MOBILITY AUTHORITY

POLICY CODE

CURRENT AS OF OCTOBER 31, 2018

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Chapter 1: GOVERNANCE (BYLAWS)

Article 1. GENERAL

101.001 The Authority

These bylaws are made and adopted for the regulation of the affairs and the performance of the functions of the Central Texas Regional Mobility Authority (the "authority"), a regional mobility authority authorized and existing pursuant Chapter 370, Transportation Code, as the same may be amended from time to time (the "RMA Act"), as well as rules adopted by the Texas Department of Transportation concerning the operation of regional mobility authorities, located at 43 T.A.C. Chapter 26 (the "RMA Rules").

101.002 Principal Office

The domicile and principal office of the authority shall be in one of the counties composing the authority.

101.003 General Powers

The activities, property, and affairs of the authority will be managed by its board (the "board"), which may exercise all powers and do all lawful acts permitted by the Constitution and statutes of the State of Texas, the RMA Act, the RMA rules, and these bylaws.

101.004 Contracts and Purchases

All contracts and purchases on behalf of the authority shall be entered into and made in accordance with rules of procedure prescribed by the board and applicable laws and rules of the State of Texas and its agencies.

101.0041 Records Retention

(a) The Mobility Authority shall comply with a retention schedule for local government records adopted by the Texas State Library and Archives Commission, including the following schedules hereby adopted and incorporated by reference into this subsection:

(1) Local Schedule GR (Revised Fourth Edition), effective July 4, 2012; and

(2) Local Schedule PW 13 TAC §7.125(b)(2) (Second Edition), effective April 11, 2011.

(b) If the Texas State Library and Archives Commission adopts a new record retention schedule, or revises an existing record retention schedule, that applies to a record maintained by the Mobility Authority, the executive director shall ensure that the Mobility Authority complies with the new or

revised retention schedule as if that new or revised schedule were specifically adopted by reference into subsection (a).

101.005 Sovereign Immunity

Unless otherwise required by law, the authority will not by agreement or otherwise waive or impinge upon its sovereign immunity.

101.006 Rates and Regulations

The board shall, in accordance with all applicable trust agreements, the RMA Act, the RMA Rules, or other law, establish toll rates and fees, designate speed limits, establish fines for toll violators, and adopt rules and regulations for the use and occupancy of said turnpike project.

101.007 Seal

The official seal of the authority shall consist of the embossed impression of a circular disk with the words "Central Texas Regional Mobility Authority, 2002" on the outer rim, with a star in the center of the disk.

101.008 Logo

The logo appearing after this sentence is approved and adopted as the official logo of the authority:

101.009 Indemnification by the Authority

(a) Any person made a party to or involved in any litigation, including any civil, criminal or administrative action, suit or proceeding, by reason of the fact that such person is or was a Director, officer, or administrator of the authority or by reason of such person's alleged negligence or misconduct in the performance of his or her duties as such Director, officer, or administrator shall be indemnified by the authority, to the extent funds are lawfully available and subject to any other limitations that exist by law, against liability and the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him or her in connection with any action therein, except in

relation to matters as to which it is adjudged that such Director, officer, or administrator is liable for gross negligence or willful misconduct in the performance of his or her duties.

(b) A conviction or judgment entered in connection with a compromise or settlement of any such litigation shall not by itself be deemed to constitute an adjudication of liability for such gross negligence or willful misconduct. However, in the event of a conviction for an offense involving the conduct for which the director, officer, or administrator was indemnified, the officer, director, or administrator shall be liable to the authority for the amount of indemnification paid, with interest at the legal rate for interest on a judgment from the date the indemnification was paid, as provided by Section 370.258 of the RMA Act.

(c) The right to indemnification will include the right to be paid by the authority for expenses incurred in defending a proceeding in advance of its final disposition in the manner and to the extent permitted by the board in its sole discretion. In addition to the indemnification described above that the authority shall provide a Director, officer or administrator, the authority may, upon approval of the board in its sole discretion, indemnify a Director, officer, or administrator under such other circumstances, or may indemnify an employee, against liability and reasonable expenses, including attorneys' fees, incurred in connection with any claim asserted against him or her in said party's capacity as a Director, officer, administrator, or employee of the authority, subject to any limitations that exist by law.

(d) Any indemnification by the authority pursuant to this section shall be evidenced by a resolution of the board.

101.010 Expenses Subject to Indemnification

As used herein, the term "expenses" includes fines or penalties imposed and amounts paid in compromise or settlement of any such litigation only if:

(1) independent legal counsel designated by a majority of the board, excluding those directors who have incurred expenses in connection with such litigation for which indemnification has been or is to be sought, shall have advised the board that, in the opinion of such counsel, such Director, officer, administrator, or other employee is not liable to the authority for gross negligence or willful misconduct in the performance of his or her duties with respect to the subject of such litigation; and

(2) a majority of the directors shall have made a determination that such compromise or settlement was or will be in the best interests of the authority.

101.011 Procedure for Indemnification

Any amount payable by way of indemnity under these bylaws may be determined and paid pursuant to an order of or allowance by a court under the applicable provisions of the laws of the State of Texas in effect at the time and pursuant to a resolution of a majority of the directors, other than those who

have incurred expenses in connection with such litigation for which indemnification has been or is to be sought. In the event that all of the directors are made parties to such litigation, a majority of the board shall be authorized to pass a resolution to provide for legal expenses for the entire board.

101.012 Additional Indemnification

The right of indemnification provided by these bylaws shall not be deemed exclusive of any right to which any Director, officer, administrator, or other employee may be entitled, as a matter of law, and shall extend and apply to the estates of deceased directors, officers, administrators, and other employees.

101.013 Strategic Plan, Annual Report, and Presentation to Commissioners Courts

(a) Each even numbered year, the authority shall issue a Strategic Plan of its operations covering the next five fiscal years, beginning with the next odd numbered fiscal year. A draft of each Strategic Plan shall be submitted to the board for review, approval, and, subject to revisions required by the board, adoption.

(b) Under the direction of the executive director, the staff of the authority shall prepare a draft of an Annual Report on the authority's activities during the preceding year and describing all turnpike revenue bond issuances anticipated for the coming year, the financial condition of the authority, all project schedules, and the status of the authority's performance under the most recent Strategic Plan. The draft shall be submitted to the board not later than February 28 for review, approval, and, subject to revisions required by the board, adoption. Not later than March 31 following the conclusion of the preceding fiscal year, the authority shall file with the Commissioners Court of each county included in the authority the authority's Annual Report, as adopted by the board.

(c) At the invitation of a Commissioners Court of a county in the authority, representatives of the board and the executive director shall appear before the Commissioners Court to present the Annual Report and respond to questions and receive comments.

101.014 Appeals Procedure

The authority shall maintain an appeals procedure to be adopted by the board and amended from time to time that sets forth the process by which parties may bring to the attention of the authority their questions, grievances, or concerns and may appeal any action taken by the authority.

101.015 Amendments to Bylaws

Except as may be otherwise provided by law, these bylaws may be amended, modified, altered, or repealed in whole or in part, at any regular meeting of the board after three days advance notice has been given by the chairman to each Director of the proposed change.

Article 2. DIRECTORS

101.016 Qualifications of Directors

(a) All directors will have and maintain the qualifications set forth in this section and in the RMA Act or RMA Rules.

(b) All appointments to the board shall be made without regard to disability, sex, religion, age, or national origin.

(c) Each Director appointed by a Commissioners Court must be a resident of the County governed by that Commissioners Court at the time of their appointment. All gubernatorial appointees must be residents of one of the counties comprising the authority at the time of their appointments.

(d) An elected official is not eligible to serve as a director.

(e) An employee of a city or county located wholly or partly within the boundaries of the authority is not eligible to serve as a director.

(f) A person who is an officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation or aviation, or whose spouse is an officer, manager, or paid consultant of a Texas trade association in the aforementioned fields, is not eligible to serve as a Director or as the authority's executive director.

(g) A person is not eligible to serve as a Director or as the authority's executive director if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization, other than a political subdivision, regulated by or receives money from TxDOT or the authority;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that is regulated by or receives money from TxDOT or the authority, other than compensation for acquisition of turnpike right of way;

(3) uses or receives a substantial amount of tangible goods, services, or money from TxDOT or the authority, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses, or for compensation for acquisition of turnpike right of way;

(4) is an officer, employee, or paid consultant of a Texas trade association in the field of road construction, maintenance, or operation; or

(5) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of

TxDOT or the authority.

(h) Each director shall certify annually to the secretary (as defined in Section 101.025) that said director is not ineligible to serve on the board as a result of any of the foregoing conditions.

101.017 Vacancies

A vacancy on the board shall be filled promptly by the entity that made the appointment that falls vacant. Each director appointed to a vacant position shall be appointed for the unexpired term of the director's predecessor in that position.

101.018 Resignation and Removal

(a) A director may resign at any time upon giving written notice to the authority and the entity that appointed that director.

(b) A director may be removed from the board if the director does not possess at the time the director is appointed, or does not maintain, the qualifications required by the RMA Act, the RMA Rules, or these bylaws, or if the director violates any of the foregoing.

(c) In addition, a director who cannot discharge the director's duties for a substantial portion of the term for which he or she is appointed because of illness or disability, or a director who is absent from more than half of the regularly scheduled board meetings during a given calendar year, may be removed.

(d) If the executive director of the authority knows that a potential ground for removal of a director exists, the executive director shall notify the chairman of the potential ground for removal. The chairman then shall notify the entity that appointed such director of potential ground for removal.

(e) A director shall be considered removed from the board only after the authority receives notice of removal from the entity that appointed such director.

101.019 Compensation of Directors

Directors shall serve without compensation, but will be reimbursed for their actual expenses of attending each meeting of the board and for such other expenses as may be reasonably incurred in their carrying out the duties and functions as set forth herein.

101.020 Conflict of Interest

(a) A director shall not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence that director in the discharge of official duties on behalf of the authority or that the director knows or should know is being offered with the intent to influence the director's official conduct; or

(2) accept other compensation that could reasonably be expected to impair the director's independence of judgment in the performance of the director's official duties.

(b) Directors shall familiarize themselves and comply with all applicable laws regarding conflicts of interest, including Chapter 171, Local Government Code, and any conflict of interest policy adopted by the board.

101.021 Additional Obligations of Directors

Directors shall comply with the requirement to file an annual personal financial statement with the Texas Ethics Commission as provided by Section 370.2521, Transportation Code, and the requirement to complete training on the RMA's responsibilities under the Open Meetings Act and the Public Information Act as provided by Sections 551.005 and 552.012, Government Code.

101.022 Officers

The officers of the authority shall consist of a chairman, a vice chairman, a secretary, and a treasurer. The offices of secretary and treasurer may be held simultaneously by the same person. The individuals elected as officers shall not be compensated for their service as officers. However, officers shall be reimbursed for all expenses incurred in conducting proper authority business and for travel expenses incurred in the performance of their duties. If desired, the board may also designate an assistant secretary and assistant treasurer, who shall also be considered officers of the authority.

101.023 Chairman

The chairman is appointed by the Governor and is a director of the authority. The chairman shall appoint all committees of the board as specified in these bylaws, except as otherwise provided in Section 101.036; call all regular meetings of the board; and preside at and set the agendas for all meetings of the board, except as provided by Section 101.029(d).

101.024 Vice Chairman

The vice chairman must be a director of the authority. During the absence or disability of the chairman, upon the chairman's death (and pending the Governor's appointment of a successor new chairman), or upon the chairman's request, the vice chairman shall perform the duties and exercise the authority and powers of the chairman.

101.025 Secretary

The secretary need not be a director of the authority. The secretary shall keep true and complete records of all proceedings of the directors in books provided for that purpose and shall assemble, index, maintain, and keep up-to-date a book of all of the policies adopted by the authority; attend to the giving and serving of all notices of meetings of the board and its committees and such other notices as are required by the office of secretary and as may be directed by the RMA Act, any trust

indenture binding on the authority, directors of the authority, or the executive director; seal with the official seal of the authority (if any) and attest all documents, including trust agreements, bonds, and other obligations of the authority that require the official seal of the authority to be impressed thereon; execute, attest, and verify signatures on all contracts in which the total consideration equals or exceeds an amount established in resolutions of the board, contracts conveying property of the authority, and other agreements binding on the authority which by law or board resolution require attestation; certify resolutions of the board and any committee thereof; maintain custody of the corporate seal, minute books, accounts, and all other official documents and records, files, and contracts that are not specifically entrusted to some other officer or depository; and hold such administrative offices and perform such other duties as the board or the executive director shall require.

101.026 Treasurer

The treasurer need not be a director of the authority. The treasurer shall execute all requisitions to the applicable bond trustee for withdrawals from the construction fund, unless the board designates a different officer, director, or employee of the authority to execute any or all of such requisitions. In addition, the treasurer shall execute, and if necessary attest, any other documents or certificates required to be executed and attested by the treasurer under the terms of any trust agreement or supplemental trust agreement entered into by the authority; maintain custody of the authority's funds and securities and keep a full and accurate account of all receipts and disbursements, and endorse, or cause to be endorsed, in the name of the authority and deposit, or cause to be deposited, all funds in such bank or banks as may be designated by the authority as depositories; render to the directors at such times as may be required an account of all financial transactions coming under the scope of the treasurer's authority; give a good and sufficient bond, to be approved by the authority, in such an amount as may be fixed by the authority; invest such of the authority's funds as directed by resolution of the board, subject to the restrictions of any trust agreement entered into by the authority; and hold such administrative offices and perform such other duties as the board or the executive director shall require. If, and to the extent that, the duties or responsibilities of the treasurer and those of any administrator conflict and are vested in different persons, the conflicting duties and responsibilities shall be deemed vested in the treasurer.

101.027 Election and Term of Office

(a) Except for the office of chairman, which is filled by the Governor's appointment, officers will be elected by the board for a term of two years, subject to Section 101.028.

(b) The election of officers to succeed officers whose terms have expired shall be by a vote of the board at the first meeting of the board held after February 1 of each year or at such other meeting as the board determines.

101.028 Removal and Vacancies

(a) Each officer shall hold office until a successor is chosen and qualified, or until the officer's

death, resignation, or removal, or, in the case of a director serving as an officer, until such officer ceases to serve as a director.

(b) Any officer, except the chairman, may resign at any time upon giving written notice to the board.

(c) The chairman may resign at any time upon giving written notice to the board and the Governor.

(d) Any officer except the chairman may be removed from service as an officer at any time, with or without cause, by the affirmative vote of a majority of the board.

(e) The board may at any meeting vote to fill any officer position except the chairman vacated due to an event described in this section for the remainder of the unexpired term.

101.029 Meetings

(a) All regular meetings of the board shall be held in a county of the authority, at a specific site, date, and time to be determined by the chairman.

(b) The chairman may postpone any regular meeting if it is determined that such meeting is unnecessary or that a quorum will not be achieved, but no fewer than four regular meetings shall be held during each calendar year.

(c) Special meetings and emergency meetings of the board may be called, upon proper notice, at any time by the chairman or at the request of any three directors. Special meetings and emergency meetings shall be held at such time and place as is specified by the chairman, if the chairman calls the meeting, or by the three directors, if they call the meeting.

(d) The chairman shall set the agendas for meetings of the board, except that the agendas of meetings called by three directors shall be set by those directors.

101.030 Meetings by Telephone

(a) As authorized by Section 370.262 of the RMA Act, the board, committees of the board, staff, or any combination thereof, may participate in and hold open or closed meetings by means of conference telephone or other electronic communications equipment by which all persons participating in the meeting can communicate with each other and at which public participation is permitted by a speaker telephone or other electronic communications equipment at a conference room of the authority or other facility in a county of the authority that is accessible to the public.

(b) Such meetings are subject to the notice requirements of Sections 551.125(c) through (f) of the Texas Open Meetings Act, and the notice must state where members of the public can attend to

hear those portions of the meeting open to the public. Such meetings are not, however, subject to the requirements of Section 551.125(b) of the Open Meetings Act.

(c) Participation in a meeting pursuant to this section constitutes being present in person at such meeting, except that a director will not be considered in attendance when the director appears at such a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened as generally provided under Section 101.033.

(d) Each part of a meeting conducted by telephone conference call or other electronic means that by law must be open to the public shall be accessible to the public at the location specified in the notice and shall be tape recorded and documented by written minutes. On conclusion of the meeting, the tape recording and the written minutes of the meeting shall be made available to the public.

101.031 Notice to Directors

(a) Notice of each meeting of the board shall be sent by mail, electronic mail, or facsimile to all directors entitled to vote at such meeting.

(b) If sent by mail, such notice will be deemed delivered when it is deposited in the United States mail with sufficient postage prepaid.

(c) If sent by electronic mail or facsimile, the notice will be deemed delivered when transmitted properly to the correct e-mail address or number, provided that an additional copy of such notice shall be sent by overnight delivery as confirmation of the notice sent by electronic mail or facsimile.

(d) Such notice of meetings also may be given by telephone, provided that any of the Chairmen, executive director, secretary, or their designee speaks personally to the applicable director to give such notice.

101.032 Waiver of Notice

Whenever any notice is required to be given to any director by statute or by these bylaws, a written waiver of such notice signed by the person or persons entitled to such notice, whether before or after the time required for such notice, shall be deemed equivalent to the giving of such notice.

101.033 Attendance as Waiver

Attendance of a director at a meeting of the board or a committee thereof will constitute a waiver of notice of such meeting, except that a director will not be considered in attendance when the director appears at such a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

101.034 Voting; Quorum

(a) A majority of the directors constitutes a quorum, and the vote of a majority of the directors present at a meeting at which a quorum is present will be necessary for any action taken by the board.

(b) No vacancy in the membership of the board will impair the right of a quorum to exercise all of the rights and to perform all of the duties of the board. Therefore, if a vacancy occurs, a majority of the directors then serving in office will constitute a quorum.

101.035 Procedure

(a) All meetings of the board and its committees shall be conducted in accordance with Robert's Rules of Order pursuant to statutorily proper notice of meeting posted as provided by law.

(b) The chairman at any time may change the order of items to be considered from that set forth in the notice of meeting, provided that all agenda items that require a vote by the board shall be considered at the meeting for which they have been posted.

(c) To the extent procedures prescribed by applicable statutes, the RMA Rules, or these bylaws conflict with Robert's Rules of Order, the statutes, the RMA Rules, or these bylaws shall govern.

101.036 Committees

(a) The chairman at any time may designate from among the directors one or more ad hoc or standing committees, each of which shall be comprised of two or more directors, and may designate one or more directors as alternate members of such committees, who may, subject to any limitations imposed by the chairman, replace absent or disqualified members at any meeting of that committee. The chairman serves as an ex-officio member of each committee.

(b) If approved by a resolution passed by a majority vote of the board, a committee shall have and may exercise all of the authority of the board, to the extent provided in such resolution and subject to the limitations imposed by applicable law.

(c) The chairman shall appoint the chairman of each committee, as well as directors to fill any vacancies in the membership of the committees. At the next regular meeting of the board following the chairman's formation of a committee, the chairman shall deliver to the directors and the secretary a written description of the committee, including:

(1) the name of the committee,

(2) whether it is an ad hoc or standing committee,

(3) its assigned function(s) and/or task(s),

(4) whether it is intended to have a continuing existence or to dissolve upon the completion of a specified task and/or the occurrence of certain events,

(5) the directors designated as members and alternate members to the committee, and its chairman, and

(6) such other information as requested by any director.

(d) The secretary shall enter such written description into the official records of the authority. The chairman shall provide a written description of any subsequent changes to the name, function, tasks, term, or composition of any committee in accordance with the procedure described in this section.

(e) A committee also may be formed by a majority vote of the board, which vote (and not the chairman) also shall specify the committee's chairman and provide the descriptive information otherwise furnished by the chairman in accordance with this section.

(f) A meeting of any committee formed pursuant to this section may be called by the chairman, the chairman of the applicable committee, or by any two members of the committee.

(g) All committees shall keep regular minutes of their proceedings and report to the board as required.

(h) The designation of a committee of the board and the delegation thereto of authority shall not operate to relieve the board, or any director, of any responsibility imposed upon the board or the individual director by law.

(i) To the extent applicable, the provisions of these bylaws relating to meetings, quorums, meetings by telephone, and procedure shall govern the meetings of the board's committees.

Article 3. ADMINISTRATION

Subchapter A. ADMINISTRATIVE STAFF

101.037 Administrators

(a) The chief administrator of the authority shall be the executive director.

(b) Other administrators may be appointed by the executive director with the consent of the board. All such administrators, except for the executive director, shall perform such duties and have such powers as may be assigned to them by the executive director or as set forth in board Resolutions.

(c) Any administrator may be removed, with or without cause, at any time by the executive director.

(d) All administrators will be reimbursed for expenses incurred in performance of their duties as approved by the executive director. Notwithstanding the foregoing, all expense reimbursements to the executive director shall be subject to the approval of the Executive Committee.

101.038 Executive Director

(a) The executive director will be selected by the board and shall serve at the pleasure of the board, performing all duties assigned by the board and implementing all resolutions adopted by the board.

(b) In addition, the executive director:

(1) shall be responsible for general management, hiring and termination of employees, and day-to-day operations of the authority;

(2) shall be responsible for preparing a draft of the Strategic Plan for the authority's operations, as described in Section 101.013;

(3) shall be responsible for preparing a draft of the authority's written Annual Report, as described in Section 101.013;

(4) at the invitation of a Commissioners Court of a county in the authority, shall appear, with representatives of the board, before the Commissioners Court to present the authority's Annual Report and respond to questions and receive comments regarding the Report or the authority's operations;

(5) may initiate procurements for goods and services, consulting and professional services, and construction services in accordance with the procedures established in this Policy Code, including soliciting proposals and advertising contracts for bids;

(6) may execute inter-agency and interlocal contracts, service contracts, and employment agreements provided that obligations assumed pursuant to such agreements are within limits specified in the most recent budget approved by the board;

(7) may execute contracts, contract supplements, contract change orders, and purchase orders not exceeding amounts established in Resolutions of the board; and

(8) shall have such obligations and authority as may be described in one or more Resolutions enacted from time to time by the board.

(c) The executive director may delegate the foregoing duties and responsibilities as the executive director deems appropriate, provided such delegation does not conflict with applicable law or any express direction of the board.

101.039 Interim Executive Director

The board may designate an interim executive director to perform the duties of the executive director during such times as the position of executive director is vacant. The interim executive director need not be an employee of the authority.

101.040 Termination of Employees

Employees of the authority shall be employees at will unless they are party to an employment agreement with the authority executed by the executive director or, in the case of an agreement with the executive director, executed by the chairman upon approval by the board. Employees may be terminated at any time, with or without cause, by the executive director subject to applicable law and the policies in place at the time of termination.

Subchapter B. PERSONNEL POLICIES

101.041 Employee Handbook

(a) The executive director shall adopt an Employee Handbook and shall make it available to all employees of the authority. The executive director may revise the Employee Handbook as the

executive director considers necessary or desirable to perform the executive director's duties as chief administrator of the authority under Section 101.037 and Section 101.038.

(b) The executive director may elect to bring one or more revisions to the Employee Handbook to the board for its consideration and appropriate action at the discretion of the board.

(c) The executive director is directed to take such steps as may be necessary to effectively communicate the authority's ethics and compliance program to employees and agents and to enforce the requirements of the program.

(d) Staff shall develop and implement a program to provide information on ethics and internal compliance issues to directors.

101.042 Extended Sick Leave

(a) The board directs the executive director to develop and implement a policy for extended sick leave and emergency absence to apply to all benefits-eligible employees.

(b) The policy implemented under this section may not provide for more than 30 days of paid leave per year.

Subchapter C. DRUG AND ALCOHOL POLICY

101.043 Policy Regarding Drug and Alcohol Use

The objective of this subchapter is to develop a drug and alcohol-free workplace that will help insure a safe and productive workplace for all authority activities. In order to further this objective, the rules in this subchapter regarding alcohol and illegal drugs in the workplace have been established. The authority will not condone substance abuse within the workforce or the workplace and will make every effort to operate in a drug-free environment. This subchapter applies during regular business hours (Monday through Friday, 8 a.m. to 5 p.m.) and at any time while conducting authority business. This Drug and Alcohol Policy is adopted pursuant to, and is in accordance with, the requirements of Section 370.033(h), Transportation Code.

101.044 Prohibited Behavior By Employees

(a) Employees are prohibited from working for the authority while under the influence of illegal or controlled substances. It is a violation of this subchapter for any authority employee to use, possess, sell, trade, distribute, dispense, purchase and/or offer for sale, on authority premises or on or in authority property, or regular business hours, any illegal drugs, drug paraphernalia, and/or illegal inhalants. This subchapter includes the misuse of prescription drugs, including controlled substances. Compliance with this prohibition will be strictly enforced. Violation of the drug portion

of this subchapter shall result in immediate disciplinary action, which may include termination of employment or removal from office following investigation.

(b) The authority prohibits the consumption of alcohol by authority employees while engaged in the regular performance of official duties during regular business hours. The authority does not condone the consumption of alcohol outside of regular business hours at a level that would materially affect an individual's physical or mental capabilities to a point where judgment is impaired and/or the employee presents a physical risk to themselves or others. Employees must report for work in a condition that allows them to perform their duties safely and efficiently. It is a violation of this subchapter to use, possess, sell, trade, distribute, dispense, purchase and/or offer for sale any alcoholic beverages during regular business hours on the authority premises or on or in authority property. Violation of the alcohol portion of this subchapter may result in disciplinary action, up to and including termination.

(c) If an employee is taking medication that has been medically prescribed, and that person believes that such medication may affect his or her job performance, they should inform their supervisor of this fact. This information must be kept confidential and communicated to the direct supervisor prior to the individual commencing authority-related work or duties. All prescription drugs must be kept in their original container.

(d) This subchapter requires that employees notify their manager or the designated human resources contact of any criminal drug statute conviction for a violation occurring on the authority premises or on or in authority property or during scheduled work time no later than five days after such a conviction. For purposes of this subchapter, criminal drug statute means a criminal statute addressing the manufacture, distribution, dispensation, use, or possession of any illegal drugs, drug paraphernalia and/or illegal inhalants.

101.045 Consequences

If an employee violates this subchapter, he or she may be subject to disciplinary action, up to and including termination. Nothing in this subchapter prohibits the authority from disciplining or discharging an employee for other policy violations and/or performance problems.

101.046 Definitions

(1) Authority Premises - All authority property including without limitation, offices, warehouses, worksites, rented premises for authority functions, authority vehicles, other vehicles being used for authority business, lockers, and parking lots.

(2) Authority Property - All authority owned or leased property used by employees including without limitation, vehicles, lockers, desks, closets, etc.

(3) Controlled Substance - Any substance listed in Schedules I-V of Section 202 of the Controlled Substance Act (21 U.S.C. § 812), as amended, or as revised and set forth in federal regulations

(21 C.F.R. §§1308.11 – 1308.15). Copies of such schedules are maintained by the authority for employee review.

(4) Drug - A drug is any chemical substance that produces physical, mental, emotional or behavioral change in the user.

(5) Drug Paraphernalia - Equipment, a product or material that is used or intended for use in concealing an illegal drug for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal drug or controlled substance.

(6) Illegal Drug - An illegal drug is any drug or derivative thereof which the use, possession, sale, transfer attempted sale or transfer, manufacture or storage of is illegal or regulated under any federal, state, or local law or regulation and any other drug, including (but not limited to) a prescription drug, used for any reason other than a legitimate medical reason, and inhalants used illegally. Included is marijuana or cannabis in all forms.

(7) Reasonable Cause/ Reasonable Suspicion – A belief based on observation and specific, articulable, objective facts where the rational inference to be drawn under the circumstances and in light of experience is that the person is under the influence of drugs or alcohol.

101.047 Employee Treatment And Education

(a) The authority encourages employees to seek help if they are concerned that they have a drug and/or alcohol problem. The authority encourages employees to utilize the services of qualified professionals in the community to assess the seriousness of suspected drug or alcohol problems and identify appropriate sources of help. However, an employee's participation in any rehabilitation programs does not preclude the authority from taking any disciplinary action, up to and including termination, against any employee.

(b) The authority will not provide any assessment, referral, treatment or education assistance to employees other than as provided by the authority's health care insurance. Entering into or use of any assessment, referral, treatment or education program relating to drug and alcohol abuse shall be at the sole discretion of the employee, and unless the authority's health care insurance pays for such a program, the entire cost of the program shall be borne by the employee.

