TEXAS TRANSPORTATION COMMISSION

ALL Counties

ALL Districts

MINUTE ORDER

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §§9.81, 9.83, 9.85, 9.87, and 9.89, 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 adopted amendments, attached to this minute order as Exhibits A and B, 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 §§9.81, 9.83, 9.85, 9.87 and 9.89 are adopted and are authorized for filing with the Office of Secretary of State.

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:

Interim Director, Right of Way Division

GUS E. CANNON

Recommended by:

Executive Director

114468 JAN 28 16

Minute Number

Date Passed

Adoption Preamble

The Texas Department of Transportation (department) adopts amendments to §9.81, Definitions, §9.83, Notice and Letter of Interest, §9.85, Evaluation, §9.87, Selection, and §9.89, Qualification Requirements for Appraisers, concerning Contracts for Scientific, Real Estate Appraisal, Right of Way Acquisition, and Landscape Architectural Services. The amendments to §§9.81, 9.83, 9.85, 9.87, and 9.89 are adopted without changes to the proposed text as published in the November 13, 2015 issue of the *Texas Register* (40 TexReg 8011) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The department adopts changes to the rules for real estate appraisal service and right of way acquisition service providers to address the increasing need for professionalism, timeliness, cost effectiveness, and transparency in the department’s contracting with professional real estate appraisers and right of way acquisition service providers.

Amendments to §9.81, Definitions, modify and clarify the definition of a professional real estate appraiser by deleting the term “licensed” and adding “certified by the Texas Appraiser Licensing and Certification Board.” Real estate appraisers are regulated in Texas under the Texas Appraiser Licensing and Certification Act, Occupations Code, Chapter 1103. A state

certification carries a higher level of appraisal authority than a state license. A definition of “department-certified appraiser” has been added to clarify that in addition to carrying a state certification, an appraiser must also qualify for a department certification which requires additional experience beyond the issuance of the state certification. Definitions have also been added to distinguish the appraisal authority of a state-certified general appraiser and a state-certified residential appraiser. The general appraisal state certification carries the authority to appraise all types of real property, while the residential appraisal state certification carries the authority to appraise only 1-4 unit residential properties.

Amendments to §9.83, Notice and Letter of Intent, and §9.85, Evaluation, replace the language referencing a “precertified” appraiser with “department-certified” appraiser. This provides clarity in the difference in a state certification and department certification. Section 9.85(c) expressly provides that to be selected for a contract an appraiser must be a department-certified appraiser.

Amendments to §9.87, Selection, increase the total right of way acquisition service provider contract amount from $2 million to $4 million for a contract issued to provide services in a single

district of the department. Contracts for right of way acquisition service providers do not carry a guarantee of work, but the artificial $2 million cap does not provide the capacity for providers to complete work authorizations on complex right of way projects, particularly with the increasing construction letting schedule throughout the state. The increase will provide a more timely and efficient business process as opposed to having to use multiple service providers on a single project in order to meet the constraints of the obsolete $2 million contract cap. The amendments also reflect the current style of expressing dollar amounts of more than $1 million.

Amendments to §9.89, Qualification Requirements for Appraisers, delete, add, and clarify language for requirements that must be met by eligible individual real estate appraisers. Language was deleted that specified types of properties that demonstrate experience as it is not a comprehensive list and creates ambiguity. New language has been added that provides flexibility in the list of property types that can be used for qualifying experience. Again, the language referencing a “precertified” appraiser has been replaced by “department-certified” appraiser. The term “licensed” appraiser was deleted as it is a level of appraisal authority substantially below the state certification that is needed to perform complex appraisal assignment for parcels subject to eminent domain. Additional

clarifying language has been added that specifies that an appraiser’s experience for department certification must be demonstrated in a period after state certification is awarded. Language has been added that specifically states that a copy of the appraiser’s state certification must be included in the application for department certification. Language was deleted in reference to a precertification being required every five years and has been replaced with language that will make the termination of the department certification the same date as the termination of the appraiser’s individual state certification. Having the same date for the state certification and the department certification will eliminate confusion and provide administrative efficiency to both the regulated appraisal industry and the department.

COMMENTS

No comments were received regarding the amendments to §§9.81, 9.83, 9.85, 9.87, and 9.89.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2254, and Occupations Code, Chapter 1103.

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

§9.81. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Appraiser--An individual certified by the Texas Appraiser Licensing and Certification Board [~~licensed~~] to provide real estate appraisal services in Texas.

(2) Competitive sealed proposals--A procurement method in which offers are solicited from a number of sources, and selection is made using criteria other than cost, although reasonableness of cost is a selection criterion.

(3) Department--The Texas Department of Transportation.

(4) Department-certified appraiser--An appraiser who has been certified by the department in accordance with §9.89 of this subchapter to perform real estate appraisal services.

