



New Item 10

Materials Contracts (MMC/TMC)



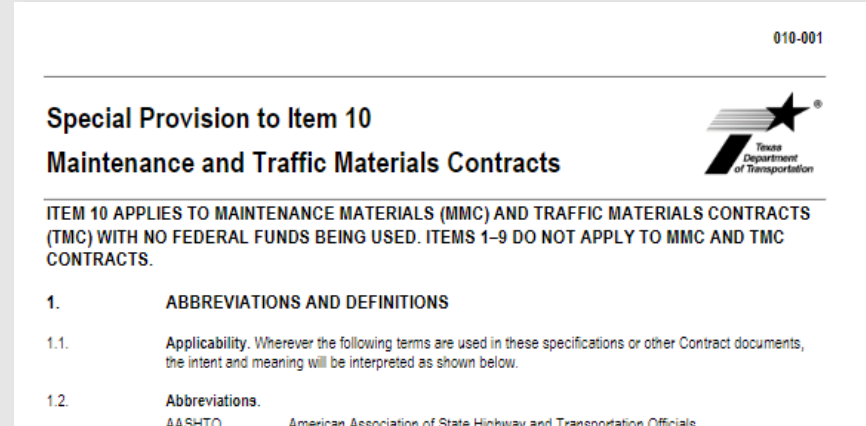
October 7, 2022



- **What is it?**
 - New general provisions for materials contracts only (MMCs and TMCs)
 - Items 1-9 no longer used for MMC/TMCs
- **How was it created?**
 - TxDOT worked with AGC to develop the new provisions
 - Only relevant provisions kept from Items 1-9
 - MNT used feedback from districts and industry to streamline administrative efforts
- **What are the benefits?**
 - Simplify contract administration for both TxDOT and industry



- For 2014 Spec Book
 - Incorporated into contract by Special Provision SP010-001
- For 2024 Spec Book
 - Will be incorporated into the 2024 Standards Specification Spec book
 - Referenced into contract via the Governing Specification Page




10.2 – Instructions to Bidders - Prequalification



- You must be prequalified to bid on a contract for TxDOT.
- Material Supplier's Questionnaire requests only the minimum information needed to do business with a state agency.
- You can bid on Materials Contracts only (MMC/TMCs).

A screenshot of the top portion of a form titled "Materials Supplier's Questionnaire". The header is dark blue with the Texas Department of Transportation logo on the left, the title "Materials Supplier's Questionnaire" in the center, and "Form 2790 (rev. 10/20) Page 1 of 10" on the right. Below the header, the main body of the form is white and contains the title "Materials Supplier's Questionnaire" and the instruction "A Separate Questionnaire Must Be Completed By Each Business Entity".

