

Item 2

Instructions to Bidders



1. 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 Department’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.

2. 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. Submit the appropriate questionnaire at least 10 calendar days before the last day of the bid opening for the District or statewide letting. Comply with all technical prequalification requirements in the proposal.

- 2.1. **Confidential Questionnaire.** Submit a Confidential Questionnaire and an audited financial statement for approval. Once prequalified, a Bidder’s eligibility is valid for a period of one year from the balance sheet statement date.
- 2.2. **Bidder’s Questionnaire.** Bidders prequalified with a Bidder’s Questionnaire are only eligible to bid on projects identified as being waived from the requirements of Section 2.2.1., “Confidential Questionnaire.” These projects are designated with a “W” on the Proposal Request Form. Submit a Bidder’s Questionnaire for approval. Once prequalified, a Bidder’s eligibility is valid for a period of one year from the date the Bidder’s Questionnaire was received by the Department.

3. ISSUING PROPOSAL FORMS

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

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

- the Bidder is suspended or debarred by the Commission, Department, or any federal agency,
- 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 Department 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 Department to participate in the preparation of the plans or specifications on which the bid or Contract is based, or

- the Bidder is ineligible to bid on any proposed Contract in accordance with Article 7.15., "Responsibility for Damage Claims."

4. INTERPRETING ESTIMATED QUANTITIES

The quantities listed in 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.

5. 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 use of the Department in the preparation of plans. This information is provided for the Bidder's information only and the Department 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 in the proposal form given during the bidding process are not binding. Only requirements included in the proposal form, associated specifications, plans, and Department-issued addenda are binding. Request explanations of documents in adequate time to allow the Department to reply before the bid opening.

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

6. PREPARING THE BID

Prepare the bid on the proposal form furnished by the Department. Informational proposal forms printed from the Department'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 Department will not accept an incomplete bid. A bid that has one or more of the deficiencies listed below is considered incomplete:

- the proposal form was not signed,
- certifications were not acknowledged,
- a regular item or the additive alternate item are left blank,
- a regular item and the corresponding replacement alternate item are left blank,
- the proposal form submitted had the incorrect number of items, or
- the Bidder did not acknowledge all addenda.

7. NONRESPONSIVE BID

The Department 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 bid was submitted for the same proposal form 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 2.3., "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 Department,
- 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,
- the Bidder did not attend a specified mandatory pre-bid conference, or
- the Bidder did not meet the requirements of the technical qualification.

8. 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 Department's bidding system.

- 8.1. **Proposal Form.** Use the electronic proposal form in the Department'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 Department'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.

- 8.2. **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.

Use the most current version of the electronic bond issued by the Department. For a joint venture, the bond must be in the name of all joint venture participants. Enter the bond authorization code into the Department's bidding system.

It is the Bidder's responsibility to ensure the electronic bid bond is issued in the name or names of the Bidder or Bidders.

- 8.3. **Submittal of Bid.** Submit the bid to the vault using the Department's bidding system.

- 8.4. **Revising the Proposal Form.** Make desired changes in the Department'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.

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

A written request must be signed and submitted to the Letting Official with proof of identification. The request must be made by a person authorized to bind the Bidder or Bidders. In the case of joint venture, the Department will accept a request from any person authorized to bind a party to the joint venture. The Department 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.

9. PRINTED BID

- 9.1. **Proposal Form.** Mark all entries in ink. As an alternative to hand writing the unit prices in 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" in 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 joint venture, provide the complete and correct name of all Bidders submitting the bid. In the case of a joint venture, the person signing the proposal form must be authorized to bind all joint venture participants.

If a proposal form contains both regular items for domestic steel or iron materials and replacement alternate items for foreign steel or iron materials, the Bidder must either:

- submit unit bid prices for domestic items only, or
- submit unit bid prices for both the domestic and foreign items.

- 9.2. **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 2.8.2., "Proposal Guaranty," and submit the electronic bid bond with the printed bid.

- 9.2.1. **Guaranty Check.** Make the check payable to the Texas Transportation Commission or the Texas Department of Transportation. 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 Department will not accept personal checks, certified checks, or other types of money orders.

- 9.2.2. **Bid Bond.** Use the bid bond form provided by the Department. 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 joint venture Bidders, each of the Bidders 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.

- 9.3. **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.

- 9.4. **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 Department will not make revisions to a bid on behalf of a Bidder.

- 9.5. **Withdrawing a Bid.** Submit a written request to withdraw a bid before the time and date set for the opening. The Department will not accept oral requests. A written request must be signed and submitted to the Letting Official with proof of identification. The request must be made by a person authorized to bind the Bidder or Bidders. In the case of joint venture, the Department will accept a request from any person authorized to bind

a party to the joint venture. The Department 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.

10. 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.

11. TABULATING BIDS

11.1. **Official Total Bid Amount.** The Department will sum the products of the quantities and the unit prices bid in the proposal form to determine the official total bid amount, except as provided in Section 2.11.5., "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.

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

If a Bidder submits 2 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.

11.3. **Rounding of Unit Prices.** The Department 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 of five-hundredths of a cent (\$0.0005) or more will be rounded up to the next highest tenth of a cent, while entries less than five-hundredths of a cent will be rounded down to the next lowest tenth of a cent.

11.4. **Interpretation of Unit Prices.** The Department 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 Department's determination will be final.

11.5. **Consideration of Unit Prices.**

11.5.1. **Additive Alternate Items.** The Department will sum the products of the quantities and the unit prices bid for the regular items in 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 pre-determined order of additive alternate items, not to exceed the Department'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 Department makes no guarantee that the additive alternate work will be required.

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

$$A + B1 + B2 + BX + \dots + BT$$

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) provided 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.

- 11.5.3. **Rubber Additives.** For proposed Contracts without federal funds, if an alternate item for “Hot Asphalt-Rubber Surface Treatments” or “Hot-Mix Asphalt Concrete Pavement” which contains ground tire rubber is shown in 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.
- 11.5.4. **“Buy America.”** The use of foreign steel is only allowed when shown on the plans. For a Bidder who proposes to use foreign steel or iron materials to be considered the apparent low Bidder, their total bid must be at least 25% lower than the next lowest bid if that bid proposes to use domestic steel or iron materials.
- This requirement does not apply to minimal use of steel or iron materials provided that the total cost of all foreign source items used in the project, as delivered to the project site, is less than \$2,500 or one-tenth-of-one-percent (1/10 of 1%) of the Contract amount, whichever is greater.
- 11.5.5. **Home State Bidding Preference.** For the purpose of determining the apparent low Bidder on proposed Contracts without federal funds, the Department will select the option that results in the greatest bidding preference to the resident Bidder.
- 11.5.5.1. **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 would 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 principle 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.
- 11.5.5.2. **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.

12. CONSIDERATION OF BID ERRORS

The Department 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 Department within 5 business days after the date the bid is opened; and
- the submittal identifies the items of work involved and include bidding documentation. The Department may request clarification of submitted documentation.

The Department will evaluate the claim of an 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 Department will result in the rejection of all bids. The erring Contractor will not be allowed to bid the project when it is relet. Rejection of bids due to the Contractor's bid error may result in the application of sanctions by the Department.

13. TIE BIDS

If the official total bid amount for 2 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 2 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 2 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 2 Bidders. The Letting Official will preside over the proceedings.