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Awarding a construction contract to a responsible contractor is an important requirement of Federal-aid project



After the environmental and design work for your Federal-aid project is complete and you're ready to bring in a contractor to build the project, you should consider the following questions:

- * Are there specific rules for advertising my project?
- * How do I analyze bids in order to choose a contractor?



Let's focus on the answers to these questions, and the associated requirements you must adhere to before your Federal-aid construction contract can be awarded. These requirements help preserve a competitive environment for bidding, ensure fair and open competition, and ultimately maximize the use of Federal-aid funds.

After your oversight agency authorizes the use of Federal funding for construction, your first step is to find a contractor to do the work. This is typically referred to as advertising the project,



meaning you publically or electronically announce your intent to solicit bids for a construction

contract. Under normal circumstances, you advertise the project for a minimum of three weeks to provide sufficient time for contractors

to assemble and submit bids. The solicitation must specify the exact day and time the advertisement period closes in the announcement. All contractors must submit their completed bid packages to you by the official "close" of the solicitation period. After that date and time, bids can no longer be accepted or changed.

Just after the close of the advertisement period, you open the bids and read aloud or publicly share the list of bidders and their bids, and identify which is the "apparent" low bid. Advertising and opening bids according to these requirements help to maintain credibility and transparency among the bidders and the public.

Now that the bids have been opened, it's time for you to analyze the apparent low bid is acceptable and meets all requirements. You need to consider four primary factors:

- Is the bidder considered responsible?
- How do the bids compare to the engineer's estimate?
- Is the bid considered responsive?
- Was there adequate competition?

- 1 Is Bidder **RESPONSIBLE**?
- 2 How Do Bids **COMPARE**?
(to Engineer's Estimate)
- 3 Is Bid **RESPONSIVE**?
- 4 Was there adequate **COMPETITION**?



The first question to consider in your analysis is: “Is the bidder responsible?” A responsible bidder is one who is

physically organized and equipped with the financial means to undertake and complete the contract. A responsible bidder is also one that is not suspended or debarred, or whose business ethics have not been otherwise determined to be inadequate. The Federal government maintains a list of all parties, called the Excluded Parties List System (EPLS), which have been suspended or debarred. You have a duty to ensure that the contractor is not listed on the EPLS before awarding a contract to that entity.

Some agencies use a prequalification process to help determine responsible bidders. However, prequalification should not be used to restrict competition or discourage otherwise responsible bidders from submitting a bid.

The next question to consider is: “How do the bids compare to the engineer’s estimate?”

Local public agencies, or LPAs, must develop and use an engineer’s estimate for analyzing bids. You use the engineer’s estimate as the benchmark to compare against all bids. This estimate reflects the amount you consider fair and reasonable, and are willing to pay for the performance of the work.



As you analyze the apparent low bid, you should pay close attention to any irregularities associated with either an individual item or the overall bid. An irregular bid is when the apparent low bid differs from the engineer’s estimate in a manner that appears unreasonable. Irregular bids play a key role in the decision to reject or award a contract.

Pay special attention to unbalanced bids and consider the potential for savings if the project is re-advertised. There are two types of unbalanced bids:

* A mathematically unbalanced bid contains lump sum, or unit bid items that do not

reasonably reflect the actual costs to construct the item

* A materially unbalanced bid creates reasonable doubt that award to that bidder would result in the lowest ultimate cost to the government.

You should consider rejecting an unbalanced bid when it cannot be reasonably explained, or if you have a reasonable doubt that it would result in the lowest overall cost to the government. If you detect an unbalanced bid, contact your State for assistance, as these issues are typically handled case by case.



Also, if at any time you believe collusion or bid-rigging among bidders has occurred, report concerns directly to your nearest U.S. Department of Transportation Office of Inspector General.

Your next question should be: “Is the bid responsive?” A responsive bid is one that meets all the requirements of the advertisement and proposal, meaning all bid-related paperwork or electronic forms are completed and signed. Your solicitation must clearly identify these requirements, which the bidder must comply with in order for the bid to be deemed responsive. Among the reasons a bid may be considered non-responsive are:



* Not signing the bid in ink or not supplying a valid electronic signature where electronic bidding is used

* Failing to include the required certification statements

* Not meeting specified prequalification, or bonding and insurance requirements

* Failure to commit to the project Disadvantaged Business Enterprise, or DBE, goals or failure to demonstrate good-faith efforts in attempting to commit to DBE goals



Your last bid review-related question to consider is: “Was there adequate competition?”

Receiving only one or two bids may or may not justify re-advertising the project. The number of bids received is a complex issue that depends on many factors, including bidder interest in the work, location of the work, and current market conditions. When you have concerns with the adequacy of competition or the number of bids for your project, contact your State department of transportation (State DOT) to help you determine if re-advertising the project is appropriate.

At the conclusion of the analysis, your goal is to confirm the apparent low bid is a responsive bid, submitted by a responsible bidder for contract award.



You must obtain concurrence for your decision from your oversight agency before officially notifying a

contractor that its bid was either selected for contract award or rejected. Submit your written request for concurrence in award to the State DOT, which will either act on your request or forward it to the Federal Highway Administration for approval, depending on who has oversight of the project.

In support of your request, you must summarize the results of your bid analysis and highlight any irregularities that may be identified. Your summary must include the bid tabulations of the project, showing bid item details for at least the low three acceptable bids and the total amounts of all other acceptable bids.

Don't forget to include a statement that identifies which bid you are recommending for contract award.

Once you have received the written concurrence in award, this becomes your authorization to notify the contractor of award and enter into a contract for construction. If you enter into a contract before receiving written concurrence in award, the result can mean losing all Federal funds for the project.



Awarding a construction contract to a responsible contractor who submits the lowest responsive bid is one of the most basic tenets of Federal-aid contracting. These requirements help preserve a competitive bidding environment to provide the lowest cost to the government for projects. Contact your State DOT if you have questions about advertising, analyzing bids, or requesting concurrence in award of your a Federal-aid contract.

Additional Resources

- Federal guidelines on preparing engineer's estimate, bid reviews, and evaluation (2004)
<http://www.fhwa.dot.gov/programadmin/contracts/ta508046.cfm>
- FHWA guidelines on preparing engineer's estimate, bid reviews and evaluation
<http://www.fhwa.dot.gov/programadmin/contracts/ta508046.cfm>
- FHWA policy memo on performing a bid analysis and evaluation of unbalanced bids (1988)
<http://www.fhwa.dot.gov/programadmin/contracts/051688.cfm>
- FHWA memo providing reasons for rejection of unbalanced bids (1987)
<http://www.fhwa.dot.gov/construction/contracts/870729.cfm>
- FHWA guidance covering online based letting and evaluation for contracts
<http://www.fhwa.dot.gov/programadmin/contracts/interbid.cfm>

The content of this document is not a substitute for information obtained from State departments of transportation, appropriate FHWA Division Offices, and applicable laws. Scenarios have been simplified for emphasis and do not necessarily reflect the actual range of requirements applicable to the scenario or this topic. This document was created under contract number DTFH63-11-F-00066 by the Federal Highway Administration, U.S. Department of Transportation, and is offered to the public to heighten and focus awareness of Federal-aid requirements within the local public agencies community and reinforces the importance of these necessary policies, procedures, and practices.

This companion resource is the script content for the video production of the same name.