

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §9.33 relating to contracting for architectural, engineering, and surveying services and §9.83 relating to contracts for scientific, real estate appraisal, right of way acquisition, and landscape architectural services to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A - C, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §9.33 and §9.83 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

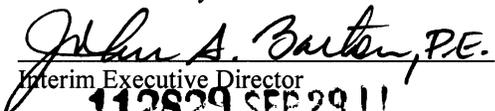
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



General Counsel

Recommended by:



Interim Executive Director

112829 SEP 29 11

Minute Number Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §9.33, Notice of Intent and Letter of Interest and
4 §9.83, Notice and Letter of Interest, both concerning newspaper
5 advertising.

6

7 EXPLANATION OF PROPOSED AMENDMENTS

8 The department procures scientific services under Transportation
9 Code, Chapter 223, Subchapter D, and professional services under
10 Government Code, Chapter 2254, Subchapter A and
11 23 C.F.R. §172.5.

12

13 The Sunset Advisory Commission's Report to the 81st Legislature
14 recommended that the department amend its rules requiring
15 professional services contract solicitations to be advertised in
16 local or statewide newspapers. Currently, the department posts
17 the contract solicitations (notices) on the department's webpage
18 and the Electronic State Business Daily. Newspaper
19 advertisements do not contain the full solicitation, but merely
20 refer the reader to the full notice, which is posted on the
21 department's website.

22

23 To comply with the recommendation made by the Sunset Advisory
24 Commission, it is necessary to amend §9.33(a) and §9.83(a)(1).
25 Implementing this recommendation will save newspaper advertising

1 costs and staff time while still allowing for effective
2 notification of contracting opportunities. While newspaper
3 advertising would no longer be mandatory, the department would
4 retain the authority to publish notices in the newspaper when
5 doing so is necessary and cost effective.

6

7 FISCAL NOTE

8 James Bass, Chief Financial Officer, has determined that for
9 each of the first five years the amendments as proposed are in
10 effect, there will be a fiscal impact to state government as a
11 result of enforcing or administering the amendments. There will
12 be a net savings to state government of approximately \$32,404.00
13 for each of the first five years because the Electronic State
14 Business Daily publishes notices free of charge and the
15 department will no longer purchase newspaper advertisements
16 unless necessary and cost effective. There will be no fiscal
17 implications for local governments as a result of enforcing or
18 administering the amendments.

19

20 Bob Jackson, General Counsel, has certified that there will be
21 no significant impact on local economies or overall employment
22 as a result of enforcing or administering the amendments.

23

24 PUBLIC BENEFIT AND COST

25 Mr. Jackson has also determined that for each year of the first

1 five years in which the sections are in effect, the public
2 benefit anticipated as a result of enforcing or administering
3 the amendments will be reduced costs to advertise contracting
4 opportunities. There are no anticipated economic costs for
5 persons required to comply with the sections as proposed. There
6 will be no adverse economic effect on small businesses.

7

8 SUBMITTAL OF COMMENTS

9 Written comments on the proposed amendments to §9.33 and §9.83
10 may be submitted to Bob Jackson, General Counsel, Texas
11 Department of Transportation, 125 East 11th Street, Austin,
12 Texas 78701-2483. The deadline for receipt of comments is 5:00
13 p.m. on November 14, 2011.

14

15 STATUTORY AUTHORITY

16 The amendments are proposed under Transportation Code, §201.101,
17 which provides the commission with the authority to establish
18 rules for the conduct of the work of the department.

19

20 CROSS REFERENCE TO STATUTE

21 None.

1 SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND
2 SURVEYING SERVICES

3 §9.33. Notice of Intent and Letter of Interest.

