



**CENTRAL TEXAS
Regional Mobility Authority**

AGENDA ITEM #7 SUMMARY

Amend the Policy Code to recognize local presence as a consideration in certain procurements for general goods and services or for a construction contract.

Department: Law
Associated Costs: N/A
Funding Source: N/A
Board Action Required: Yes

Description of Matter: This proposed amendment to the Policy Code allows the Board, in a low-bid procurement for goods, certain services, or for a construction contract, to choose to award the contract to a “local bidder” (one whose designated headquarters is in Williamson County or Travis County) if the local bidder’s bid is no more than 3% higher than the bid from lowest bidder, and that lowest bidder is not a local bidder.

A local presence consideration will not apply to the award of a contract where doing so would violate federal or state laws or regulations or other funding restrictions, for a contract procured under the Texas Professional Services Procurement Act, for consulting services, for a design-build contract, or for a comprehensive development agreement.

Backup information: Draft Policy Code Amendment
Draft Resolution

Contact: Andrew Martin, General Counsel

401.015 Award Under Competitive Bidding

(a) ~~Contracts~~A contract for general goods ~~and/or~~ services procured using competitive bidding shall be awarded to the lowest best bidder based on the same criteria used in awarding a construction ~~contracts~~contract, together with the following additional criteria:

- (1) the quality and availability of the goods or contractual services to be provided and their adaptability to the authority's needs and uses; and
- (2) the ~~bidder's~~bidder's ability to provide, in timely manner, future maintenance, repair parts, and service for goods being purchased.

(b) In accordance with Subchapter A, Chapter 2252, Government Code, the authority will not award a contract to a nonresident bidder unless the nonresident underbids the lowest best bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid ~~the~~a nonresident bidder to obtain a comparable contract in the state in which the ~~nonresident's~~nonresident bidder's principal place of business is located.

(c) As an alternative to awarding a contract for general goods and services under subsection (a), the authority may award a contract to:

(1) the lowest best bidder; or

(2) a local bidder, provided that:

(A) the bid from the local bidder is no more than three percent (3%) higher than the bid of the lowest best bidder, and

(B) the lowest best bidder is not a local bidder.

(3) In this subsection, a "local bidder" means a bidder whose principal place of business is located within a county of the authority, and the "principal place of business" means the bidder's designated headquarters, where most of the important functions and full responsibility for managing and coordinating the bidder's business activities take place.

(d) The authority may not award a contract to a local bidder under subsection (c) unless the board determines by resolution that awarding the contract to the local bidder offers the authority the best combination of contract price, technical competence, and economic development opportunities for residents of a county of the authority.

(e) Subsection (c) does not apply to the procurement of a contract:

- (1) for which the authority uses funds from a federal, state, or other source as any payment for the contract and the award of the contract under subsection (c) would violate federal or state law or regulations, or if the funding source prohibits or restricts the award of the contract under subsection (c);
- (2) for professional services procured under article 5 of this chapter, or if the award of the contract is otherwise subject to the requirements of the Professional Services Procurement Act, Chapter 2254, Government Code;
- (3) for consulting services procured under article 4 of this chapter; or
- (4) for a design-build contractor or for a comprehensive development agreement procured under article 7 of this chapter.
- (f) Notwithstanding this section, the authority is not required to award a contract and may reject all bids.

401.046 Award of Contract.

- (a) Except as otherwise provided in this article, ~~or by subsection (c)~~, if the authority does not reject all bids, it will award the contract to the lowest best bidder.
- (b) In determining the lowest best bidder, in addition to price the authority shall consider:
 - (1) the bidder's ability, capacity, and skill to perform the contract or provide the service required;
 - (2) the bidder's ability to perform the contract or provide the service promptly, or in the time required, without delay or interference;
 - (3) the bidder's character, responsibility, integrity, reputation, and experience;
 - (4) the quality of performance by the bidder of previous contracts or services;
 - (5) the bidder's previous and existing compliance with laws relating to the contract or service; and
 - (6) the sufficiency of the bidder's financial resources and ability to perform the contract or provide the service.
- (c) As an alternative to awarding a contract under subsection (a), the authority may award a contract to:
 - (1) the lowest best bidder; or
 - (2) a local bidder, provided that:

(A) the bid from the local bidder is no more than three percent (3%) higher than the bid of the lowest best bidder, and

(B) the lowest best bidder is not a local bidder.

(3) In this subsection, a “local bidder” means a bidder whose principal place of business is located within a county of the authority, and the “principal place of business” means the bidder’s designated headquarters, where most of the important functions and full responsibility for managing and coordinating the bidder’s business activities take place.

(d) The authority may not award a contract to a local bidder under subsection (c) unless the board determines by resolution that awarding the contract to the local bidder offers the authority the best combination of contract price, technical competence, and economic development opportunities for residents of a county of the authority.

(e) The authority may not award a contract under subsection (c) if the authority uses funds from a federal, state, or other source as any payment for the contract and the award of the contract under subsection (c) would violate federal or state law or regulations, or if the funding source prohibits or restricts the award of the contract under subsection (c).

(f) Notwithstanding this section, the authority is not required to award a contract and may reject all bids.

