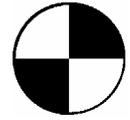




PROJECT DELIVERY LEADERSHIP TEAM

OPERATIONAL NOTICE



NUMBER	REVISION #	SUPERSEDES	EFFECTIVE DATE	VALIDATION DATE	RESCINDED DATE
PD-08	4.1	2-1-2005	2-1-2008	N/A	N/A
SUBJECT			TOPIC/PROGRAM		
Operational Policy Between Bid Opening and Contract Award			Contracting		

**PURPOSE:**

To provide guidance and clarification of the processes, roles, and responsibilities occurring during the timeline between Bid Opening and Notice to Proceed in the award of highway and bridge construction projects.

**DEFINITIONS:**

FHWA: Federal Highway Administration

OTC: Oregon Transportation Commission

OPO - Construction: ODOT Procurement Office - Construction Support Services Branch

OPL: ODOT Office of Project Letting, Roadway Section Technical Services Branch

PM: ODOT Project Manager

AM: ODOT Area Manager

LAL: ODOT Local Agency Liaison

LGS: ODOT Local Government Section

CPO: Chief Procurement Officer, ODOT Procurement Office Support Services Branch

CE Budget: Construction Engineering Budget

MPB : Major Projects Branch

ACU Advanced Contracting Unit

BDU Bridge Delivery Unit

Final Bid Evaluation: Bid price analysis performed by OPL and forwarded to OPO - Construction as part of evaluation materials used to determine bid award/rejection of all bids.

## **1. BID OPENING**

ODOT Procurement Office - Construction (OPO-Construction) oversees the bid opening and public reading of the bids. All interested parties are invited to attend the bid opening.

## **2. BID REVIEW BY ODOT PROCUREMENT OFFICE - CONSTRUCTION (OPO - Construction)**

Within a few hours after bid opening, OPO - Construction posts the Preliminary Bid Results on the Website, [http://www.oregon.gov/ODOT/CS/OPO/construction/preliminary\\_bid\\_results.shtml](http://www.oregon.gov/ODOT/CS/OPO/construction/preliminary_bid_results.shtml) then, proceeds to review the bids. The objective of the bid review is to determine that the bids received are responsive and responsible and have met all of the requirements specified in the solicitation documents. In addition, an assessment is made regarding the amount of competition that existed for the project and to identify any factors that may have influenced or impacted competition. OPO - Construction completes the bid review process within 1-2 working days after bid opening, including entry of bids into the Trns.port database, review of proposals, production of bid tabulation reports, and rejections of non-responsive bidders. OPO - Construction will notify OPL of the apparent low responsive bidder at which time OPL will analyze the bid items.

## **3. BID ANALYSIS BY OFFICE OF PROJECT LETTING (OPL)**

After OPO - Construction has completed its bid review for bid responsiveness, OPL will perform an analysis of the bid items received for each project and prepare the Bid Evaluation and Recommendation. This analysis compares the unit prices contained in the Engineer's Estimate against the bidder's unit prices. The purpose of this analysis is to identify differences in pricing between the Engineer's Estimate and the low bidder. Additionally, this analysis compares unit prices for bid items between the bids received for a project when the low bidder's unit price is substantially different than the Engineer's Estimate in an attempt to identify the cause or a consistent trend. Another aspect of the bid analysis is to identify and document possible mathematical or material unbalancing of bid items. Unbalancing is something that could be detrimental to the department and result in the state paying higher costs for construction. Mathematical unbalances are identified in the analysis and outlined in the Bid Evaluation and Recommendation, then relayed to the PM for monitoring in the field during construction. Materially unbalanced bids are a serious concern to ODOT and FHWA and will be cause for rejection of all bids. Additional information on unbalanced bids can be found in the FHWA Contract Administration Core Curriculum Manual or at [http://www.fhwa.dot.gov/programadmin/contracts/cor\\_III.htm#IIIA11](http://www.fhwa.dot.gov/programadmin/contracts/cor_III.htm#IIIA11).