101.048 Employee Drug Testing Program

(a) If the authority has reasonable cause/reasonable suspicion (as defined above) to believe that any employee (including those in non-safety-sensitive positions) is under the influence of illegal drugs, illegal inhalants and/or alcohol, the authority will require the employee to submit to a drug and/or alcohol test. Tests that may be used include (but are not limited to) blood tests, breath analysis, saliva tests, hair tests, as well as urinalysis or other scientific methods. As required under Section 370.033(h), Transportation Code, all testing results will be kept strictly confidential by

authority, unless required to be disclosed by a court order, or unless disclosure is otherwise permitted in writing by the individual who is the subject of testing.

(b) In the event that an employee is involved in an accident while driving an authority owned/leased vehicle (including any machinery), the authority will require the employee to submit to a drug and/or alcohol test.

(c) Any employee, who refuses to submit to drug and/or alcohol testing, as provided for in this subchapter, may be asked to leave the office or authority facility immediately and the employee may be terminated.

101.049 Coordination With Law Enforcement Agencies

(a) The authority reserves the right, at all times, and without prior notice, to inspect and search any and all authority property and premises for purposes of determining whether this subchapter or any other authority Policy has been violated, or whether such inspection and investigation is necessary for purposes of promoting safety in the workplace or compliance with state and federal laws.

(b) The sale, use, purchase, transfer or possession of an illegal drug or drug paraphernalia is a violation of the law. The authority will report information concerning possession, distribution, or use of any illegal drugs to law enforcement officials and will turn over to the custody of law enforcement officials any such substances found on authority premises or property. The authority will cooperate fully in the prosecution and/or conviction of any violation of the law.

101.050 Reservation Of Rights

(a) The authority reserves the right to interpret, change, suspend or cancel, with or without notice, all or any part of this subchapter, or procedures or benefits discussed herein. The authority expressly reserves the right to initiate additional testing procedures if the authority determines the same to be advisable. Employees will be provided with a copy of any revisions to this subchapter.

(b) Although adherence to this subchapter is considered a condition of continued employment, nothing in this subchapter alters an employee's at-will status and shall not constitute nor be deemed a contract or promise of employment for a specified period of time. Employees remain free to resign their employment at any time for any or no reason, without notice, and the authority retains the right to terminate any employee at any time, for any or no reason, without notice.

101.051 Other Laws And Regulations

The provisions of this subchapter shall apply in addition to, and shall be subordinated to, any requirements imposed by applicable federal, state or local laws, regulations or judicial decisions. Unenforceable provisions of this subchapter shall be deemed to be deleted.

101.052 Officers and Directors

All officers, including all board officers (chairman, vice-chairman, treasurer and secretary) and other directors, are encouraged to adhere to the policies reflected herein. Use of illegal drugs, or abuse of controlled substances and/or alcohol may be grounds for removal from office in accordance with the "inability to perform duties" standard set forth in Section 370.254, Transportation Code.

Subchapter D. TRAVEL EXPENSE POLICY

101.053 Applicability

This subchapter applies to the board and all staff.

101.054 Submission of Expense Reimbursement Requests

All expense reimbursement requests must be received by the authority no more than 90 days after the occurrence of the expense. Any items over 90 days may be denied reimbursement.

101.055 Requests for Reimbursements that include Overnight Travel

(a) Travel arrangements should be made at lowest cost, using the Internet, if possible, to mitigate fees. Staff will assist in arranging flights. Travel agents may be used on more complicated travel arrangements to reduce staff time and thereby reduce overall costs.

(b) Employee travel should be done in a manner to minimize time away from work.

(c) Hotel shuttles should be used when available. Rental cars should be approved in advance by the executive director or chief financial officer.

(d) Additional lodging reimbursement would be allowed only if there is a significant reduction in airfare over the cost for the extra days lodging and per 'diems. '

(e) All incremental costs of any non-authority companion traveling with an employee or director will be paid for by the employee or director and must be paid in advance or promptly reimbursed to the authority.

(f) Travel expenses must be approved by the executive director before reimbursement. All out of state travel by staff must be approved by the executive director prior to travel.

101.056 Airfare

(a) Airfare should be booked at the most economical rate as far in advance as reasonably possible.

(b) Coach or business fares or Internet specials should be used when possible. Cost of upgrades

at user's expense.

(c) Travel agents may be used on more complicated travel arrangements to reduce staff time and thereby reduce overall costs. .

(d) Cancellation fees or fees for ticket changes will be reimbursed if it is in the best interests of the authority or a family emergency.

101.057 Hotel accommodations

(a) Hotel stays will be reimbursed or paid for at the lowest reasonable rate.

(b) Exceptions to the above rate would include:

(1) The alternate hotel would reduce total overall costs of travel, such as not requiring a rental car.

(2) Time constraints for business meetings would require staying at a closer hotel.

(3) Conference rate is always acceptable in Conference hotel or one located nearby.

101.058 Meals

(a) Meals will be reimbursed without a receipt at $34/day.

(b) Meals above $34/day will require a receipt and justification.

(c) No meals not related to authority business will be allowed.

(d) No reimbursement for alcohol will be allowed.

101.059 Incidentals

(a) Reasonable and customary tips and gratuities do not require a receipt.

(b) Parking, toll and taxi receipts will be reimbursed on an actual basis.

(c) Other minor expenditures should have a receipt and justification.

(d) Local calls related to business will be reimbursed.

(e) Long distance calls related to business, including Internet connections will be reimbursed.

(f) There will be no reimbursement for any parking or traffic violations.

(g) There will be no reimbursement for entertainment purposes, including in hotel movies.

101.060 Rental vehicles

(a) Vehicle rental should be approved in advance by executive director or chief financial officer.

(b) Preference for compact or mid-sized vehicles, unless multiple persons traveling in vehicle.

(c) Gasoline should be refilled prior to returning.

(d) Loss damage waiver should be used until such time as the authority has either insurance coverage or individual personal coverage extension.

(e) In certain cities, it is cost effective to use private van services in order to meet meeting schedules. The costs should be compared to taxi services for reasonableness.

101.061 Mileage Reimbursement

(a) Use of a personal vehicle on authority business will be reimbursed using the current Internal Revenue Service rate. A request for reimbursement should include:

(1) The purpose of the travel;

(2) The dates of the travel; and

(3) Net Mileage.

(b) If a personal vehicle is used and extended or long-distance trip, the maximum reimbursement will be at the lower of the:

(1) IRS rate times the number of miles driven or

(2) The lowest quoted airfare at the time of travel for overnight stay.

101.062 Food Service at Local Meetings

Food service for local business meetings will be reimbursed. These business meetings are required for the active conduct of authority business and include board meetings and workshops, board committee meetings, meetings with other governmental entities for authority business and other official business as determined by the executive director. A request for reimbursement should include:

(1) The purpose of the meeting

(2) The time and location of the meeting

(3) Names of principle attendees

(4) Approval of the reimbursement request by the executive director

101.063 Other expenses

(a) Recruiting expenses for top level candidates, subject to approval by the board.

(b) Organizational membership fees, subject to advance approval by Executive Committee.

Article 4. CONFLICT OF INTEREST

Subchapter A. CONFLICT OF INTEREST POLICY FOR CONSULTANTS

101.064 Purpose

The authority anticipates utilizing outside consultants for a significant portion of the work necessary to plan, study, and develop transportation projects. The authority also anticipates developing projects through a variety of means, including through private sector involvement and contracts which combine various elements of the work necessary for design, construction, financing, operation and/or maintenance of projects. The authority recognizes that many of the same individuals and firms that provide services to it may also have, or previously have had, some business relationship with individuals and firms seeking to do business with the authority. To assure that any such relationships are fully disclosed and so as to assure that the impartiality of the individuals and firms working for the authority is not compromised, individuals and firms working for the authority, and those seeking to do business with the authority, must adhere to the following procedures:

101.065 Key Personnel and Firms

The authority shall maintain, on its website and in the records of the authority, a list of key personnel and firms performing work for the authority. Any individual or firm receiving more than $10,000 in compensation for goods and services rendered to the authority during the preceding 12 months, as well as any newly hired individual or firm expected to be paid more than $10,000 in a 12 month period, shall be included on that list.

101.066 Disclosure of Business Relationship

(a) Any individual, firm, or team, including individual team members, submitting a proposal, including an unsolicited proposal and a response to a solicited proposal, to the authority to perform work for the authority shall disclose in its submittal the existence of any current or previous (defined as one terminating within 12 months prior to submission of the proposal) business relationship with any of the authority's key personnel. The disclosure shall include information on the nature of the relationship, the current status, and the date of termination or expected termination, if known, of the relationship. Failure to make the disclosure required in this subsection is grounds for rejection of the proposal and disqualification from further consideration for the project or work which is the subject of the proposal.

(b) Separate and apart from the disclosure required to be made by proposers under subsection (a), any key personnel of the authority who are requested to participate in any way in the review of a proposal, the procurement of goods and services leading to a proposal, or the supervision of work to be performed pursuant to a proposal, must disclose the existence of any current or previous business relationship with any individual, firm, or team, including team members, making a proposal to provide goods or services or a proposal to perform work to be supervised. Failure to make the disclosure required in this subsection is grounds for termination of work by the key personnel failing

to make the disclosure. Disclosures required under this subsection shall be made within three business days of receipt of information concerning the identity of a proposer to the authority's general counsel in accordance with Section 101.068, unless the disclosure is required of the general counsel, in which case disclosure shall be made to the executive director.

101.067 Submittal of Form

For any disclosures required under Section 101.066, the affected key personnel shall complete and submit the form attached hereto as Appendix 2. (Submittal of such form shall be sufficient to constitute the disclosure required under Section 101.066.) Completion of the required information is necessary to provide the authority with information to assess the nature of the prior or current business relationships, the role of individuals and firms involved, internal safeguards which may be implemented by the key personnel to protect against access to, or disclosure of, information, and the potential for the prior or current business relationship to compromise the independence of the affected key personnel.

101.068 Executive Committee Decision

The authority's general counsel shall be responsible for compiling and presenting to the Executive Committee information concerning all conflict of interest disclosures (e.g., those contained in proposals and those made by key personnel). The Executive Committee shall determine whether to permit the affected key personnel to continue its work on the proposal or the work giving rise to the conflict, and if such work is permitted to continue, the safeguards to be implemented as a condition of the continuation. If continuation of work is approved subject to the implementation of safeguards, failure to implement and maintain those measures is grounds for termination of that work and any further work for the authority. If the Executive Committee does not approve of the continuation of work by the key personnel, the key personnel shall immediately cease any work and shall turn over all records concerning such work to the authority.

101.069 Amendments

These policies and procedures may be amended or modified at any time by action of the board. Key personnel and proposers seeking to do business with the authority are responsible for complying with these policies and procedures as amended from time to time.

Subchapter B. CONFLICT OF INTEREST POLICY FOR FINANCIAL TEAM MEMBERS

101.070 Purpose

The authority anticipates utilizing outside consultants for a significant portion of the work necessary to develop financial plans for the financing of specific authority projects and for advice concerning the overall management of the authority's financial affairs. The authority also anticipates developing projects through a variety of means, including through private sector involvement and contracts which combine various elements of the work necessary for design, construction, financing, operation and/or maintenance of projects. The authority recognizes that many of the same individuals and firms that provide financial planning and advisory services to it may also have, or previously have had, some business relationship with individuals and firms seeking to do business with the authority. To assure that any such relationships are fully disclosed and so as to assure that the impartiality of the individuals and firms working for the authority on financial matters is not compromised, individuals and firms working for the authority, and those seeking to do business with the authority, must adhere to the procedures established by this subchapter.

101.071 Key Financial Personnel and Firms

The authority shall maintain, on its website and in the records of the authority, a list of key financial personnel and firms performing work for the authority. At a minimum, this group will include the authority's financial advisor(s), bond counsel, accountants and auditors, and investment banking firms which are part of an underwriting syndicate for any authority project. Other individuals or firms may be classified as authority key financial personnel at the sole discretion of the authority.

101.072 Disclosure by Proposers

Any individual, firm, or team (including individual team members) submitting a proposal (including an unsolicited proposal and a response to a solicited proposal) to the authority to perform work for the authority shall disclose in its submittal the existence of any current or previous (defined as one terminating within 12 months prior to submission of the proposal) business relationship with any of the authority's key financial personnel. The disclosure shall include information on the nature of the relationship, the current status, and the date of termination, or expected termination, if known, of the relationship. Failure to make the disclosure required in this section is grounds for rejection of the proposal and disqualification from further consideration for the project or work which is the subject of the proposal.

101.073 Disclosure by Key Financial Personnel

Separate and apart from the disclosure required to be made by proposers under Section 101.072, any key financial personnel of the authority must disclose the existence of any current or previous business

relationship with any individual, firm, or team, including team members, making a proposal to provide goods or services or a proposal to perform work to be supervised. Failure to make the disclosure required in this section is grounds for termination of work by the key financial personnel failing to make the disclosure. Disclosures required under this section shall be made to the authority's general counsel within three business days of receipt of information from the authority concerning the identity of a proposer, including its team members and known subconsultants. Disclosures shall be made in accordance with Section 101.074.

101.074 Form for Disclosure

For any disclosures required under this subchapter, the affected key financial personnel shall complete and submit the form attached hereto as Appendix 3. Submittal of such form shall be sufficient to constitute the disclosure required under Section 101.073. Completion of the required information is necessary to provide the authority with information to assess the nature of the prior or current business relationships, the role of individuals and firms involved, internal safeguards which may be implemented by the key financial personnel to protect against access to, or disclosure of, information, and the potential for the prior or current business relationship to compromise the independence of the affected key financial personnel.

101.075 Participation Ineligibility

Except for investment banking firms, key financial personnel shall not be permitted to be part of a team (as a partner, subconsultant, or in any other capacity) proposing or competing to develop a transportation project through a comprehensive development agreement. Investment banking firms shall not be permitted to participate in a syndicate of firms designated by the authority to participate in the financing of a project and also be part of a team (as a partner, subconsultant, or in any other capacity) proposing or competing to develop that same project (or a variation of that project). Investment banking firms may be part of a team proposing or competing to develop a project for which they have not been designated as part of the underwriting syndicate for that project by the authority. These prohibitions are intended to preclude key financial personnel from working both for the authority and for (or with) entities seeking to do business with the authority in a manner which would result in or create the appearance of conflicting loyalties in financial matters.

101.076 Executive Committee Decision

The authority's general counsel shall be responsible for compiling and presenting to the Executive Committee information concerning all conflict of interest disclosures (e.g., those contained in proposals and those made by key financial personnel). The Executive Committee shall determine whether to permit the affected key financial personnel to continue its work on the proposal or the work giving rise to the conflict, and if such work is permitted to continue, the safeguards to be implemented as a condition of the continuation. If continuation of work is approved subject to the implementation of safeguards, failure to implement and maintain those measures is grounds for

termination of that work and any further work for the authority. If the Executive Committee does not approve of the continuation of work by the key financial personnel, the key financial personnel shall immediately cease any work and shall turn over all records concerning such work to the authority.

101.077 Amendment

These policies and procedures may be amended or modified at any time action of the board. Key financial personnel and proposers seeking do business with the authority are responsible for complying with these policies and procedures as amended from time to time.

Chapter 2: FINANCES

Article 5. INVESTMENT POLICY AND STRATEGY

201.001 Overview

This article is adopted and intended to comply with the Texas Public Funds Investment Act, Chapter 2256, Government Code, as that act may be amended from time to time (the "PFIA"). It is the policy of the authority to invest public funds in a manner which will provide the maximum security with the highest investment return while meeting the daily cash flow demands of the authority conforming to all state and local statutes governing the investment of public funds. The authority's Investment Policy and Strategy is approved by the board and is adopted to provide investment policy and strategy guidelines for use by authority staff and its advisors.

201.002 Scope

This article applies to all investment activities of authority funds except those subject to other investment covenants, or excluded by contract. All funds covered by this article shall be invested in accordance with the PFIA. These funds are accounted for in the authority's annual financial report and include:

(1) Revenue Fund

(2) Rebate Fund

(3) Operating Funds

(4) Debt Service Funds

(5) Debt Service Reserve Funds

(6) Renewal and Replacement Fund

(7) General Fund

(8) Capital Projects Funds

201.003 Objectives

The primary objectives, in priority order, of investment activities shall be:

(1) Safety: Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective shall be to mitigate credit risk and interest rate risk.

(2) Credit Risk: Credit risk is the risk of loss due to the failure of the security issuer or backer. Credit risk may be mitigated by:

(3) Limiting investments to the safest types of securities; as listed in Section 201.014.

(4) Pre-qualifying the financial institutions, brokers/dealers, intermediaries, and advisors with which the authority will do business; and,

(5) Diversifying the investment portfolio so that potential losses on individual securities will be minimized.

(6) Interest Rate Risk: Interest rate risk is the risk that the market value of securities in the portfolio will fall due to changes in general interest rates. Interest rate risk may be mitigated by:

(7) Structuring the investment portfolio so that securities mature to meet cash requirements for ongoing projects, thereby avoiding the need to sell securities on the open market prior to maturity; and,

(8) By investing operating funds primarily in shorter-term securities, money market mutual funds or similar investment pools and limiting the average maturity of the portfolio in accordance with Section 201.009.

(9) Liquidity: The investment portfolio shall remain sufficiently liquid to meet all project and operating requirements that may be reasonably anticipated. This is accomplished by structuring the portfolio so that securities mature concurrent with cash needs to meet anticipated demands.

(10) Yield: The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs. Return on investment is of least importance compared to the safety and liquidity objectives described above. The core investments are limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed. Securities shall be held to maturity with the following exceptions:

(11) A declining credit security could be sold early to minimize loss of principal;

(12) A security swap would improve the quality, yield, or target duration in the portfolio; or,

(13) Liquidity needs of the portfolio require that the security be sold.

(14) Public Trust: Participants in the authority's investment process shall act responsibly as public trust custodians. Investment Officers shall avoid transactions which might impair public confidence in the authority's ability to manage effectively.

201.004 Standards Of Care

(a) Prudence: The standard of prudence to be used by investment officials shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio. An Investment Officer acting in accordance with the Investment Policy and Strategy and written procedures and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

(b) Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

201.005 Ethics and Conflicts

(a) Investment Officers shall refrain from personal business activity that could conflict with or be perceived to conflict with the proper execution and management of the investment program, or that could impair their ability to make an impartial decision. An Investment Officer shall refrain from undertaking personal investment transactions with an individual person with whom business is conducted on behalf of the authority.

(b) For purposes of this section, an investment officer has a personal business relationship with a business organization if:

(1) the investment officer owns 10 percent or more of the voting stock or shares of the business organization or owns $5,000 or more of the fair market value of the business organization;

(2) funds received by the investment officer from the business organization exceed 10 percent of the investment officer's gross income for the previous year; or

(3) the investment officer has acquired from the business organization during the previous year investments with a book value of $2,500 or more for the personal account of the investment officer.

(c) An Investment Officer shall file with the Texas Ethics Commission and with the board a statement disclosing the existence of the relationship if the Investment Officer:

(1) has a personal business relationship with a business organization offering to engage in an investment transaction with the authority; or

(2) is related within the second degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to an individual seeking to sell an investment to the authority.

201.006 Designation of Investment Officer

The chief financial officer and controller are designated and shall act as the Investment Officers of the authority and shall have responsibility for managing the authority's investment program. Additional authority personnel may also be designated as an Investment Officer with approval of the board. Written operational and investment procedures consistent with this chapter shall be established. Such procedures shall include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this chapter and the established procedures.

201.007 Investment Advisor

The board may select an Investment Advisor to advise the authority on investment of funds and other responsibilities as outlined in this article including but not limited to broker compliance, security selection, competitive bidding, reporting and security documentation. The Investment Advisor must be registered with the Securities and Exchange Commission (SEC) under the Investment Advisor's Act of 1940 as well as with the Texas State Securities Board.

201.008 Required Training

The chief financial officer and controller and any other person designated by resolution of the board as an Investment Officer shall attend at least one training session relating to the responsibilities of maintaining the investment portfolio within 12 months after taking office or assuming duties; and shall attend a training session not less than once every two years and receive not less than ten hours of training. Such training, from an independent source, shall include education in investment controls, security risks, strategy risks, market risks, and compliance with the PFIA. Training required by this section shall be from an independent source certified to provide training required by the PFIA and approved or endorsed by the Government Finance Officers Association of Texas, the Government Treasurers Organization of Texas, the Texas Municipal League, or the North Central Texas Council of Governments.

201.009 Investment Strategies

(a) The authority's investment portfolio shall be designed with the objective of obtaining a rate of return throughout budgetary and economic cycles, commensurate with the investment risk constraints and the cash flow needs.

(b) Market Yield Benchmark: The authority's investment strategy is conservative. Given this strategy, the basis used by the chief financial officer to determine whether minimum market yields

are being achieved shall be the six month T-bill rate. Investment Officers and Investment Advisors shall strive to safely exceed minimum market yield within policy and market constraints.

(c) Maximum Maturities: To the extent possible, the authority will attempt to match its individual investments with anticipated cash flow requirements of each fund. However, in no instance shall the maximum stated maturity of an individual investment exceed five years, unless approved by the board.

201.010 Diversification

The authority will seek to diversify investments, by security types and maturity dates in order to avoid incurring unreasonable risks.

201.011 Authorized Financial Institutions and Qualified Brokers

(a) The board shall approve by separate resolution the financial institutions and qualified brokers authorized to provide investment services and engage in investment transactions with the authority. These may include "primary" brokers or regional brokers that qualify under Securities & Exchange Commission Rule 15C3-1 (uniform net capital rule).

(b) Each security broker who desires to become qualified and authorized under this section to engage in investment transactions with the authority must supply the chief financial officer with the following:

(1) Audited financial statements;

(2) Proof of National Association of Securities Dealers (NASD) certification;

(3) Proof of state registration;

(4) The completed security broker/dealer questionnaire in the form approved by the board in a separate resolution; and,

(5) A written certification relating to this Investment Policy and Strategy signed by a qualified representative of the firm in the form approved by the board in a separate resolution. The authority will not enter into an investment transaction with a security broker/dealer prior to receiving this written certification and acknowledgement.

(c) A current audited financial statement is required to be on file for each financial institution and broker in which the authority invests. An annual review of the financial condition and registrations of qualified brokers will be conducted by the executive director.

(d) In accordance with state law, the authority requires all funds held by financial institutions above the Federal Deposit Insurance Corporation (FDIC) insurance limit to be collateralized with securities whose market value is pledged at 102% of principal and accrued interest by that institution

with the authority's custodial bank. Private insurance coverage is not an acceptable collateralization form. Securities which are acceptable for collateralization purposes are as follows:

(1) FDIC insurance coverage.

(2) A bond bill, certificate of indebtedness, or Treasury note of the United States, or other evidence of indebtedness of the United States that is guaranteed as to principal and interest by the United States (i.e. Treasury Agency issues).

(3) Obligations, the principal and interest on which, are unconditionally guaranteed or insured by the State of Texas.

(4) A bond of the State of Texas or a country, city or other political subdivision of the State of Texas having been rated as investment grade by a nationally recognized rating agency with a remaining maturity of ten years or less.

201.012 Custody - Delivery vs. Payment

All security transactions entered into by the authority shall be conducted on a delivery-versus-payment (DVP) basis. Securities will be held by the authority's custodial bank and evidenced by safekeeping receipts.

201.013 Safekeeping of Securities

(a) Securities purchased for the authority's portfolios will be delivered in book entry form and will be held in third party safekeeping by a Federal Reserve member financial institution designated as the authority's safekeeping and custodian bank.

(b) The authority will execute Safekeeping Agreements prior to utilizing the custodian's safekeeping services. The safekeeping agreement must provide that the safekeeping agent will immediately record and promptly issue and deliver a safekeeping receipt showing the receipt and the identification of the security, as well as the authority's interest. All securities owned by the authority will be held in a Customer Account naming the authority as the customer.

(c) The safekeeping institution shall annually provide a copy of their most recent report on internal controls (Statement of Auditing Standards no. 70 or SAS 70).

201.014 Authorized And Suitable Investments

(a) The investment of authority funds will be made using only those investment types approved by the board and which are in accordance with the PFIA. The approved investment types will be limited to the following:

(1) U.S. Treasury and Federal Agency Issues.

(2) Certificates of Deposit as authorized under Section 2256.010 of the PFIA.

(3) Repurchase Agreements, including flexible Repurchase Agreements, collateralized by U.S. Treasury or Federal Agency Securities whose market value is 102% of the authority's investment and are pledged and held with the authority's custodial bank or a third-party safekeeping agent approved by the authority. Repurchase agreements must also be secured in accordance with State law. Each counter party to a repurchase transaction is required to sign a copy of an Investment Repurchase Agreement under the guidelines of Section 2256.011 of the PFIA, using the Bond Market Association Public Securities Association Master Repurchase Agreement as a general guide and with such changes thereto as are deemed in the best interest of the authority. Such an Agreement must be executed prior to entering into any transaction with a repo counter-party.

(4) Guaranteed Investment Contracts (GIC's) collateralized by U.S. Treasury or Federal Agency Securities whose market value is 102% of the authority's investment and are pledged and held with the authority's custodial bank or a third-party safekeeping agent approved by the authority. Bond proceeds, other than bond proceeds representing reserves and funds maintained for debt service purposes, may not be invested for a term which exceeds five years from the date of bond issuance.

(5) Obligations of states, agencies, counties, cities, and other political subdivisions of any State having been rated as to investment quality by a nationally recognized investment rating firm and having received a rating of not less than "AA" or its equivalent, with fixed interest rates and fixed maturities.

(6) SEC registered no-load money market mutual funds with a dollar weighted average portfolio maturity of 90 days or less; that fully invest dollar for dollar all authority funds without sales commissions or loads; and whose investment objectives include the maintenance of a stable net asset value of $1 per share

(7) Local government investment pools, which are "AAA" rated by a nationally recognized bond rating company (e.g., Moody's, S&P, Fitch), and which participation in any particular investment pool(s) has been authorized by resolution of the board, not to exceed 80% of the total investment portfolio less bond funds. Bond funds may be invested at 100%.

(b) The authority is prohibited from purchasing any security that is not authorized by Texas law, or any direct investment in asset-backed or mortgage-backed securities. The authority expressly prohibits the purchase of inverse floaters, interest-only (IO) and principal-only (PO) collateralized mortgage obligations (CMO's).

(c) An Investment that requires a minimum rating does not qualify as an authorized investment during the period the investment does not have the minimum rating. The Investment Officers shall monitor the credit rating on all authorized investments in the portfolio based upon independent information from a nationally recognized rating agency. The authority shall take all prudent measures

that are consistent with its Investment Policy and Strategy to liquidate an investment that does not have the minimum rating.

201.015 Reporting and Review

(a) Quarterly Report Requirements: The Investment Officers shall jointly prepare, no less than on a quarterly basis, an investment report, including a summary that provides a clear picture of the status of the current investment portfolio and transactions made after the ending period of the most recent investment report. The report shall be provided to the board and the executive director. The report shall comply with requirements of the PFIA and shall include the following:

(1) The investment position of the authority on the date of the report.

(2) The signature of each Investment Officer.

(3) Summary for each fund stating:

(A) Beginning market value;

(B) Ending market value.

(4) Beginning and ending book value and market value for each investment along with fully accrued interest for the reporting period.

(5) Maturity date of each investment.

(6) Description of the account or fund for which the investments were made.

(7) Statement that the investment portfolio is in compliance with the authority's Investment Policy and Strategy.

(b) Security Pricing: Current market value of securities may be obtained by independent market pricing sources including, but not limited to, the Wall Street Journal, broker dealers and banks other than those who originally sold the security to the authority as well as the authority's safekeeping agent.

(c) Annual Audit: If the authority places funds in any investment other than registered investment pools or accounts offered by its depository bank, the above reports shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the Executive Committee. In addition, the authority's external auditors shall conduct a compliance audit of management controls on investments and adherence to the Investment Policy and Strategy.

201.016 Current Investments Exempted from Policy

Any investment currently held that does not meet the guidelines of this article or subsequent amended versions shall be exempted from the requirements of this article. At maturity or liquidation, such

monies shall be reinvested only as provided by this article.