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 14-___

**AMENDING THE POLICY CODE TO RECOGNIZE LOCAL PRESENCE
AS A CONSIDERATION IN CERTAIN PROCUREMENTS
FOR GENERAL GOODS AND SERVICES OR FOR A CONSTRUCTION CONTRACT.**

WHEREAS, by Resolution No. 12-016 adopted February 29, 2012, the Board adopted the Mobility Authority Policy Code (“Policy Code”) as a non-substantive codification of all policy resolutions adopted by the Board since 2003; and

WHEREAS, the Policy Code authorizes procurement of general goods and services and for a construction contract by competitive sealed bids awarded to the lowest responsible bidder; and

WHEREAS, state laws applicable to other political subdivisions allow local presence to be considered in the award of certain contracts otherwise awarded to the low bidder, and the Executive Director recommends amending the Policy Code to similarly include local presence as a consideration in awarding certain contracts for goods, services, or for construction, as set forth in the proposed amendment to Sections 401.015 and 401.046 attached as Exhibit 1 to this resolution.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby amends Sections 401.015 and 401.046 of the Policy Code, each to read in its entirety as set forth in Exhibit 1.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 17th day of December, 2014.

Submitted and reviewed by:

Approved:

Andrew Martin
General Counsel for the Central
Texas Regional Mobility Authority

Ray A. Wilkerson
Chairman, Board of Directors
Resolution Number: 14-___
Date Passed: 12/17/2014

EXHIBIT 1 TO RESOLUTION NO. 14-

401.015 Award Under Competitive Bidding

(a) A contract for general goods or services procured using competitive bidding shall be awarded to the lowest best bidder based on the same criteria used in awarding a construction contract, together with the following additional criteria:

- (1) the quality and availability of the goods or contractual services to be provided and their adaptability to the authority's needs and uses; and
- (2) the bidder's ability to provide, in timely manner, future maintenance, repair parts, and service for goods being purchased.

(b) In accordance with Subchapter A, Chapter 2252, Government Code, the authority will not award a contract to a nonresident bidder unless the nonresident underbids the lowest best bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident bidder's principal place of business is located.

(c) As an alternative to awarding a contract for general goods and services under subsection (a), the authority may award a contract to:

- (1) the lowest best bidder; or
- (2) a local bidder, provided that:
 - (A) the bid from the local bidder is no more than three percent (3%) higher than the bid of the lowest best bidder, and
 - (B) the lowest best bidder is not a local bidder.

(3) In this subsection, a "local bidder" means a bidder whose principal place of business is located within a county of the authority, and the "principal place of business" means the bidder's designated headquarters, where most of the important functions and full responsibility for managing and coordinating the bidder's business activities take place.

(d) The authority may not award a contract to a local bidder under subsection (c) unless the board determines by resolution that awarding the contract to the local bidder offers the authority the best combination of contract price, technical competence, and economic development opportunities for residents of a county of the authority.

(e) Subsection (c) does not apply to the procurement of a contract:

- (1) for which the authority uses funds from a federal, state, or other source as any payment for the contract and the award of the contract under subsection (c) would violate federal or state law or regulations, or if the funding source prohibits or restricts the award of the contract under subsection (c);
 - (2) for professional services procured under article 5 of this chapter, or if the award of the contract is otherwise subject to the requirements of the Professional Services Procurement Act, Chapter 2254, Government Code;
 - (3) for consulting services procured under article 4 of this chapter; or
 - (4) for a design-build contractor or for a comprehensive development agreement procured under article 7 of this chapter.
- (f) Notwithstanding this section, the authority is not required to award a contract and may reject all bids.

401.046 Award of Contract.

- (a) Except as otherwise provided in this article or by subsection (c), if the authority does not reject all bids, it will award the contract to the lowest best bidder.
- (b) In determining the lowest best bidder, in addition to price the authority shall consider:
 - (1) the bidder's ability, capacity, and skill to perform the contract or provide the service required;
 - (2) the bidder's ability to perform the contract or provide the service promptly, or in the time required, without delay or interference;
 - (3) the bidder's character, responsibility, integrity, reputation, and experience;
 - (4) the quality of performance by the bidder of previous contracts or services;
 - (5) the bidder's previous and existing compliance with laws relating to the contract or service; and
 - (6) the sufficiency of the bidder's financial resources and ability to perform the contract or provide the service.
- (c) As an alternative to awarding a contract under subsection (a), the authority may award a contract to:
 - (1) the lowest best bidder; or
 - (2) a local bidder, provided that:

- (A) the bid from the local bidder is no more than three percent (3%) higher than the bid of the lowest best bidder, and
 - (B) the lowest best bidder is not a local bidder.
- (3) In this subsection, a “local bidder” means a bidder whose principal place of business is located within a county of the authority, and the “principal place of business” means the bidder’s designated headquarters, where most of the important functions and full responsibility for managing and coordinating the bidder’s business activities take place.
- (d) The authority may not award a contract to a local bidder under subsection (c) unless the board determines by resolution that awarding the contract to the local bidder offers the authority the best combination of contract price, technical competence, and economic development opportunities for residents of a county of the authority.
- (e) The authority may not award a contract under subsection (c) if the authority uses funds from a federal, state, or other source as any payment for the contract and the award of the contract under subsection (c) would violate federal or state law or regulations, or if the funding source prohibits or restricts the award of the contract under subsection (c).
- (f) Notwithstanding this section, the authority is not required to award a contract and may reject all bids.