

Item 2L

Instructions to Bidders

# Introduction

Instructions to the Contractor in these specifications are generally written in active voice, imperative mood. The subject of imperative sentences is understood to be “the Contractor.” The Owner’s responsibilities are generally written in passive voice, indicative mood. Phrases such as “as approved,” “unless otherwise approved,” “upon approval,” “as directed,” “as verified,” “as ordered,” and “as determined” refer to actions of the Engineer unless otherwise stated, and it is understood that the directions, orders, or instructions to which they relate are within the limitations of and authorized by the Contract.

# Eligibility of Bidders

Obtain a prequalification form from the Department’s website. A Bidder may choose to be prequalified by submitting either a Confidential Questionnaire or a Bidder’s Questionnaire (select one) at the time of bid opening. Comply with all technical prequalification requirements in the proposal.

## **Confidential Questionnaire (CQ)**. Submit a CQ and an audited financial statement for approval. Once prequalified, a Bidder’s eligibility is valid for a period of 1 yr. from the balance sheet statement date.

## **Bidder’s Questionnaire (BQ)**. Bidders prequalified with a BQ are only eligible to bid on projects identified as being waived from the requirements of Section 2L.2.1., “Confidential Questionnaire (CQ).” These projects are designated with a “W” on the Proposal Request Form. Submit a BQ for approval. Once prequalified, a Bidder’s eligibility is valid for a period of 1 yr. from the date the BQ was received by the Department.

# Issuing Proposal Forms

The Owner will issue a proposal form to a prequalified Bidder if the Engineer’s estimate is within that Bidder’s available bidding capacity. Request a proposal form electronically from the Owner’s website. A proposal form printed directly from the Owner’s website is for informational purposes only and will not be accepted as an official proposal form. In the case of a joint venture (JV), all JV participants must be prequalified. An equally divided portion of the Engineer’s estimate must be within each participant’s available bidding capacity.

The Owner will not issue a proposal form if one or more of the following apply:

* the Bidder is suspended or debarred by the Commission or TxDOT,
* the Bidder has not fulfilled the requirements for prequalification,
* the Bidder does not have the available bidding capacity,
* the Bidder is prohibited from rebidding a specific proposal form due to a bid error on the original proposal form,
* the Bidder failed to enter into a Contract on the original award,
* the Bidder was defaulted or terminated on the original Contract, unless the Owner terminated in the best interest of the State or the public,
* the Bidder or a subsidiary or affiliate of the Bidder has received compensation from the Owner to participate in the preparation of the plans or specifications on which the bid or Contract is based,
* the Bidder is ineligible to bid on any proposed Contract in accordance with Article 7L.15., “Responsibility for Damage Claims,”
* the Bidder failed to attend a mandatory pre-bid conference,
* the Bidder or affiliate of the Bidder that was originally determined as the apparent low Bidder on a project but was deemed nonresponsive for failure to submit a DBE commitment as specified in Article 2L.14., “Disadvantaged Business Enterprise (DBE),” is prohibited from rebidding that specific project, or
* the Bidder or affiliate of the Bidder that was originally determined as the apparent low Bidder on a project but was deemed nonresponsive for failure to register or participate in the Department of Homeland Security (DHS) E-Verify system as specified in Article 2.15., “Department of Homeland Security (DHS) E-Verify System,” is prohibited from rebidding that specific project.

# Interpreting Estimated Quantities

The quantities listed on the proposal form are approximate and will be used for the comparison of bids. Payments will be made for the work performed in accordance with the Contract.

# Examining Documents and Work Locations

Examine the proposal form, plans, specifications, and specified work locations before submitting a bid for the work. Submitting a bid will be considered evidence that the Bidder has performed this examination. Borings, soil profiles, water elevations, and underground utilities shown on the plans were obtained for the Owner’s use in the preparation of the plans. This information is provided for the Bidder’s information only, and the Owner makes no representation as to the accuracy of the data. Be aware of the difficulty of accurately classifying all material encountered in making foundation investigations, the possible erosion of stream channels and banks after survey data have been obtained, and the unreliability of water elevations other than for the date recorded.

Oral explanations, instructions, or consideration for Contractor-proposed changes on the proposal form given during the bidding process are not binding. Only requirements included on the proposal form, associated specifications, plans, and Owner-issued addenda are binding. Request explanations of documents in adequate time to allow the Owner to reply before the bid opening.