4 (a) Notice of Intent (NOI). Not fewer than 21 days before
5 the letter of interest due date, the department will post on an
6 electronic bulletin board a notice identifying:

7 [~~(1) Electronic notice. Not less than 21 days before the~~
8 ~~letter of interest due date, the department will post on an~~
9 ~~electronic bulletin board a notice identifying:]~~

10 (1) (1) [~~(A)~~] the solicitation number;

11 (2) (2) [~~(B)~~] work category codes;

12 (3) (3) [~~(C)~~] the type of selection in accordance with §9.39
13 of this subchapter (relating to Selection Types, Contract Types,
14 and Projected Contracts);

15 (4) (4) [~~(D)~~] the general description of the project and work
16 to be done;

17 (5) (5) [~~(E)~~] the due date and time;

18 (6) (6) [~~(F)~~] qualification information if the work type is
19 not an approved category according to §9.43 of this subchapter
20 (relating to Precertification Requirements);

21 (7) (7) [~~(G)~~] whether the department has waived the
22 precertification requirement of §9.41 of this subchapter
23 (relating to Precertification) when the total contract fee for

1 professional services is anticipated to be less than \$250,000 on
2 an individual contract;

3 (8) [~~(H)~~] selection criteria to be used to determine the
4 short list; and

5 (9) [~~(I)~~] the assigned HUB or DBE participation goal for
6 the contract(s) (The department may assign individual contract
7 DBE or HUB goals pursuant to 49 CFR Part 26 or 34 TAC §20.13,
8 respectively.).

9 [~~(2) Newspaper notice. Not less than 21 days before the~~
10 ~~letter of interest due date, the department will publish a~~
11 ~~notice in a local newspaper within the geographical area of the~~
12 ~~district, division, or office in which the work will be~~
13 ~~performed. If the newspaper fails to print the notice, the~~
14 ~~department will consider the notice posted. The notice will~~
15 ~~contain:~~]

16 [~~(A) the solicitation number;~~]

17 [~~(B) the general description of the project and work to~~
18 ~~be done;~~]

19 [~~(C) the due date and time;~~]

20 [~~(D) the contact person; and~~]

21 [~~(E) the location of the electronic bulletin board that~~
22 ~~contains more information.]~~

23 (b) Letter of interest (LOI).

1 (1) The provider shall send a letter of interest to the
2 department notifying the department of the provider's interest
3 in the contract prior to the deadline published in the notice.

4 (2) The following requirements apply unless otherwise
5 specified in the NOI. The letter of interest will consist of a
6 minimum of three and a maximum of five pages plus attachments.
7 The maximum page length will be stated in the notice.
8 Attachments will be restricted to precertification information
9 required in paragraph (b)(3) of this section. The department
10 will not accept a letter of interest by electronic facsimile or
11 electronic mail.

12 (3) To be considered:

13 (A) a prime provider or a subprovider that will be
14 performing work in any individual work category must be
15 precertified by the deadline for receiving the letter of
16 interest in accordance with §9.41 of this subchapter (relating
17 to Precertification) unless the work category is not approved
18 according to §9.43 of this subchapter (relating to
19 Precertification Requirements);

20 (B) a prime provider or subprovider must demonstrate in
21 an attachment to the LOI how it meets the minimum qualifications
22 for work that does not fall within any work category approved
23 according to §9.43 of this subchapter (The attachment is in

1 addition to the maximum pages allowed for the LOI.);

2 (C) in the LOI, a subprovider that is not precertified
3 must identify both the service to be provided for which there is
4 no dedicated pre-certified work category and the precertified or
5 non-listed work category that the service supports;

6 (D) if the total contract fee for professional services
7 is anticipated to be less than \$250,000 on an individual
8 contract and the department has waived the precertification
9 requirement of §9.41 of this subchapter (relating to
10 Precertification), then a provider or subprovider that:

11 (i) is not precertified must submit an attachment
12 with the LOI that describes how the prime provider or
13 subprovider meets the minimum requirements specified for the
14 work category approved according to §9.43(b) of this subchapter
15 or how it possesses the knowledge and skill to perform the work
16 in those categories (The attachment is in addition to the
17 maximum pages allowed for the LOI.); or

18 (ii) is precertified must submit a LOI, but is not
19 required to submit an attachment describing its qualifications
20 in precertified categories (If the firm proposes to do work in
21 categories in which it has not been precertified, then it must
22 submit an attachment describing how the firm meets the minimum
23 requirements or how it possesses the knowledge and skill to

1 perform the work in those categories.);

2 (E) the proposed team must demonstrate that they have a
3 professional engineer, architect, or surveyor registered or
4 licensed in Texas who will sign and/or seal the work to be
5 performed on the contract;

6 (F) the provider must demonstrate that it is registered
7 with the appropriate State of Texas licensing board, such as
8 the:

9 (i) Texas Board of Professional Engineers;

10 (ii) Texas Board of Architectural Examiners; or

11 (iii) Texas Board of Professional Land Surveying; and

12 (G) the letter of interest is received by the
13 department by the deadline specified in the notice.