 **Materials Supplier's Questionnaire** Form 2790
(rev. 10/20)
Page 1 of 10

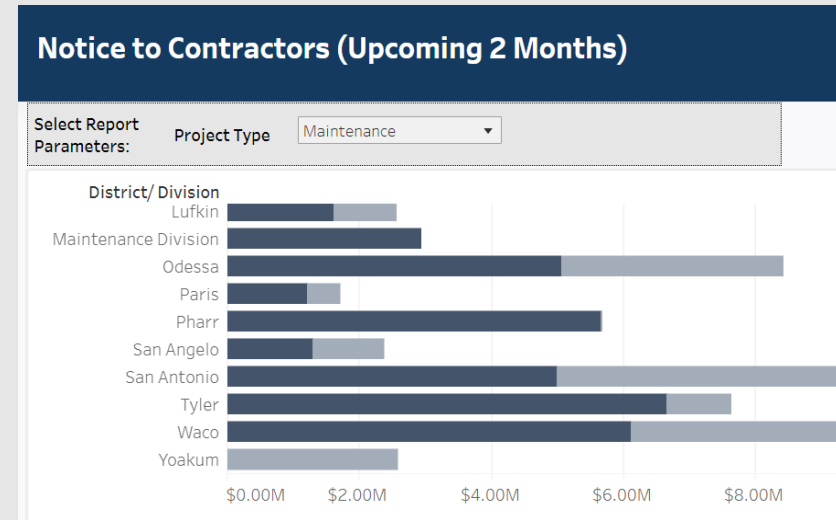
Materials Supplier's Questionnaire

A Separate Questionnaire Must Be Completed By Each Business Entity

10.2 – Instructions to Bidders



- Official advertisement platform is the [Electronic State Business Daily \(ESBD\)](#)
 - MMC/TMCs will either be a state or local let maintenance contract
- Use the [Notice to Contractors Dashboard](#) to find projects letting in next 2 months
 - Filter Project Type by “Maintenance”
 - Filter Project Classification by “Material Maintenance”
 - Project Number will start with “MMC” or “TMC”
 - All Materials Contracts are waived





- There are two acceptable methods to submit bids to TxDOT: manual or electronic.
 - Manual bidding: contact the office that is listed on the advertisement to request a paper bid form after completing prequalification process. Return your bid to that office.
 - Electronic bidding: Submit for iCX administrative account after getting prequalified. [Electronic Bidding System information is posted here on txdot.gov](#)
- Review this link for more information on [Contract letting](#)
- Bids must be received by the letting official at the time and location specified in the advertisement.



GOVERNING SPECIFICATIONS AND SPECIAL PROVISIONS

ALL SPECIFICATIONS AND SPECIAL PROVISIONS APPLICABLE TO THIS PROJECT ARE IDENTIFIED AS FOLLOWS:

STANDARD SPECIFICATIONS: ADOPTED BY THE TEXAS DEPARTMENT OF
----- TRANSPORTATION NOVEMBER 1, 2014.
STANDARD SPECIFICATIONS ARE INCORPORATED
INTO THE CONTRACT BY REFERENCE.

ITEM 10 MAINTENANCE AND TRAFFIC MATERIALS CONTRACTS

SPECIAL PROVISIONS: SPECIAL PROVISIONS WILL GOVERN AND TAKE
----- PRECEDENCE OVER THE SPECIFICATIONS ENUMERATED
HEREON WHEREVER IN CONFLICT THEREWITH.

SPECIAL PROVISION "NONDISCRIMINATION" (000---002)
SPECIAL PROVISION "CERTIFICATE OF INTERESTED PARTIES (FORM 1295)"
(000--1019)

SPECIAL PROVISION TO ITEM 10 (010---001)
SPECIAL PROVISION TO SPECIAL SPECIFICATION ITEM 8032 (8032--001)

NOTE:

In order for the Item 10 language to pull into the proposal, "special provision" 010-001 is included. This is just the Item 10 spec.

2024 spec book will include item 10 so dummy SP 010-001 won't be needed

Required 000 SPs for Item 10:

000-002 Nondiscrimination
000-1019 Certificate of Interested Parties

That's it!!

Proposal and Contract info



- Proposal MUST include Item 10 language
- Contract should NOT have performance and payment bond pages

PERFORMANCE BOND

CONTRACT NO. 05221702
COUNTY WALKER
BOND NO. _____

KNOW ALL PERSONS BY THESE PRESENTS:
That we TOUCHSTONE RESOURCES, LLC as principal, and the other undersigned as surety, are held and firmly bound unto the State of Texas, with a sum not greater than one hundred thirty-two thousand and 00/100 Dollars (\$132,000.00), lawful money of the United States, well and truly to be paid to the State of Texas, and we bind ourselves, our heirs, successors, executors, and administrators jointly and severally, firmly by these presents.


PAYMENT BOND

CONTRACT NO. 05221702
COUNTY WALKER
BOND NO. _____

KNOW ALL PERSONS BY THESE PRESENTS:
That we TOUCHSTONE RESOURCES, LLC as principal, and the other undersigned as surety, are held and firmly bound unto the State of Texas, with an amount no greater than one hundred thirty-two thousand and 00/100 Dollars (\$132,000.00), lawful money of the United States, well and truly to be paid to the State of Texas, and we bind ourselves, our heirs, successors, executors, and administrators jointly and severally, firmly by these presents.