Immediately notify the Owner of any error, omission, or ambiguity discovered in any part of the proposal form and Contract documents. The Owner will issue addenda when appropriate.

# Preparing the Bid

Prepare the bid on the proposal form furnished by the Owner. Informational proposal forms printed from the Owner’s website will not be accepted.

Specify a unit price in dollars and cents for each regular item and additive alternate item, or replacement alternate item for which an estimated quantity is given.

When “Working Days” is an item, submit the number of working days to be used to complete the Contract or phases of the Contract shown on the plans.

The Owner will not accept an incomplete bid. A bid that has one or more of the deficiencies listed below is considered incomplete:

* certifications were not acknowledged,
* a regular item or the additive alternate item is left blank,
* a regular item and the corresponding replacement alternate item are left blank,
* the proposal form submitted had the incorrect number of items,
* the Bidder did not acknowledge all addenda, or
* additionally, for printed bids:
* the blank spaces for each item as required on the bid form are not filled in by writing in words in ink,
* the bid was not signed in ink in the complete and correct name of the bidder making the bid, and signed by the person or persons authorized to bind the bidder, or
* unit prices were not stated in dollars and cents for each bid item listed on the bid form, except in the case of a regular bid item that has an alternate bid item.

# Nonresponsive Bid

The Owner will not accept a nonresponsive bid. A bid that has one or more of the deficiencies listed below is considered nonresponsive:

* the bid was not in the hands of the Letting Official at the time and location specified in the advertisement,
* a proposal form was submitted for the same project by a Bidder or Bidders and one or more of its partners or affiliates, the Bidder was not authorized to receive a proposal form under Article 2L.3., “Issuing Proposal Forms,”
* the Bidder failed to acknowledge receipt of all addenda issued,
* the proposal form was signed by a person who was not authorized to bind the Bidder or Bidders,
* the proposal guaranty did not comply with the requirements contained in this Item,
* the bid was in a form other than the official proposal form issued by the Owner,
* the Bidder modified the bid in a manner that altered the conditions or requirements for work as stated in the proposal form,
* the Bidder bid more than the maximum or less than the minimum number of allowable working days shown on the plans when working days was an item,
* a typed proposal form does not contain the information in the format shown on the “Example of Bid Prices Submitted by Computer Printout” on the proposal form,
* the Bidder did not meet the requirements of the technical qualification,
* the Bidder failed to submit a DBE commitment as specified in Article 2L.14., “Disadvantaged Business Enterprise (DBE),” or
* the Bidder failed to participate in the DHS E-Verify system as specified in Article 2L.15., “Department of Homeland Security (DHS) E-Verify System.”
* The bidder is not prequalified by TxDOT

# Electronic BID

The Bidder is responsible for taking the appropriate measures to submit a bid. These measures include, but are not limited to acquiring hardware, software, and Internet connectivity needed for submitting a bid via the Owner’s bidding system.

## **Proposal Form**.Use the electronic proposal formin the Owner’s bidding system. When regular bid items have corresponding replacement alternate items, select the bid item or group of items to be used for the bid tabulation. Acknowledge all addenda listed in the Owner’s bidding system.

## The electronic proposal form does not contain the special provisions, special specifications, general notes, and other Contract documents. These documents are included by reference.

## **Proposal Guaranty**. Provide a proposal guaranty in the amount indicated on the proposal form. Use an electronic bid bond. Guaranty checks or printed bid bonds will not be accepted.

For a JV, the bond must be in the name of all JV participants. Enter the bond authorization code into the Owner’s bidding system.

It is the Bidder’s responsibility to ensure the electronic bid bond is issued in the name or Owner vendor identification numbers of the Bidder or Bidders.

## **Submittal of Bid**. Submit the bid to the vault using the Owner’s bidding system.

## **Revising the Proposal Form**.Make desired changes in the Owner’s bidding system up until the time and date set for the opening of bids. The last bid submitted to the vault will be used for tabulation purposes.

## **Withdrawing a Bid**.Submit an electronic or written request to withdraw a bid before the time and date set for the opening. The Owner will not accept oral requests. An electronic request must be made using the Owner’s bidding system.

## If a bidder is unable to withdraw an electronic bid using the Owner’s bidding system, a written request may be submitted. A written request must be signed and submitted to the Letting Official conducting the letting, with proof of identification. The request must be made by a person authorized to bind the Bidder or Bidders. In the case of a JV, the Owner will accept a request from any person authorized to bind a party to the JV. The Owner may require written delegation of authority to withdraw a bid when the individual sent to withdraw the bid is not authorized to bind the Bidder or Bidders.