201.017 Annual Review

The authority shall review and approve the Investment Policy and Strategy annually. This review shall be conducted by the board with recommendations from the executive director. Any approved amendments shall be promptly incorporated into written policy.

Article 6. SWAP POLICY

201.018 Purpose

Interest rate swap transactions can be an integral part of the authority's asset/liability and debt management strategy. By utilizing interest rate swaps, the authority can expeditiously take advantage of market opportunities to reduce costs. Interest rate swaps will allow the authority to actively manage asset and liability interest rate risk, balance financial risk, and achieve debt management goals and objectives through synthetic fixed rate and variable rate financing structures. The authority shall not enter into interest rate swaps for speculative purposes.

201.019 Authorization

(a) By recommendation of the Executive Committee of the board (the "Executive Committee"), approval to execute an interest rate swap on behalf of the authority will be authorized by a resolution passed by the board on a case-by-case basis.

(b) Each swap resolution will authorize the swap agreement and its provisions to include, notional amount, security, payment, and certain other terms in regards to the swap agreement between the authority and qualified swap counterparties ("Counterparties"), and other necessary documents. Each swap resolution shall specify the appropriate authority officials authorized to make modifications to the swaps contemplated, within certain parameters. In the event of a conflict between a swap resolution and the Master Swap Policy, the terms and conditions of the swap resolution shall control.

(c) Such actions of the authority will be taken pursuant to applicable provisions of the Government Code, whereby the authority must make a finding and determine that it is prudent and advisable for the authority to enter into interest rate swap agreements or other such arrangements from time to time based on certain terms and conditions set forth in the swap resolution and this article.

201.020 General Guidelines for Interest Rate Swap Agreements

The following non-exclusive list provides certain guidelines the Executive Committee will follow in the evaluation and recommendation of interest rate swap transactions:

(1) Legality: The Executive Committee must first determine, or have determined by appropriate legal counsel, that the proposed contract fits within the legal constraints imposed by state laws, authority resolutions, and existing indentures and other contracts.

(2) Goals: In the authorizing resolution, the authority must clearly state the goals to be achieved through the swap contract and must adopt execution parameters consistent with the goals.

(3) Rating Agencies: The swap agreement being entered into will not have an adverse impact on any existing authority credit rating. In addition to the legal constraints as noted above, the swap agreement will conform to outstanding commitments with bond insurers, credit enhancers, and surety providers. Where possible, the authority shall obtain confirmation on the underlying ratings of the revenue source obligated under the swap agreement. All swap agreements must be discussed with the rating agencies prior to execution, and cannot be executed if doing so would impact negatively on the authority' s credit ratings.

(4) Term: The authority shall determine the appropriate term for an interest rate swap agreement on a case-by-case basis. However, in no circumstance may the term of a swap agreement entered into for liability management purposes between the authority and a qualified swap Counterparty extend beyond the final maturity date of the underlying debt of the authority, or in the case of a refunding transaction, beyond the final maturity date of the refunding bonds.

(5) Impact on Variable Rate Capacity: The impact of the swap agreement on the authority's variable rate capacity must be quantified prior to execution so as not to hinder the authority's ability to continue the issuance of traditional variable rate products such as commercial paper which is used to fund capital projects.

(6) Enhancements: The authority may utilize other swap enhancement products such as forward swaps, swap options, basis swaps, caps, floors, collars, cancellation options, etc. Utilization and consideration of each of these products will be part of the approval process per swap agreement as detailed in Section 201.024. The costs, benefits, and other considerations regarding the enhancement will be explained to board as a part of the approval process. In the case of swap options in which the authority would receive up-front cash, the authority will not enter into any such swap agreements.

(7) Bond Covenants: The implementation of derivative products or interest rate swaps will not conflict with existing bond covenants and debt policies. The derivative product will also not

contain terms that would cause restrictions on additional bond test and protective covenants of outstanding bonds or create cross defaults.

(8) Accounting Compliance: The impact of compliance with GASB Technical Bulletin No. 2003-1 shall be disclosed in the authority's annual financial reports.

(9) Staffing: The authority shall maintain appropriate staff with responsibility and knowledge suitable for monitoring swap transactions. Before entering into a swap, the accounting impact of the swap on the authority must be determined.

(10) Exit Strategy: The mechanics for determining termination values at various times and upon various occurrences must be explicit in the swap agreement, and the authority should obtain estimates from its financial advisor and swap advisor of the potential termination costs which might occur under various interest rate scenarios, and plan for how such costs would be funded.

201.021 Basis of Award

(a) Competitive Bid: Competitively bid transactions will be deemed "quasi-competitive" and will include not fewer than three firms. The Executive Committee will recommend to the board the method of sale and which firms will participate in the competitive transaction based on criteria described in Section 201.023. However, for a competitive bid, in situations in which the authority would like to a reward a particular firm or firms, or wishes to achieve diversification of its Counterparty exposure, the Executive Committee may select one of the following bases for award:

(1) Allow the firm or firms not submitting the best bid to amend its bid to match the best bid, and by doing so, be awarded up to a specific percentage of the transaction.

(2) To encourage competition, the second and third place bidders may be allowed to contract for a specific amount of the notional amount as long as their bid is no greater than a pre-specified spread from the best bidder in a proportional manner as specified in bidding parameters.

(3) The authority may award the transaction to a firm or firms that submit the best bid as defined in the solicitation for bid.

(b) Negotiated Transactions: In the case of a pure negotiated transaction, the authority shall rely on its swap advisor to negotiate the price and render a "fair value opinion." The Counterparty shall disclose payments to third parties regarding the execution of the derivative contract.

201.022 Management of Swap Transaction Risk

Certain risks will be created as the authority enters into various interest rates swap agreements with numerous swap counterparties. In order to manage the associated risks, guidelines and parameters for each risk category are as follows:

(1) Counterparty Risk: The risk of swap Counterparty default can be reduced by limiting swap agreements between the authority and any single swap Counterparty that qualifies as an eligible swap Counterparty to the authority as described in Section 201.023(a) and Section 201.023(c). In addition, the authority may require the posting of collateral by the swap Counterparty, with a mark-to-market as requested by the authority, in accordance with the guidelines described in Section 201.023(d).

(2) Termination Risk:

(A) Optional Termination: At a minimum, the authority shall have the right to optionally terminate a swap agreement at any time over the term of the agreement (elective termination right) at the then-prevailing market value of the swap (so long as a swap Counterparty receiving payment upon termination is not in default). In general, exercising the right to optionally terminate an agreement should produce a benefit to the authority, either through receipt of a payment from a termination, or if a termination payment is made by the authority, in conjunction with a conversion to a more beneficial (desirable) debt obligation of the authority as determined by the authority. Termination value shall be readily determinable by one or more independent swap counterparties, who may assume the swap obligations of the authority. A Counterparty to the authority shall not have the elective right to terminate the swap agreement except when a termination option has been priced into the terms of the swap at inception. The authority should explore the viability of a unilateral termination provision without being exposed to a termination payment.

(B) Mandatory Termination: A termination payment by the authority may be required in the event of termination of a swap agreement due to a Counterparty default or following a decrease in credit rating of the authority. In some circumstances, the defaulting party will be required to make a termination payment to the non-defaulting party. However, under certain circumstances, upon an event of termination, the non-defaulting party may be required to make a payment to the defaulting party. It is the intent of the authority not to make a termination payment to a Counterparty failing to meet its contractual obligations. At a minimum, prior to making any such termination payment, the authority shall require a suitable time period during which the authority may evaluate whether it is financially advantageous for the authority to obtain a replacement Counterparty to avoid making a termination payment. For example, in order to mitigate the financial impact of making such a payment, at the time such payment is due, the authority will seek to replace the terms of the terminated transaction with a new Counterparty and, as a result, receive value from the replacement Counterparty. The new or replacement Counterparty would make an upfront payment to the authority in an amount that would offset (either in whole or in part) the payment obligation of the authority to the original Counterparty. The market value of each swap agreement (including termination costs) will be calculated by the swap advisor and provided periodically as information to board in accordance with the

provisions of Section 201.027 to monitor the transaction's value and in order to implement an appropriate exit strategy in a timely manner, if required.

(3) Amortization Risk (Term): The slope of the swap curve, the marginal change in swap rates from year to year along the swap curve, termination value, and the impact that the term of the swap has on the overall exposure of the authority shall be considered in determining the appropriate term of any swap agreement. Any swap should reflect the amortization of the debt swapped against or will be in place for no longer than the period of time that matching assets are available to hedge the transaction.

(4) Liquidity Risk: The authority should consider if the swap market is sufficiently liquid (i.e., if enough potential qualified counterparties participate actively in the market to assure fair pricing) for the type of swap being considered and the potential ramifications of an illiquid market for such types of swaps. There may not be another appropriate party available to act as an offsetting Counterparty. The authority may enter into liquidity agreements with qualified liquidity providers and/or credit enhancers to protect against this risk.

(5) Basis (Index) Risk (including Tax Risk): Any index chosen as part of an interest rate swap agreement shall be a recognized market index, including but not limited to The Bond Market Association Municipal Swap Index (TBMA) or London Interbank Offering Rate (LIBOR). The authority shall not enter into swap agreements that do not have a direct (one to one) correlation with the movement of an index without analyzing the risk associated with the enhancement. Any Counterparty for a swap which relies on an index will agree to not lobby, or otherwise influence, any changes to the index that will adversely affect the authority. The tax risk and impact to the authority of each swap transaction shall be detailed through the Counterparty disclosure requirements outlined in Section 201.024.

(6) Bankruptcy Risk: Bond or swap counsel will disclose to the authority the bankruptcy risks and issues associated with the Counterparty and type of swap chosen. Additionally, bond or swap

counsel will disclose to the authority the bankruptcy issues associated with the method of collateral required to be posted.

201.023 Counterparty Approval Guidelines

(a) Eligibility: The authority shall enter into interest rate swap transactions only with Counterparties. To qualify as a Counterparty under this article, at the time of entry into a swap transaction, the selected swap provider(s):

(1) shall be rated at least AA-/Aa3/AA- by at least two of the three nationally recognized credit rating agencies (Standard & Poor's, Moody's, and Fitch Ratings, respectively) and shall have a minimum capitalization of $50 million, or

(2) shall be rated at least BBB-/lBaa3/BBB- by two of the three nationally recognized credit rating agencies and shall provide a credit support annex ("CSA"') to the schedule to the ISDA master agreement that shall require such party to deliver collateral for the benefit of the authority:

(A) that is of a kind and in such amounts as are specified therein and which relate to various rating threshold levels of the Counterparty or its guarantor, from AA-/Aa3/AA- through BBB/Baa3/BBB-, and

(B) that, in the judgment of the authority in consultation with its Financial Advisor, is reasonable and customary for similar transactions, taking into account all aspects of such transaction including without limitation the economic terms of such transaction and the creditworthiness of the Counterparty or, if applicable, its guarantor; or

(C) shall post suitable and adequate collatera1 (separate from any collateral requirements of Section 6.3) at a third party for the benefit of the authority; or

(3) shall obtain credit enhancement from a provider with respect to its obligations under the transaction that satisfies the requirements of subdivision (1) of this subsection, given the undertaking involved with the particular transaction.

(b) The authority shall not enter into an interest rate swap transaction with a firm that does not qualify as a Counterparty. The Counterparty must make available audited financial statements and rating reports of the Counterparty (and any guarantor), and must identify the amount and type of derivative exposure, and the net aggregate exposure to all parties (the authority and others), along with relevant credit reports at the time of entering into a swap and annually thereafter unless the entity or credit enhancer is under credit or regulatory review and in that case immediately upon notice by the appropriate agencies to the entity.

(c) Swap Counterparty Exposure Limits and Transfer: In order to limit and diversify the authority's Counterparty risk, and to monitor credit exposure to each Counterparty, the authority

may not enter into an interest rate swap agreement with a qualified swap Counterparty if the following exposure limits are reached per Counterparty:

(1) The maximum notional amount for interest rate swaps between a particular Counterparty (and its unconditional guarantor, if applicable) and the authority shall not exceed the maximum of $100 million. The $100 million limitation shall be the net exposure total of all notional amounts between each Counterparty and the authority. As such, notional amounts for fixed to floating swaps may be used to "offset" the notional amounts for floating to fixed swaps, or vice versa.

(2) Limitations on transfers of swaps with a particular Counterparty should be carefully analyzed and would require the authority's prior written consent. If the Counterparty unilaterally restricts transfer, then the authority should have the ability to terminate the swap without penalty if the swap is transferred or the Counterparty is merged with another entity that changes the credit profile of the swap Counterparty, unless the authority gives its prior written consent.

(3) If the maximum notional limit for a particular Counterparty is exceeded solely by reason of merger or acquisition involving two or more counterparties, the authority shall expeditiously analyze the exposure, but shall not be required to "unwind" existing swap transactions unless the authority determines such action is in its best interest, given all the facts and circumstances.

(4) If the exposure limit is breached by a Counterparty, then the authority shall:

(A) conduct a review .of the exposure limit calculation of the counterparty; and

(B) determine if collateral may be posted to satisfy the exposure limits; and

(C) enter into an offsetting swap transaction, if necessary.

(5) The authority will not enter into contracts with derivative product companies ("DPCs") that are classified as "terminating" or "Sub-T" DPC's by the rating agencies.

(d) Collateral Requirements: Collateral posting requirements between the authority and each swap Counterparty should not be unilateral in favor of the Counterparty. As part of the swap agreement,

the authority or the swap Counterparty may require that collateralization to secure any or all swap payment obligations be posted. Collateral requirements shall be subject to the following guidelines:

(1) Collateral requirements imposed on the authority should not be accepted to the extent they would impair the authority's existing operational flow of funds.

(2) Each Counterparty shall be required to provide a form of a Credit Support Annex should the credit rating of the Counterparty fall below the "A-/A3/A-" category by at least two of the nationally recognized agencies:

(3) A list of acceptable .securities that may be posted as collateral and the valuation of such collateral will.be determined and mutually agreed upon during negotiation of the swap agreement with each swap Counterparty.

(4) The market value of the collateral shall be determined on either a daily, weekly, or monthly basis by an independent third party, as provided in the swap documentation.

(5) Failure to meet collateral requirements will be a default pursuant to the terms of the swap agreement.

(6) The authority and each swap Counterparty may provide in the supporting documents to the swap agreement for reasonable threshold limits for the initial deposit and for increments of collateral posting thereafter.

(7) The swap agreement may provide for the right of assignment by one of the parties in the event of certain credit rating events affecting the other party. The authority (or the Counterparty) shall first request that the Counterparty (or the authority) post credit support, or provide a credit support facility. If the Counterparty (or the authority) does not provide the required credit support, then the authority (or the Counterparty) shall have the right to assign the agreement to a third party acceptable to both parties and based on terms mutually acceptable to both parties. The credit rating thresholds to trigger an assignment shall be inc1uded in the supporting documents.

201.024 Form of Swap Agreements and Other Documentation

Each interest rate swap agreement shall contain terms and conditions as set forth in the International Swap & Derivatives Association, Inc. ("ISDA") Master Agreement and such other terms and conditions included in any schedules, confirmations, and credit support annexes as approved in accordance with the authority's swap resolution pertaining to that transaction. The swap Counterparty shall provide a disclosure memorandum that will include an analysis by the Counterparty of the risks and benefits of the transactions, with amounts quantified. This analysis should include, among other things, a matrix of maximum termination values over the life of the swap. The disclosure memorandum shall become a part of the official transcript for the transaction. The swap Counterparty shall also affirm receipt and understanding of the authority's statement of swap policies, and will

further affirm that the contemplated transactions fit within the swap policies as described.

201.025 Modification of Swaps

Each swap resolution should provide specific approval guidelines for the swap transactions to which it pertains. These guidelines should provide for modifications to the approved swap transactions, provided such modifications, unless considered and recommended by the Executive Committee, do not .extend the average life of the term of the swap, increase the overall risk to the authority resulting from the swap, or increase the notional amount of the swap. The swap resolution should further designate which authority officers shall be authorized to cause such modifications.

201.026 Aggregation of Swaps

Unless the swap resolution states otherwise, the approval requirements set forth in each swap resolution are applicable for the total notional amount of transactions executed over a consecutive three-month period for a given security or credit. Therefore, the notional amount of swap transactions including the average life of the swap agreements over a consecutive three-month period are considered in total (net of the notional amount of a swap reversal) to determine what approval is required pursuant to a particular swap resolution.

201.027 Reporting Requirements

The Executive Committee shall be required to report the status of all interest rate swap agreements to the board at least on an annual basis and shall present all footnote disclosure items required by GASB Technical Bulletin No. 2003-1.

Article 7. RESERVE FUND POLICY

201.028 Purpose

In Resolution No. 10-12, dated February 26, 2010, the board approved the establishment of a reserve fund. The reserve fund is intended to ensure that the authority maintains adequate funds to satisfy its outstanding financial commitments and operational requirements in the event of unforeseen circumstances or events. The board recognizes that establishment and maintenance of sufficient reserve funds is of particular importance in light of the authority's dependence upon discretionary user fees as its primary revenue stream.

201.029 Fund Balance

(a) It shall be the goal of the authority to maintain twelve months of funds sufficient to pay, maintain, or satisfy all required debt service, debt service coverage, contractual financial commitments, and operational requirements (collectively, "Funding Requirements") as a reserve fund; provided, however, that the executive director shall have the authority to take action resulting in a reduction of the reserve fund to a minimum of nine months of funding sufficient to pay, maintain, or satisfy all Funding Requirements if he determines that such action is necessary, in the best interest of the authority, and will not adversely affect the authority's financial stability.

(b) In the event that the executive director authorizes action on behalf of the authority to reduce the reserve fund balance to less than twelve months of funding sufficient to pay, maintain, or satisfy all Funding Requirements, he shall disclose to the board at the next regular board meeting the amount by which the reserve fund was reduced and the circumstances that led to the reduction.

(c) In no event may the reserve fund balance be reduced to less than nine months of funding sufficient to pay, maintain, or satisfy all Funding Requirements without the prior approval of the board.

Article 8. DAMAGE CLAIMS BY CTRMA

201.030 Purpose

This article sets forth guidelines for management and collection of claims by the authority against an individual, company, or organization for damage to a transportation project. This article is not intended to apply to damage to authority property resulting from the actions of contractors engaged in the construction, maintenance, or repair of authority projects.

201.031 Definitions

(1) Accident: A collision, crash, or impact, with or without apparent cause, involving one or more vehicles.

(2) Damage: Loss or harm to a transportation project resulting from an accident or from a deliberate act, including an act of vandalism. Damage does not include wear and tear caused by normal use of a transportation project.

(3) Insurer: An insurance company authorized to write motor vehicle insurance in this state and through which a responsible party had a motor vehicle insurance policy in effect at the time of an accident.

(4) Responsible Party: The owner or operator of a vehicle involved in an accident resulting in damage or the person responsible for a deliberate act resulting in damage to a transportation project.

(5) Transportation Project: A turnpike project, passenger or freight rail facility, roadway, pedestrian or bicycle facility, or any other facility or structure included within the definition of "transportation project" set forth in Section 370.003(13), Transportation Code.

(6) Vehicle: A device in or by which a person or property is or may be transported or drawn on a public highway, other than a device used exclusively on stationary rails or tracks. Includes, without limitation, a passenger car, truck, bus, tractor, trailer, semi-trailer, all-terrain vehicle, recreational vehicle, motorcycle, moped, or bicycle.

201.032 Collection of Damage Claims

(a) The authority shall seek reimbursement from the responsible party for costs it incurs to repair damage to a transportation project owned or maintained by the authority, including the cost of labor, materials, equipment. Additionally, the authority may seek reimbursement for any internal or

external administrative or other costs the authority necessarily incurs in connection with making repairs to the damage and obtaining reimbursement for those costs.

(b) The executive director shall develop and implement procedures for maintaining records of all damage claims and notifying a responsible party and/or the party's insurer, as appropriate, of the existence and nature of damage claim by the authority and for recovering the cost of the repairs. A responsible party and the insurer shall be provided with a copy of any police report relating to the accident or damage, a description of the damage, and a summary of the costs incurred or estimates of costs to be incurred for repairing the damage. The authority shall provide a process for a responsible party and the insurer to dispute the liability of a responsible party or the existence or amount of a damage claim.

(c) If a responsible party who did not have an insurance policy in effect at the time of an accident fails to pay a claim for damages totaling at least $1,000.00 within 90 days after notice of a claim is sent to the responsible party by the authority, the authority may notify the Texas Department of Public Safety and may recommend that the responsible party's driver's license be suspended in accordance with procedures set forth in Subchapter F, Chapter 601, Transportation Code.

(d) For a damage claim that totals at least $500 against a responsible party who did not have a motor vehicle insurance policy in effect at the time of an accident, the authority may enter into a payment plan with the responsible party; provided, however, that payments shall not extend beyond a one year period.

(e) A damage claim that does not exceed $50,000 may be compromised or settled in the best interests of the authority with the approval of the executive director. A damage claim that exceeds $50,000 may be compromised or settled only with the approval of the board.

(f) If the authority is unable to collect a damage claim through its internal collection procedures, the claim may be assigned to a collection agency or, with the approval of the board, the authority may institute a civil action to recover its damages in a court of competent jurisdiction. All efforts by the authority to recover costs of repairing damage to authority property shall comply with applicable state and federal laws and regulations governing the collection of debts.

Chapter 3: OPERATIONS

Article 9. TOLL POLICIES

Subchapter A. TOLL RATES

301.001 Priority of Bond Documents

Notwithstanding any conflicting provision in this subchapter or in a prior resolution adopting the Toll Policies, the toll rates and schedules promulgated by the authority shall always be sufficient to meet or exceed all covenants and requirements set forth in all applicable bond documents and obligations of the authority. If any conflict arises between the bond documents and this subchapter or a prior resolution adopting the Toll Policies, the covenants and requirements of the bond documents shall control to the extent of such conflict.

301.002 Toll Rates

(a) The authority shall establish toll rates for each tolled facility operated by the authority. Each toll established by this section is subject to an adjustment on January 1 of each year under the procedure set forth in Section 301.003 (Annual Toll Rate Escalation). The executive director is authorized and directed to edit a toll established by this section to update and certify any change to a toll made pursuant to Section 301.003.

(b) The toll charge for each tolled facility operated by the authority shall be published on the authority website.

(c) The toll charged for use of the MoPac Express Lanes shall be variable in nature. The minimum toll rate will be $0.25 per Express Lane segment, in 2016 dollars. The minimum toll rate per segment will be adjusted annually by $0.05 per segment until the minimum toll rate is $0.50, at which point the minimum toll rate per segment will be adjusted annually in accordance with the methodology for toll rate escalation provided in Section 301.003. There shall be no maximum toll rate. To maximize throughput and maintain free flowing conditions, the toll rate for each MoPac Express Lane segment shall change on a real-time basis based on traffic volumes. When traffic volumes increase, the minimum toll rate shall be increased as much as necessary to prevent the MoPac Express Lane(s) from becoming congested. When traffic volumes decrease, the toll rate shall be reduced to encourage use of the MoPac Express Lane(s). The primary goal of the variable toll rate is to minimize congestion on the MoPac Express Lanes and to encourage more people to ride public transit or join a registered vanpool. Changeable message signs shall be located prior to the entrance of each MoPac Express Lane segment to notify customers of the current toll rate. A customer shall never pay more than the toll rate information shown on the sign located near the vehicle's entry point, but may be charged less. The Mobility Authority may reduce tolls if it determines that operational issues warrant such an adjustment.

301.003 Annual Toll Rate Escalation

(a) The following provisions are fully adopted and made a part of this subchapter and may be incorporated in any Trust Indenture or Supplemental Trust Indenture issued in conjunction with bond financing to be utilized for the financing of the construction and development of projects by the authority (defined terms in these provisions shall be in accordance with the terms and definitions set forth in the Master Trust Indenture and any applicable Supplemental Trust Indenture):

> Subject in all instances to the provisions, requirements and restrictions of the Master Indenture, as amended and supplemented from time to time, beginning on October 1, 2012 and on each October 1 thereafter (the "Toll Escalation Determination Date"), a percentage increase in the Toll rates charged on all toll facilities in the Turnpike System will be determined in an amount equal to the Toll Rate Escalation Percentage. The Toll Rate Escalation Percentage, as calculated on each Toll Escalation Determination Date, shall be reported to the board each year at its October board meeting. The percentage increase in the Toll rates shall be effective on the January 1 of the next calendar year, unless at such board meeting the board affirmatively votes to modify the Toll Rate Escalation Percentage. If the board votes to modify the Toll Rate Escalation Percentage, the Toll rate increase to be effective on January 1 of the next calendar year shall be based on the modified Toll Rate Escalation Percentage.

(b) For purposes of determining the Toll Rate Escalation Percentage, the following capitalized terms shall have the meanings given below:

(1) "Toll Rate Escalation Percentage" = shall mean a percentage amount equal to $[(CPI^{t} – CPI^{t-12})/CPI^{t-12}]$. In the event the Toll Rate Escalation Percentage is calculated to equal less than 0%, then the Toll Rate Escalation Percentage shall be deemed to equal 0%.

(2) "CPI^{t}" = the most recently published non-revised index of Consumer Prices for All Urban Consumers (CPI-U) before seasonal adjustment ("CPI"), as published by the Bureau of Labor Statistics of the U.S. Department of Labor ("BLS") prior to the Toll Escalation Determination Date for which such calculation is being made. The CPI is published monthly and the CPI for a particular month is generally released and published during the following month. The CPI is a measure of the average change in consumer prices over time for a fixed market basket of goods and services, including food, clothing, shelter, fuels, transportation, charges for doctors' and dentists' services, and drugs. In calculating the index, price changes for the various items are averaged together with weights that represent their importance in the spending of urban households in the United States. The contents of the market basket of goods and services and the weights assigned to the various items are updated periodically by the BLS to take into account changes in consumer expenditure patterns. The CPI is expressed in relative terms in

relation to a time base reference period for which the level is set at 100.0. The base reference period for the CPI is the 1982-1984 average.

(3) "CPI^{t-12}" = the CPI published by the BLS in the month that is 12 months prior to the month used to established CPI^{t}.

(4) If the CPI is discontinued or substantially altered, as determined in the sole discretion of the authority, the authority will determine an appropriate substitute index or, if no such substitute index is able to be determined, the authority reserves the right to modify its obligations under this section.

301.004 Exemption from Toll

(a) The operator or the registered owner of a vehicle operated on an authority toll facility is required to pay the toll established by this subchapter unless the vehicle is exempted by state law or by this section.

(b) An authorized emergency vehicle defined by Section 541.201, Transportation Code, is exempt from paying a toll to use an authority toll facility under Section 370.177, Transportation Code.

(c) A state or federal military vehicle is exempt from paying a toll to use an authority toll facility under Section 362.901, Transportation Code.

(d) Through December 31, 2021, recipients of the Congressional Medal of Honor, Legion of Valor and Purple Heart awards as well as Disabled Veterans are eligible to participate in the Qualified Veterans Toll Discount Program. To be exempt from paying a toll to use the authority's non variable rate toll facilities, participants must be registered with the authority; the vehicle must be registered with the Texas Department of Motor Vehicles; the vehicle must have a qualifying specialty plate and have it properly displayed; the vehicle must be associated to an electronic toll tag account; and the participating veteran must have no outstanding CTRMA toll violations at the time of the transaction. Participation is limited to one (1) vehicle per qualified veteran. The exemption does not apply to the authority's express lane facilities.

(e) Under Section 370.177(a-1), Transportation Code, and to facilitate a multi-modal transportation system that ensures safe and efficient travel for all individuals in central Texas, a vehicle used exclusively to provide transportation to a member of the public under a transit program

established and managed by the Capital Metropolitan Transportation Authority or the Capital Area Rural Transportation System is exempt from paying a toll to use an authority toll facility.

(f) The authority will create technical procedures to implement the toll exemptions described and established by this section.

301.005 Discounts and Incentives

(a) A primary objective of the authority's marketing and public information program is to encourage enrollment of as many customers as possible in interoperable transponder programs. Transponder programs that are interoperable with the authority's facilities are listed on the authority's website. The board will determine appropriate introductory and marketing activities on a project-by-project basis by separate resolution, which may include, but not be limited to, those described in subsection (b).