010-001

Special Provision to Item 10
Maintenance and Traffic Materials Contracts



ITEM 10 APPLIES TO MAINTENANCE MATERIALS (MMC) AND TRAFFIC MATERIALS CONTRACTS (TMC) WITH NO FEDERAL FUNDS BEING USED. ITEMS 1-9 DO NOT APPLY TO MMC AND TMC CONTRACTS.

1. **ABBREVIATIONS AND DEFINITIONS**

1.1. **Applicability.** Wherever the following terms are used in these specifications or other Contract documents, the intent and meaning will be interpreted as shown below.

1.2. **Abbreviations.**

AASHTO	American Association of State Highway and Transportation Officials
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute
ASNT	American Society for Nondestructive Testing

Item 10 is a 23-page specification which basically covers items 1-9, but for MMC/TMC contracts

Note that this is called a special provision only so it gets pulled into the proposal.

Proposal Changes: Proposal Guaranty Page



Item 10 Proposal Guaranty Page

A bid bond may be used as the required proposal guaranty. The bond form may be detached from the proposal for completion. The proposal may not be disassembled to remove the bond form. The bond must be in accordance with **Item 10** of the specifications.

Any addenda issued amending this proposal and/or the plans that have been acknowledged by the bidder, become part of this proposal.

By signing the proposal the bidder certifies:

1. the only persons or parties interested in this proposal are those named and the bidder has not directly or indirectly participated in collusion, entered into an agreement or otherwise taken any action in restraint of free competitive bidding in connection with the above captioned project.
2. the signatory represents and warrants that they are an authorized signatory for the organization for which the bid is submitted and they have full and complete authority to submit this bid on behalf of their firm.
3. that the certifications and representations contained in the proposal are true and accurate and the bidder intends the proposal to be taken as a genuine government record.

• Signed: **

(1) _____ (2) _____ (3) _____

Print Name:

(1) _____ (2) _____ (3) _____

Title:

(1) _____ (2) _____ (3) _____

Company:

(1) _____ (2) _____ (3) _____

• Signatures to comply with **Item 10** of the specifications.

**Note: Complete (1) for single venture, through (2) for joint venture and through (3) for triple venture.

* When the calendar days field contains an asterisk (*) refer to the Special Provisions and General Notes.

This statement is removed from the Item 10 version

Typical Proposal Guaranty Page

A bid bond may be used as the required proposal guaranty. The bond form may be detached from the proposal for completion. The proposal may not be disassembled to remove the bond form. The bond must be in accordance with Item 2 of the specifications.

Any addenda issued amending this proposal and/or the plans that have been acknowledged by the bidder, become part of this proposal.

By signing the proposal the bidder certifies:

1. the only persons or parties interested in this proposal are those named and the bidder has not directly or indirectly participated in collusion, entered into an agreement or otherwise taken any action in restraint of free competitive bidding in connection with the above captioned project.
2. in the event of the award of a contract, the organization represented will secure bonds for the full amount of the contract.
3. the signatory represents and warrants that they are an authorized signatory for the organization for which the bid is submitted and they have full and complete authority to submit this bid on behalf of their firm.
4. that the certifications and representations contained in the proposal are true and accurate and the bidder intends the proposal to be taken as a genuine government record.

• Signed: **

(1) _____ (2) _____ (3) _____

Print Name:

(1) _____ (2) _____ (3) _____

Title:

(1) _____ (2) _____ (3) _____

Company:

(1) _____ (2) _____ (3) _____

• Signatures to comply with Item 2 of the specifications.

**Note: Complete (1) for single venture, through (2) for joint venture and through (3) for triple venture.

* When the calendar days field contains an asterisk (*) refer to the Special Provisions and General Notes.

10.3 Award & Execution of Contract



Subject: AWARD OF CONTRACT

The Department has awarded you the contract for the maintenance project listed above. We are forwarding one surety copy and two bound copies of the contract for execution. The Surety Company should retain the surety copy of the contract. ALL CONTRACT DOCUMENTS MUST BE CORRECTLY EXECUTED ACCORDING TO THE ATTACHED INSTRUCTIONS. One executed contract and your proposal guaranty will be returned or released after the Department has processed the contracts.