# Printed BID

## **Proposal Form**. Mark all entries in ink. As an alternative to hand writing the unit prices on the proposal form, submit a typed proposal form. A typed proposal form must contain the information in the format shown on the “Example of Bid Prices Submitted by Computer Printout” on the proposal form.

When regular bid items have corresponding replacement alternate items, select the bid item or group of items to be used for the bid tabulation. Acknowledge all addenda by checking the appropriate box on the addendum acknowledgement page. Provide the complete and correct name of the Bidder submitting the bid. A person authorized to bind the Bidder must sign the proposal form. In the case of a JV, provide the complete and correct name of all Bidders submitting the bid. In the case of a JV, the person signing the proposal form must be authorized to bind all JV participants.

## **Proposal Guaranty**. Provide a proposal guaranty in the amount indicated on the proposal form. Use either a guaranty check or a printed bid bond. An electronic bid bond may be used as the guaranty. Ensure the electronic bid bond meets the requirements of Section 2L.8.2., “Proposal Guaranty,” and submit the electronic bid bond with the printed bid.

### **Guaranty Check**. When used, make the check payable to the Owner. The check must be a cashier’s check, money order, or teller’s check drawn by or on a state or national bank, or a state or federally chartered credit union (collectively referred to as “bank”). The check must be dated on or before the date of the bid opening. Postdated checks will not be accepted. The type of check or money order must be indicated on the face of the instrument, except in the case of a teller’s check, and the instrument must be no more than 90 days old. A check must be made payable at or through the institution issuing the instrument, be drawn by a bank and on a bank, or be payable at or through a bank. The Owner will not accept personal checks, certified checks, or other types of money orders.

### **Bid Bond**.When a bond is used, use the bid bond form provided by the Owner. Submit the bid bond in the amount specified with the powers of attorney dated and attached. The bond must be dated on or before the date of the bid opening, bear the impressed seal of the Surety, and be signed by the Bidder or Bidders and an authorized individual of the Surety. As an alternative for JV Bidders, each Bidder may submit a separate bid bond completed as outlined in this Section. Bid bonds will only be accepted from Sureties authorized to execute a bond under and in accordance with state law.

## **Submittal of Bid**. Place the completed proposal form and the proposal guaranty in a sealed envelope marked to indicate the contents.

When submitting by mail or delivery service, place the envelope in another sealed envelope and address as indicated in the official advertisement. It is the Bidder’s responsibility to ensure that the sealed bid arrives at the location described on or before the time and date set for the bid opening. To be accepted, the bid must be in the hands of the Letting Official by that time of opening regardless of the method chosen for delivery.

## **Revising the Proposal Form**. Make desired changes to the proposal form in ink, initial each change made, and submit the proposal to the Letting Official. Correction fluid or tape will be considered a change to the bid and requires the initials of the Bidder. The Owner will not revise a bid on behalf of a Bidder.

## **Withdrawing a Bid**.Submit to the Letting Official conducting the letting a written request to withdraw a bid before the time and date set for the opening. The Owner will not accept oral requests. A written request must be signed and submitted to the Letting Official conducting the letting, with proof of identification. The request must be made by a person authorized to bind the Bidder or Bidders. In the case of a JV, the Owner will accept a request from any person authorized to bind a party to the JV. The Owner may require written delegation of authority to withdraw a bid when the individual sent to withdraw the bid is not authorized to bind the Bidder or Bidders.

# Opening and Reading of Bids

At the time, date, and location specified in the official advertisement, the Letting Official will publicly open and read bids.

# Tabulating Bids

## **Official Total Bid Amount**.The Owner will sum the products of the quantities and the unit prices bid on the proposal form to determine the official total bid amount, except as provided in Section 2L.11.5., “Consideration of Unit Prices.” The official total bid amount is the basis for determining the apparent low Bidder. The total bid amounts will be compared and the results made public.

## **Consideration of Bid Format**.When a Bidder submits both an electronic bid and a printed bid that are responsive, the unit bid prices in the electronic bid will be used to determine the total bid amount. If the electronic bid is incomplete or nonresponsive, the printed bid will be used in the tabulation of the total bid amount.

