

TEXAS TRANSPORTATION COMMISSION

Bexar County

MINUTE ORDER

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San Antonio District

Transportation Code, Chapter 223, Subchapter F prescribes the process by which the Texas Department of Transportation (department) may enter into a design-build contract with a private entity that provides for the design, construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project. Transportation Code, § 223.242 authorizes the department to enter into, in each state fiscal biennium, up to six design-build contracts for highway projects with estimated construction costs of \$150 million or more.

On March 31, 2022, by Minute Order 116217, the Texas Transportation Commission (commission) authorized the department to issue a request for qualifications (RFQ) to design, construct, and potentially maintain the I-35 Northeast Expansion (NEX) South Project. The project will include non-tolled improvements along I-35 from approximately I-410 South to I-410 North, including transitions along I-35 from Petroleum Drive to I-410 South, and along the portion of I-410 South from the I-35/I-410 South Interchange to 0.3 miles north of Seguin Road/FM 78, which improvements include the construction of: additional elevated mainlanes comprised of two General Purpose lanes and one High Occupancy Vehicle lane in each direction; two additional direct connectors at the I-35/I-410 South interchange to connect I-410 to the I-35 elevated lanes; and connection to the elevated lanes and direct connectors at the I-35/I-410 North interchange being constructed as part of the I-35 Northeast Expansion Central Project in Bexar County, Texas.

The department issued the RFQ on April 15, 2022. Four proposer teams responded to the RFQ. Following the department's evaluation of the qualifications statements, the best qualified teams will be short-listed and requested to submit detailed proposals to design, construct, and potentially maintain the project.

Transportation Code § 223.246 and 43 TAC § 9.153(d) provide that, if authorized by the commission, the department will issue a request for proposals (RFP) from all private entities qualified for the short list. The department intends to issue an RFP for the I-35 NEX South Project and to request detailed proposals from the short-listed teams to design, construct, and maintain the I-35 NEX South Project.

Transportation Code § 223.249(a) and 43 TAC § 9.153(f) requires the department to pay an unsuccessful private entity that submits a detailed proposal that is responsive to the requirements of the RFP a stipulated amount in exchange for the work product contained in the proposal. The stipend must be a minimum of twenty-five hundredths of one percent of the contract amount, the stipulated amount must be stated in the RFP, and it may not exceed the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions. Payment for this work product would allow the department to use the work product for the benefit of the I-35 NEX South Project or other department projects without further payment to the unsuccessful proposer. Transportation Code § 223.249(b) and 43 TAC § 9.153(f) require the department to pay a partial stipend in the event that a procurement is terminated before the execution of a design-build contract.

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IT IS THEREFORE ORDERED by the commission that the department is authorized to issue an RFP to design, construct, and maintain the I-35 NEX South Project in Bexar County.

IT IS FURTHER ORDERED that, after consideration of the criteria in 43 TAC § 9.153(f), the department is authorized to pay each proposer that submits a responsive, but unsuccessful, proposal for the I-35 NEX South Project an amount based upon the value of the work product provided in the proposal that can, as determined by the department, be used by the department in the performance of its functions, up to a maximum amount per proposer of 0.25% of the successful proposer’s price for all work under the design-build contract.

IT IS FURTHER ORDERED that in the event the procurement is terminated prior to the execution of the design-build contract, and after consideration of the criteria in 43 TAC § 9.153(f), the department is authorized to pay each proposer a partial stipend based upon the value of the work product that can, as determined by the department, be used by the department in the performance of its functions, up to a maximum amount per proposer of \$1,575,000.

IT IS FURTHER ORDERED that payment for work product may only be paid to the extent that the work product submitted meets the minimum criteria and the proposer satisfies the conditions for payment identified by the department in the I-35 NEX South Project procurement documents.

Submitted and reviewed by:

Recommended by:

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Deputy Executive Director

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Executive Director

116305 August 30, 2022

Minute Number Date Passed