In addition, a form for business ownership information is attached. Please complete this form by providing the required information and returning the completed form with the contracts.

RETURN BOTH CONTRACTS AND BUSINESS OWNERSHIP INFORMATION, NOT LATER THAN:

August 26, 2022

ADDRESS INFORMATION FOR RETURNING CONTRACTS IS LISTED ON THE ATTACHED INSTRUCTION SHEET.

Dear Contractor:

We are forwarding one copy of the fully executed Contract as shown above. Your proposal check is being returned according to your instructions or your proposal bid bond is released from further liability.

The authorization for you to begin work on this Maintenance Contract will be sent to you by the office who is responsible for administering this contract. Any questions pertaining to this work should be directed to that office.

Sincerely,

Jenea Martin
Bryan District Contract Specialist

Attachments & Enclosures

cc: BRY District

BONDED BY: THE CINCINNATI INSURANCE COMPANY
PERFORMANCE AND PAYMENT BOND NUMBER B-2797972

- The highlighted text will be removed. There is no surety/surety copy.

New Instructions to Contractor to Execute Contract



Texas Department of Transportation (TXDOT) Materials (MMC/TMC) Contracts Additional Instructions for CONTRACTORS For MMC/TMC Contracts Governed by Item 10

CONTRACTS AND BONDS

- **Contracts must NOT be disassembled for any reason.**
- CONTRACTOR must execute (in **INK**), both copies of the contract and return them to the address below.
- **An Authorized Signatory of the company must sign and date the Signature Pages.**

INSURANCE

- Please verify the required insurance information is on file and current with TXDOT and the contract requirements. New, or updated information, must be submitted by the **insurance agent** by completing the appropriate TXDOT Certificate of Insurance, **Form 1560**. The form can be accessed at the following link:
 - <http://www.txdot.gov/inside-txdot/forms-publications/consultants-contractors/forms/contractors.html>
- Completed forms can be submitted to CST_Insurance@txdot.gov

BUSINESS OWNERSHIP FORM

- The Business Ownership Form (stapled behind the Award Letter) must be completed in ink and returned with all other contract documents.

MAIL

- Return all contract documents prior to 5:00 PM on the due date shown on the Award letter. If the contract due date is on a weekend or holiday, the contract is due the first business day following the weekend or holiday. The bound contract will be returned to the CONTRACTOR when fully executed by the State. If the CONTRACTOR fails to comply with all requirements in Article 10.3.3., "Execution of Contract," the proposal guaranty will become the property of the State, not as a penalty, but as liquidated damages. The CONTRACTOR forfeiting the proposal guaranty will not be considered in future proposals for the same work unless there has been a substantial change in design of the work.

Send contract documents to:
TEXAS DEPARTMENT OF TRANSPORTATION
Address
CITY, TEXAS 7XXXX-XXXX

ASSISTANCE

- For questions or assistance, call (xxx) - - or email

10.4 Scope of Work - Coordination Call (Form 2902)





MMC/TMC Coordination Call – Agenda

Form 2902
(08/22)
Page 1 of 3

District: Date:
 Area Office: Project:
 Contractor: Material:

- I. Welcome, introduction of all present and identify project (location, limits, etc.)
- II. Escalation Ladder - Identify Role of TxDOT Project Staff and Prime Contractor Staff (Attachment A)
- III. Purpose of meeting - This meeting is in accordance with department policy in order for personnel of TxDOT and the Contractor, to discuss the schedule and methods of operation, and acquaint all concerned with lines of authority and communication while promoting greater safety.
- IV. Contract Information
 Contract Expiration Date:
 Optional Extension Term*:
*Price adjustments are considered based on the Producer Price index only at contract extensions.
 Low bid Amount:

	Contact Information
TxDOT Contract Manager: <input type="text"/>	<input type="text"/>
Contractors Supplier's Agent: <input type="text"/>	<input type="text"/>

- V. Contract Specifics (use this section for project specific discussion items)
 - Process for issuing work orders and how days will be charged on work orders
 - How liquidated damages will be applied (Roadway vs Yard delivery)
 - Minimum order quantities
 - Delivery requirements and locations
 - Material requirements from specs/General Notes

- Material sourcing
- Anticipated demand in the next few months (Peak time period)
- Insurance requirements
- Expedited work orders (If relevant)
- Payment Details (Invoices should not be submitted to FIN)

VI. Include the following completed forms ([located in E-forms](#)) as attachments with the coordination call meeting notes.
 Attachment A - TxDOT Form 2390 - Escalation Ladder



MMC/TMC Coordination Call – Sign In Roster (copy as needed)

Form 2902 (08/22)
Page 3 of 3

District: Date:
 Area Office: CSJ:
 Contractor: Material:

Name: Company:
 Email: Phone:



Topic	Item 10 Says...
Quantities in the contract	Quantities at time of letting should be based on historical usage for the amount of time in the contract. However, TxDOT does not guarantee any work orders. Bid quantities may be overrun as needed. (10.4.3)
What about changing delivery locations?	Either party can request a contract adjustment for freight if a location changes by more than 5 miles. (10.4.3)



Topic	Item 10 Says...
Contract extensions	For contracts 6 months or less, up to 2 allowable extensions. For contracts more than 6 months, only 1 allowable extension. (10.4.3.1)
How will extensions work?	There are no special provisions to Item 4 in the contract at the time of letting. Handle via change order and quantities can increase up to current contract quantities at time of change order and do unit price increases w/Producer Price Index table (10.4.3.1)

10.4 Scope of Work - Producer Price Index



PPI Values for Month/Year				Commodity Weighting	Commodity % Change	PPI Freight Index (Transportation Services 30-301)				Freight % Change	Freight % of Delivery Cost
Current Date	Feb-22	Base Date	Sep-21			Current Date	Feb-22	Base Date	Sep-21		
Index	152.36	Index	141.008	1	0.081	Index	199.396	Index	178.904	0.115	0.25

Contract Bid Item	Bid Code Description	Unit of Measure	Current Unit Bid Price	Delivery Item?	New Bid Item Unit Price
8010-6012	EMULSION(CRS-2P)(DELIVERY)	GAL	\$2.29	Yes	\$2.49
8010-6008	EMULSION(CSS-1H)(PICKUP)	GAL	\$1.20	No	\$1.30

- TxDOT will use PPI commodity values and determine price adjustments.



Topic	Item 10 Says...
Work Order Final Acceptance	The Engineer or designated representative will determine if all material was provided and met Contract specifications according to the work orders issued on the Contract. Work Order Final Acceptance relieves the Contractor from further Work Order responsibilities. (10.5.4)
Contract Termination	The Contract terminates upon the latter of 1) fulfillment of all Work Orders; or 2) on the termination date or after passage of the calendar days shown in the proposal, unless extended by mutual agreement. (10.5.5)

10.6 – Control of Materials



Topic	Item 10 Says...
Acceptance of Rejection of Defective Material	<p>If material fails Contract specifications but still adequate to serve purpose, the Engineer can decide to accept it. The Engineer will document the basis of acceptance and may adjust the contract price.</p> <p>If rejected, materials need to be removed and replaced immediately. If TxDOT has to remove, cost of removal may be deducted from monies due. (10.6.2)</p>
Testing and Sampling requirements	<p>Sampling and testing contract requirements are those in effect at the time of the proposed Contract is advertised. Unless otherwise noted, TxDOT will perform testing and its expense.</p>

10.7 – Legal Relations and Responsibilities



Topic	Item 10 Says...
Responsibility of Damage Claims	Indemnify and save harmless the State and its agents and employees from all suits, actions, or claims and from all liability and damages for any injury or damage to any person or property due to the Contractor's negligence in the performance of the work and from any claims arising or amounts recovered under any laws, including workers' compensation and the Texas Tort Claims Act (10.7.8)
Hauling and Loads on Roadways	Loads shall comply with federal and state laws concerning legal gross and axle weights. If a load does not comply, TxDOT will turn it away. (10.7.9)