14 (4) The letter of interest shall include:

15 (A) the solicitation number;

16 (B) an organizational chart containing:

17 (i) the prime provider's project manager (who may be
18 replaced during the selection process and before contract
19 execution only by another person proposed in the LOI for the
20 prime provider and approved by the director of the Design
21 Division); and

22 (ii) names of the prime provider's and any
23 subprovider's key personnel (who may be replaced during the

1 selection process and before contract execution only by another
2 person from the team proposed in the LOI and approved by the
3 CST);

4 (C) information addressing the criteria stated in the
5 notice;

6 (D) evidence of compliance with the assigned DBE/HUB
7 goal;

8 (E) name and contact information for references from
9 the department or other entities; and

10 (F) other pertinent information addressed in the
11 notice.

1 SUBCHAPTER F. CONTRACTS FOR SCIENTIFIC, REAL ESTATE APPRAISAL,
2 RIGHT OF WAY ACQUISITION, AND LANDSCAPE ARCHITECTURAL SERVICES

3 §9.83. Notice and Letter of Interest.

4 (a) Notice. When the department elects to use competitive
5 sealed proposals to procure appraisal, right of way acquisition,
6 landscape architectural, and scientific services, notice will be
7 given as follows.

8 (1) Electronic [~~and newspaper~~] notice. Not less than 21
9 days before the proposal due date, the department will post a
10 notice on an electronic bulletin board [~~and publish a notice in~~
11 ~~a selected newspaper~~]. The notice will contain the:

12 (A) proposed contract or RFP number;

13 (B) type of selection in accordance with §9.87 of this
14 title (relating to Selection Types);

15 (C) general description of the project and work to be
16 done;

17 (D) due date for providers to send letters of interest
18 to the department;

19 (E) contact person;

20 (F) date and location of the proposal meeting, if
21 applicable; and

22 [~~(G) location of the electronic bulletin board that~~
23 ~~contains more information; and]~~

1 (G) [~~(H)~~] if the notice is for an appraiser, a
2 statement that the appraiser must be precertified in accordance
3 with §9.89 of this section (relating to Qualification
4 Requirements for Appraiser).

5 (2) Organizations. The department will publish a
6 quarterly statewide list of projected contracts to be issued
7 under this subchapter and will provide upon request, or make
8 available on the department's Web site, a copy of the list to
9 community, business, and professional organizations for
10 dissemination to their membership.

11 (b) Letter of interest.

12 (1) The provider may obtain an RFP packet by:

13 (A) sending a letter of interest to the department
14 notifying the department of the provider's interest in the
15 contract;

16 (B) downloading it from the department's Web site; or

17 (C) obtaining it at the proposal meeting, if
18 applicable.

19 (2) The department will accept a letter of interest by
20 electronic facsimile.

21 (c) Requests for proposals. The RFP packet will include:

22 (1) the requirements for a responsive proposal including:

23 (A) date, time, and location for submittal of the

1 proposal;

2 (B) an outline of the required proposal format and
3 content; and

4 (C) mandatory/minimum provider qualifications;

5 (2) scope of services to be provided by the department;

6 (3) scope of services to be provided by the provider;

7 (4) proposed contract duration;

8 (5) proposed method of payment;

9 (6) any constraints directly relating to the performance
10 of the contract, if applicable;

11 (7) description of the evaluation criteria including
12 numerical weighting values;

13 (8) a copy of the evaluation matrices;

14 (9) type of contract selection;

15 (10) a copy of the proposed contract, with all
16 attachments;

17 (11) criteria for breaking ties, if criteria are
18 different from that outlined in §9.85(e) of this title (relating
19 to Evaluation);

20 (12) any special contract requirements.

21 (d) Proposal meeting. The meeting may be either mandatory
22 or optional at the discretion of the department. If the meeting
23 is mandatory, the department will only accept proposals from

1 providers represented at the meeting. The proposal meeting
2 provides an opportunity for the provider to seek clarification
3 or ask questions concerning the contract.