If a Bidder submits two or more printed bids, all responsive bids will be tabulated. The bid with the lowest tabulation will be used to determine the total bid amount.

## **Rounding of Unit Prices**.The Owner will round off all unit bids involving fractional parts of a cent to the nearest one-tenth cent ($0.001) in determining the amount of the bid as well as computing the amount due for payment of each item under the Contract. For rounding purposes, entries that contain five-hundredths of a cent ($0.0005) or more will be rounded up to the next highest tenth of a cent, while entries that contain less than five-hundredths of a cent will be rounded down to the next lowest tenth of a cent and in accordance with Section 2L.11.5., “Consideration of Unit Prices.” Bids less than one-tenth of a cent ($0.001) will be rounded to one-tenth of a cent ($0.001). When credit items are included (negative unit prices), rounding is performed on the absolute value.

## **Interpretation of Unit Prices**.The Owner will make a documented determination of the unit bid price if a unit bid price is illegible or conflicting in the case of replacement alternate items. The Owner’s determination will be final.

## **Consideration of Unit Prices**.Unit bid price entries such as no dollars and no cents, zero dollars and zero cents, or numerical entries of less than $0.001 will be tabulated as one-tenth of a cent ($0.001). Proposals in which unit bid prices have been left blank are incomplete and nonresponsive.

### **Alternate Items**. If a proposal has a regular and corresponding alternate item or group of items, the proposal will be considered complete if:

* the regular item or group of regular items has unit prices entered,
* the alternate item or group of alternate items has unit prices entered, or
* both regular item or group of regular items and alternate item or group of alternate items have unit prices entered. The Owner will use the price bid for the regular or the alternate item, or group of items, that will result in the lowest cost to the State.

### The bid will be considered incomplete and nonresponsive if:

* a regular item or group of regular items is left blank, or
* a corresponding alternate item or group of alternate items is left blank.

### **Additive Alternate Items**.The Owner will sum the products of the quantities and the unit prices bid for the regular items on the proposal form to determine the total bid amount for the base bid. The official total bid amount will be determined by the summation of the base bid plus a predetermined order of additive alternate items, not to exceed the Owner’s budgeted amount for the Contract. An estimate of the budgeted amount may be shown on the plans.

### The Contract will identify the base bid work and additive alternate work to be performed. The Owner makes no guarantee that the additive alternate work will be required.

### **A + B Bidding**. The official total bid amount will be determined by the summation of the Contract amount and the time element. The Owner will use the following formula to make the calculation:

A + B1 + B2 + BX + … + BT

The Contract amount, equal to A in the formula, is determined by the summation of the products of the approximate quantities shown in the proposal and the unit bid prices bid, and the time element, equal to B1, B2, BX (when phases are included as bid components), and BT (substantial completion of the project when included as a bid component), of the bid is determined by multiplying the number of working days bid to substantially complete the project, or phases, by the daily road-user cost (RUC) shown on the plans. When partial days are bid, they will be rounded up to the nearest whole day.

The formula above determines the low Bidder and establishes the Contract time or time for specific phases of the Contract.

### **Rubber Additives**.For proposed Contracts without federal funds, if an alternate item for “Hot Asphalt-Rubber Surface Treatments” or “Hot-Mix Asphalt Concrete Pavement” that contains ground tire rubber is shown on the proposal form and the Bidder bids that alternate item, the amounts bid for “Hot Asphalt-Rubber” and “Aggregate” or “Hot-Mix Asphalt Concrete” will be reduced to 85% of the amounts actually bid. This reduction will only be used for the purposes of determining the lowest Bidder. To qualify, the ground tire rubber used must be produced from scrap tire ground in a facility in Texas. Payment for “Hot Asphalt-Rubber” and “Aggregate” or “Hot-Mix Asphalt Concrete” will be at the actual unit prices bid.

### **Home State Bidding Preference**. For the purpose of determining the apparent low Bidder on proposed Contracts without federal funds, the Owner will select the option that results in the greatest bidding preference to the resident Bidder.

#### **Reverse Application of Non-Resident Bidder’s Home State Bidding Preference**.The total bid amount will be based upon the reverse application of the non-resident Bidder’s home state bidding preference, if any. This will also apply to another state’s preference for a Bidder that offers materials grown, produced, processed, or manufactured in that state.

