



ATTENTION: TP&D, DESIGN, CONSTRUCTION, MAINTENANCE AND
TRAFFIC OPERATIONS ENGINEERS

SPECIAL PROVISION AND/OR SPECIFICATION CHANGE MEMORANDUM 02-17

MEMO

Date: January 3, 2017

To: District Engineers

From: Tracy D. Cain, P.E.
Construction Division Director

Subject: Statewide Special Provision 002-009 (14), "Instructions to Bidders"

The above-referenced special provision has been approved statewide use and is required for all federal-aid projects beginning with the February 2017 letting.

This special provision adds language to Standard Item 2 in coordination with Special Provision 000-394, "Disadvantaged Business Enterprise (DBE) in Federal Aid Contracts," and addresses how bidders are specifically affected in the areas of proposal issuance, non-responsive bids, and DBE commitments by the implementation of existing U.S. Department of Transportation regulations.

Please disseminate this information to your Transportation Planning & Development, Design, Construction, Laboratory, Maintenance, and Traffic Operations Engineers.

CC: TxDOT Specification Committee
Federal Highway Administration
The Associated General Contractors of Texas

Special Provision to Item 2

Instructions to Bidders



Item 2, "Instructions to Bidders," of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 2.3., "Issuing Proposal Forms," second paragraph, is supplemented by the following.

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

- the Bidder or affiliate of the Bidder that was originally determined as the apparent low Bidder on a project, but was deemed nonresponsive for failure to submit a DBE commitment as specified in Article 2.14., "Disadvantaged Business Enterprise (DBE)," is prohibited from rebidding that specific project.

Article 2.7., "Nonresponsive Bid," is supplemented by the following:

The Department will not accept a nonresponsive bid. A bid that has one or more of the deficiencies listed below is considered nonresponsive:

- the Bidder failed to submit a DBE commitment as specified in Article 2.14., "Disadvantaged Business Enterprise (DBE)."

Article 2.14., "Disadvantaged Business Enterprise (DBE)," is added.

The apparent low bidder must submit DBE commitment information on federally funded projects with DBE goals within 5 calendar days (as defined in 49 CFR Part 26, Subpart A) of bid opening. For a submission that meets the 5-day requirement, administrative corrections will be allowed.

If the apparent low Bidder fails to submit their DBE information within the specified timeframe, they will be deemed nonresponsive and the proposal guaranty will become the property of the State, not as a penalty, but as liquidated damages. The Bidder forfeiting the proposal guaranty will not be considered in future proposals for the same work unless there has been a substantial change in the design of the work. The Department may recommend that the Commission:

- reject all bids, or
- award the Contract to the new apparent low Bidder, if the new apparent low Bidder submits DBE information within one calendar day of notification by the Department.

If the new apparent low Bidder is unable to submit the required DBE information within one calendar day:

- the new apparent low Bidder will not be deemed nonresponsive,
- the new apparent low Bidder's guaranty will not be forfeited,
- the Department will reject all bids, and
- the new apparent low Bidder will remain eligible to receive future proposals for the same project.