(b) During the initial start-up phase of tolling on a particular project, incentives to customers may be offered depending on the level of toll tag enrollment, such as the following discounts and incentives:

(1) The authority may offer incentives with each new toll project that is opened to encourage ridership.

(2) The authority may offer discounts for transponder users from the toll amount paid by Pay By Mail toll customers.

Subchapter B. TOLL COLLECTIONS

301.006 Purpose

This subchapter establishes practices and operations for toll collection systems on designated controlled-access toll roads operating within the turnpike system, and incorporates provisions of Section 370.177, Transportation Code, regarding failure or refusal to pay turnpike project tolls and related penalties and offenses.

301.007 Transponder Billing

The authority offers transponder billing as a payment option for customers that use its toll facilities with an interoperable transponder account. A transponder is an electronic device that records the presence of a vehicle on a toll road and is usually attached to the windshield of the vehicle. Each transponder issuer that is interoperable with the authority's toll facilities has its own user agreement concerning requirements to open and maintain a transponder account. The authority will maintain a list of transponder programs that are interoperable with the authority's website.

301.008 Video Billing

(a) The authority offers video billing as a payment option for customers that use its toll facilities without a transponder account. The authority, through a third-party vendor (the "Contractor"), will use the license plate information of a vehicle that does not have a valid toll transponder but travels on the authority's toll facilities to determine the registered owner of such a vehicle via an interface with Vehicle Title & Registration database or similar institution.

(b) The Contractor will send an invoice to the registered owner of the vehicle and accept payment on behalf of the authority. The Contractor will add a processing fee for each invoice. Payment of each invoice is required by the stated due date.

301.009 Establishment of Administrative Fee for Unpaid Tolls

(a) Section 370.177, Transportation Code, authorizes the assessment and collection of an administrative fee to recover the authority's cost of collecting unpaid tolls. An administrative fee may not exceed $100.00 per unpaid toll. The authority has determined that such fees may vary depending on how far in the collection process a delinquent account proceeds.

(b) An administrative fee shall be applied at each phase of non-payment in addition to the unpaid toll. An additional administrative fee shall be imposed upon the filing of a criminal complaint for non-payment or upon the determination of habitual violator status.

(c) The administrative fee for each billing phase and enforcement level shall be approved by the authority and published on the authority's website.

(d) The board recognizes that the amount of the administrative fee should be subject to periodic change when collection costs and associated matters are considered. Therefore, the board delegates the authority to revise the administrative fee, or any aspect thereof, to the executive director, in consultation with the director of operations, and the executive director may revise an administrative fee by written amendment. The executive director shall give notice to the board of any such revision at the next regularly scheduled board meeting after the revision is put into effect.

301.010 Customer Service and Violation Enforcement Policies

(a) A tolerant and customer-friendly approach will be employed towards customers who use the road without paying the required toll. While it is understood that the objective of the authority is to collect revenue and minimize toll violation abuse, the authority believes that a moderate approach towards customers who did not pay the toll ultimately will allow for a period of adjustment as customers begin using the toll roads, and will create new toll customers for the authority.

(b) The authority will establish a process where vehicle images captured at the toll collection point and for which no toll was paid will be reviewed and processed according to authority policies and in accordance with the toll enforcement process established by state law. Repeat offenders will be

issued notices of nonpayment and will be given the opportunity to make outstanding toll and administrative payments.

(c) Failure to respond to the established customer contact process and to satisfy outstanding, unpaid toll amounts may result in the assessment of administrative fees; additional collection activities; publication of a list of names of the registered owners or lessees of non-paying vehicles; and/or criminal (Class C) misdemeanor charges.

(d) Customers with 100 or more events non-payment within a period of one year and who have received at least two written notices of non-payment may be considered habitual violators. An event of non-payment is considered to be one unpaid toll transaction.

(e) Following a final determination that a registered owner with at least 100 unpaid toll violations within a year is a habitual violator, the authority may report a vehicle owned or leased by a person determined to be a habitual violator to a county tax assessor-collector or the Texas Department of Motor Vehicles in order to cause the denial of a vehicle registration.

(f) By order of its Board of Directors, the authority may prohibit the operation of a motor vehicle owned or leased by a person determined to be a habitual violator on all authority toll roads. Vehicles that continue to operate on a toll road after the prohibition are subject to ticketing and impounding.

(g) Customers have the right to appeal the authority's habitual violator determination. If the authority receives a written request from a potential habitual violator for a hearing not later than thirty (30) days after the habitual violator notice is mailed, then an administrative hearing shall be held. Otherwise, the authority's habitual violator determination shall become final.

(h) The process for administering the habitual violator program shall be published on the authority website.

301.011 Procedures for Disputing Toll Violations

(a) A customer may dispute an alleged failure to pay a toll on the authority's web site or by contacting the CSC where a valid transponder account has been established.

(b) A customer who has contacted a CSC or the authority's collection contractor and has been unable to satisfactorily resolve a dispute regarding a toll violation may submit a written appeal to the authority. Such appeal shall be for the purposes of the customer providing the authority with the information upon which they base their appeal. The authority may or may not determine that there

is any merit to such appeal and is not required to undertake any formal proceedings to make such determination.

Article 10. OPERATIONS

301.012 Statement of General Policy

(a) The mission of the authority is to implement innovative multi-modal transportation solutions that reduce congestion and create transportation choices that enhance quality of life and economic vitality. It is the policy of the authority that all actions shall be based on achieving the highest degree of regional mobility and transportation safety while encouraging economic development and enhancing the quality of life.

(b) Pursuant to Section 370.033(a)(12), Transportation Code, this article adopts and establishes rules for the use of the authority's transportation projects. These provisions are in addition to and an enhancement of the provisions of Subtitle C, Title 7, Transportation Code (the "Statutory Rules of the Road"). The authority expressly adopts these provisions and those set forth in the Statutory Rules of the Road. To the extent any conflict arises between the provisions hereof and the Statutory Rules of the Road that cannot be overcome through any reasonable consideration of both, the Statutory Rules of the Road shall control.

301.013 Definitions

The following words and terms, when used in these policies, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Median: the area between traffic lanes for the purpose of separating traffic

(2) Toll Plaza: The area where tolls are collected

(3) Toll Gantry: A structural frame installed over tolled roadways and/or ramps supporting electronic toll collection systems.

301.014 Speed Limits

(a) Subchapter H, Chapter 545, Transportation Code, "Speed Restrictions," governs speeds on highways in the State of Texas. The authority has the authority to alter prima facie speed limits on its toll roads, provided the Procedures for Establishing Speed Zones are followed.

(b) Guidelines established by Texas Department of Transportation Procedures for Establishing Speed Zones, current edition, will be used in conducting Speed Zone Studies and establishing Speed Limits on authority operated toll roads. The data collected during the Speed Zone Studies are analyzed to determine the 85th Percentile Speed. The 85th Percentile Speed is the speed at which

85% of the traffic at a specific test site is traveling at or slower. The 85th Percentile Speed will be the basis for how the posted speed limit is determined.

(c) Maximum speeds within construction, transitional or reduced speed zones or during any period of adverse atmospheric or weather conditions shall be in accordance with signs displayed for such zones. All regulatory and zoning signs displayed on authority operated toll roads shall be obeyed.

(d) Regulatory signs for toll plaza speed zones shall be placed in advance of, at the beginning, and at the end of the defined speed zone. All regulatory signs displayed at the toll plaza shall be obeyed.

(e) Motor vehicles shall not be driven in excess of the mechanical limits of vehicles or tires. If traffic, weather, pavement or other conditions render the maximum allowable speed hazardous, the speed of motor vehicles shall be reduced consistent with such conditions.

301.015 Speed Limits for Specific Roadways

(a) The maximum speed of a motor vehicle on the main tolled lanes of the 183A Turnpike is limited to 75 miles per hour except within construction, transitional, or reduced speed zones, or during any period of adverse atmospheric or weather conditions. Notwithstanding the foregoing, the maximum speed of a motor vehicle on a non-tolled frontage road of the 183A Turnpike is limited to 60 miles per hour.

(b) The maximum speed of a motor vehicle on the main toll lanes of the 290 Toll is limited to 75 miles per hour except within construction, transitional, or reduced speed zones, or during any period of adverse atmospheric or weather conditions. Notwithstanding the foregoing, a lesser transition maximum speed limit for a motor vehicle that is entering or exiting a main toll lane of the 290 Toll is established as identified on the strip map attached as Appendix C to the September 8, 2014, Speed Zone Study, on file in the Mobility Authority offices.

301.016 Parking

(a) Parking or stopping of vehicles on any traffic lane, deceleration lane, acceleration lane, or on any bridge is prohibited. Parking or stopping of vehicles is permitted only on the shoulders to the right of the traffic lane. All wheels and projecting parts of the vehicle or load shall be completely clear of the traffic lane.

(b) During the period beginning 30 minutes after sunset and ending 30 minutes before sunrise or at any other time when insufficient light or unfavorable atmospheric or weather conditions require,

any parked vehicle shall display illuminated parking and tail lights, or lighted flares to indicate its location.

(c) Unnecessary parking or parking of vehicles for extended periods of time (in excess of 24 hours) is prohibited, and the driver of a disabled vehicle shall arrange for its prompt removal from authority operated toll roads.

301.017 Median Strip

(a) The median strip is the area between the dual or triple traffic lanes for the purpose of separating traffic.

(b) Crossing, driving, parking or stopping on the median strip is prohibited, except as necessary for official maintenance, operational or emergency uses.

301.018 No U-Turn

Except as specifically provided for as standard Turnarounds, U-Turns at any location on authority operated toll roads are prohibited.

301.019 Pedestrians

Pedestrians are not permitted on the mainlane roadways, access ramps or any interchange of authority toll roads. Solicitation of rides or "hitchhiking", panhandling, passing of handbills, displaying signs, or attempting to sell merchandise is prohibited on authority operated toll roads. Loitering in or about Toll Plazas or upon any Turnpike property is prohibited.

301.020 Prohibited Modes of Transportation

(a) No person shall operate any of the following on any roadway or access ramp operated by the authority:

(1) Animal drawn vehicles.

(2) Animals - led, ridden, or driven.

(3) Vehicles loaded with animals or poultry not properly confined.

(4) Vehicles with flat pneumatic tires.

(5) Vehicles in the charge of intoxicated or otherwise incapacitated operators.

(6) Vehicles with improperly secured loads which may shift or litter the highway.

(7) Vehicles with metal tires or which have solid tires worn to metal.

(8) Rollers, graders, power shovels, or other construction equipment, either self- propelled or in tow of another vehicle, unless such equipment is either:

(A) truck mounted, and such truck can be operated at a minimum speed of 45 miles per hour while traveling on the mainlane roadways of authority operated toll roads, weather and road conditions permitting, or

(B) owned or controlled by the authority or by any contractor in connection with the performance of work authorized by the authority.

(9) Vehicles exceeding the maximum weights allowed on State highways under the motor vehicles laws of the State of Texas in effect from time to time.

(10) Vehicles including any load thereon exceeding the following maximum dimensions are prohibited:

Height	13 feet 6 inches
Width	8 feet 6 inches
Length	The maximum allowable lengths permitted on Interstate highways and other controlled access roadways in Texas pursuant to the motor vehicle laws of the State of Texas, as in effect from time to time, without an over-length permit.

(11) disabled vehicles in tow by tow-rope or chain.

(b) No person shall operate any of the following on the mainlane roadways or access ramps of authority operated toll roads:

(1) Bicycles or tricycles, with or without motors, and motor driven cycles, including motor scooters, and

(2) Farm implements.

301.0211 Vehicles Prohibited in an Express Lane

(a) No person shall operate a vehicle with more than two axles on an authority facility designated as a tolled express lane that has variable rate tolls.

(b) No person shall operate a vehicle that is towing a trailer on an authority facility designated as a tolled express lane that has variable rate tolls.

(c) This section does not apply to any vehicle that is exempt from paying a toll to use an authority toll facility under state law.

301.021 Evasion of Fare

Entering or leaving authority operated toll roads or any part of its right of way except through the regular Toll Plaza lanes, or committing any act with intent to defraud or evade payment of fare is prohibited.

301.022 Trees, Shrubs and Plants

Culling, mutilating or removing trees, shrubs, or plants located within authority operated toll roads right-of-way is prohibited.

301.023 State Laws

All laws, rules and regulations in the State of Texas pertaining to the use of public highways and policing thereof, including but not limited to the Statutory Rules of the Road, shall apply to authority operated toll roads, except insofar as they may be supplemented by this article.

301.024 Penalties

Any violation of a provision of this article shall be deemed an offense as defined in the Statutory Rules of the Road and shall be subject to prosecution and penalties as set forth in the Statutory Rules of the Road.

Article 11. ACCESS MANAGEMENT STANDARDS

301.025 Application and Permit Required

(a) This article establishes standards and policies to manage access to authority roadways from abutting property.

(b) Before constructing an access connection that connects to an authority roadway, a property owner with a right to establish the access connection must file an application with the authority and receive a direct access permit from the authority in accordance with this article and other applicable law.

301.026 Criteria for Approval of an Access Connection

(a) Unless otherwise specifically provided by this article, an access connection to an authority roadway shall comply with the all criteria and standards established for a frontage road by the *Access Management Manual* adopted by the Texas Department of Transportation, as that manual is in effect on the date the application for the permit is filed with the authority.

(b) A decision under the TxDOT *Access Management Manual* that may be made by a TxDOT employee at the district engineer level or below may under this article be made on behalf of the authority by the executive director or his or her designee.

(c) The executive director may promulgate and adopt application or other forms necessary or desirable to facilitate the review and decision on a direct access permit required by this article.

301.027 Prohibited Direct Access

Direct access to an authority frontage road is prohibited in the vicinity of existing ramp connections to mainlane roadways, as detailed by a defined "control of access" area illustrated on official right-of-way maps for the authority roadway on file with the authority.

301.028 Costs of Associated Infrastructure Improvements

(a) If the executive director determines a proposed access connection may reasonably cause safety or operational problems on the frontage road, including a reduction in the capacity of through lanes on the frontage road, as a condition of approval for a direct access permit the executive director may require the applicant to bear all or a portion of the costs of providing infrastructure improvements necessary to resolve or mitigate the safety or operational problems.

(b) The executive director may negotiate and execute a development agreement and associated agreements with an applicant to implement requirements under subsection (b). Board approval of

an agreement under this subsection is required if the authority will pay more than $50,000 in costs that are not reimbursed by the applicant.

301.029 Appeal

(a) An applicant may appeal a decision of the executive director to the Board in accordance with the appeal rights and procedures set out the TxDOT *Access Management Manual*, as modified by this section. The board shall exercise the power of the TxDOT Design Division to hear and decide an appeal under the TxDOT *Access Management Manual*.

(b) An applicant must file a written notice of appeal with the executive director no later than 15 days after the date the applicant receives written notice of the decision being appealed.

(c) The executive director shall schedule the appeal for a hearing by the board no sooner than seven days and no later than 45 days after the date the notice of appeal is received.

(d) The decision by the board on an appeal is final.

Article 12. ENCASEMENT PROTECTED RIGHT-OF-WAY

301.030 Applicability

This article applies only to a utility facility constructed in Encasement Protected ROW after January 25, 2012.

301.031 Definitions

In this article:

(1) "Utility Facility" means: (a) a water, wastewater, natural gas, or petroleum pipeline or associated equipment; (b) an electric transmission or distribution line or associated equipment; or (c) telecommunications information services, or cable television infrastructure or associated equipment, including fiber optic cable, conduit, and wireless communications facilities, used to provide a utility service.

(2) "Authority Encasement" means an encasement installed under a roadway within right-of-way and owned by the authority.

(3) "Encasement Protected ROW" means right-of-way for 183A between its intersections with RM 2243 and Hero Way.

301.032 Utility Facility in Encasement Protected ROW.

(a) A Utility Facility installed in Encasement Protected ROW shall be installed only within a Authority Encasement.

(b) This section does not apply to a Utility Facility that the authority determines cannot reasonably be installed within an Authority Encasement because the Authority Encasement has insufficient capacity to contain the proposed Utility Facility.

301.033 Agreement to Install a Utility Facility in an Authority Encasement

(a) A Utility Facility may not be installed in an Authority Encasement unless the owner of the Utility Facility executes an agreement with the authority.

(b) An agreement under this section must:

(1) include such terms and conditions as are reasonably necessary to protect the interests of the authority and its customers, as may be recommended by the executive director and approved by the board;

(2) include payment terms that fully reimburse the authority for its actual costs incurred to design, construct, and maintain the Authority Encasement; and

(3) be competitively neutral and nondiscriminatory among similarly situated users of the Encasement Protected ROW.

(c) A requirement of this section that directly conflicts with another law relating to use of authority right-of-way for a Utility Facility shall be subject to the provisions of the other law to the extent of such conflict.

Article 13. MONUMENTS ON AUTHORITY RIGHT-OF-WAY

301.034 Definitions

In this article:

(1) a "monument" is a freestanding sign or structure that identifies a local government;

(2) a "local government" is a city, county, or other Texas political subdivision whose jurisdiction includes authority right-of-way; and

(3) "guidelines" are standards promulgated and adopted by the executive director to implement the requirements of this article.

301.035 Requirements

(a) A monument shall:

(1) be located in right-of-way between the outer limit of the authority's right-of-way and an existing or planned authority frontage road;

(2) comply with all applicable requirements in the Federal Highway Administration Manual on Uniform Traffic Control Devices, the TxDOT Manual on Uniform Traffic Control Devices, the TxDOT Roadway Design Manual, the AASHTO Roadside Design Guide, and other applicable law;

(3) display only the local government's name, logo, graphic, seal, slogan associated with the community, or any combination thereof as desired by the local government;

(4) be designed and maintained to be consistent with the community design context established and maintained by the authority at and near the monument location, including appropriate size, scale, and landscaping;

(5) be designed and maintained in a manner that does not create a distraction or safety issue for those who operatxe a vehicle on an authority roadway; and

(6) be removed by the local government at its expense no later than 60 days after the executive director provides written notice to the local government that the board, after notice to the local government, has determined that the best interests and operational needs of the authority require removal of the monument.

301.036 Application

(a) A local government that seeks to install a monument shall file an application with the authority that includes the following:

(1) the name of the local government and the name, title, mailing address, telephone numbers, and email address of the person authorized to file the application on behalf of the local government;

(2) an agreement to pay all costs incurred by the authority in its review and processing of the application for board consideration;

(3) an agreement to pay all costs related to the design, installation, maintenance, and removal of the monument, as set forth in the license agreement promulgated under Section 301.039; and

(4) a detailed description of the proposed monument establishing that the monument, as constructed and maintained as proposed, will comply with the requirements of this article and the guidelines.

(b) The executive director may adopt and revise guidelines to implement this article, an application form, and other requirements to facilitate processing of an application under this section.

301.037 Board Approval

After considering the recommendation of the executive director, the board may approve an application for a monument if the board, in its sole discretion, determines the proposed monument complies with the requirements established by this article and the guidelines. The Board in its sole discretion may waive compliance with a standard established by the guidelines, and may condition its approval of a proposed monument on a standard or requirement specific to a proposed monument:

301.038 License Agreement and Financial Requirement

(a) A local government that installs a monument is responsible for all costs related to the design, construction, maintainence, and removal of the monument and associated landscaping.

(b) Before a local government may begin the installation of an approved monument, the local government shall:

(1) enter into a license agreement in the form promulgated by the executive director that establishes the respective obligations of the local government and the authority relating to the monument; and

(2) pay all costs incurred by the authority to review and process the application.

Chapter 4: PROCUREMENT OF GOODS AND SERVICES

Article 14. GENERAL

401.001 Statement of General Policy.

It is the policy of the authority that all authority procurements shall be based solely on economic and business merit in order to best promote the interests of the citizens of the counties served by the authority.

401.002 Definitions.

As used in this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Available bidding capacity: Bidding capacity less uncompleted work under a construction or building contract.

(2) Bid or quote: The response to a request for the pricing of products, goods, or services (other than professional services or certain consulting services) that the authority proposes to procure.

(3) Bid documents: Forms promulgated by the authority which the bidder completes and submits to the authority to document the bidder's bid on a contract to be let by the authority. Bid documents promulgated by the authority for a procurement will include the following information:

(A) the location and description of the proposed work;

(B) an estimate of the various quantities and kinds of work to be performed and/or materials to be furnished;

(C) a schedule of items for which unit prices are requested;

(D) the time within which the work is to be completed;

(E) any special provisions and special specifications; (vi) the amount of bid guaranty, if any, required; and

(F) the authority's goals regarding the participation in the contract or in subcontracts let under the contract by Disadvantaged Business Enterprises, in accordance with the authority's policies regarding such participation.

(4) Bid guaranty: The security designated in the bid documents for a construction or building contract to be furnished by the bidder as a guaranty that the bidder will enter into a contract if awarded the work.

(5) Bidder: An individual, partnership, limited liability company, corporation or any combination submitting a bid or offer of goods or services.

(6) Bidding capacity: The maximum dollar value a contractor may have under a construction or building contract at any given time, as determined by the authority.

(7) Building contract: A contract for the construction or maintenance of an authority building, toll plaza, or appurtenant facilities.

(8) Comprehensive Development Agreement: An agreement entered into and subject to the requirements of Subchapter B, Article 7 of this chapter. [Amended by Resolution No. 12-021, March 28, 2012]

(9) Construction contract: A contract for the construction, reconstruction, or repair of a segment of a transportation project, including a contract let to preserve and prevent further deterioration of a transportation project.

(10) Consulting service: The service of advising or preparing studies or analyses for the authority under a contract that does not involve the traditional relationship of employer and employee. Except in connection with comprehensive development agreements consulting services may not be procured under a construction or building contract. Consulting services are not professional services or general goods and services as defined by this chapter.

(11) Counties of the Authority: Travis and Williamson Counties, as well as any counties which may subsequently join the authority.

(12) Emergency: Any situation or condition affecting a transportation project resulting from a natural or man-made cause, which poses an imminent threat to life or property of the traveling public or which substantially disrupts or may disrupt the safe and efficient flow of traffic and commerce or which has caused unforeseen damage to machinery, equipment or other property which would substantially interfere with or prohibit the collection of tolls in accordance with the authority's bonding obligations and requirements.

(13) Executive director: The executive director of the authority or any individual designated by the Board to act as the chief administrative officer of the authority.

(14) Federal-aid project: The construction, reconstruction, maintenance, or repair of a segment of a transportation project, including a contract let to preserve and prevent further deterioration of a transportation project, funded in whole or in part with funds provided by the government of the United States or any department thereof.

(15) General goods and services: Goods, services, equipment, personal property and any other item procured by the authority in connection with the fulfillment of its statutory purposes that are not procured under a construction or building contract or that are not consulting services or professional services as defined by this chapter.

(16) Highway: A road, highway, farm-to-market road, or street under the supervision of a state or political subdivision of the State.

(17) Intermodal hub: A central location where cargo containers can be easily and quickly transferred between trucks, trains and airplanes.

(18) Lowest best bidder: The lowest responsible bidder on a contract that complies with the authority's criteria for such contract, as described in this chapter.

(19) Materially unbalanced bid: A bid, as may be more particularly defined in the bid documents, on a construction or building contract which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the authority.

(20) Mathematically unbalanced bid: A bid, as may be more particularly defined in the bid documents, on a construction or building contract containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

(21) Official newspaper of the authority: A general circulation newspaper published in the counties of the authority. If there are multiple newspapers which are published in the counties of the authority, the board shall designate which one is the official newspaper of the authority.

(22) Professional services: Services which political subdivisions of the State must procure pursuant to the Professional Services Procurement Act, which are services defined by state law of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing, or services provided in connection with the employment or practice of a person who is licensed or registered as a certified public accountant, an architect, a landscape architect, a land surveyor, a physician (including a surgeon), an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, or a registered nurse. Except in connection with a comprehensive development agreement professional services may not be procured under a construction or building contract.

(23) Professional Services Procurement Act: Subchapter A, Chapter 2254. Government Code, as amended from time to time.

(24) Public Utility Facility: A

(A) water, wastewater, natural gas, or petroleum pipeline or associated equipment;

(B) an electric transmission or distribution line or associated equipment; or

(C) telecommunications information services, or cable television infrastructure or associated equipment, including fiber optic cable, conduit and wireless communications facilities.

(25) Salvage property: Personal property (including, without limitation, supplies, equipment, and vehicles), other than items routinely discarded as waste, that through use, time, or accident is so damaged, used, consumed, or outmoded that it has little or no value to the authority.

(26) Surplus property: Personal property (including, without limitation, supplies, equipment, and vehicles) that is not currently needed by the authority and is not required for the authority's foreseeable needs. The term includes used or new property that retains some usefulness for the purpose for which it was intended or for another purpose.

(27) State: The State of Texas.

(28) System: A transportation project or a combination of transportation projects designated as a system by the board in accordance with Section 370.034, Transportation Code.

(29) Transportation Project: Includes a(n):

(A) turnpike project;

(B) system;

(C) passenger or freight rail facility, including (i) tracks; (ii) a rail line; (iii) switching, signaling, or other operating equipment; (iv) a depot; (v) a locomotive; (vi) rolling stock; (vii) a maintenance facility; and (viii) other real and personal property associated with a rail operation.

(D) roadway with a functional classification greater than a local road or rural minor collector;

(E) ferry;

(F) airport, other than an airport that on September 1, 2005, was served by one or more air carriers engaged in scheduled interstate transportation, as those terms were defined by 14 C.F.R. Section 1.1 on that date;

(G) pedestrian or bicycle facility;

(H) intermodal hub;

(I) automated conveyor belt for the movement of freight;

(J) border crossing inspection station;

(K) air quality improvement initiative;

(L) public utility facility;

(M) a transit system; and

(N) projects and programs listed in the most recently approved state implementation plan for the area covered by the authority, including an early action compact.

(30) Turnpike Project: A highway of any number of lanes, with or without grade separations, owned or operated by the authority and any improvement, extension or expansion to the highway, including:

(A) an improvement to relieve traffic congestion or promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, service road, ramp, or service station;

(C) an administration, storage, or other building the board considers necessary to operate the project;

(D) property rights, easements and interests the board acquires to construct or operate the project;

(E) a parking area or structure, rest stop, park, and any other improvement or amenity the board considers necessary, useful, or beneficial for the operation of a turnpike project; and

(F) a toll-free facility that is appurtenant to and necessary for the efficient operation of a turnpike project, including a service road, access road, ramp, interchange, bridge, or tunnel.

(31) TxDOT: The Texas Department of Transportation.

401.003 Conflict of Interest.

(a) In addition to any other requirements or restrictions imposed by state law, a director or an employee or agent of the authority shall not:

(1) contract with the authority or, without disclosure and recusal, be directly or indirectly interested in a contract with the authority or the sale of property to the authority;

(2) accept or solicit any gift, favor, or service that might reasonably tend to influence that director, employee or agent in the making of procurement decisions or that the director, employee or agent knows or should have known is being offered with the intent to influence the director's, employee's or agent's making of procurement decisions; or

(3) accept other compensation that could reasonably be expected to impair the director's, employee's or agent's independence of judgment in the making of procurement decisions.

(b) A bidder shall not be eligible to contract with the authority if a director, employee or agent is related to the bidder within the second degree of consanguinity or affinity, as determined under Chapter 573, Government Code. A bidder shall be required to complete a conflict of interest

disclosure statement disclosing any business or familial relationships with directors, employees or agents of the authority which may disqualify the bidder from consideration.

401.004 Disadvantaged Business Participation; Compliance With Policy.

Disadvantaged Business Enterprises will be encouraged to participate in the procurement process. If the authority adopts a policy regarding Disadvantaged Business Enterprises, all procurements shall comply with such policy.

401.005 Dispute Resolution Procedures

The authority shall have the general ability and authority, when negotiating the terms and conditions of any contract to be entered into with any entity, to negotiate for the inclusion of dispute resolution procedures in such contract. Such dispute resolution procedures may vary from contract to contract, provided that, at a minimum, the procedures require that a meeting of principles, mediation, and/or formal alternative dispute resolution procedures be followed before any party may file suit against, or initiate an arbitration proceeding against, the authority for an alleged breach of contract claim.