(5) [~~(4)~~] Indefinite delivery contract--A contract that contains a general scope of services, maximum contract amount, and contract termination date in which contract rates are negotiated prior to contract execution, and work is authorized as needed.

(6) [~~(5)~~] Landscape architect--An individual licensed

to practice landscape architecture in the state or states that he or she performs professional services.

(7) [~~(6)~~] Mandatory/minimum qualifications--Those qualifications listed in the request for proposals that the provider must demonstrate it meets in order for the proposal to be considered responsive.

(8) [~~(7)~~] Provider--An individual or entity that provides scientific, appraisal, right of way acquisition, or landscape architectural services.

(9) [~~(8)~~] Request for proposals (RFP)--A request for submittal of a proposal that demonstrates competence and qualifications of the provider to perform the requested services and shows an understanding of the specific project.

(10) [~~(9)~~] Right of way acquisition provider (ROW provider)--A firm performing right of way acquisition, including appraisal services, but excluding surveying, engineering, or architectural services.

(11) State-certified general appraiser--An appraiser authorized to appraise all types of real property without regard to complexity or transaction value.

(12) State-certified residential appraiser--An appraiser authorized to appraise 1-4 unit residential properties without regard to transaction value or complexity of the

appraisal.

(13) [~~(10)~~] Subprovider--A provider proposing to perform work through a contractual agreement with the provider.

(14) [~~(11)~~] Scientific services--Environmental or cultural studies, analyses, and document preparation services required by state or federal law, for a transportation project within the authority or jurisdiction of the department, and performed by an archeologist, biologist, geologist, historian, architectural historian, or other technical expert.

(15) [~~(12)~~] Technical expert--An archeologist, biologist, geologist, historian, architectural historian, or other non-engineering expert in a natural, social, historical, or environmental science qualified to conduct an environmental or cultural study required by state or federal law for a transportation project. This definition includes a firm or institution employing one or more technical experts.

§9.83. Notice and Letter of Interest.

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

(1) Electronic notice. Not less than 21 days before

the proposal due date, the department will post a notice on an electronic bulletin board. The notice will contain the:

(A) proposed contract or RFP number;

(B) type of selection in accordance with §9.87 of this subchapter (relating to Selection);

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

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

(E) contact person;

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

(G) if the notice is for an appraiser, a statement that the appraiser must be a department-certified appraiser [~~precertified in accordance with §9.89 of this subchapter (relating to Qualification Requirements for Appraisers~~].

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

(b) Letter of interest.

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

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

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

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

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

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

(1) the requirements for a responsive proposal including:

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

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

(C) mandatory/minimum provider qualifications;

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

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

(4) proposed contract duration;

(5) proposed method of payment;

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

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

(8) a copy of the evaluation matrices;

(9) type of contract selection;

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

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

(12) any special contract requirements.

(d) Proposal meeting. The meeting may be either mandatory or optional at the discretion of the department. If the meeting is mandatory, the department will only accept proposals from providers represented at the meeting. The proposal meeting provides an opportunity for the provider to seek clarification or ask questions concerning the contract.

§9.85. Evaluation.

(a) Technical expert and ROW provider evaluation criteria. The department will evaluate a technical expert's or ROW

provider's responsive proposal based on the following criteria, if applicable:

(1) professional qualifications;

(2) experience of the firm and the team or individuals;

(3) merits of the proposal, including unique or innovative methods for performing the work;

(4) ability to commit personnel, time, and other resources to the project (technical experts cannot be removed from association with the contract without prior consent by the department);

(5) demonstrated understanding of the scope of services to be provided, including identifying which type of work will be performed by a subprovider, if any;

(6) demonstrated understanding of applicable rules, regulations, policies, and other requirements associated with the environmental or cultural studies, analyses, or document preparation to be performed;

(7) ability to meet department scheduling requirements;

(8) past performance of the provider, specific provider staff, or subproviders on similar contracts; and

(9) reasonableness of fee.

(b) Landscape architect evaluation. The department will evaluate a landscape architect's responsive proposal based on the following criteria:

(1) experience of the project manager and project team;

(2) demonstrated understanding of the scope of services to be provided, including identifying which type of work will be performed by a subprovider, if any;

(3) references including the ability to meet deadlines over the past three years;

(4) ability to meet department scheduling requirements; and

(5) reasonableness of fee.

(c) Appraiser evaluation. An appraiser must be a department-certified appraiser [~~precertified in accordance with §9.89 of this section (relating to Qualification Requirements for Appraisers)~~]. The department will evaluate a department-certified [~~precertified~~] appraiser’s responsive proposal based on the following criteria:

(1) experience of the individual;

(2) demonstrated understanding of the scope of services to be provided;

(3) references including the ability to meet deadlines

over the past three years;

(4) ability to meet department scheduling requirements; and

(5) reasonableness of fee.