10.8 - Prosecution and Progress



Topic	Item 10 Says...
Contract Length	Any time period is allowed up to 365 days. All contracts are calendar days. (10.8.2)
Calendar day charges start?	30 days from execution date or the date the first work order is issued, whichever comes first. (10.8.1)
Work Order Delivery	A minimum of 7 working days to deliver material as of the date shown in the work order. (10.8.3)
Material Delivery working days	Monday thru Friday, excluding holidays, if weather or other conditions permit the performance of the manufacturing and delivery of materials for a continuous period of 7 hours between 7 A.M. and 5 PM. (10.8.3.1)
Default	Declaration of Default (10.8.7)



- Expedited Work Order (EWO). A work order requiring material to be delivered within 48 hours. (10.8.5)
 - Bid items identified as “expedited” in the Contract.
 - Contractor must accept the work order within 2 hr. from initial contact of TxDOT.
 - If no response or no delivery in 48 hours, TxDOT will obtain the material through another source.
 - TxDOT could seek damages for any costs exceeding the EWO costs
 - Delivery days include Sunday through Saturday.

Late Delivery Damages



Failure to complete a work order within the number of working days specified, including any approved additional working days, will result in actual damages being charged as follows.

For Roadway Operations – Material delivered to a specified roadway

Any materials specified in the work order will be considered late unless the Department agrees to a new time and date offered by the contractor **no less than 48 hr. prior to the work order's time and date of delivery.**

Actual damages incurred will be deducted from the monthly payment and calculations will be provided upon request.

If advanced notice is not approved and the Department has to obtain material through another source, the Department could seek damages for any costs exceeding the contract bid item(s).



For Stockpile Deliveries – Material delivered to a roadway or maintenance yard

For deliveries of stockpile materials, any materials specified in the work order will be considered late unless the Department agrees to a new time and date offered by the contractor **no less than 24 hr. prior to the work order's time and date of delivery.**

If advanced notice is not approved and the Department has to obtain material through another source, the Department could seek damages for any costs exceeding the contract bid item(s).



Question	Item 10 Says...
What is demurrage?	If TxDOT delays the contractor who has arrived with materials, TxDOT can delay for up to 2 hours and then demurrage fees apply every 15 minutes thereafter. (10.9.5)
What about restocking?	If TxDOT cancels an order after we have received materials, we may pay up to a 10% restocking fee. If we cancel an order before we have received materials, there is no restocking fee unless there are job specific materials involved. (10.9.6)

Pay Attention to General Notes!



- Delivery locations
- Pick up Items – look for prescribed maximum distance
- Haul vehicle needs and/or equipment
- Contract length and extension terms
- Work Order information

Ask QUESTIONS before you bid!!!

AGC Time Delivery Requirements for Common Materials



Spec & Material	Delivery Rqmt
Item 10 Generic	No work order for less than 7 working days on anything. 48 hours for expedited items.
8011 Hot Mix	5 business day lead time
8040 LRA	15 business day lead time
8013 Hot Mix Cold Laid	15 business day lead time, with large order quantities needed
8039 Aggregates for Surface Treatments	10 business days for uncoated rock and 17 business days for precoated rock
8010 Asphalts, Oils, and Emulsions	5 business day lead time
8007 Flex Base, 8042 Salt, 8025/8019 Patching Materials	No comments yet

Go Live Date is...November 2022 Lettings!



9/16/2022

11/1/2022

TxC updated

- Districts notified to update letting dates to November if wanting to use Item 10

Between 9/16 and 11/1

- Contracts letting in this time period DO NOT have Item 10

Item 10 Lettings Go Live

- any state or local let MMC/TMC contracts let on or after this date have Item 10/SP 010-001

- no MMC/TMC contracts can use Item 10 prior to November lettings