401.006 Emergency Procurements

(a) Emergency Procurement Procedures. The authority may employ alternate procedures for the expedited award of construction contracts and to procure goods and services to meet emergency conditions in which essential corrective or preventive action would be unreasonably hampered or delayed by compliance with the foregoing rules. Types of work which may qualify for emergency contracts include, but are not limited to, emergency repair or reconstruction of streets, roads, highways, building, facilities, bridges, toll collection systems and other authority property; clearing debris or deposits from the roadway or in drainage courses within the right of way; removal of hazardous materials; restoration of stream channels outside the right of way in certain conditions; temporary traffic operations; and mowing to eliminate safety hazards.

(b) Before a contract is awarded under this section, the executive director or his designee must certify in writing the fact and nature of the emergency giving rise to the award.

(c) To be eligible to bid on an emergency construction and building projects, a contractor must be qualified to bid on TxDOT construction or maintenance contracts or be pre-qualified by the authority to bid on authority construction or building contracts.

(d) A bidder need not be qualified or pre-qualified by the authority to be eligible to bid on emergency non-construction or non-building projects.

(e) After an emergency is certified, if there are three or more firms qualified to bid on the contract as reflected by the authority's files, the authority will send bid documents for the work to at least three qualified contractors. The authority will notify recipients of the bid documents of the date and time by which the bids must be submitted and when the bids will be opened, read, and tabulated.

The authority will also notify the recipients of any expedited schedule and information required for the execution of the contract. Bids will be opened, read, and tabulated, and the contract will be awarded, in the manner provided in the other sections of this chapter as required to procure construction or goods and services, as the case may be.

401.0061 Discretionary Exemptions

A contract to purchase general goods or services that may be exempted under Section 262.024, Local Government Code, from competitive bidding or competitive proposal requirements otherwise made applicable to a county by the County Purchasing Act may be exempted from competitive bidding or competitive proposal requirements established by Article 3 of this chapter if the board exempts the contract by motion or resolution.

Article 15. STATE COOPERATIVE PURCHASING PROGRAMS AND INTERGOVERNMENTAL AGREEMENTS

401.007 State of Texas CO-OP Purchasing Program.

Pursuant to and in accordance with Section 2155.204, Government Code, and Subchapter D, Chapter 271, Local Government Code, the authority may request the Texas Comptroller of Public Accounts to allow the authority to participate on a voluntary basis in the program established by the comptroller by which the comptroller performs purchasing services for local governments.

401.008 Catalog Purchase of Automated Information Systems.

Pursuant to and in accordance with Chapter 2157, Government Code, the authority may utilize the catalogue purchasing procedure established by the comptroller with respect to the purchase of automated information systems.

401.009 Cooperative Purchases.

Pursuant to and in accordance with Subchapter F, Chapter 271, Local Government Code, the authority may participate in one or more cooperative purchasing programs with local governments or local cooperative programs.

401.010 Interlocal Agreements with TxDOT.

Subject to limitations imposed by general law, the authority may enter into inter-local agreements with TxDOT to procure goods and services from TxDOT.

401.011 Effect of Procurements under this Article.

Purchases made through the comptroller, a cooperative program or by interlocal agreement shall be deemed to have satisfied the procurement requirements of this chapter and shall be exempted from a procurement requirement contained in another article of this chapter.

Article 16. GENERAL GOODS AND SERVICES

401.012 Approval of Board.

(a) Every procurement of general goods and services costing more than $50,000 shall require the approval of the board, evidenced by a resolution adopted by the board.

(b) A large procurement may not be divided into smaller lot purchases to avoid the dollar limits prescribed herein.

401.013 Purchase Threshold Amounts.

(a) The authority may procure general goods and services costing $50,000 or less by such method and on such terms as the executive director determines to be in the best interests of the authority.

(b) General goods and services costing more than $50,000 shall be procured using competitive bidding or competitive sealed proposals.

(c) A large procurement may not be divided into smaller lot purchases to avoid the dollar limits prescribed herein.

401.014 Competitive Bidding Procedures.

Competitive bidding for general goods and services shall be conducted using the same procedures specified for the competitive bidding of construction contracts, except that:

(1) with respect to a particular procurement, the executive director may waive the qualification requirements for all prospective bidders;

(2) the executive director may waive the submission of payment or performance bonds (or both) and/or insurance certificates by the successful bidder if not otherwise required by law;

(3) notice of the procurement shall be published once at least two weeks before the deadline for the submission of responses in the officially designated newspaper of the authority, as well as on the authority's website (www.ctrma.org).

(4) in addition to advertisement of the procurement as set forth in subsection 7.3(c) above, the authority may solicit bids by direct mail, telephone, Texas Register publication, advertising in other locations, or via the Internet. If such solicitations are made in addition to newspaper advertising, the prospective bidder may not be solicited by mail, telephone and internet or in any other manner, nor may the prospective bidder receive bid documents until such time that the advertisement has appeared on the authority's website (www.ctrma.org); and

(5) a purchase may be proposed on a lump-sum or unit price basis. If the authority chooses to use unit pricing in its notice, the information furnished to bidder must specify the approximate

quantities estimated on the best available information, but the compensation paid the bidder must be based on the actual quantities purchased.

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.

401.016 Competitive Sealed Proposals.

(a) The authority may solicit offers for provision of general goods and services under this section by issuing a request for proposals ("RFP") to identify the proposer who provides the goods or services at the best value for the authority. If a contract for goods and services must be approved by the board, the board must approve issuance of the RFP under this section.

(b) Each RFP shall contain the following information:

(1) the authority's specifications for the goods or services to be procured, stating that the contract may be awarded to the proposer who provides the goods or services at the best value for the authority;

(2) an estimate of the various quantities and kinds of services to be performed and/or materials to be furnished;

(3) a schedule of items for which unit prices are requested;

(4) the time within which the contract is to be performed;

(5) any special provisions and special specifications;

(6) the relative importance of price and other evaluation factors; and

(7) the authority's goals regarding the participation in the contract or in subcontracts let under the contract by Disadvantaged Business Enterprises.

(c) The authority shall give public notice of an RFP in the manner provided for requests for competitive bids for general goods and services.

(d) The authority shall avoid disclosing the contents of each proposal on opening the proposal and during negotiations, if any, with competing proposers. The authority shall file each proposal in a register of proposals, which, after a contract is awarded, is open for public inspection unless the register contains information that is excepted from disclosure as public information.

(e) The authority shall evaluate each proposal received in response to an RFP based on the criteria and relative importance of price and other evaluation factors identified in the RFP.

(f) In the sole discretion of the authority, after evaluating a proposal the authority may discuss acceptable or potentially acceptable proposals with proposers who are determined to be reasonably qualified for the award of the contract to assess a proposer's ability to meet the requirements established in the RFP. The authority may not disclose information derived from proposals submitted from competing proposers. The authority shall provide fair and equal treatment to each proposer with respect to any opportunity for discussion and revision of proposals. A proposer may revise a proposal after submission and before award for the purpose of offering a proposal that establishes the proposer's best and final offer.

401.017 Award Under Competitive Sealed Proposals.

(a) The authority may award a contract for general goods and services procured using competitive sealed proposals to the proposer whose final proposal provides goods or services at the best value for the authority.

(b) In determining the best value proposal for the authority, the authority may consider:

(1) the purchase price;

(2) the reputation of the proposer and of the proposer's goods or services;

(3) the quality of the proposer's goods or services;

(4) the extent to which the good or service meets the authority's needs;

(5) the proposer's past relationship with the authority;

(6) the impact on the ability of the authority to comply with applicable laws and rules relating to contracting with Disadvantaged Business Enterprises;

(7) the total long-term cost to the authority to acquire the proposer's goods or services; and

(8) any relevant criteria specifically listed in the RFP.

(c) The authority may refuse all proposals if none of those submitted is acceptable.

(d) The authority may submit a written contract to the proposer whose proposal is the most advantageous to the authority, considering price and the evaluation factors in the RFP (the "first-choice candidate"). The terms of the contract shall incorporate the terms set forth in the RFP and the best and final offer submitted by the first choice candidate, but if the proposal conflicts with the RFP, the RFP shall control unless the authority elects otherwise. If the authority and the first choice candidate cannot agree on the terms of a contract, the authority may elect not to contract with the first choice candidate, and at the exclusive option of the authority, may submit a contract to the proposer whose proposal is the next most favorable to the authority ("second-choice candidate"). If agreement is not reached with the second choice candidate, the process may be continued with other proposers in like manner, but the authority shall have no obligation to submit a contract to the next highest-ranked proposer if the authority determines at any time during the process that none of the remaining proposals is acceptable or otherwise within the best interest of the authority.

(e) 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 nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

401.018 Proprietary Purchases.

If the executive director finds that the authority's requirements for the procurement of a general good or service describe a product that is proprietary to one vendor and do not permit an equivalent product to be supplied, the authority may solicit a bid for the general good or service solely from the proprietary vendor, without using the competitive bidding or competitive proposal procedures. The executive director shall justify in writing the authority's requirements and shall submit the written justification to the board. The written justification must:

(1) explain the need for the specifications;

(2) state the reason competing products are not satisfactory; and

(3) provide other information requested by the board.

Article 17. CONSULTING SERVICES

401.019 Contracting for Consulting Services.

The authority may contract for consulting services if the executive director reasonably determines that the authority cannot adequately perform the services with its own personnel.

401.020 Selection Criteria.

The authority shall base its selection on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services.

401.021 Contract Amounts.

(a) The authority may procure consulting services anticipated to cost no more than $50,000 by such method and on such terms as the executive director determines to be in the best interests of the authority. Without limiting the foregoing, the executive director may procure consulting services anticipated to cost no more than $50,000 pursuant to a "single-source contract," if the executive director determines that only one prospective consultant possesses the demonstrated competence, knowledge, and qualifications to provide the services required by the authority at a reasonable fee and within the time limitations required by the authority.

(b) Consulting services anticipated to cost more than $50,000 shall be procured by the authority's issuance of either a Request for Qualifications ("RFQ") or a Request for Proposals ("RFP") as the authority deems appropriate.

401.022 Request for Qualifications.

Each RFQ prepared by the authority shall invite prospective consultants to submit their qualifications to provide such services as specified in the RFQ. Each RFQ shall describe the services required by the authority, the criteria used to evaluate proposals, and the relative weight given to the criteria. In procuring consulting services through issuance of an RFQ, the authority shall follow the notices set forth in Section 401.033 of these policies for the procurement of professional services.

401.023 Request for Proposals.

(a) Each RFP shall contain the following information:

(1) the authority's specifications for the service to be procured;

(2) an estimate of the various quantities and kinds of services to be performed;

(3) a schedule of items for which unit prices are requested;

(4) the time within which the contract is to be performed;

(5) any special provisions and special specifications; and

(6) the authority's goals regarding the participation in the contract or in subcontracts let under the contract by Disadvantaged Business Enterprises. The authority shall give public notice of a RFP in the manner provided for requests for competitive bids for general goods and services.

(b) In procuring consulting services through issuance of an RFP, the authority shall follow the notices set forth in Section 401.014 for the procurement of general goods and services.

401.024 Notice of RFQs and RFPs.

(a) Notice of the issuance of a RFQ or RFP must provide:

(1) the date, time, and place where responses to the RFQ or RFP will be opened,

(2) the address and telephone number from which prospective proposers may request the RFQ or RFP, and

(3) a general description of the type of services being sought by the authority.

(b) Alternatively, the authority may publish and otherwise distribute, in accordance with these procedures, the RFQ or RFP itself in lieu of publishing a notice of issuance of a RFQ or RFP.

(c) The authority shall publish the notice of issuance of a RFQ or RFP on its website and shall either:

(1) publish notice of the issuance of a RFQ or RFP, or the content of the RFQ or RFP itself, in an issue of the Texas Register; or

(2) publish in the officially designated newspaper of the authority notice of the issuance of a RFQ or RFP, or the content of the RFQ or RFP itself, once at least two weeks before deadline for the submission for responses in the officially designated newspaper of the authority.

(d) The authority may, but shall not be required to, solicit responses to a RFQ or RFP by direct mail, telephone, advertising in trade journals or other locations, or via the Internet. With regard to RFPs, if such solicitations are made in addition to the required publications, the prospective bidder may not be solicited by mail, telephone and internet or in any other manner, nor may the prospective bidder receive bid documents until such time that notice of the RFP has been made available on the authority's website.

(e) The date specified in the RFQ or RFP as the deadline for submission of responses may be extended if the executive director determines that the extension is in the best interest of the authority.

401.025 Opening and Filing of Responses; Public Inspection.

The authority shall avoid disclosing the contents of each response to a RFQ on opening the response and during negotiations with competing respondents. The authority shall file each response in a register of responses, which, after a contract is awarded, is open for public inspection unless the register contains information that is excepted from disclosure as an open record.

401.026 Contract Negotiation and Execution.

(a) With regard to consulting services procured through issuance of a RFQ, the authority shall submit a written contract to the respondent (the "first choice candidate") whose response best satisfies the authority's selection criteria. If the authority and the first choice candidate cannot agree on the terms of a contract, the authority may terminate negotiations with the first choice candidate, and, at the exclusive option of the authority, the authority may enter into contract negotiations with the respondent ("second choice candidate") whose response is the next most favorable to the authority. If agreement is not reached with the second choice candidate, the process may be continued with other respondents in like manner, but the authority shall have no obligation to submit a contract to the next highest-ranked respondent if the authority determines that none of the remaining responses is acceptable or that continuing with the procurement is not within the best interest of the authority.

(b) With regard to consulting services procured through issuance of a RFP, the authority shall submit a written contract to the offeror (the "first-choice candidate") whose proposal is the most advantageous to the authority, considering price and the evaluation factors in the RFP. The terms of the contract shall incorporate the terms set forth in the RFP and the proposal submitted by the first choice candidate, but if the proposal conflicts with the RFP, the RFP shall control unless the authority elects otherwise. If the authority and the first choice candidate cannot agree on the terms of a contract, the authority may elect not to contract with the first choice candidate, and at the exclusive option of the authority, may submit a contract to the offeror ("second-choice candidate") whose proposal is the next most favorable to the authority. If agreement is not reached with the second choice candidate, the process may be continued with other offerors in like manner, but the authority shall have no obligation to submit a contract to the next highest-ranked offeror if the authority determines at any time during the process that none of the remaining proposals is acceptable or otherwise within the best interest of the authority.

401.027 Single-Source Contracts.

If the executive director determines that only one prospective consultant possesses the demonstrated competence, knowledge, and qualifications to provide the services required by the authority at a reasonable fee and within the time limitations required by the authority, consulting services from that consultant may be procured without issuing a RFQ or RFP. Provided, however, that the executive director shall justify in writing the basis for classifying the consultant as a single-source and shall submit the written justification to the board. The justification shall be submitted for board consideration prior to contracting with the consultant if the anticipated cost of the services exceeds $50,000. If the anticipated cost of services does not exceed $50,000, the executive director, with the prior approval of the Executive Committee, may enter into a contract for services and shall submit the justification to the board at its next regularly scheduled board meeting.

401.028 Prior Employees.

Except as otherwise provided by state or federal law or for those employment positions identified in a resolution of the board, nothing shall prohibit the authority from procuring consulting services from an individual who has previously been employed by the authority or by any other political subdivision of the state or by any state agency; provided, that if a prospective consultant has been employed by the authority, another political subdivision, or a state agency at any time during the two years preceding the making of an offer to provide consulting services to the authority, the prospective consultant shall disclose in writing to the authority the nature of his or her previous employment with the authority, other political subdivision, or state agency; the date such employment was terminated; and his or her annual rate of compensation for the employment at the time of termination.

401.029 Mixed Contracts.

This article applies to a contract that involves both consulting and other services if the primary objective of the contract is the acquisition of consulting services.

Article 18. PROFESSIONAL SERVICES

401.030 General.

Except as otherwise permitted by Chapter 370, Transportation Code, the authority shall procure all professional services governed by the Professional Services Procurement Act in accordance with the requirements of that Act. In the event of any conflict between these policies and procedures and the Act, the Act shall control.

401.031 Selection of Provider; Fees.

(a) The authority may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award based on the provider's:

(1) demonstrated competence and qualifications to perform the service, including pre-certification by TxDOT; and

(2) ability to perform the services for a fair and reasonable price.

(b) The professional fees under the contract:

(1) may be consistent with and must not be higher than the recommended practices and fees published by any applicable professional associations and which are customary in the area of the authority; and

(2) may not exceed any maximum provided by law.

401.032 Request For Qualifications.

(a) In order to evaluate the demonstrated competence and qualifications of prospective providers of professional services, the authority shall invite prospective providers of professional services to submit their qualifications to provide such services as specified in a Request for Qualifications ("RFQ") issued by the authority.

(b) Each RFQ for professional services shall describe the services required by the authority, the criteria used to evaluate proposals, and the relative weight given to the criteria.

401.033 Notice of RFQs.

(a) Notice of the issuance of a RFQ for professional services must provide:

(1) the date, time, and place where responses to the RFQ will be opened,

(2) the contact or location from which prospective professional service providers may request the

RFQ, and

(3) a general description of the type of professional services being sought by the authority.

(b) Alternatively, the authority may publish or otherwise distribute, in accordance with these procedures, the RFQ itself in lieu of publishing a notice of RFQ. Neither a notice of a RFQ for professional services, nor any RFQ itself shall require the submission of any specific pricing information for the specific work described in the RFQ, and may only require information necessary to demonstrate the experience, qualifications, and competence of the potential provider of professional services.

(c) The authority shall publish on its website (www.ctrma.org) all notices of the issuance of a RFQ and/or the entirety of the RFQ itself at least two weeks prior to the deadline for the responses.

(d) The authority may also publish notice of the issuance of a RFQ, or the content of the RFQ itself, in an issue of the *Texas Register*, and in newspapers, trade journals, or other such locations as the authority determines will enhance competition for the provision of services.

(e) The date specified in the RFQ as the deadline for submission of responses may be extended if the executive director determines that the extension is in the best interest of the authority.

401.034 Contract for Professional Services.

(a) In procuring professional services, the authority shall:

(1) first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and

(2) then attempt to negotiate with that provider a contract at a fair and reasonable price.

(b) If a satisfactory contract cannot be negotiated with the most highly qualified provider of professional services, the authority shall:

(1) formally end negotiations with that provider;

(2) select the next most highly qualified provider; and

(3) attempt to negotiate a contract with that provider at a fair and reasonable price.

(c) The authority shall continue the process described in this section to select and negotiate with providers until a contract is entered into or until it determines that the services are no longer needed or cannot be procured on an economically acceptable basis.

Article 19. CONSTRUCTION AND BUILDING CONTRACTS

401.035 Competitive Bidding.

A contract requiring the expenditure of public funds for the construction of the authority's transportation projects may be let by competitive bidding in which the contract is awarded to the lowest responsible bidder that complies with the authority's criteria for such contract, and such bidder shall constitute the lowest best bidder in accordance with this article. Bidding for procurements made by competitive bidding will be open and unrestricted, subject to the procedures set forth in this article.

401.036 Qualification of Bidders.

A potential bidder must be qualified to bid on construction contracts of the authority. Unless the authority elects, in its sole discretion, to separately qualify bidders on a construction project, only bidders qualified by TxDOT to bid on construction or maintenance contracts of TxDOT will be deemed qualified by the authority to bid on the authority's construction contracts. At its election, the authority may waive this section with respect to bidders on building contracts.

401.037 Qualifying with the Authority.

(a) If the authority elects under Section 401.036 to separately qualify bidders on a construction project, the authority will require each potential bidder to submit to the authority an application for qualification to include:

(1) a questionnaire in a form prescribed by the authority, which may require the potential bidder to provide information concerning that bidder's:

(A) ability, capacity, equipment, skill, experience, and financial resources needed to perform the contract or provide the services required;

(B) ability to perform the contract or provide the services in the time prescribed without delay or interference;

(C) character, responsibility, integrity, and reputation;

(D) quality of performance in previous contracts or services, including references; and

(E) previous and existing compliance with laws relating to the contract or services;

(2) the bidder's current audited financial statement in form and substance acceptable to the authority; and

(3) a reasonable fee to be specified by the authority to cover the cost of evaluating the bidder's application.

(b) Information submitted by a potential bidder to the authority under this section is confidential to the extent that an exception to disclosure of such information is authorized by the Public Information Act, Chapter 552, Government Code, or other applicable law.

(c) An audited financial statement requires examination of the accounting system, records, and financial statements of the bidder by an independent certified public accountant in accordance with generally accepted auditing standards. Based on the examination, the auditor expresses an opinion concerning the fairness of the financial statements and conformity with generally accepted accounting principles.

(d) Upon the recommendation of the executive director and with the concurrence of the board, the authority may waive the requirement that a bidder's financial statement be audited if the estimated amount of the contract is $1,000,000.00 or less. A bidder with no prior experience in construction or maintenance shall not receive a bidding capacity of more than $100,000.00.

(e) The authority will advise the bidder of its qualification and approved bidding capacity or of its failure to qualify. A bidder qualified by the authority will remain qualified at its approved bidding capacity for 12 months from the date of the bidder's financial statement; provided, however, that the authority may require updated audited information at any time if circumstances develop which might alter the bidder's financial condition, ownership structure, affiliation status, or ability to operate as an ongoing concern. The authority may revoke or modify the bidder's qualification and approved bidding capacity based on such updated information. All such decisions concerning bidder qualifications shall be at the authority's sole discretion.

401.038 Notice of Contract Letting

(a) Each notice of contract letting must provide :

(1) the date, time, and place where contracts will be let and bids opened;

(2) the address and telephone number from which prospective bidders may request bid documents; and

(3) a general description of the type of construction, services, or goods being sought by the authority.

(b) The authority shall post a notice of contract letting and any addenda to a notice on its website (www.ctrma.org) for at least two weeks before the date set for letting of a contract.

(c) Notice of a contract letting for a federal-aid project shall also be published in the officially designated newspaper of the authority no later than three weeks before the date set for letting of the contract.

(d) The authority may also publish notice of contract lettings in the Texas Register, trade publications, or such other places that the authority determines will enhance competition for the

work.

(e) The date specified in the notice may be extended if the executive director, in his or her sole discretion, determines that the extension is in the best interest of the authority. All bids, including those received before an extension is made, must be opened at the same time.

401.039 Bid Documents.

The authority will prepare a set of bid documents for each construction or building contract to be let through the procedures of this article.

401.040 Issuance of Bid Documents.

(a) Except as otherwise provided in this article, the authority will issue bid documents for a construction contract or building contract upon request and only after proper notice has been given regarding the contract letting.

(b) A request for bid documents for a federal-aid project must be submitted in writing and must include a statement in a form prescribed by the authority certifying whether the bidder is currently disqualified by an agency of the federal government as a participant in programs and activities involving federal financial and non-financial assistance and benefits.

(c) A request for bid documents for any other construction or building contract may be made orally or in writing.

(d) Unless otherwise prohibited under this article, the authority will, upon receipt of a request, issue bid documents for a construction contract as follows:

(1) to a bidder qualified by TxDOT, if the estimated cost of the project is within that bidder's available bidding capacity as determined by TxDOT;

(2) to a bidder qualified by the authority, if the estimated cost of the project is within that bidder's available bidding capacity as determined by the authority; and

(3) to a bidder who has substantially complied with the authority's requirements for qualification, as determined by the authority.

401.041 Withholding Bid Documents.

The authority will not issue bid documents for a construction contract if:

(1) the bidder is suspended or debarred from contracting with TxDOT or the authority;

(2) the bidder is prohibited from rebidding a specific project because of default of the first awarded bid;

(3) the bidder has not fulfilled the requirements for qualification under this article, unless the bidder has substantially complied with the requirements for qualification, as determined by the authority;

(4) the bidder is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits, and the contract is for a federal-aid project; or

(5) the bidder or its subsidiary or affiliate has received compensation from the authority to participate in the preparation of the plans or specifications on which the bid or contract is based.

401.042 Completion and Submission of Bid Documents.

(a) At the option of the authority, a pre-bid conference may be held before opening bids to allow potential bidders to seek clarification regarding the procurement and/or the bid documents. Alternatively, bidders may submit written requests for clarification.

(b) Bidders shall complete all information requested in bid documents by typing, printing by computer printer, or printing in ink. The bidder shall submit a unit price, expressed in numerals, for each item for which a bid is requested (including zero dollars and zero cents, if appropriate), except in the case of a regular item that has an alternate bid item. In such case, prices must be submitted for the base bid or with the set of items of one or more of the alternates. Unit prices shown on acceptable computer printouts will be the official unit prices used to tabulate the official total bid amount and used in the contract if awarded.

(c) Each set of bid documents shall be executed in ink in the complete and correct name of the bidder making the bid and shall be signed by the person or persons authorized to bind the bidder.

(d) If required by the bid documents, the bidder must submit a bid guaranty with the bid. The bid guaranty shall be in the amount specified in the bid documents, shall be payable to the authority, and shall be in the form of a cashier's check, money order, or teller's check issued by a state or national bank, savings and loan association, or a state or federally chartered credit union (collectively referred to as "bank"). The authority will not accept cash, credit cards, personal checks or certified checks, or other types of money orders. Bid bonds may be accepted at the sole discretion of the authority. Failure to submit the required bid guaranty in the form set forth in this subsection shall disqualify a bidder from bidding on the project described in the bid documents.

(e) A bid on a federal-aid project shall include, in a form prescribed by the authority, a certification of eligibility status. The certification shall describe any suspension, debarment, voluntary exclusion, or ineligibility determination actions by an agency of the federal government, and any indictment, conviction, or civil judgment involving fraud or official misconduct, each with respect to the bidder or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director/supervisor, manager, auditor, or a position involving the administration of federal funds; such certification shall cover the three-year period immediately preceding the date

of the bid. Information adverse to the bidder as contained in the certification will be reviewed by the authority and by the Federal Highway Administration, and may result in rejection of the bid and disqualification of the bidder.

(f) The bidder shall place each completed set of bid documents in a sealed envelope which shall be clearly marked "Bid Documents for _____" (name of the project or service). When submitted by mail, this envelope shall be placed in another envelope which shall be sealed and addressed as indicated in the notice. Bids must be received at the location designated in the notice on or before the hour, as established by the official clock of the authority, and date set for the receipt. The official clock at the place designated for receipt of bids shall serve as the official determinant of the hour for which the bid shall be submitted and shall be considered late.

401.043 Revision of Bid by Bidder.

(a) A bidder may change a bid price before it is submitted to the authority by changing the price and initialing the revision in ink.

(b) A bidder may change a bid price after it is submitted to the authority by requesting return of the bid in writing prior to the expiration of the time for receipt of bids. The request must be made by a person authorized to bind the bidder.

(c) The authority will not accept a request by telephone, telegraph, or electronic mail, but will accept a properly signed facsimile request. The revised bid must be resubmitted prior to the time specified for the close of the receipt of bids.

401.044 Withdrawal of Bid.

(a) A bidder may withdraw a bid by submitting a request in writing before the time and date of the bid opening. The request must be made by a person authorized to bind the bidder.

(b) The authority will not accept telephone, telegraph, or electronic mail requests, but will accept a properly signed facsimile request.

401.045 Acceptance, Rejection, and Reading of Bids.

(a) Bids will be opened and read at a public meeting held at the time, date and place designated in the notice. Only the person so designated by the authority shall open bids on the date specified in the notice, or as may have been extended by direction of the executive director.

(b) The authority, acting through the executive director or the executive director's designee, will not accept and will not read a bid if:

(1) the bid is submitted by an unqualified bidder;

(2) the bid is in a form other than the official bid documents issued to the bidder;

(3) the form and content of the bid do not comply with the requirements of the bid documents and/or subsection 5.8;

(4) the bid, and if required, federal-aid project certification, are not signed;

(5) the bid was received after the time or at some location other than specified in the notice or as may have been extended;

(6) the bid guaranty, if required, does not comply with subsection 5.8;

(7) the bidder did not attend a specified mandatory pre-bid conference, if required under the bid documents;

(8) the proprietor, partner, majority shareholder, or substantial owner is 30 or more days delinquent in providing child support under a court order or a written repayment agreement;

(9) the bidder was not authorized to be issued a bid under this article;

(10) more than one bid involves a bidder under the same or different names.

401.046 Tabulation of Bids.

(a) Except for lump sum building contracts bid items, the official total bid amount for each bidder will be determined by multiplying the unit bid price written in for each item by the respective quantity and totaling those amounts. Bid entries such as "no dollars and no cents" or "zero dollars and zero cents" will be interpreted to be one-tenth of a cent ($.001) and will be entered in the bid tabulation as $.001. Any entry less than $.001 will be interpreted and entered as $.001.

