

TEXAS TRANSPORTATION COMMISSION

Dallas County

MINUTE ORDER

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Dallas 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 April 30, 2020, by Minute Order 115724, the Texas Transportation Commission (commission) authorized the department to issue a request for qualifications (RFQ) to design, construct, and maintain a project to reconstruct and widen Interstate Highway 35E from I-635 to the Denton County line in the cities of Dallas, Farmers Branch, and Carrollton in Dallas County (I-35E Phase 2 Project). The I-35E Phase 2 Project consists of the full reconstruction and widening of this segment of the I-35E corridor and includes the addition of one general purpose lane in each direction and full reconstruction and “grandfathering” of the existing two reversible tolled managed lanes, for a total of 10 general purpose and tolled managed lanes, along with the reconstruction of continuous frontage roads and numerous intersection improvements.

The department issued the RFQ on May 20, 2020. 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 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-35E Phase 2 Project and to request detailed proposals from the short-listed teams to design, construct, and maintain the I-35E Phase 2 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-35E Phase 2 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-35E Phase 2 Project in Dallas 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-35E Phase 2 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 \$1,500,000.

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-35E Phase 2 Project procurement documents.

Submitted and reviewed by:

Recommended by:

DocuSigned by:

Benjamin H. Asher

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Director, Project Finance,
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James M. Brass

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Executive Director

115793 July 30, 2020

Minute Date
Number Passed