The results of this analysis are summarized in a document called the *Bid Evaluation and Recommendation*. This recommendation indicates whether or not the low bidder's total bid price is consistent with the fair market value of the work, and whether or not awarding the project to the low bidder would be in the best interest of the Department.

The Bid Evaluation and Recommendation is normally completed within 8 working-days of the bid opening and is forwarded to OPO - Construction for use in proceeding with award or rejection of all bids. It is also used as supporting documentation with the Construction Authorization and award package.

## **4. NOTICE OF INTENT TO AWARD**

When both the bid review performed by OPO - Construction, and the bid analysis performed by OPL are completed and the low responsive bidder is determined, the Notice of Intent to Award and Bid Tabulations are posted on the OPO - Construction webpage at: <http://www.oregon.gov/ODOT/CS/OPO/construction/frontpage.shtml>. OPO - Construction then requests CE Budget from AM/PM/LAL.

**5. PROTESTS**

ODOT 731-005-0690 [http://arcweb.sos.state.or.us/rules/OARS\\_700/OAR\\_731/731\\_005.html](http://arcweb.sos.state.or.us/rules/OARS_700/OAR_731/731_005.html) provides a 3-day period after posting of Notice of Intent to Award, during which time an aggrieved offeror may file a protest of award. OPO - Construction must resolve the protest before proceeding with award.

**6. CONSTRUCTION ENGINEERING (CE) BUDGETS**

After the Notice of Intent to Award is posted, OPO - Construction will request the final Construction Engineering (CE) Budget from AM/PM/LAL. The CE Budget will be developed following the processes described below:

Construction Engineering (CE) Budgets are developed to determine the costs that will be incurred during the construction phase of a project. The scope includes but may not be limited to the following items:

- Inspection services
- Testing & Monitoring services
- Consultant services
- Preparation of as-constructed drawings
- R/W Monumentation
- Public relations
- Contract administration functions.

**Construction Leadership Team Guidelines For Construction Engineering (CE) Budgets:**

$$\text{CE Budget Percentage} = \frac{\text{CE Budget}}{((1.035 * \text{Bid amount}) + \text{Additional Anticipated Items})} \times 100$$

<u>CATEGORY</u>	<u>GUIDELINE</u>
Modernization	Not to exceed 10.5%
Preservation	Not to exceed 6.5%
Bridge	Not to exceed 11%
Safety	Not to exceed 10%
Operations	Not to exceed 12%
Other Programs	Not to exceed 11%

CE performed by consultants normally is in the range of 10 to 15%.

CE on state or federally funded Local Agency projects is negotiated with the Local Agency and/or the consultant as part of the consultant work order.

**State or Federally Funded Local Agency Projects Not Delivered by ODOT:**

For state or federally funded Local Agency projects that are not delivered by ODOT, adhere to the processes described in the ODOT “Local Agency Guidelines Manual”, in lieu of this Operational Notice. See above for Construction Leadership Team Guidelines for Local Agency CE Budget.

**ODOT Projects and Local Agency Projects Delivered by ODOT:**

On projects delivered by ODOT, the responsibility for establishing and submitting the CE Budget resides with the ODOT PM, or ODOT LAL working with the Local Agency PM. Below is the process for establishing a CE budget for an ODOT project.

- A. Each unit performing construction support work on a project must submit a pre-bid budget for that work to the appropriate PM no later than the day prior to the bid opening.