(b) If a bidder submits both a completed set of bid documents and a properly completed computer printout of unit bid prices, the authority will use the computer printout to determine the total bid amount of the bid. If the computer printout is incomplete, the authority will use the completed bid documents to determine the total bid amount of the bid. If a bidder submits two computer printouts reflecting different totals, both printouts will be tabulated, and the authority will use the lowest tabulation.

(c) If a unit bid price is illegible, the authority will make a documented determination of the unit bid price for tabulation purposes. If a unit bid price has been entered for both the regular bid and a corresponding alternate bid, the authority will determine the option that results in the lowest total cost to the authority and tabulate as such. If both the regular and alternate bids result in the same cost to the authority, the authority will select the regular bid item or items.

401.047 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 may consider the bidder's:

(1) ability, capacity, and skill to perform the contract or provide the services under the conditions prescribed in the procurement and contract documents; and

(2) sufficiency of financial resources to perform the contract or provide the services.

(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.

401.048 Rejection of Bids; Nonresident Bidders.

(a) The authority, acting through the executive director or his designee, may reject any and all bids opened, read, and tabulated under this article. It will reject all bids if:

(1) there is reason to believe collusion may have existed among the bidders;

(2) the low bid is determined to be both mathematically and materially unbalanced;

(3) the lowest best bid is higher than the authority's estimate and the authority determines that re-advertising the project for bids may result in a significantly lower low bid or that the work should be done by the authority; or

(4) the board, acting on the recommendation of the executive director, determines, for any reason, that it is in the best interest of the authority to reject all bids.

(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 nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

401.049 Bid Protests.

(a) All protests relating to advertising of bid notices, alleged improprieties or ambiguities in bid documents, deadlines, bid openings and all other bid-related procedures must be made in writing and submitted to the executive director within five days of the bid opening. Each protest must include the following:

(1) the name and address of the protester, and the vendor it represents, if different;

(2) the identification number, reference number, or other identifying criteria specified in the bid documents to identify the procurement in question;

(3) a statement of the grounds for protest; and

(4) all documentation supporting the protest.

(b) A decision and response to the protest will be prepared by the executive director within a reasonable time after receipt of a properly prepared written protest.

(c) Appeals of responses and decisions regarding protests must be made to the board in writing, and must be filed with the executive director of the authority, with a copy to the chairman of the board, within ten days after the response and decision regarding the original protest are issued. Written appeals shall include all information contained in the original written protest, as well as any

newly discovered documentation supporting the protest that was not reasonably available to the protester when the original protest was filed. Subject to all applicable laws governing the authority, the decision of the board regarding an appeal shall be final.

401.050 Contract Execution; Submission of Ancillary Items.

(a) Within the time limit specified by the authority, the successful bidder must execute and deliver the contract to the authority together with all information required by the authority relating to the Disadvantaged Business Enterprises participation to be used to achieve the contract's Disadvantaged Business Enterprises goal as specified in the bid documents and the contract.

(b) After the authority sends written notification of its acceptance of the successful bidder's documentation to achieve the Disadvantaged Business Enterprises goal, if any, the successful bidder must furnish to the authority within the time limit specified by the authority:

(1) a performance bond and a payment bond, if required and as required by Chapter 2253, Government Code, with powers of attorneys attached, each in the full amount of the contract price, executed by a surety company or surety companies authorized to execute surety bonds under and in accordance with state law;

(2) a certificate of insurance on form ACORD-27 showing coverages in accordance with contract requirements; provided, however, that a successful bidder on a routine construction contract will be required to provide the certificate of insurance prior to the date the contractor begins work as specified in the authority's order to begin work.

401.051 Unbalanced Bids.

The authority will examine the unit bid prices of the apparent low bid for reasonable conformance with the authority's estimated prices. The authority will evaluate, and may reject, a bid with extreme variations from the authority's estimate, or where obvious unbalancing of unit prices has occurred.

401.052 Bid Guaranty.

(a) Not later than seven days after bids are opened, the authority will mail the bid guaranty of all bidders to the address specified on each bidder's bid documents, except that the authority will retain the bid guaranty of the apparent lowest best bidder, second-lowest best bidder, and third-lowest best bidder, until after the contract has been awarded, executed, and bonded.

(b) If the successful bidder (including a second-lowest best bidder or third-lowest best bidder that ultimately becomes the successful bidder due to a superior bidder's failure to comply with these rules or to execute a contract with the authority) does not comply with subsection 5.16 the bid guaranty will become the property of the authority, not as a penalty but as liquidated damages, unless the

bidder effects compliance within seven days after the date the bidder is required to submit the bonds and insurance certificate under subsection 5.16.

(c) A bidder who forfeits a bid guaranty will not be considered in future bids for the same work unless there has been a substantial change in the design of the project subsequent to the forfeiture of the bid guaranty and the board, upon request made in writing by bidder and received at such time that the board may consider the request at a regularly scheduled board meeting prior to the due date for the bids approves of the submission of a bid by the bidder.

401.053 Progress Payments; Retainage and Liquated Damages.

(a) In addition to other provisions required by the authority, construction and building contracts will provide for the authority to make progress payments, which shall be reduced by retainage, as work progresses and is approved by the authority.

(b) Retainage shall be in the amount of five percent of the contract price until the entire work has been completed and accepted. Unless the authority agrees otherwise in writing, retainage shall not bear interest or be segregated from other authority funds. If the authority agrees to segregate retainage in an interest-bearing account, the authority may impose terms and conditions on such arrangement, including but not limited to, the following:

(1) retained funds must be deposited under the terms of a trust agreement with a state or national bank domiciled in Texas and approved by the authority;

(2) all expenses incident to the deposit and all charges made by the escrow agent for custody of the securities and forwarding of interest shall be paid solely by the contractor;

(3) the authority may, at any time and with or without reason, demand in writing that the bank return or repay, within 30 days of the demand, the retainage or any investments in which it is invested; and

(4) any other terms and conditions prescribed by the authority as necessary to protect the interests of the authority.

(c) Without limiting the authority's right to require any other contract provisions, the authority, at its sole discretion, may elect to require that a liquidated damages provision be made a part of any contract it enters into.

Article 20. DESIGN-BUILD CONTRACT; COMPREHENSIVE DEVELOPMENT AGREEMENT

Subchapter A. DESIGN-BUILD PROCUREMENT

401.054 Design-Build Contract for a Transportation Project

(a) The authority may use the design-build method to procure the design, construction, financing, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a transportation project. In using the design-build method and in entering into a contract for the services of a design-build contractor, the authority and the design-build contractor shall follow the procedures and requirements of this subchapter.

(b) The authority may enter into not more than two design-build contracts in any fiscal year.

(c) A design-build contract under this subchapter may not grant to a private entity:

(1) a leasehold interest in the transportation project; or

(2) the right to operate or retain revenue from the operation of the transportation project.

401.055 Definitions

In this subchapter:

(1) "Design-build contractor" means a partnership, corporation, or other legal entity or team that includes an engineering firm and a construction contractor qualified to engage in the construction of transportation projects in this state.

(2) "Design-build method" means a project delivery method by which the authority contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a transportation project.

401.056 Procurement Process

(a) The authority must solicit proposals for a design-build contract under this subchapter.

(b) The Professional Services Procurement Act, Chapter 2254, Government Code, does not apply to a design-build contract.

401.057 Use of Engineer or Engineering Firm and Other Professional Services

(a) The authority must select or designate an engineer or a qualified engineering firm that is independent of the design-build contractor to act as the authority's representative during the procurement of a design-build contract.

(b) The engineer representative selected or designated under this section may be:

(1) an engineer that is an employee of the authority;

(2) the authority's general engineering consultant, if any; or

(3) a qualified engineer or engineering firm hired by the authority pursuant to the Professional Services Procurement Act, Chapter 2254, Government Code.

(c) The authority must provide or contract for, independently of the design build contractor, the following services as necessary for acceptance of the transportation project by the authority:

(1) inspection services;

(2) construction materials engineering and testing; and

(3) verification testing services.

(d) The authority shall ensure that the engineering services contracted for under this section are selected based on demonstrated competence and qualifications, in accordance with applicable law.

401.058 Requests for Qualifications

(a) The authority must solicit proposals for a design-build contract by issuing a Request for Qualifications ("RFQ").

(b) The authority shall publish a notice advertising the issuance of the RFQ in the Texas Register and on the authority's website, and shall publish the RFQ on the authority's website.

(c) An RFQ issued under this subchapter shall include:

(1) information regarding the proposed project's location, scope, and limits;

(2) information regarding funding that may be available for the project and a description of the financing to be requested from the design-build contractor, as applicable;

(3) criteria that will be used to evaluate the proposals, which must include a proposer's qualifications, experience, technical competence, and ability to develop the project;

(4) the relative weight given to the criteria; and

(5) the deadline by which proposals must be received by the authority.

401.059 Withdrawal of an RFQ

The authority may withdraw an RFQ at any time.

401.060 Evaluation of Responses to an RFQ

(a) If the authority receives only one responsive proposal to an RFQ, the authority shall terminate the procurement.

(b) The authority shall evaluate each qualifications statement received in response to an RFQ based on the criteria identified in the request.

(c) The authority may interview responding proposers.

(d) Based on the evaluation of qualifications statements and interviews, if any, the authority shall qualify or short-list at least two, but no more than five, proposers to submit detailed proposals.

401.061 Requests For Detailed Proposals

(a) The authority shall issue a request for detailed proposals ("RFDP") to proposers qualified or short-listed under Section 401.060.

(b) Before issuing an RFDP under this section, the authority may issue a draft RFDP to the proposers eligible under Subsection (a) for purposes of receiving their input.

(c) An RFDP must include:

(1) information on the overall project goals;

(2) the authority's cost estimates for the design-build portion of the work;

(3) materials specifications;

(4) special material requirements;

(5) a schematic design approximately 30 percent complete;

(6) known utilities, provided that the authority is not required to undertake an effort to locate utilities;

(7) quality assurance and quality control requirements;

(8) the location of relevant structures;

(9) notice of authority rules or goals relating to awarding contracts to disadvantaged businesses;

(10) available geotechnical or other other information related to the project;

(11) the status of any environmental review of the project;

(12) detailed instructions for preparing the technical proposal required by Section 401.063, including a description of the form and level of completeness of drawings expected;

(13) the relative weighting of the technical and cost proposals required by this section and the formula by which the proposals will be evaluated and ranked, provided that the formula shall allocate at least 70 percent of the weighting to the cost proposal;

(14) the criteria and weighting for each element of the technical proposal;

(15) the risks and costs that should be assumed by the design-build contractor, including

(A) all risks and costs associated with:

(i) scope changes and modifications, as requested by the authority;

(ii) unknown or differing site conditions;

(iii) environmental clearance and other regulatory permitting for the project; and

(iv) natural disasters and other force majeure events; and

(B) all costs associated with property acquisition, excluding costs associated with acquiring a temporary easement or work area associated with staging or construction for the project;

(16) a general form of the design-build contract that the authority proposes if the terms of the contract may be modified as a result of negotiations prior to contract execution; and

(17) the deadline established by Section 401.064 by which responses to the RFDP must be received.

401.062 Alternative Technical Concepts

(a) The authority may provide for the submission of alternative technical concepts by a proposer in the response to the RFDP.

(b) If the authority provides for the submission of alternative technical concepts, the authority must prescribe the process for notifying a proposer whether the proposer's alternative technical concepts are approved for inclusion in a technical proposal.

401.063 Separate Technical and Cost Proposals

(a) Each response submitted to an RFDP shall include a sealed technical proposal and a separate sealed cost proposal.

(b) The technical proposal must address:

(1) the proposer's qualifications and demonstrated technical competence, provided that the proposer shall not be requested to resubmit any information that was submitted and evaluated pursuant to Section 401.058;

(2) the feasibility of developing the project as proposed, including identification of anticipated problems;

(3) the proposed solutions to anticipated problems;

(4) the ability of the proposer to meet schedules;

(5) the conceptual engineering design proposed; and

(6) any other information requested by the authority.

(c) The cost proposal must include:

(1) the cost of delivering the project;

(2) the estimated number of days required to complete the project; and

(3) any terms for financing for the project that the proposer plans to provide.

401.064 Deadline for Response to RFDP

The authority shall establish a time, date, and location for submittal of a response to an RFDP, which deadline shall be no later than the 180th day after the RFDP is issued to each proposer qualified or short-listed under Section 401.060.

401.065 Withdrawal of an RFDP

(a) The authority may withdraw a RFDP at any time prior to the submission deadline for detailed proposals. In such event the authority shall have no liability to the entities chosen to submit detailed proposals.

(b) If the authority provides for the submission of ATCs and/or VACs, the authority shall establish a process for submission and review of ATCs and/or VACs prior to submission of a technical proposal. Only those ATCs and/or VACs approved by the authority may be included in

an entity's technical proposal. The authority shall notify a proposer whether its ATCs and/or VACs are approved for inclusion in the technical proposal.

(c) The authority may conduct meetings with or interview proposers submitting a response to an RFDP.

401.066 Unapproved Changes to Team

The authority may reject as nonresponsive a proposal from a proposer qualified or short-listed under Section 401.060 that makes a significant change to the composition of the proposer's design-build team as initially submitted if that change was not approved by the authority as provided in the RFQ.

401.067 Evaluation and Ranking of Responses to an RFDP

(a) The authority shall first open, evaluate, and score each responsive technical proposal submitted on the basis of the criteria described in the RFDP and assign points on the basis of the weighting specified in the request for detailed proposals.

(b) After completing the scoring required by Subsection (a), the authority shall subsequently open, evaluate, and score each cost proposal based on criteria set forth in the RFDP and assign points on the basis of the weighting specified in the request for detailed proposals. The authority shall rank the proposers in accordance with the formula provided in the request for detailed proposals.

(c) The authority shall then rank the proposers in accordance with the formula provided in the RFDP.

401.068 Stipend for Unsuccessful Proposers

(a) Pursuant to the provisions of the RFDP, the authority shall pay an unsuccessful proposer that submits a responsive proposal to the RFDP a stipend for work product contained in the proposal. The stipend must be specified in the initial RFDP in an amount of at least two-tenths of one percent of the contract amount, but may not exceed the value of the work product contained in the proposal to the authority. In the event the authority determines that the value of the work product is less than the stipend amount, the authority must provide the proposer with a detailed explanation of the valuation, including the methodology and assumptions used in determining value.

(b) After payment of the stipend, the authority may make use of any work product contained in the unsuccessful proposal, including the techniques, methods, processes, and information contained in the proposal.

(c) The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipend

under this section.

(d) The authority may provide in the RFDP for the payment of a partial stipend in the event a procurement is terminated prior to securing project financing and execution of a design-build contract.

401.069 Contract Negotiations

(a) After ranking the proposers under Section 401.067, the authority shall first attempt to negotiate a contract with the highest-ranked proposer.

(b) If the authority is unable to negotiate a satisfactory contract with the highest-ranked proposer, the authority shall, formally and in writing, end all negotiations with that proposer and proceed to negotiate with the next proposer in the order of the selection ranking until a contract is reached or negotiations with all ranked proposers end.

(c) If the authority has committed in the RFDP to paying a stipend to unsuccessful proposers in accordance with Section 401.068, the authority may include in the negotiations alternative technical concepts proposed by other proposers.

(d) The authority may establish a deadline for the completion of negotiations with a proposer for a design-build contract. If a design-build contract has not been executed by that deadline, the authority may terminate the negotiation under Subsection (b) or, at its discretion, may extend the deadline for negotiating a design-build contract with that proposer.

(e) Notwithstanding the foregoing, the authority may terminate the procurement process at any time upon a determination that continuation of the process or development of a project through a design-build contract is not in the authority's best interest. If the procurement process is terminated after the deadline for responses to the RFDP under Section 401.064, the authority shall have no liability to any proposer other than paying the stipend in accordance with the terms of Section 401.068.

401.070 Performance and Payment Security

(a) The authority shall require a design-build contractor to provide:

(1) a performance and payment bond;

(2) an alternative form of security; or

(3) a combination of a performance and payment bond and alternative security.

(b) Except as provided by Subsection (c), a performance and payment bond, alternative form of security, or combination of the forms of security shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If the authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the authority shall set the amount of the security.

(d) A performance and payment bond is not required for the portion of a design-build contract that includes design services only.

(e) The authority may require one or more of the following alternative forms of security:

(1) a cashier's check drawn on a financial entity specified by the authority;

(2) a United States bond or note;

(3) an irrevocable bank letter of credit drawn from a federal or Texas chartered bank; or

(4) any other form of security determined suitable by the authority.

Subchapter B. COMPREHENSIVE DEVELOPMENT AGREEMENTS

401.071 Comprehensive Development Agreement Allowed

(a) The authority may enter into a comprehensive development agreement (a "CDA") for a transportation project authorized by state law in accordance with requirements and procedures established by this subchapter.

(b) The authority may enter into a CDA with a private entity that, at a minimum:

(1) provides for the design and construction of a transportation project;

(2) may provide for the financing, acquisition, maintenance, or operation of a transportation project; and

(3) entitles the private entity to:

(A) a leasehold interest in the transportation project; or

(B) the right to operate or retain revenue from the operation of the transportation project.

(c) The authority may negotiate provisions relating to professional and consulting services provided in connection with a CDA.

401.072 Confidentiality of Negotiations for a CDA

(a) The authority shall use its best efforts to protect the confidentiality of information made confidential by Sections 370.307 and 371.052(d), Transportation Code, as established by state law and detailed in Subsection (b).

(b) The following information in the possession of the authority or its agents is confidential, is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed CDA project is entered into:

(1) all or part of a proposal submitted by a private entity for a CDA, except:

(A) information regarding the proposed transportation project's location, scope, and limits; and

(B) information regarding the proposing private entity's qualifications, experience, technical competence, and capability to develop the project;

(2) supplemental information or material submitted by a private entity in connection with a proposal submitted under this subchapter; and

(3) information created or collected by an authority or its agent during consideration of a proposal submitted under this subchapter, including without limitation financial forecasts and traffic and revenue reports prepared by or for the authority before the authority enters into a CDA.

(c) After the authority completes its final ranking of proposals under Section 401.079, the final rankings of each proposal under each of the published criteria are not confidential.

(d) After the authority enters into a CDA, financial forecasts and traffic revenue reports prepared by or for the authority before it entered into the CDA are public information.

401.073 Competitive Procurement Process for a CDA

(a) The authority may consider an unsolicited proposal to enter into a CDA or may solicit proposals for a CDA in accordance with this subchapter.

(b) The competitive bidding requirements for highway projects as specified under Chapter 223, Transportation Code, and Chapter 2254, the Texas Professional Services Procurement Act, Government Code, do not apply to a CDA.

401.074 Filing an Unsolicited Proposal for a CDA

(a) An unsolicited proposal for a CDA filed with the authority shall comply with the requirements and procedures established by this section.

(b) An unsolicited proposal filed with the authority must include a $20,000.00 non-refundable review fee payable to the authority.

(c) An unsolicited proposal must also include the following information:

(1) the proposed transportation project location, scope, and limits;

(2) information regarding the proposing private entity's qualifications, experience, technical competence, and capability to develop the project;

(3) a proposed financial plan for the proposed project that includes, at a minimum:

(A) projected project costs;

(B) proposed sources of funds; and

(4) the name and business address of each person and business entity with a substantial interest in the business entity that is the proposing private entity filing the unsolicited proposal, as the terms "business entity" and "substantial interest" are defined under Chapter 171, Government Code, and the name and business address of each consultant or subconsultant the private entity anticipates using if the private entity develops the proposed project.

401.075 Review of an Unsolicited Proposal

(a) An unsolicited proposal shall be reviewed by the executive director, who may interview, and who may request additional information from, the proposing private entity. Based on that review, the executive director shall make a recommendation to the board on whether the board should consider further evaluation of the unsolicited proposal.

(b) If the board authorizes further evaluation of an unsolicited proposal, then the board shall direct the executive director to issue an RFQ under Section 401.076.

401.076 Authority Solicitation of Requests for Qualifications

(a) Under this subchapter, the authority may solicit proposals for a CDA to develop a transportation project or for competing proposals to an unsolicited proposal filed with the authority by issuing an RFQ relating to the transportation project.

(b) The authority shall publish a notice advertising the issuance of the RFQ in the Texas Register and on the authority's website, and shall publish the RFQ on the authority's website.

(c) An RFQ issued under this section shall include the following:

(1) a description of the project;

(2) the information a private entity must provide in response to the RFQ regarding:

(A) the private entity's qualifications, experience, technical competence, and capability to develop the project;

(B) the private entity's proposed financial plan for the proposed project that includes, at a minimum:

(i) projected project costs; and

(ii) proposed sources of funds; and

(3) the criteria to be used by the authority to evaluate proposals received in response to the RFQ;

(4) the relative weight given to the criteria; and

(5) the deadline by which proposals must be received by the authority.

(d) A proposal submitted in response to an RFQ issued under this section must include, at a minimum, the information required to be submitted under Subsection (c)(2), and, if the RFQ solicits competing proposals to an unsolicited proposal filed under Section 401.074, the fee required by Section 401.074(b).

(e) The authority may withdraw the RFQ at any time, and may then publish a new RFQ for a CDA in accordance with this section.

401.077 Evaluation of the Responses to a Request for Qualifications

(a) The executive director shall review each response received to an RFQ issued under Section 401.076 based on the criteria and relative weighting established in the RFQ. The executive director may include an interview as part of the review process.

(b) After completing the review, the executive director shall make a recommendation to the board on whether the board should consider further evaluation of a CDA for the project.

(c) If the board decides to proceed with further evaluation of a CDA for the project, the board shall direct the executive director to issue a request for detailed proposals (an "RFDP") under Section 401.078.

(d) If the authority has received and reviewed more than one proposal from a private entity under Section 401.074, Section 401.076, or both, the board shall qualify at least two private entities to respond to the RFDP issued under Section 401.078.

(e) If only one private entity has filed a proposal with the authority under this subchapter, the board may request a response from the sole private entity to an RFDP issued under Section 401.078.

401.078 Request for Detailed Proposals

(a) Before issuing an RFDP, the authority may solicit input from all private entities qualified under Section 401.077 and from any other person.

(b) The authority shall issue an RFDP to all private entities qualified under Section 401.077. The authority shall mail or hand deliver the RFDP directly to the private entity.

(c) The RFDP must contain the following information:

(1) instructions for preparing the proposal and the items included therein;

(2) the criteria to be used by the authority to evaluate the detailed proposals, including factors related to:

(A) oversight of the toll project;

(B) maintenance and operations costs of the toll project;

(C) the structure and rates of tolls;

(D) economic development impacts of the toll project;

(E) benefits and impacts of the toll project; and

(F) any other factors the authority determines appropriate;

(3) the relative weight to be given to the criteria;

(4) a stipulated amount to be paid to unsuccessful proposers subject to Section 401.083, if any, including any terms and conditions relating to payment of the stipulated amount;

(5) the general form of a CDA sought by the authority, including any matters relating to the CDA the authority considers advantageous to the authority; and

(6) the date and time by which the detailed proposal must be received by the authority.

(d) An RFDP under this subchapter may require the private entity to provide additional information relating to:

(1) the private entity's qualifications and demonstrated technical competence;

(2) the feasibility of developing the project as proposed;

(3) detailed engineering or architectural designs;

(4) the private entity's ability to meet schedules;

(5) costing methodology; and

(6) any other information the authority considers relevant or necessary to fully assess the private entity's proposal.

(e) The RFDP may require a responding private entity to submit a sealed technical proposal and a separate, sealed cost proposal.

(f) The authority may withdraw an RFDP at any time. In such event the authority shall have no liability to a private entity chosen to submit a detailed proposal, except as may be specified in the RFDP regarding a stipulated amount offered under Subsection (c)(4) and Section 401.083.

(g) After the authority has issued an RFDP under this section, the authority may solicit input regarding alternative technical concepts.

401.079 Evaluation and Ranking of Detailed CDA Proposals

The authority shall evaluate and rank each detailed proposal received based on the criteria described in the RFDP and shall identify the private entity whose proposal offers the best value to the authority. The authority may interview the private entities as part of its evaluation process.

401.080 Post-Submissions Discussions

(a) After the authority has evaluated and ranked the detailed proposals in accordance with Section 401.079, the authority may enter into discussions with the private entity whose proposal offers the apparent best value provided, The discussions under this section shall be limited to:

(1) incorporation of aspects of other detailed proposals for the purpose of achieving the overall best value for the authority;

(2) clarifications and minor adjustments in scheduling, designs, operating characteristics, cash flow, and similar items; and

(3) other matters that have arisen since the submission of the detailed proposal.

(b) If at any point in discussions under Subsection (a), it appears to the authority that the highest ranking proposal will not provide the authority with the overall best value, the authority may end discussions with the highest-ranking private entity and enter into discussions with the private entity submitting the next-highest ranking proposal.

(c) The authority may withdraw a request issued under Section 401.078 at any time. The authority may then publish a new request for competing proposals and qualifications under Section 401.076.

401.081 Negotiations for CDA

(a) Subsequent to the discussions conducted pursuant to Section 401.080 and provided the authority has not terminated or withdrawn the procurement, the authority and the highest-ranking proposer shall attempt to negotiate the specific terms of a CDA.

(b) The authority shall prescribe the general form of the CDA and may include any matter therein considered advantageous to the authority.

(c) The authority may establish a deadline for the completion of negotiations for a CDA. If an agreement has not been executed within that time, the authority may terminate the negotiations, or, at its discretion, may extend the time for negotiating an agreement.

(d) In the event an agreement is not negotiated within the time specified by the authority, or if the parties otherwise agree to cease negotiations, the authority may commence negotiations with the second-ranked proposer or it may terminate the process of pursuing a CDA for the project which is the subject of the procurement process.

(e) Notwithstanding the foregoing, the authority may terminate the procurement process, including the negotiations for a CDA, at any time upon a determination that continuation of the process or development of a project through a CDA is not in the authority's best interest. In such event, the authority shall have no liability to any proposer other than paying the stipend in accordance with the terms of Section 401.083 if detailed proposals have been submitted to the

authority.

401.082 Property Subject to a CDA

(a) A transportation project (excluding a public utility facility) that is the subject of a CDA is public property and belongs to the authority.

(b) The authority may lease rights-of-ways, grant easements, issue franchises, licenses, permits or any other lawful form of use to enable a private entity to construct, operate, and maintain a transportation project, including supplemental facilities. At the termination of any such agreement, the transportation project shall be returned to the authority in a state of maintenance deemed adequate by the authority and at no additional cost to the authority.

401.083 Payment by Authority for Submission of Detailed CDA Proposal

(a) The authority may pay an unsuccessful private entity that submits a response to an RFDP issued under Section 401.078 a stipulated amount of the final contract price for any costs incurred in preparing that proposal. A stipulated amount may not exceed the value of any work product contained in the proposal that can, as determined by the authority, be used by the authority in the performance of its functions. The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipulated amount under this section.

(b) After payment of a stipulated amount under Subsection (a):

(1) the authority owns the exclusive rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, and information contained in the project design; and

(2) the work product contained in the proposal becomes the property of the authority.

401.084 Performance and Payment Security

(a) The authority shall require any private entity entering into a CDA under this subchapter to provide a performance and payment bond or an alternative form of security in an amount sufficient to:

(1) insure the proper performance of the agreement; and

(2) protect:

(3) the authority; and

(4) payment bond beneficiaries who have a direct contractual relationship with the private entity and subcontractors of the private entity who supply labor or materials.

(b) A performance and payment bond or alternative form of security shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If the authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the authority shall set the amount of the bonds or alternative form of security.

(d) A performance and payment bond or alternative form of security is not required for the portion of a CDA that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.

(e) The amount of the payment security must not be less than the amount of the performance security.

(f) If the authority prescribes requirements for alternative forms of security, in addition to performance and payment bonds the authority may require the following alternative forms of security:

(1) a cashier's check drawn on a financial entity specified by the authority;

(2) a United States bond or note;

(3) an irrevocable bank letter of credit; or

(4) any other form of security determined suitable by the authority.

401.085 Review by Attorney General

(a) The authority may not enter into a CDA unless the Texas Attorney General reviews the proposed agreement and determines the CDA is legally sufficient, in accordance with Subchapter B, Chapter 371, Transportation Code.