(d) Evaluation scale. The department will assign a numerical weighting value to each evaluation criterion and then score each criterion based upon a numerical scale.

(e) Evaluation matrix. The department will evaluate each responsive proposal using an individual proposal evaluation matrix.

(f) Tie scores. In the event of a tie, the managing officer will break the tie using the following method unless different criteria have been listed in the RFP.

(1) The first tie breaker, if needed, will be references/past performances.

(2) The second tie breaker, if needed, will be ability to meet department scheduling requirements.

(3) If there is still a tie, the provider will be chosen by random selection.

§9.87. Selection. The department will perform three types of contract selections.

(1) Individual contract selection. One contract will

result from the contract notice.

(2) Multiple contract selection. More than one contract, of similar work types and estimated amounts will result from the contract notice. The notice will indicate the number and type of contracts to result from the advertisement, and specify a range of scores for providers that will be considered qualified to perform the work.

(3) Indefinite delivery contract selection.

(A) This contract selection may be for award of contracts to single or multiple providers to perform work under a general scope of services.

(B) The typical type of work will be described in the contract. Specific services shall be authorized by individual work authorizations on an as-needed basis. The maximum contract amount shall be specified in the contract. The total contract amount shall not exceed $4 million [~~$2,000,000~~] for a contract issued to provide services in a single district of the department. The total of the contract work authorizations shall not exceed $5 million [~~$5,000,000~~] in a contract issued to provide services in two or more districts of the department.

(C) All work authorizations under an indefinite delivery contract shall be issued within two years of the

effective date of the contract, except for scientific services. For scientific services, the initial work authorization for any specific project must be issued within two years. The work authorization for tasks or subtasks, within the specific project, may be issued after the initial two years provided that the task or subtask does not initiate a new project.

§9.89. Qualification Requirements for Department-Certified Appraisers.

(a) Eligible individuals. To become a department-certified appraiser, [~~be precertified~~] an applicant [~~appraiser~~] must:

[~~(1) have demonstrated experience after licensure in the performance of appraisals associated with one or more of the following types of properties: residences, apartments, commercial, industrial, farms, or other special purpose;~~]

(1) [~~(2)~~] be a state-certified general appraiser or state-certified residential appraiser; [~~currently licensed to practice in the state of Texas by the Texas Appraiser Licensing and Certification Board; and~~]

(2) have demonstrated experience after state certification in the performance of appraisal types required by the department; and

(3) submit to the Right of Way Division of the Texas

Department of Transportation in Austin a complete and correct application for department certification [~~precertification~~] on a form prescribed by the department, including, but not limited to, a copy of the applicant's state certification issued by the state of Texas Appraiser Licensing and Certification Board [~~information regarding education, training, experience, and copies of licenses and certifications~~].

(b) Certification as a department-certified [~~The precertification of an~~] appraiser does not guarantee that work will be awarded to the appraiser.

(c) An applicant [~~appraiser~~] will be notified, [~~precertified~~] within 60 days after the day of the Right of Way Division's [~~of~~] receipt of a complete and correct application form, that the applicant has been certified as a department-certified appraiser, that the applicant [~~or notified in writing within the same time period that they~~] did not meet the requirements for department certification, [~~precertification~~] or that additional information or documentation will be required for review.

(d) If the application is incomplete, the applicant [~~appraiser applying for precertification~~] will be requested to submit additional information or documentation for review. The applicant [~~appraiser~~] shall submit such information or

documentation within 30 days of receipt of the department's request for such information or documentation. If the information is not provided within 30 days after receipt of the request, the application for department certification [~~precertification~~] will be processed with the information available. The department will make a determination on department certification [~~precertification~~] status within 60 days of receipt of the additional information.

(e) Renewal of department certification [~~precertification~~] will be required within 60 days after the issuance of the appraiser's renewal of the state certification issued by the Texas Appraiser Licensing and Certification Board [~~every five years~~]. Department certification terminates on the date that state certification expires or is surrendered, suspended, or revoked. [~~Precertified appraisers will be assigned a renewal date by the department and must apply for renewal of precertification on an application form prescribed by the department between 90 and 30 days prior to their renewal date. The precertification of a appraiser who fails to submit an application for renewal at least 30 days prior to its renewal date will expire, and the appraiser would then be ineligible to submit a letter of interest for new contracts until having first been precertified.~~]

(f) Appeal. An applicant [~~appraiser~~] may appeal denial of department certification [~~precertification~~] by submitting additional information within 30 days of receipt of written notification of denial to the Director of the Right of Way Division in Austin. This information shall justify why the applicant [~~appraiser~~] meets the requirements for a department-certified appraiser [~~precertification~~]. The Director of the Right of Way Division will review the information and make a determination regarding department certification [~~precertification~~]. An applicant [~~appraiser~~] may appeal that determination by filing a written complaint regarding denial of department certification [~~selection for precertification~~] with the executive director or his or her designee.