- CE budgets should be prepared and submitted in the format or manner established by the Region or Area.
  - The PM and the responsible unit may discuss or negotiate the amount to be budgeted for each unit.
  - If a unit performing work on a project does not submit a budget in a timely manner to the PM then an estimated amount should be included in the pre-bid budget.
- B. The PM/LAL compiles all budget requests and needs into the final CE budget, determines the appropriate project categories for inclusion into the budget, and calculates the CE budget percentage.
- If the proposed CE budget percentage exceeds the Construction Leadership Team Guidelines, the PM/LAL should review the budget request, make any needed modifications, and write a justification for the additional budget amount.
  - The PM submits the proposed budget, with justification for the amount exceeding the Construction Leadership Team Guidelines, to the AM for review. The AM may negotiate the budget request with the PM/LAL or responsible unit, make any needed revisions to the budget request, and must agree to the reasons for any request that exceeds the Guidelines.
- C. After OPO - Construction and OPL complete the bid review and bid analysis and Notice of Intent to Award is posted, OPO - Construction will request the final CE budget from the AM/PM/LAL. At this time, OPO Construction will provide the Final Bid Evaluation, Engineer's Estimate, bid tabulations, and a list of Additional Anticipated Items to the PM/LAL for use in finalizing the CE Budget.
- After the AM has approved the budget and concurs that sufficient funds are available in the Region budget, the AM (or designee) will sign the final CE Budget and the PM will send to OPO - Construction, along with any justification for amounts exceeding the Guidelines.
  - The PM must send the CE Budget to OPO - Construction within 3 days (5 days for a local agency project) after receiving the request for CE budget from OPO - Construction.

OPO - Construction will include the amount of the CE budget in the Project Authorization and attach a copy of the CE budget as supporting documentation in the award packet that goes to the Chief Engineer/Deputy Director/OTC/FHWA for review and final approval of award.

## **7. PROCESS FOR PROCEEDING WITH AWARD OR REJECTION OF ALL BIDS**

### **A. ODOT Projects:**

#### **1) If the Low Responsive Bid is less than 110% of the Engineer's Estimate:**

The Oregon Transportation Commission has authorized the Deputy Director of Highways to award projects, with concurrence from FHWA for full-oversight projects, when the low responsive bid is less than 110% of the Engineer's Estimate.

When OPO - Construction and OPL have completed the bid review and bid analysis and it is determined the low bidder's proposal is responsive, OPO-Construction will proceed with award of the contract.

- OPO - Construction will forward the bid tabulations, anticipated items, Engineer's Estimate and Final Bid Evaluation to the AM, PM, or OPD/OBDU as appropriate. This transmittal is for informational purposes to aid in preparation of the CE Budget and shall be kept confidential.
- Upon receipt of this information, the AM/PM or authorized party will submit to ODOT Procurement Office - Construction the approved construction engineering (CE) budget within three (3) working days.

**2) If the Low Responsive Bid is greater than 110% of the Engineer's Estimate:**

Upon OPO - Construction and OPL completion of the bid review and bid analysis, OPO - Construction will forward the bid tabulations, anticipated items, Engineer's Estimate and Final Bid Evaluation to the AM/PM or BDU as appropriate. This transmittal is for informational purposes to aid in preparing the CE Budget and shall be kept confidential.

If Final Bid Evaluation recommends award and the Region/BDU concurs:

- The AM or other authorized representative will provide within one (1) working day of receiving the Final Bid Evaluation, written notice to OPO - Construction indicating whether there are funds available for the additional project cost.
- PM will submit the final CE Budget to OPO - Construction within three (3) working days after receiving the Final Bid Evaluation report.

If Final Bid Evaluation is to reject all bids and Region/BDU concurs:

- AM or other authorized representative will provide within one (1) working day of receiving the Final Bid Evaluation, written notice to OPO - Construction indicating concurrence to reject all bids.
- OPO - Construction will prepare a Public Interest Finding supporting rejection of all bids and send recommendation to Chief Engineer, Deputy Director, Oregon Transportation Commission, and FHWA if a full-oversight project.