(b) The authority may require the private entity who intends to enter into a CDA with the authority to pay the examination fee assessed by the attorney general for the legal sufficiency review required by Section 371.051, Transportation Code.

Article 21. BUSINESS OPPORTUNITY PROGRAM AND POLICY

401.086 Purpose

In accordance with state and federal law, the authority is required to facilitate and assure the participation of disadvantaged and small businesses in the authority's procurement process. The authority is also generally required to procure its goods and services and construction contracts through a competitive bid process. To facilitate compliance with federal and state laws regarding disadvantaged businesses and competitive bid procurement, the board adopted Resolution No. 03-60, which establishes the Disadvantaged Business Enterprise ("DBE") Policy Statement and this Business Opportunity Program and Policy ("BOPP"). The BOPP incorporates the policies and objectives of state and federal laws, and establishes goals that attempt to monitor and encourage disadvantaged and small businesses to participate in the process and award of governmental contracts. The BOPP will consist of two separately administered programs: (1) the DBE Program; and (2) the Small Business Enterprise (SBE) Program.

401.087 Applicability

The policies, procedures and contract clause(s) established under the BOPP apply to authority procurements, bidders and recipients of contracts, and to related subcontracts, to the extent that these provisions are not inconsistent with state or federal law or other rules and regulations.

401.088 Policy Statement and Objectives Of Business Opportunity Program

(a) It is the policy of the authority to ensure that disadvantaged businesses, as defined in 49 C.F.R. Part 26 and under this BOPP, have an equal opportunity to receive and participate in contracts. It is the policy of the authority never to exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, or national origin. In administering its BOPP, the authority will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of federal and state law with respect to individuals of a particular race, color, sex, or national origin. In implementing these policies and objectives, the authority will strive to ensure that the DBE Program is narrowly tailored in accordance with applicable law.

(b) This program also incorporates the DBE Policy Statement adopted by the board in Resolution No. 03-60, dated November 5, 2003.

401.089 Administration of Business Opportunity Program

The DBE and SBE programs will be administered through and in accordance with the BOPP. All authority departments, personnel, and/or consultants having or sharing responsibility for awarding

contracts and/or making procurements, will support and assist in promoting and carrying out this BOPP. Examples of such departments, or consultant services, include Administration, Engineering, Information Technology, Maintenance, Contract Management, Legal, and Purchasing.

401.090 BOPP Liaison Officer

The executive director will appoint a BOPP Liaison Officer who will report directly to the executive director regarding the implementation, status and compliance with the BOPP. The BOPP Liaison Officer's duties for this BOPP include, but are not limited to, the following:

(1) implementing, coordinating, administering and monitoring the BOPP;

(2) developing and presenting annual and other reports as may be requested by the executive director or board;

(3) coordinating and conducting outreach efforts with other authority departments, TxDOT, FHWA and other agencies;

(4) educating and advising the staff as necessary for effective implementation of the BOPP, and the DBE and SBE programs;

(5) developing and maintaining procedures to ensure that disadvantaged businesses are afforded an equitable opportunity to compete on all contracts by providing assistance and opportunities through workshops and trade fairs, distributing handbooks, conducting pre-bid/pre-proposal conferences, and assuring timely dissemination of bid/contract information;

(6) developing, administering and enforcing policies, standards, definitions, criteria and procedures to govern the implementation, interpretation, and application of the BOPP in a manner that is designed to achieve its purposes;

(7) assuring that listings or directories of SBEs are developed, maintained and available to persons seeking to do business with the authority;

(8) receiving and reviewing inquiries and making recommendations concerning the DBE and/or SBE programs, including concerns about violations and/or abuse of the DBE and/or SBE programs;

(9) making recommendations for resolution of any issues or concerns and taking appropriate steps to enforce the BOPP, including deciding and imposing appropriate sanctions for violations and/or abuse of the program;

(10) considering and evaluating whether efforts for DBE and SBE utilization by contractors satisfy the good faith requirements of the BOPP;

(11) recommending, in cooperation with other departments, appropriate DBE and/or SBE goals

and any program changes, which may be appropriate to improve the overall effectiveness of the BOPP;

(12) ensuring that appropriate provisions of the DBE and/or SBE Program are included in bid proposals and contract specifications;

(13) periodically reviewing applicable insurance and bonding requirements with a view toward determining, if prudent and feasible, whether established risk/exposure limits may be changed to allow business enterprises, particularly DBEs and SBEs, to bid more competitively on all contracts;

(14) compiling information to determine the level of DBE and/or SBE utilization; and

(15) reviewing contracting requirement and recommending modification of requirements, where appropriate, that may tend to create barriers for minority, women owned and small businesses.

401.091 Departmental Responsibilities

All authority departments, and consultants, when applicable, will cooperate with the BOPP Liaison Officer in the implementation of the goals and intent of this BOPP. However, certain departments and consultants will have particular responsibilities because of their procurement activity. Examples of such departments and consultant services include Engineering, Information Technology, Maintenance and Purchasing. These responsibilities for this BOPP include, but are not limited to, the following:

(1) assisting the BOPP Liaison Officer in gathering information to determine the availability of qualified disadvantaged businesses, as defined in this BOPP;

(2) assisting and participating in workshops, trade fairs, outreach seminars, and other similar programs designed to identify and increase the participation of disadvantaged businesses in authority projects;

(3) working with the BOPP Liaison and other departments and coordinating with TxDOT, where appropriate, in establishing BOPP goals;

(4) maintaining appropriate records to keep track of compliance with the BOPP and to be able to present reports concerning the DBE/SBE programs;

(5) ensuring that applicable provisions of the DBE and/or SBE programs are included in bid proposals and specifications and in contracts awarded;

(6) assisting in evaluating whether there are opportunities to present bid packages and requests for proposal in a manner that provides DBEs and/or SBEs a maximum opportunity for competitive participation; and

(7) ensuring that purchasing procedures are consistent with the BOPP.

401.092 Outreach

The authority will maintain and participate in outreach programs that are designed to maximize the opportunities for disadvantaged and small businesses to contract with the authority. The outreach efforts will include, but not be limited to, one or more of the following:

(1) Website: The authority's official website will include information about its procurement process and how to do business with the authority.

(2) Notice Of Bidding Opportunities: The authority will advertise bidding opportunities in accordance with the Procurement Policy. The authority may advertise in newspapers or other publications that target small, minority-owned, and/or woman-owned businesses. The authority will take reasonable steps to include disadvantaged and small businesses on its mailing lists for the receipt of bid documents.

(3) Assistance In Bidding Process: Upon request, the authority will assist small, minority-owned, and woman-owned businesses by providing them information regarding bid specifications, contracting opportunities, and prerequisites for bidding on authority contracts.

(4) Structure Of Bidding Opportunities: When determined to be feasible, the authority will structure its solicitations for bid proposals so that they include bidding opportunities for businesses of varying sizes and delivery schedules and encourage opportunities for disadvantaged and small businesses.

(5) Simplification Or Reduction Of Bonding Requirements: When determined to be feasible, the authority will simplify or reduce bonding and financing requirements to encourage disadvantaged and small business participation.

(6) Directory For Prime Contractors: The authority will utilize and refer contractors to the DBE participant directories developed and maintained by TxDOT, to directories maintained by other agencies, and may prepare and maintain one or more of its own directories of disadvantaged and small businesses. The authority will make the directory(ies) available to its prime contractors and known potential prime contractors, and encourage prime contractors to subcontract with the disadvantaged and small businesses.

(7) Encouragement Of Joint Ventures: The authority may encourage joint ventures between and with businesses that qualify as disadvantaged and small businesses by providing access to it directories.

(8) Use Of Financial Institutions: The authority will make reasonable efforts to use small, woman-owned or minority-owned financial institutions. The authority will encourage prime contractors to use such institutions.

(9) TxDOT/FHWA Programs: The authority will use and cooperate with programs administered by TxDOT in its DBE Program.

401.093 Program Monitoring

The authority will keep track of disadvantaged and small business participation in contracts, including those with and without specific contract goals. "Participation" by disadvantaged and small businesses for this purpose means that payments have actually been made to the disadvantaged and/or small business. The record will show the commitments and attainments as required by 49 C.F.R. § 27.37. The BOPP Liaison Officer will monitor the authority's progress toward its annual overall goal as may be required by law or the executive director. Progress toward the federal DBE Program goal will be calculated in accordance with 49 C.F.R. § 26.55.

401.094 Program Inquiries

Any questions about the Programs or Policies, including allegations about possible violation and/or abuse of the Programs or Policies, must be submitted to the BOPP Liaison Officer.

401.095 Directories and Designations of Disadvantaged Businesses

As part of the authority's efforts to identify and ensure participation of disadvantaged and small businesses on projects, the authority will rely on listings (directories) of certified small, woman-owned and minority-owned businesses maintained by TxDOT and other entities and governmental units that satisfy the authority's certification requirements, including the Texas Unified Certification Program for Federal DBE Certification, as administered through TxDOT and the City of Austin's Department of Small and Minority Business Resource (as the designated Texas DBE certifying agency for Hays, Travis, Williamson, Caldwell and Bastrop Counties), or any other recognized certification that the authority finds acceptable.

401.096 General Requirements of Contractors/Vendors:

(a) Good Faith Efforts/Waiver: Contractors/vendors who propose to perform a contract with the authority that is subject to the DBE Program, using their own work force, and without the use of subcontractors will be required to demonstrate good-faith efforts by submitting information (when requested by the authority) sufficient for the authority to determine the following to effectuate a waiver of applicable BOPP requirements:

(1) That it is a normal business practice of the contractor/vendor to perform the elements of the contract with its own work forces without the use of subcontractors;

(2) That the technical nature of the proposed project does not facilitate subcontracting nor any significant supplier opportunities in support of the project; and/or;

(3) That the contractor/vendor in fact has demonstrated its capabilities to perform the elements of the contract with its own work forces without the use of subcontracts.

(b) The authority may also require the same demonstration by contractors/vendors who propose to perform a contract with the authority that is subject to the SBE Program.

(c) Payment Of Subcontractors In A Timely Manner: Each contract the authority signs with a prime contractor/vendor will also contain provisions with regard to the timely payment of subcontractors as required by 49 C.F.R. § 26.29. The following language is an example of the type of language to be included, however, such language may be subject to modification and approval by TxDOT:

> The contractor agrees to pay its subcontractors for satisfactory performance of their contracts no later than 30 days from its receipt of payment from the authority. The contractor shall also promptly return any retainage payments to subcontractors within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the authority. This clause applies to payments to all subcontractors.

(d) Reasonable Efforts To Use Local DBE/SBE Financial Institutions: Prime contractors subject to the DBE Program will also be encouraged to make reasonable efforts to identify and use financial institutions owned and controlled by socially and economically disadvantaged individuals in their communities pursuant to 49 C.F.R. § 26.27.

(e) Approval For Replacement of DBE: A contactor must obtain approval from the authority to substitute another firm for a DBE firm listed on an approved commitment and demonstrate written justification for the substitution, for example, that the original firm is unable or unwilling to carry out the terms of the contract.

401.097 DBE Program

The authority is required, as a condition of receiving federal financial assistance for transportation projects, to provide certain assurances that it will comply with 49 C.F.R. Part 26, which requires the creation of a DBE Program that applies to contracts, including roadway construction contracts and related purchases, funded in whole or in part with federal funds received from the United States Department of Transportation ("DOT"), including funds received through the Federal Highway Administration ("FHWA"), or funded in whole or in part with such federal funds received by the authority through the Texas Department of Transportation ("TxDOT"). To comply with the federal regulations, the authority may elect to adopt the federally approved TxDOT DBE Program pursuant to 49 C.F.R. § 26.45(c)(4) and the Recreational Trails Program Guidance (Revised 2 June 2000) of the DOT. The authority may agree to a Memorandum of Understanding ("MOU") between the authority, TxDOT and the FHWA concerning the authority's adoption and operation of its DBE program under TxDOT's DBE program for contracts involving federal assistance.

401.098 Definitions

The following are definitions of terms used in this article based primarily on definitions found in 49 C.F.R. § 26.5:

(1) Aspirational Goal: A level of SBE participation that the authority will strive to achieve which may be based upon a numeric formula or other milestones.

(2) Availability: The calculated estimate of qualified small business enterprises in a particular trade and/or profession. In defining availability of small business enterprises, a common sense approach with respect to geographical basis, customs that apply to firms and logistics of timely completion of work orders are taken into consideration.

(3) Bidder/Proposer: Any person, firm, partnership, corporation, association or joint venture as herein provided seeking to be awarded an contract, award or lease by a competitive process.

(4) Business Enterprise: Any legal entity which is organized to engage in lawful commercial transactions and is actively engaged in such transactions as a means of livelihood, such as a sole proprietorship, partnership or corporation, but not a joint venture except as hereinafter provided.

(5) Commercially Useful Function: Means the DBE/SBE is responsible for a distinct element of the work of a contract and actually manages, supervises, and controls the materials, equipment, employees, and all other business obligations related to the satisfactory completion of the contracted work.

(6) Contract: An award by the authority whereby the authority expends or commits the expenditure of its funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing.

(7) Contractor: One who participates through a contract or subcontract in a transportation construction project.

(8) DBE Goal: A flexible target determined by the authority and/or TxDOT, in accordance with the requirements and formulas set forth in 49 C.F.R. Part 26, and applicable rules promulgated thereunder, based on estimates of the availability of qualified and certified disadvantaged business enterprises ("DBEs") in the applicable marketplace, and known circumstances and conditions. In no case will a goal be construed as constituting a quota.

(9) Disadvantaged Business: A minority-owned, woman-owned, or otherwise economically disadvantaged small business in general, used in this BOPP to refer to both DBEs and SBEs, as may be more particularly defined by certifying agencies.

(10) Disadvantaged Business Enterprise ("DBE"): A for-profit small business enterprise:

(A) which is at least 51.0 percent owned, as defined herein, by one or more Socially and Economically Disadvantaged Individual(s), or, in the case of any publicly owned business, at least 51.0 percent of the stock of which is owned by one or more Socially and Economically Disadvantaged Individual(s); and

(B) whose management and daily business operations are controlled, as defined herein, by one or more of the Socially and Economically Disadvantaged Individual(s) who own it; and

(C) which receives appropriate certification status through the appropriate federally-designated or approved DBE certification agency.

The Texas Unified Certification Program, administered by TxDOT, is the certifying agency for businesses within the state of Texas.

(11) Good Faith Efforts: Efforts to achieve a goal or other requirements that, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the BOPP.

(12) Joint Venture: An association of two or more persons, partnerships, corporations or any combination thereof, founded to carry on a single business activity, which is limited in scope and duration. The degree to which a joint venture may satisfy the stated DBE goal cannot exceed the proportionate interest of the DBE as a member of the joint venture in the work to be performed by the joint venture. For example, a joint venture for which the DBE contractor is to perform 50.0 percent of the contract work itself shall be deemed equivalent to having DBE participation of 50.0 percent of the work. DBE member(s) of the joint venture must have financial, managerial, or technical skills in the work to be performed by the joint venture.

(13) Minority Business Enterprise (MBE): A business enterprise that is owned and controlled by one or more minority person(s). Minority persons include the ethnic categories listed under the definition of "Socially and Economically Disadvantaged Individuals" in this section. The MBE must also satisfy the owned and controlled provisions set forth in the definitions of "Disadvantaged Business Enterprise" and "Socially and Economically Disadvantaged Individuals."

(14) Prime Contractor: Any person, firm, partnership, corporation, association, or joint venture as herein provided which has been awarded an contract or agreement.

(15) Professional Services: Those Services as defined by Chapter 2254, Professional Services Procurement Act, Government Code.

(16) Race-and-Gender Conscious: Describes a measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.

(17) Race-and-Gender Neutral: Describes a measure or program that is, or can be, used to assist all

small businesses.

(18) Small Business Concern: As defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business shall not include any business or group of businesses controlled by the same Socially and Economically Disadvantaged Individual(s) which has annual average gross receipts in excess of the standards established by the Small Business Administration's regulation under 13 C.F.R. Part 121 for a consecutive three-year period. However, no firm is considered small if, including its affiliates, it averages annual gross receipts in excess of $16.6 million per year over the previous three fiscal years. The definition of "Small Business Concern" applies only to federal DBE certification, and not to the authority state SBE program set forth in Section 401.106.

(19) Small Business Enterprise: A business is considered a "Small Business Enterprise" for purposes of the BOPP if it meets the definition of "small business concern" as set forth in Section 3 of the U.S. Small Business Act. This provision defines a "small business concern" as any business concern (including those limited to enterprises engaged in the business of production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries) which is independently owned and operated and which is not dominant in its field of operation. 13 C.F.R. § 121.201 sets forth the "size standards, " in either number of employees or average annual receipts, that define the maximum size that a concern, together with all of its affiliates, may be to be eligible for federal small business programs. The Small Business Administration organizes these specific size standards according to North American Industry Classification System (NAICS) Codes, as published in the Small Business Administration's "Table of Small Business Size Standards."

(20) Socially and Economically Disadvantaged Individuals: As included in 49 C.F.R. Part 26, individuals who are citizens of the United States (or lawfully admitted permanent residents), and who are Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act, or individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. There shall be a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged, and DBE Program officials may also

determine, on a case-by-case basis, that individuals who are not members of one of the following groups are socially and economically disadvantaged :

(A) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(B) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;

(C) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;

(D) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma, Vietnam, Laos, Cambodia, Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, and the U.S. Trust Territories of the Pacific Islands, the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(E) "Subcontinent Asian Americans," which include persons whose origins are from India, Pakistan and Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;

(F) "Women;" and

(G) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(21) Subcontractor: Any named person, firm, partnership, corporation, association or joint venture as herein provided identified as providing work, labor, services, supplies, equipment, materials or any combination of the foregoing, under contract with a prime contractor on a contract.

(22) Vendor: One who participates in contracts with and/or procurements by the authority in a transportation construction project.

(23) Women Business Enterprise (WBE): A business enterprise that is owned and controlled by one or more females. The WBE must also satisfy the owned and controlled provisions under the definition of "Disadvantaged Business Enterprise" in .

401.099 DBE Program Adoption.

(a) This DBE Program is created pursuant to 49 C.F.R. Part 26 and applies only to procurements that are federally-assisted and only until such time that all funds from DOT have been expended. As a sub-recipient of federal funds through TxDOT, the authority may establish a distinct federal

DBE Program, or may comply with the federal regulations by adopting the federally approved TxDOT DBE Program.

(b) In order to facilitate the administration of the federal DBE requirements, the authority, and TxDOT may enter into a Memorandum of Understanding (MOU) to establish the obligations and responsibilities of the authority, TxDOT and FHWA in each agency's collective efforts to abide by and implement the policies and objectives of the federal DBE regulations. Should the authority adopt the TxDOT DBE Program, it will conduct its DBE Program in accordance with the MOU that is adopted by the board and incorporated herein for all purposes pursuant to 49 C.F.R. § 26.45(c)(4). If the MOU requirements are inconsistent with the DBE Program requirements, the MOU will govern.

401.100 DBE Certification

The authority will ensure that only businesses certified as DBEs are allowed to participate as DBEs in its DBE Program. To be certified as a DBE, a business must meet the definition of Disadvantaged Business Enterprises as set forth in Section 401.098 and the certification standards set forth at 49 C.F.R. Part 26, Subpart D. The authority will recognize DBE certification by TxDOT, the Texas Unified Certification Program, and the City of Austin Department of Small and Minority Business Resources (as the Federal DBE certifying entity for Hays, Travis, Williamson, Caldwell, and Bastrop Counties), and other agencies, to the extent approved by TxDOT to process applications for DBE certification.

401.101 DBE Goal Setting/DBE Annual Goal :

(a) Process For Establishing DBE Goal: The authority will establish a DBE participation goal following the process set forth in 49 C.F.R. § 26.45 or the MOU. The authority will not use quotas in any way in the administration of this article.

(b) Race- and Gender-Neutral And Race- and Gender-Conscious Participation: The authority will meet the maximum feasible portion of its overall goal by using race- and gender-neutral efforts of facilitating DBE participation. The authority will adjust the estimated percentage of race- and gender-neutral and race- and gender-conscious participation as needed to reflect actual DBE participation and will track and report race- and gender-neutral and race- and gender-conscious participation separately. For reporting purposes, race- and gender-neutral DBE participation is defined in this BOPP.

(c) Race- and Gender-Neutral Efforts To Achieve Annual DBE Goals: Race-and gender-neutral DBE participation exists when a DBE:

(1) wins a prime contract through customary competitive procurement procedures;

(2) is awarded a subcontract on a prime contract that does not carry a DBE goal; or

(3) is awarded a subcontract on a prime contract that carries a DBE goal if the prime contractor awarded the subcontract without regard to DBE status.

401.102 DBE Contract Goals

Contract goals may be established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the authority's overall DBE goal that is not projected to be met through the use of race- and gender-neutral efforts. Contract goals may be set only if the authority determines that it will not meet its annual overall DBE participation goal by race and gender neutral efforts, and that the contract at issue will have subcontracting opportunities. In this event, contract goals shall be set in accordance with 49 C.F.R. § 26.51(e), (f) and (g) and race- and gender-neutral efforts shall be increased to achieve the overall goal. If a contract goal is set, the contract must include provisions requiring the contractor to make good faith efforts to achieve the contract goal and may only be awarded to a bidder who agrees to do so. The authority need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBE's to perform the particular type of work). The authority will express its DBE contract goals as a percentage of the total contract, including both federal and any other funds; however, for purposes of reporting to the U.S. DOT, emphasis will be placed on the percentage of federal funds that were ultimately paid to DBEs.

401.103 Good Faith Effort

The authority will make a good faith effort to meet or exceed the goal of this DBE Program, using good faith efforts and the race- and gender-neutral methods described in this article. Contractors will be required to make good faith efforts to obtain DBE participation as described in Appendix A to 49 C.F.R. Part 26 and the TxDOT DBE Program, if applicable. The authority will grant no preferences to DBEs in the bidding/contracting process.

401.104 DBE Contractor/Vendor Obligations

(a) Potential prime contractors on projects involving federal funds will be notified of this section and must meet the following standards:

(b) Compliance With This Program: Authority contracts that involve federal financial assistance will include a contract provision requiring the contractor:

(1) to encourage the use of DBEs in subcontracting and material supply activities;

(2) to prohibit discrimination against DBEs; and

(3) to provide a method of reporting race-and gender neutral DBE participation.

401.105 Adherence To Equal Opportunity

When federal financial assistance is involved, each contract the authority signs with a contractor and each subcontract between a prime contractor and a subcontractor will include the following assurance as required by 49 C.F.R. § 26.13:

> The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

401.106 SBE Program

(a) The SBE Program is created pursuant to Section 370.183, Transportation Code, and applies to all contracts and procurements that do not involve federal financial assistance (i.e. contracts and procurements funded strictly by state, local or private means, or any combination thereof).

(b) The SBE Program applies to contracts and procurements that do not involve federal financial assistance. In accordance with Section 370.183, Transportation Code, the Procurement Policy, and consistent with general law, the authority will:

(1) set goals for the award of contracts to disadvantaged and small businesses and attempt to meet the goals;

(2) attempt to identify disadvantaged and small businesses that provide or have the potential to provide supplies, materials, equipment, or services to the authority; and

(3) give disadvantaged and small businesses full access to the authority's contract bidding process, inform the businesses about the process, offer the businesses assistance concerning the process, and identify barriers to the businesses' participation in the process.

401.107 SBE Certification

(a) The authority will require SBEs to be certified according to its standards, which may vary from the DBE certification. The authority will recognize as certified SBEs certifications for small, minority-owned, women-owned, historically underutilized, and disadvantaged business enterprises. Such certifications may be provided by one or more of the following agencies or entities: TxDOT; the Texas Unified Certification Program for Federal DBE Certification; the Texas Building and Procurement Commission's Historically Underutilized Business ("HUB") Program Certification; the City of Austin's Department of Small and Minority Business Resources; or any other recognized certification that the authority finds acceptable.

(b) Firms that desire or are required by the authority to be certified for SBE participation must complete and submit a SBE Status Certification Affidavit which identifies the status certification

and the group providing the certification. The MWSBE status certification is effective for as long as it is effective with the certifying entity, unless terminated earlier by the authority.

401.108 SBE Goals

(a) The authority will identify overall SBE aspirational goals for the construction, professional services, consulting services and other goods and services procurements. The aspirational goal may generally establish a level of participation that the authority will strive to achieve. The aspirational goal may be based upon a numeric formula and/or based on other factors. During the process of developing SBE goals, the authority may review and consider information on the availability of SBEs in the authority's applicable marketplace, as well as any other information and data which the authority believes is pertinent to goal setting.

(b) The overall SBE aspirational goal(s) may be established or reaffirmed on an annual basis and will reflect the authority's commitment to facilitate opportunities for the participation of small business enterprises in the authority procurement process and awards.

(c) The goals may be expressed as a broad and general aspiration, as a percentage of the total estimated dollar amount of all contracts and subcontracts to be awarded during the applicable fiscal year, or as a specific percentage of the dollar amount on a given contract. The goal may reflect the authority's estimate of overall SBE participation that is attainable given available authority SBE resources and the performance of the authority in its efforts to achieve previous goals under the Program.

(d) If contract-specific goals are established, no contract will be executed until the lowest responsible bidder/proposer has achieved or demonstrated an acceptable good-faith effort toward achievement of the SBE goal. If goals are established and are not met, no sanctions will be recommended or imposed provided the successful bidder/proposer can fully demonstrate that he/she made an acceptable good-faith effort, as defined by the authority, to achieve the goals.

401.109 SBE Contractor/Vendor Obligations

All contracts and specification packages and requests for bids or proposals will incorporate the following provisions specifically or by reference :

(1) It is the policy of the board that disadvantaged and small businesses will have the maximum practicable opportunity to participate in the awarding of contracts and related subcontracts.

(2) The bidder, proposer, contractor or vendor agrees to employ good-faith efforts to carry out this policy through award of subcontracts to small or disadvantaged business enterprises to the fullest extent consistent with the efficient performance of the contract, and/or the utilization

of SBE suppliers where feasible. Authority contractors are expected to make a good faith effort to solicit bids for subcontractors/suppliers from available SBEs.

(3) The bidder, proposer, contractor or vendor specifically agrees to comply with all applicable provisions of the SBE Program, and to include federal requirements when applicable.

(4) The contractor/vendor will maintain records, as specified in his/her contract, showing:

(A) subcontract/supplier awards, specifically to small business enterprises;

(B) specific efforts to identify and award such contracts to small business enterprises; and,

(C) submit, when requested, copies of executed contracts to establish actual SBE participation and how much DBEs were paid.

(5) The contractor/vendor agrees to submit periodic reports of subcontract and/or supplier awards to small business enterprises in such form and manner, and at such time, as the authority shall prescribe and will provide access to books, records and accounts to authorized officials of the authority, state or federal agencies for the purpose of verifying SBE participation and good-faith efforts to carry out this SBE policy. All contractors may be subject to a post-contract SBE audit. Audit determination(s) may be considered and have a bearing in the evaluation of a contractor's good-faith efforts on future contracts.

(6) The contractor/vendor will appoint an official or representative knowledgeable as to this Policy and Program to administer and coordinate the contractor's efforts to carry out this SBE policy.

(7) Where possible and/or practical, all vendors and/or contractors will make good-faith efforts to subcontract and meet the SBE goal. Contractors may be required to provide documentation demonstrating that they have made good-faith efforts, as defined by the authority, in attempting to do so by submitting an acceptable SBE Utilization Statement. Bidders are required to satisfy applicable SBE Program requirements prior to the award of contract. Bidders that fail to meet these requirements will be considered non-responsive or in non-compliance.

(8) Vendors or contractors will report any changes in proposed or actual SBEs, and will make good-faith efforts to replace SBE subcontractors or subconsultants unable to perform on the contract with another SBE.

(9) Failure or refusal by a bidder, proposer, contractor or vendor to comply with the SBE provisions herein or any applicable provisions of the SBE Program, either during the bidding process or at any time during the term of the contract, shall constitute a material breach of contract whereupon the contract, at the option of the authority, may be canceled, terminated or

suspended in whole or in part; and, the contractor may be debarred from further contracts with the authority as a non-responsible contractor.

