposers are responsible for monitoring the WC-CL RMA website for periodic updates.

### **VIII. SELECTION OF GEC**

The WC-CL RMA will make its selection of its GEC based on demonstrated competence, experience, knowledge, and qualifications as reflected in the criteria set forth below. At the time a firm is selected to serve as GEC, the WC-CL RMA anticipates negotiating the services to be provided and the fees and expenses related thereto. The WC-CL RMA may decline to engage a firm if such negotiations are not successful.

Proposers shall be evaluated by a selection committee according to the following criteria:

Experience of Firm	40%
Approach to the Services	30%
Staffing (including HUB/DBE participation)	<u>30%</u>
	100%

The WC-CL RMA has not committed itself to select a GEC, and neither the suggested services nor the terms of the Agreement should be construed to require that a GEC be engaged for any or all of the services described in this RFQ. The WC-CL RMA may, but shall not be required to, solicit oral presentations from one or more of the responding firms in accordance with Article IX below prior to selecting a GEC. A selection committee shall make a recommendation to the Board of Directors concerning the best-qualified Proposer(s) to serve as the WC-CL RMA's GEC(s). Final selection of the GEC(s), if any, shall be made by the Board of Directors.

#### **IX. ORAL PRESENTATIONS**

Some or all of the firms being considered for the services may, at the sole discretion of the WC-CL RMA, be asked to appear for oral presentations. The oral presentations, if required, shall be conducted so as to elicit information to enable the WC-CL RMA to evaluate the capability of the Proposers to provide the desired services. If the WC-CL RMA notifies a Proposer that an oral presentation is required, the WC-CL RMA will inform that Proposer of the schedule, order and procedure for the presentation, including its content, time limits, identity of the presenters, and use of handouts and visual aids. The WC-CL RMA may tape record and/or videotape any presentations. The Board of Directors may consider the oral presentations, if any, when selecting the best-qualified firm to provide the GEC services.

Notwithstanding the foregoing, the WC-CL RMA emphasizes that it may elect to forego oral presentations for all or some Proposers. Consequently, all responses should be comprehensive and clear on their face, and no Proposer should rely upon the opportunity to present additional or clarifying information at a later time.

#### **X. NEGOTIATIONS**

Upon conclusion of the selection process, the WC-CL RMA shall attempt to negotiate the Agreement with the selected Proposer(s) of the required services at a fair and reasonable price. If a satisfactory contract cannot be negotiated with a selected Proposer of the required services, the WC-CL RMA shall formally end negotiations with that Proposer, select the next best-qualified Proposer, and attempt to negotiate a contract with that Proposer at a fair and reasonable price. The WC-CL RMA shall continue the foregoing process until the Agreement is executed, provided that nothing herein will preclude the WC-CL RMA from terminating this procurement at any time.

## **XI. MISCELLANEOUS**

- 11.1 **PUBLIC INFORMATION ACT**: All responses to this RFQ shall be deemed to be the property of the WC-CL RMA. Responses may be subject to public disclosure under the Texas Public Information Act (“PIA”). Any material believed by the responder to be proprietary, confidential, or otherwise exempt from disclosure under the PIA should be clearly marked as such. If the WC-CL RMA receives a request for public disclosure of all or any portion of a response, the WC-CL RMA will use reasonable efforts to notify the responder of the request and give the responder an opportunity to assert, in writing to the Office of the Attorney General, a claimed exception under the Act or other applicable law within the time period allowed under the Act.
- 11.2 **COST OF RESPONSES**: All costs directly or indirectly related to preparation of a response to this RFQ and in any oral presentation required to supplement and/or clarify the RFQ shall be the sole responsibility of, and shall be borne by, the Proposers.
- 11.3 **PROPOSER'S ACKNOWLEDGEMENT**: By submitting a response to this RFQ, each Proposer unequivocally acknowledges that the Proposer has read and fully understands this RFQ, and that the Proposer has had the opportunity to ask questions and, if questions were asked, has received satisfactory answers from the WC-CL RMA regarding any provision of this RFQ.

All written and electronic correspondence, printed material, exhibits, appendices, photographs, and reports submitted in response to all sections of this RFQ process are, upon their receipt by the WC-CL RMA the property of the WC-CL RMA and may not be returned.

## **XII. ANTI-LOBBYING PROHIBITION**

During the pendency of this procurement, prospective respondents may not contact the WC-CL RMA Board of Directors nor, except as provided herein, any WC-CL RMA staff, consultants, or evaluation committee members (as posted on the WC-CL RMA’s website) concerning this procurement. All contact with the WC-CL RMA is to be through the WC-CL RMA contact designated in Article VII above. Any firm violating the anti-lobbying prohibition may be disqualified from consideration in this procurement.

## **Exhibit A**

### **Potential WC-CL Projects**

- (1) Loop 20 south of International Boulevard to US 59
- (2) Vallecillo Road, from Mines Road to IH 35
- (3) Loop 20 east and westbound mainlanes over IH 35
- (4) Southern extension of Loop 20 to US 83
- (5) Four (4) interchanges on Loop 20 at major arterial street intersections as described in the Laredo Long Range Thoroughfare Plan
- (6) Upgrade of US 59 to IH69 design standards from the Laredo City Limits to the Duval County line
- (7) Development and construction of Green Ranch Parkway from FM 1472 to IH 35
- (8) Laredo Outer Loop, from IH 35 (near the Camino Columbia Toll Road) to US 83 south of Laredo
- (9) other transportation projects as identified by the WC-CL RMA