If Final Bid Evaluation is to reject all bids but Region/BDU does not concur:

- Region/BDU will prepare a written justification of why all bids should not be rejected. This justification should be sent to OPO - Construction within 3 days of receiving Final Bid Evaluation.
- OPO - Construction will forward the Region's justification to the State Roadway Engineer, whereupon after discussions with Region/BDU, OPL, and other involved parties, will prepare a final recommendation on behalf of Technical Services to award or reject all bids.
- Roadway Engineer's recommendation will be sent to OPO - Construction within three (3) days of receiving Region's justification from OPO - Construction.
- OPO - Construction will review background materials and based upon best business practices for the Department will forward a recommendation to award or reject to Chief Engineer, Deputy Director, and OTC (also to FHWA if a full-oversight project).

**B. Local Agency Projects (delivered by ODOT):**

**1) If a project's estimate is modified by Cost Estimating Unit:**

The Office of Project Letting (OPL) will contact the Local Government Section (LGS) and the appropriate ODOT LAL. The LAL will contact the appropriate Local Agency for their review and comments. The responsibility for the determination of the Engineer's Estimate lies with the ODOT Office of Project Letting (OPL) staff.

**2) If the Low Responsive Bid is less than 110% of the Engineer's Estimate:**

- The ODOT Procurement Office - Construction (OPO - Construction) will notify the Office of Project Letting of the low responsive bidder.

- OPL will review the low bid in comparison to the Engineer's Estimate and determine whether the low bid reflects a fair market value to the agency. The bid is also checked for errors and mathematical and/or material unbalancing. OPL will prepare the Bid Evaluation and Recommendation and forward to OPO - Construction within eight (8) working days of bid opening.
- If OPO - Construction determines the low bidder's proposal is responsive, OPO - Construction will proceed with award of the contract.
- OPO - Construction will forward the Final Bid Evaluation, anticipated items, bid tabulations, and Engineer's Estimate to the ODOT AM and LAL (who will forward to the Local Agency Project Manager). This transmittal is for informational purposes only and shall be kept confidential.
- Upon receipt of this information, the authorized LAL (in consultation with the Local Agency), will submit to OPO - Construction the approved construction engineering (CE) budget within three (3) working days.

**3) If the Low Responsive Bid is greater than 110% of the Engineer's Estimate:**

OPO - Construction will notify OPL of the low responsive bidder. OPL will review the low bid in comparison to the Engineer's Estimate and determine whether the low bid reflects a fair market value to the agency. The bid is also checked for errors and mathematical and/or material unbalancing.

OPO - Construction will forward the Final Bid evaluation, anticipated items, Engineer's Estimate and Bid tabulations to the LGS Manager, ODOT AM, and LAL. This transmittal is for informational purposes only and shall be kept confidential.

If the Final Bid Evaluation recommends award of project and the local agency concurs:

- The LAL, on behalf of the local agency will submit to OPO - Construction, written confirmation of additional funding within three (3) days of receipt of Final Bid Evaluation.
- The LAL, on behalf of the local agency will submit to OPO Construction the CE Budget within five (5) working days of receiving the Final Bid Evaluation.
- OPO - Construction will not proceed with award of the contract until concurrence to award and confirmation of funding availability is received from the LAL on behalf of the local agency. If the notice from the Local Agency cannot be obtained within five (5) working days, OPO - Construction, LGS, LAL and Local Agency will discuss and agree on how to proceed.

If the Final Bid Evaluation recommends rejection of all bids and local agency concurs:

- LAL on behalf of local agency, will provide within one (1) working day of receiving the Final Bid Evaluation, written notice to OPO - Construction indicating concurrence to reject all bids.
- OPO - Construction will prepare a Public Interest Finding supporting Rejection of All Bids and send recommendation to Chief Engineer, Deputy Director, Oregon Transportation Commission, and FHWA if a full-oversight project.

If the Final Bid Evaluation recommends rejection of all bids and the local agency **does not** concur:

- The LAL, on behalf of the local agency, will notify OPO - Construction within three (3) days of receiving the Final Bid Evaluation if the local agency does not concur with ODOT's recommendation to reject all bids. This notification will include a written justification supporting award of project.
- OPO Construction will forward the justification letter along with other background materials to the State Roadway Engineer. The Roadway Engineer will consult with LAL, local agency, OPL, and other involved parties and will prepare a final recommendation on behalf of

Technical Services. This final recommendation will be sent to OPO - Construction within three (3) days of receiving justification materials.