401.110 Compliance With Program

The BOPP Liaison Officer will monitor compliance by all prime contractors with the requirements under these Programs, implement appropriate mechanisms to ensure compliance by all program participants, and verify that the work committed to disadvantaged and small businesses is actually performed by the disadvantaged and/or small business.

401.111 Claims of Program Violations

(a) Allegations about violations and/or abuse should be made in writing and identify the person making the allegation. The BOPP Liaison Officer will review the information presented and take whatever steps he or she determines to be appropriate under the circumstances to resolve the issues raised by the allegation. The BOPP Liaison Officer may conduct an investigation of the allegations. The authority cannot assure complete confidentiality in conducting its investigation, which may require the disclosure of information to other governmental agencies or affected third parties. Allegations that are made anonymously or verbally will be reviewed as is deemed appropriate. It may not be possible to investigate an issue if insufficient information is provided.

(b) Notification of TxDOT, DOT and Other Agencies: The authority will notify TxDOT, FHWA, the DOT and other appropriate agencies of any false, fraudulent, or dishonest conduct in connection with the federal DBE Program, so that TxDOT and/or DOT can take the necessary steps to investigate the alleged conduct as provided in 49 C.F.R. § 26.109.

401.112 Compliance And Severability Clause

(a) It is the intent of the authority to comply with all applicable federal and state laws and regulations and to comply with the TxDOT DBE Program, where applicable. The BOPP will not apply to contracts that are subject to overriding state or federal laws, regulations, policies or guidelines, including those regarding small, minority-owned, or woman-owned businesses. In the event that an apparent conflict arises between the language contained in this Program and federal, state or local law or ordinance, the language will be construed so as to comply with the federal, state or local law or ordinance.

(b) Nothing in this Business Opportunity Program or Policy should be construed as requiring a set-aside or mandatory quota. Any questions regarding the authority's Business Opportunity Program should be directed to the BOPP Liaison Officer.

401.113 Effective Date

This Business Opportunity Program and Policy (BOPP) shall become effective on November 5, 2003,

and apply to any contract or procurement executed thereafter. The authority shall approve any amendment, modification, or replacement of this BOPP by resolution, with such resolution including either an explicit repeal of specific sections and provisions of this BOPP, or a replacement of this BOPP with entirely new provisions.

Article 22. SOLICITATION OF EMPLOYEE APPLICANTS

401.114 Solicitation Of Employee Applicants

In conjunction with efforts to solicit applicants for available employment positions with the authority, authority staff shall follow the solicitation and application guidelines set forth in this article in order to

(1) provide notice of the employment position opening,

(2) provide a method of allowing potential applicants to receive detailed information regarding particular criteria and requirements for the individual employment position, and

(3) provide information related to any application deadlines or extensions of deadlines.

401.115 Solicitation of Applicants for Professional or Managerial Positions.

(a) In order to reach the largest potential pool of qualified applicants for employment positions that are either professional or managerial in nature, authority staff shall post information regarding potential employment opportunities, detailed position descriptions, and requirements for applications for professional or managerial staff positions in the following manner:

(b) Notice of employment position openings with the authority shall be published on the authority's website, and shall include:

(1) employment position title;

(2) a general description of position duties and responsibilities;

(3) educational and prior work experience requirements;

(4) the statement that the authority is an equal opportunity employer;

(5) materials required to be submitted for position applications;

(6) the physical mailing address and/or e-mail address for submitting application materials; and

(7) the telephone number for questions regarding the employment position description and/or application process.

(c) Notice of employment position openings with the authority may be published in the officially designated newspaper of the authority, the Texas Register, trade journals, and other sources that the authority determines are appropriate for contacting potentially qualified applicants. In addition, the

authority may, but shall not be required to, solicit potential applicants by direct mail, telephone, or via the Internet.

(d) The application deadline specified in the notice of employment position opening may be extended if the executive director determines that the extension is in the best interest of the authority.

401.116 Solicitation of Administrative or Clerical Applicants.

(a) Authority staff shall post information regarding potential employment opportunities, detailed position descriptions, and requirements for application for administrative or clerical staff positions in the following manner:

(1) Notice of employment position openings with the authority shall be published on the authority's website, and shall include:

(2) employment position title;

(3) a general description of position duties and responsibilities;

(4) educational and prior work experience requirements;

(5) the statement that the authority is an equal opportunity employer;

(6) materials required to be submitted for position applications;

(7) the physical mailing address and/or e-mail address for submitting application materials; and

(8) the telephone number for questions regarding the position description or application process. authority staff may include any and all of the required information listed in (1)-(7) above in a standard employment application form issued by the authority.

(9) Notice of employment position openings with the authority may be published in the officially designated newspaper of the authority and in such other places that the authority determines are appropriate for contacting potentially qualified applicants. In addition, the authority may, but shall not be required to, solicit potential applicants by direct mail, telephone, or via the Internet.

(b) The application deadline specified in the notice of employment position opening may be extended if the executive director determines that the extension is in the best interest of the authority.

Article 23. DISPOSITION OF SALVAGE OR SURPLUS PROPERTY

401.117 Sale by Bid or Auction.

The authority may periodically sell the authority's salvage or surplus property by competitive bid or auction. Salvage or surplus property may be offered as individual items or in lots at the authority's discretion.

401.118 Trade-In for New Property.

Notwithstanding subsection 12.1, the authority may offer salvage or surplus property as a trade-in for new property of the same general type if the executive director considers that action to be in the best interests of the authority.

401.119 Heavy Equipment.

If the salvage or surplus property is earth-moving, material-handling, road maintenance, or construction equipment, the authority may exercise a repurchase option in a contract in disposing of such types of property. The repurchase price of equipment contained in a previously accepted purchase contract is considered a bid under subsection (a).

401.120 Sale to State, Counties, etc.

Notwithstanding subsection 12.1 above, competitive bidding or an auction is not necessary if the purchaser is the State or a county, municipality, or other political subdivision of the State. The authority may accept an offer made by the State or a county, municipality, or other political subdivision of the State before offering the salvage or surplus property for sale at auction or by competitive bidding.

401.121 Failure to Attract Bids.

If the authority undertakes to sell property under subsection 12.1. and is unable to do so because no bids are made for the property, the executive director may order such property to be destroyed or otherwise disposed of as worthless. Alternatively, the executive director may cause the authority to dispose of such property by donating it to a civic, educational or charitable organization located in the State.

401.122 Terms of Sale.

All salvage or surplus property sold or otherwise disposed of by the authority shall be conveyed on an "AS IS, WHERE IS" basis. The location, frequency, payment terms, inspection rights, and all other terms of sale shall be determined by the authority in its sole and absolute discretion.

401.123 Rejection of Offers.

The authority or its designated representative conducting a sale of salvage or surplus property may reject any offer to purchase such property if the executive director or the authority's designated representative finds the rejection to be in the best interests of the authority.

401.124 Public Notices of Sale.

The authority shall publish the address and telephone number from which prospective consultants may request information concerning an upcoming sale in at least two issues of the officially designated newspaper of the authority, or any other newspaper of general circulation in each county of the authority, and the authority may, but shall not be required to, provide additional notices of a sale by direct mail, telephone, or via the internet.

Chapter 5: ENVIRONMENTAL REVIEW FOR PROJECTS

501.001 Purpose.

(a) These procedures are adopted pursuant to Section 370.188, Transportation Code, and are applicable only to transportation projects that are not otherwise subject to review under

(1) the National Environmental Policy Act (NEPA) (42 U.S.C. Section 4321, et seq.); or

(2) environmental review and approval conducted by the Texas Department of Transportation ("TxDOT") or the Texas Transportation Commission (the "Commission").

(b) The policies and procedures are intended to be consistent with the spirit and intent of NEPA.

501.002 Definitions.

The following words and terms, when used in these policies, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Authority Project: For purposes of these policies and procedures, authority projects which are not subject to review under NEPA or the procedures for environmental review and approval adopted and administered by TxDOT or the Commission.

(2) Environmental Document: A decision making document which incorporates environmental studies, coordination, and consultation efforts, and engineering elements. Documents may include categorical exclusion assessments, environmental assessments, and environmental impact statements.

(3) Environmental Studies: The investigation of potential environmental impacts of an authority project.

(4) Public Hearing: A hearing held after public notice is provided to solicit public input in determining a preferred alternative for an authority project. All testimony given at a public hearing will be made part of the public hearing record.

(5) Public Involvement: An ongoing phase of the project planning process which encourages and solicits public input, and provides the public the opportunity to become fully informed regarding development of an authority project.

(6) Public Meeting: Informal discussions intended to assist in the preparation of environmental documents. These may be held with local public officials, interested citizens or the general public, and local, neighborhood, or special interest groups for the purpose of exchanging ideas,

and collecting input on the need for, and possible alternatives to, a given authority project. Notice of a public meeting will depend upon anticipated audience attendance.

(7) Significantly: This term shall have the same meaning as is used, and has been interpreted, under 42 U.S.C. § 4332 of NEPA.

501.003 Review Of Non-NEPA Authority Projects

(a) Environmental studies for authority projects which are not subject to review under NEPA or are not subject to review and approval through processes administered by TxDOT or the Commission will be accomplished in accordance with these policies and procedures and other applicable state and federal laws including, but not limited to, the Endangered Species Act of 1973, as amended, 16 USC §§ 1531 et seq.; the Rivers and Harbors Act of 1899, as amended, 42 USC §§ 401 et seq.; the Federal Water Pollution Act, as amended, 33 USC § 1251 et seq., 33 CFR Parts 114 through 115; the Safe Drinking Water Act, as amended, 42 USC § 300f et seq.; Chapter 370, Transportation Code. In addition, the authority will coordinate with the Texas Commission on Environmental Quality and the Texas Parks and Wildlife Department in conducting environmental studies under these policies and procedures.

(b) These policies and procedures are intended to establish the minimum guidelines to be followed for environmental review of the authority projects to which they apply. In addition, the authority anticipates utilizing forms of public involvement when feasible, including, without limitation, processes implementing context sensitive design and other processes intended to encourage public involvement.

501.004 Public Involvement

Public involvement shall be encouraged as an important element of authority project planning. It shall be initiated by the authority staff and will depend on, and be consistent with, the type and complexity of each authority project. Authority staff shall use its best efforts to maintain a list of individuals and groups interested in authority project development, and shall provide notification of public hearing activities to these individuals and groups.

501.005 Public Involvement Methods

(a) INFORMAL MEETINGS: Informal meetings, as one form of public involvement, will be held with affected property owners, residents, any known neighborhood associations within the area

of the authority project and which have notified the authority in writing of their interest in the project, and affected local governments and public officials, when such projects require:

(1) detours and/or a minimal amount of right-of-way acquisition, or use of temporary construction easements; and

(2) a minor location or design revision after an environmental document for an authority project has been approved and public involvement requirements have previously been completed, provided that if a location or design revision is deemed by the authority to be significant an additional opportunity for a public hearing will be provided.

(3) Notice of informal meetings, and the time and location of such meetings, will depend upon the nature of the authority project and the number of individuals or entities directly affected by the project.

(b) PUBLIC MEETINGS: Public meetings, as a form of public involvement, will be held:

(A) at any time during project planning and development that the board directs or the authority staff, with the approval of the Executive Committee, deems appropriate in order to keep the public informed;

(B) during the drafting of the draft environmental impact statement, as discussed in Section 501.008;

(C) as early as the authority staff determines feasible to encourage beneficial public input to project planning and consideration of project alternatives;

(D) at a time and place convenient to the public in the vicinity of the authority project; and

(E) pursuant to notice provided by such means as the authority deems appropriate given the scope and magnitude of the project, provided that at a minimum the notice shall be posted on the authority's website. Mailed notice (or email notice in lieu of mailing) shall also be provided to persons or organizations included on any lists of interested parties maintained by the authority for the project, any known neighborhood associations within the area of the authority

project and which have notified the authority in writing of their interest in the project, and affected local governments and public officials.

(c) PUBLIC HEARINGS

(1) Permissive Public Hearings. An opportunity for public hearings shall be afforded for authority projects which require or result in:

(A) the acquisition of significant amounts of rights-of-way;

(B) a substantial change in the layout or function of the connecting roadways or of the facility being improved;

(C) a measurable adverse impact on abutting real property;

(D) there is otherwise a substantial social, economic, or environmental effect which may result from the authority project; or

(E) a finding of no significant impact (FONSI), as discussed in Section 501.007 below, with such hearing to be afforded at such time as the environmental assessment is considered technically complete and is initially approved by the board to proceed with public involvement.

(2) The following procedures will be followed for providing notice of an opportunity for a public hearing:

(A) Two notices of the opportunity for public hearing shall be published in local newspaper(s) having general circulation. The first notice shall be published approximately 30 days in advance of the deadline set by the authority for submittal of written requests for holding of public hearings; and the second notice shall be published approximately ten days prior to the deadline date. In the event an authority project is expected to directly affect an area that is predominantly Spanish-speaking, the notices required herein shall be published in a Spanish language newspaper of general circulation in the area of the project, if available.

(B) Notices of the opportunity for public hearing shall also be mailed to landowners abutting the roadway as identified by tax rolls, known neighborhood associations whose boundaries encompass all or part of the authority project and which have notified the authority, in writing, of their interest in the project, and to affected local governments and public officials.

(C) No further action will be taken to hold a public hearing if at the end of the time set for affording an opportunity for a public hearing no requests are received.

(3) Mandatory Public Hearings. For projects with substantial public interest, such as authority projects requiring an environmental impact statement or high profile FONSI authority projects, or when a request for hearing is received as discussed in the preceding paragraph (c)(2)(C), or when the authority project requires the taking of public land designated as a park, recreation

areas, wildlife refuge, historic site, or scientific area (as covered in Chapter 26, Parks and Wildlife Code), a public hearing will be held to receive suggestions as to project alternatives; to present project alternatives already considered; and to solicit public comment, and shall be held at such time as location and design studies have been developed and when the public can be given a feasible proposal with appropriate environmental studies. The hearing notice for a public hearing under this subsection shall at a minimum contain the following information:

(A) time, date, and location of the hearing;

(B) description of the project termini, improvements, and right-of-way needs;

(C) reference to maps, drawings, and environmental studies and/or documents, and other information about the project, that are available for public inspection at a designated location;

(D) reference to the potential for relocation of residences and businesses and the availability of relocation assistance for displacements;

(E) a statement that verbal and written comments may be presented for a period of 10 days after the hearing;

(F) the address where written comments may be submitted; and

(G) the existence of any floodplain, wetland encroachment, taking of endangered species habitat; or encroachment on a sole source aquifer recharge zone by an authority project.

(H) Except for authority projects requiring the taking of public land designated as a park, recreation area, wildlife refuge, historic site, or scientific area, notice of the public hearing must be given by the publication of two notices in local newspapers having general circulation, with the first notice published approximately 30 days before the hearing, and the second notice published approximately 10 days before the hearing. In the event an authority project is expected to directly affect an area that is predominantly Spanish-speaking, the notices required herein shall be published in a Spanish language newspaper of general circulation in the area of the project, if available. Notices of the public hearing shall also be mailed to landowners abutting the roadway as identified by tax rolls, known neighborhood associations whose boundaries encompass all or part of the authority project and which have notified the authority, in writing, of their interest in the project, and affected local governments and public officials. For authority projects requiring the taking of public land designated as a park, recreation area, wildlife refuge, historic site, or scientific area, notice of the public hearing shall be given in accordance with Section 26.002, Parks and Wildlife Code.

(d) Public Hearing Record. The public shall have 10 days after the close of a public hearing to submit written comments to the authority office regarding a proposed authority project. Public hearings shall be considered complete at the time and date designated by the authority staff after receipt of a verbatim transcript of the public hearing. As another method of public involvement,

there shall be published in a local newspaper of general circulation the notice of the availability of the environmental assessment in order to inform the public of its availability and advising where to obtain information concerning the authority project, and that any written comments should be furnished within a 30-day period of the date of the notice in order to be included within the public hearing record.

501.006 Categorical Exclusions (CE).

(a) An authority project will be classified as a categorical exclusion (CE) if it does not:

(1) involve significant environmental impacts;

(2) induce significant impacts to planned growth or land use of the authority project area;

(3) require the relocation of significant numbers of people;

(4) have a significant impact on any natural, cultural, recreational, historic, or other resource;

(5) involve significant air, noise, or water quality impacts;

(6) significantly impact travel patterns; or

(7) either individually or cumulatively, have any significant environmental impacts.

(b) The following actions are examples of authority projects which meet the criteria of a CE as found in this section and will not in most cases require further environmental review or approval by the authority:

(1) those which do not involve or lead directly to construction, such as planning and technical studies, grants or training and research programs, engineering feasibility studies that either define the elements of a proposed project or identify alternatives so that social, economic, and environmental effects can be assessed for potential impact;

(2) approval of utility installations along or across an authority project;

(3) construction of bicycle and pedestrian lanes, paths, and facilities;

(4) landscaping;

(5) installation of fencing, signs, pavement markings, small passenger shelters, and traffic signals, when no substantial land acquisition or traffic disruption will occur;

(6) emergency repairs as defined in 23 USC § 125;

(7) acquisition of scenic easement; and

(8) alterations to facilities or vehicles in order to make them accessible for elderly and handicapped

persons.

(c) For any authority project not of a type described in this section, the authority may conduct appropriate environmental studies to determine if the CE classification is proper. Any other actions meeting the criteria for a CE as found in subsection (a) will require board review and approval.

(d) Board approval will be based on staff submitting a brief environmental overview which demonstrates that the specific conditions or criteria for classification of a CE as found in subsection (a) is satisfied and that significant environmental impacts will not result, including the results of any coordination effected with resource agencies. Examples may include, but are not limited to, the following:

(1) modernization of a roadway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes such as parking, weaving, turning, climbing, and correcting substandard curves and intersections with only minor amounts of additional right-of-way required;

(2) highway safety or traffic operation improvement projects including the installation of ramp metering control devices and lighting;

(3) bridge rehabilitation, reconstruction, or replacement, or the construction of grade separation to replace existing at-grade railroad crossings;

(4) transportation corridor fringe parking facilities;

(5) approvals for changes in access control; and

(6) approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(e) The authority may classify other authority projects as a CE if, from the documentation required to be submitted, a determination is made that the project meets the CE classification. Classification as a CE means that no further environmental review is required. Board approval is required for any CE classification under this provision.

501.007 Environmental Assessments (EA).

(a) Preparation. For authority projects for which the extent of impacts is not readily discerned, an EA will be prepared to determine the nature and extent of environmental impacts, with either a finding of no significant impact anticipated or a finding that an environmental impact statement is required. An EA is not required for any project which is the subject of an Environmental Impact Statement.

(b) Coordination and consultation. For authority projects that require an EA, the interested

agencies, local political subdivisions and others to achieve the following objectives:

(1) definition of the scope of the project;

(2) identification of any alternatives to the proposed actions including different modes of transportation;

(3) determination as to which aspects of the proposed actions have potential for environmental impact;

(4) identification of measures and alternatives which might mitigate adverse environmental impacts; and

(5) identification of other environmental review and consultation requirements which should be prepared concurrently.

(c) Notice. As required in Section 501.005(c), the notice of the public hearing or of opportunity for a public hearing will announce the availability of the EA and where it may be obtained or reviewed.

(d) Revised determination. If, at any point in the EA process, the authority staff determines that the project may have a significant impact on the environment, the preparation of an Environmental Impact Statement (EIS) as discussed in Section 501.008 will be required.

(e) Finding of no significant impact. The board, after its review of the EA, proposed mitigation measures, and any public hearing statement or comments received regarding the EA, and if in agreement with the staff recommendations, will make a separate written finding of no significant impact (FONSI), incorporating the EA and any other appropriate environmental documents and agency consultations and coordinations. The FONSI completes the environmental studies and public involvement process for an authority project.

(f) Notification of FONSI. After issuance of the FONSI, a notice of the availability of the FONSI shall be published by the authority. Notification will also be given to the local media through a press release.

501.008 Environmental Impact Statements (EIS).

(a) Required. An EIS will be required for authority projects in which there are likely to be significant environmental impacts. The preparation of the EIS will occur in two stages:

(1) the draft EIS (DEIS); and

(2) the final EIS (FEIS).

(b) Not required. If the analyses or review comments indicate that significant impacts to the human environment will not occur, an EIS should not be prepared.

501.009 Notice of intent.

(a) Prior to the preparation of an EIS there shall be prepared a notice of intent (NOI) to prepare an EIS.

(b) The NOI should:

(1) briefly detail the project;

(2) identify significant impacts on the human environment; and

(3) identify any preliminary alternatives under consideration by the authority.

(c) The NOI shall be sent to applicable agencies for their early review and comment. Any comments received will be used as the basis for the DEIS, as described in subsection (d).

(d) A summary of the NOI shall also be published in the Texas Register, on the authority's website, and in a local newspaper of general circulation.

501.010 Draft Environmental Impact Statement.

(a) The DEIS shall identify and evaluate all reasonable alternatives to the authority project; discuss the elimination of other alternatives, if applicable; summarize the studies, reviews, consultations, and coordination required by law to the extent appropriate; and designate a preferred alternative if appropriate.

(b) When the staff determines that the DEIS complies with these and other requirements, the DEIS will be approved for circulation by signing and dating the cover sheet.

(c) The DEIS will be circulated for comment after a notice is published in the Texas Register, on the authority's website, and in a local newspaper of general circulation which describes a circulation and comment period of no less than 45 days, and identifies where comments are to be sent.

(d) The DEIS shall be transmitted to state and applicable federal agencies.

(e) The DEIS will be made available to interested public officials, interest groups, and members of the public at the request of any such group or individuals. Notice of availability of the DEIS will be mailed to affected local governments and public officials.

(f) A fee which is not more than the actual cost of reproduction of the DEIS and administrative costs of the reproduction may be charged for any written request received for a copy of the DEIS.

(g) The DEIS may also be reviewed at designated public locations.

(h) Either an opportunity for public hearing shall be afforded or a public hearing shall be held for a DEIS authority project.

(i) The DEIS will be made available at the authority for the general public at a minimum of 30 days in advance of the public hearing for authority projects.

501.011 Final Environmental Impact Statement.

(a) After the DEIS is circulated and comments reviewed, a FEIS shall be prepared by the authority.

(b) The FEIS shall:

(1) identify the preferred alternative and evaluate all reasonable alternatives considered;

(2) discuss substantive comments received on the DEIS and responses to those comments;

(3) summarize public involvement that has been afforded for the project;

(4) describe the mitigation measures that are to be incorporated into the authority project;

(5) document compliance, to the extent possible, with all applicable environmental laws, or provide reasonable assurance that requirements can be met; and

(6) identify those issues and the consultations and all reasonable efforts made to resolve interagency disagreements.

(c) The authority will indicate approval of the FEIS by signing and dating the cover page.

(d) The initial printing of the FEIS shall be in sufficient quantities to meet the request for copies which can be reasonably expected from agencies, organizations, and individuals.

(e) A fee which is not more than the actual cost of reproduction and administrative costs associated with the reproduction of the FEIS may be charged for purchase of the document.

(f) Copies of the FEIS may also be placed in appropriate public locations, such as local governmental offices, libraries, or other public institutions.

(g) Notice detailing the availability of the FEIS shall be published in the Texas Register, on the authority's website, and in a local newspaper of general circulation.

(h) The notice shall include information on obtaining copies.

(i) The public and interested organizations will have 30 days following publication of the notice in the Texas Register to submit comments.

(j) Following the approval of the FEIS, it will be made available to agencies which made substantive comments on the DEIS; however, in the event the FEIS is voluminous, the authority may provide for alternative circulation such as notifying agencies of the availability of the FEIS, and by providing a method for these agencies to request a copy.

(k) The authority will complete and sign a record of decision (ROD) no sooner than 30 days after publication of the availability of the FEIS notice in the Texas Register. Until any required ROD has been signed, no further approvals may be taken except for administrative activities taken to secure further project funding. The ROD will:

(1) present the basis for the decision and summarize any mitigation measures; and

(2) be published in the Texas Register.

501.012 Re-evaluations.

An evaluation to determine whether a supplement to the DEIS or a new DEIS is needed shall be prepared by the authority if an acceptable FEIS is not submitted within three years from the date of circulation of the DEIS. The re-evaluation will:

(1) not be circulated for agency review, although resource agency coordination may be required;

(2) be required before further approvals may be granted if major steps to advance the action such as authority to undertake final design or acquire significant portions of right-of-way, or approval of the plans, specifications, and estimates have not occurred within three years after the approval of the FEIS, supplemental FEIS, or the last major departmental approval.

501.013 Supplemental Environmental Impact Statements.

(a) A DEIS or FEIS may be supplemented at any time.

(b) An EIS will be supplemented whenever the authority determines that:

(1) changes to the project would result in significant environmental impacts that were not evaluated in the EIS; or

(2) new information or circumstances relevant to environmental concerns bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.

(c) A supplemental EIS will not be necessary when:

(1) changes to the project, new information, or new circumstances result in a lessening of adverse impacts evaluated in the EIS without causing other environmental impacts that are significant and were not evaluated in the EIS; or

(2) the authority decides to approve an alternative fully evaluated in the approved FEIS but not identified as the preferred alternative.

(d) When there is an uncertainty of the significance of new impacts, the authority will develop appropriate environmental studies, or if deemed appropriate, an EA to assess the impacts of the changes, new information, or new circumstances.

(e) If the authority determines, based on studies, that a supplemental EIS is not necessary, it shall so indicate in the project record.

(f) A supplemental EIS shall be developed using the same process and format as an original EIS, except that early coordination shall not be required.

(g) A supplemental EIS may be required to address issues of limited scope, such as the extent of proposed mitigation, or the evaluation of location or design variations for a limited portion of an overall project. In this situation the preparation of the supplemental EIS shall not necessarily:

(1) prevent the granting of new approvals;

(2) require the withdrawal of previous approvals; or

(3) require the suspension of project activities for any activity not directly affected by the supplement.

Chapter 6: APPENDIXES

APPENDIX 1: [DELETED BY RESOLUTION NO. 12-022, MARCH 28, 2012]

APPENDIX 2: CONFLICT OF INTEREST DISCLOSURE FORM FOR CONSULTANTS

DISCLOSURE STATEMENT FORM

This Disclosure Statement outlines potential conflicts of interest as a result of a previous or current business relationship between the undersigned individual (and/or the firm for which the individual works) and an individual or firm submitting a proposal or otherwise under consideration for a contract associated with _____. Section I of this Disclosure Statement Form describes the potential conflicts of interest. Section II of this Disclosure Statement Form describes the proposer's management plan for dealing with the potential conflicts of interest as described in Section I of this form. This Disclosure Statement is being submitted in compliance with the Central Texas Regional Mobility Authority's Conflict of Interest Policy for Consultants. The undersigned acknowledges that approval of the proposed management plan in within the sole discretion of the Central Texas Regional Mobility Authority.

SECTION I. Description of Potential Conflicts of Interest.

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SECTION II. Management Plan for Dealing with Potential Conflicts of Interest.

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_____

SIGNED: _____ DATE: _____

NAME AND TITLE: _____

REPRESENTING: _____

APPROVED BY THE CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY:

SIGNED: _____ DATE: _____

NAME AND TITLE: _____

APPENDIX 3: CONFLICT OF INTEREST DISCLOSURE FORM FOR KEY FINANCIAL PERSONNEL

DISCLOSURE STATEMENT FORM

This Disclosure Statement outlines potential conflicts of interest as a result of a previous or current business relationship between the undersigned individual (and/or the firm for which the individual works) and an individual or firm submitting a proposal or otherwise under consideration for a contract associated with _____. Section I of this Disclosure Statement Form describes the potential conflicts of interest. Section II of this Disclosure Statement Form describes the proposer's management plan for dealing with the potential conflicts of interest as described in Section I of this form. This Disclosure Statement is being submitted in compliance with the Central Texas Regional Mobility Authority's Conflict of Interest Policy for Financial Team Members. The undersigned acknowledges that approval of the proposed management plan in within the sole discretion of the Central Texas Regional Mobility Authority.

SECTION I. Description of Potential Conflicts of Interest.

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SECTION II. Management Plan for Dealing with Potential Conflicts of Interest.

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SIGNED: _____ DATE: _____

NAME AND TITLE: _____

REPRESENTING: _____

APPROVED BY THE CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY:

SIGNED: _____ DATE: _____

NAME AND TITLE: _____