Any reverse application of the home state bidding preference will be the greater of the following:

* the amount by which a resident Bidder would be required to underbid the non-resident Bidder to obtain a comparable contract in the state in which the non-resident’s principal place of business is located; or
* the amount by which a resident Bidder would be required to underbid the non-resident Bidder to obtain a comparable contract in the state in which a majority of the manufacturing relating to the Contract will be performed.

#### **Texas Home State Bidding Preference**. A Bidder will be considered the apparent low Bidder if the Bidder’s home office is located in this state and their bid does not exceed an amount equal to 105% of the apparent low bid received from a Bidder whose home office is not located in this state. This will not apply to a Bidder from a bordering state whose state does not give a preference to a Bidder in a manner similar to this Section.

# Consideration of Bid Errors

The Owner will consider a claim of a bid error by the apparent low Bidder if the following requirements have been met:

* a written notification is submitted to the Owner within 5 business days after the date the bid is opened and
* the submittal identifies the items of work involved and includes bidding documentation. The Owner may request clarification of submitted documentation.

The Owner will evaluate the claim of a bid error by the apparent low Bidder by considering the following:

* the bid error relates to a material item of work,
* the bid error amount is a significant portion of the total bid,
* the bid error occurred despite the exercise of ordinary care, and
* the delay of the proposed work will not impact cost and safety to the public.

Acceptance of the bid error claim by the Owner will result in the rejection of all bids. The erring Contractor will not be allowed to bid the project when it is re-let. Rejection of bids due to the Contractor’s bid error may result in the application of remedial actions by the Owner.

# Tie Bids

If the official total bid amount for two or more Bidders is equal and those bids are the lowest submitted, each tie Bidder will be given an opportunity to withdraw their bid. If two or more tie Bidders do not withdraw their bids, the low Bidder will be determined by a coin toss or a series of coin tosses when there are more than two Bidders. If all tie Bidders request to withdraw their bids, no withdrawals will be allowed and the low Bidder will be determined by a coin toss or a series of coin tosses when there are more than two Bidders. The Letting Official will preside over the proceedings.

# Disadvantaged Business Enterprise (DBE)

The apparent low bidder must submit DBE commitment information on federally funded projects with DBE goals within 5 calendar days (as defined in 49 CFR Part 26, Subpart A) of bid opening. For a submission that meets the 5-day requirement, administrative corrections will be allowed.

If the apparent low Bidder fails to submit their DBE information within the specified timeframe, they will be deemed nonresponsive. The Bidder forfeiting the proposal guaranty will not be considered in future proposals for the same work unless there has been a substantial change in the design of the work. The Owner may recommend that the Commission:

* reject all bids, or
* award the Contract to the new apparent low Bidder, if the new apparent low Bidder has already submitted DBE information to the Owner.

If the new apparent low Bidder did not submit the required DBE information:

* the new apparent low Bidder will not be deemed nonresponsive,
* the new apparent low Bidder’s guaranty will not be forfeited,
* the Owner will reject all bids,
* the new apparent low Bidder will remain eligible to receive future proposals for the same project, and
* the proposal guaranty of the original apparent low bidder will become the property of the Owner, not as a penalty, but as liquidated damages.

# Department of Homeland Security (DHS) E-Verify System

The Owner will not award a Contract to a Contractor that is not registered in the DHS E-Verify system. Remain active in E-Verify throughout the life of the Contract. In addition, in accordance with Article 8L.2., “Subcontracting,” sixth paragraph, include this requirement in all subcontracts and require that subcontractors remain active in E-Verify until their work is completed.

If the apparent low Bidder does not appear in the DHS E-Verify system before award, the Contractor must submit documentation showing that they are compliant within 5 calendar days after bid opening. A Contractor that fails to comply or respond within the deadline will be declared nonresponsive. The Bidder forfeiting the proposal guaranty will not be considered in future proposals for the same work unless there has been a substantial change in the scope of the work.

The Owner may recommend to:

* reject all bids or
* award the Contract to the new apparent low Bidder, if the Owner is able to verify the Bidder’s participation in the DHS E-Verify system.

If the Owner is unable to verify the new apparent low Bidder’s participation in the DHS E-Verify system:

* the new apparent low Bidder will not be deemed nonresponsive,
* the new apparent low Bidder’s guaranty will not be forfeited,
* the Owner will reject all bids,
* the new apparent low Bidder will remain eligible to receive future proposals for the same project, and
* the proposal guaranty of the original low bidder will become the property of the Owner, not as a penalty, but as liquidated damages.