- OPO-Construction will review materials and based upon best business practices for the Department will forward a final recommendation to award or reject all bids to Chief Engineer, Deputy Director, and OTC (to FHWA if a full-oversight project).

## **8. CONSTRUCTION PROJECT AUTHORIZATION and FORMAL AWARD/REJECTION**

OPO - Construction is responsible for preparing the *Construction Project Authorization* for each project. The purpose of this document is to provide a summary or overview of the costs that will be incurred during the construction of a project. Some of the information shown in the project summary includes:

### **Informational Items:**

- The Engineer's Estimate
- The name of the low responsive bidder
- Funding deposits received from local governments or others

### **Budget Items:**

- The amount of the low bid (biddable work) – the lowest responsive bid
- Bid Item Modifiers - Project fund set aside to provide for escalation/de-escalation and bonus specifications.
  - Examples: statistical asphalt bonus, AC/PCC smoothness bonus, fuel escalation, oil escalation, or other commodity escalations. These items are typically included as an anticipated item.
- Construction Engineering Budget – See section PD-08 section 6
- Contingencies – This amount is 3.5% of the low bid, this allows funding to cover normal fluctuation of project quantities as well as changes that are normally implemented on a project. There are rare occurrences where the construction work is of unusual risk that the percentage used warrants change. Documented cause for changing this percentage shall be submitted to the State Roadway Engineer for review and approval.
- Anticipated Items – (Refer to PD-07)
- Credits for salvaged materials

When this document is completed by OPO - Construction, it is sent to the Chief Engineer for review and concurrence and on to the Deputy Director of Highways/Oregon Transportation Commission for approval and to FHWA for concurrence on full-oversight projects. Copies of the CE Budget, Anticipated Item Requests, and Final Bid Evaluation are attached to the Project Authorization as supporting documentation.

If the Deputy Director of Highway, or the Oregon Transportation Commission elect to award/reject and FHWA concurs on full-oversight projects, the award/rejection letter included with this packet is signed and the contract award/rejection becomes official at that point.

A version of the Construction Project Authorization without the Engineer's Estimate is transmitted to Region/LAL/BDU, Technical Services, Financial Services, and FHWA personnel after a project is awarded/rejected.

## **9. CONTRACT BOOKLETS**

OPO - Construction is responsible for preparing the contract booklets and sending them to the successful bidder. The contract booklets are mailed to the contractor as soon the contract is awarded by Deputy Director of Highways/Oregon Transportation Commission, and concurrence of FHWA if a full oversight project. ODOT is required by specification to provide the successful bidder with Notice of Award and contract booklets ready for execution normally within 30 calendar days of bid opening.

## **10. COMPLETION OF THE CONTRACT BOOKLETS (By the successful bidder)**

The successful bidder is responsible to deliver back to the OPO - Construction, completed and signed contract booklets with all required bonds, insurances and certificates. By specification, the contractor is normally allowed 15 calendar days from the date the contract booklets are conveyed to them to return them. See PD-15: <http://egov.oregon.gov/ODOT/HWY/OPD/docs/OPnotices/PDLTnotice15.pdf>

## **11. REVIEW AND EXECUTION OF THE CONTRACT (By ODOT)**

The OPO - Construction is responsible for reviewing the contract booklets returned from the successful bidder for accuracy and completeness. If the submittals are incomplete, they are returned to the contractor/surety company for correction. If the submittals are complete, the OPO Manager, or an authorized representative, is required to execute the contract normally within 7 calendar days of receiving the contract booklets from the successful bidder.

## **12. NOTICE TO PROCEED**

The OPO - Construction will issue Notice to Proceed to the contractor normally within 5 calendar days of executing the contract. In addition, they will provide copies of the Notice to Proceed to the AM, PM, LAL, Construction Section, and other appropriate parties.