



Oregon

Department of Transportation
Technical Services Branch
Roadway Engineering

Interoffice Memo

January 30, 2004

To: Designers
Project Leaders
Transportation Design Managers
Memo to Designers Manual Holders

From: s/Thomas Lauer, PE
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Cc: Kathryn Ryan, Kevin Thiel, John Gernhauser - FHWA, Dale Horman - DOJ

Subject: Management of the Engineer's Estimate (EE)

PURPOSE: The purpose of this memo is to update and clarify the ODOT policy for managing the Engineer's Estimate (EE) for any public works project being awarded via the ODOT Construction Contracts Section.

SCOPE: This policy addresses the confidentiality of ODOT construction project cost estimates from initial project inception through formal project construction contract award. This policy applies to projects developed and engineered by ODOT internal staff, ODOT contracted consultants, Local Agencies and Local Agency consultants.

HISTORY: The latest written ODOT policy regarding the management of the EE appears to be a memo written by H. S. Coulter, State Highway Engineer dated December 30, 1982. Excerpting from this memo:

"The Engineer's Estimates prepared for contract bidding comparisons, federal-aid programming, etc., are to be kept strictly confidential until the low bidder has executed the contract documents."

While the referenced 1982 policy does not explicitly say it, the EE only becomes public information after formal contract award.

The FHWA addresses the management of the EE in a variety of Technical Advisories but ultimately defers policy to the individual states. However, it is clear within the aforementioned technical advisories, and in conversation with FHWA staff, that they strongly prefer keeping the EE confidential. Regardless of the FHWA preferences, a few states do include the EE with bidding documents, the majority of states keep the EE confidential until project award (like Oregon), and still others never release the EE at all.

There are many different opinions and justifications, both pro and con, for keeping the EE confidential. Regardless, Oregon has no statutory requirements that control the EE either way. Considering this fact, it is clear that the management of the EE is an ODOT Policy decision. ODOT Executive Deputy Director, John Rosenberger, has recently re-affirmed the above 1982 State Highway Engineer policy decision after receiving counsel from Drummond Kahn, ODOT Internal Audits, and Dale Hormann, DOJ.

Given the above background, the goal of the policy and procedure that follows is to communicate the expectations regarding the management of the EE now and in the future. It departs somewhat from most policy statements, in that it does not attempt to describe the relative merits of the confidentiality decision, but rather, merely tries to clarify what this decision means operationally.

POLICY:

1. THE ENGINEER'S ESTIMATE SHALL BE CONSIDERED AS INFORMATION CONFIDENTIAL TO ODOT. It is not to be shared with persons other than appropriate ODOT project development personnel, contracted consulting staff, and Local Agencies and their consultants/agents. This confidentiality shall apply during all stages of project development up to the point of formal "notice to proceed" by the ODOT Construction Contracting Section (CCS).
2. This policy applies to ALL projects being publicly bid via the CCS regardless of the method of PS&E delivery.
3. It is not ODOT's policy to voluntarily post or disclose in any form the EE after contract award to the public.
4. When requested, the release of the EE is to be managed solely by the CCS.
5. After formal contract award the EE will be made available to non-ODOT and non-Local Agency individuals and companies upon written request. This will be done on a project-by-project basis after approval to release is obtained from the CCS. In the case where a contract is not awarded, the EE shall remain confidential. In all cases only the total value of the EE will be released after written approval from the CCS. Unit prices under the EE should only be released subsequent to a freedom of information request and approval of release by both the Managers of the ODOT CCS and the ODOT Technical Services Branch.

DEFINITIONS:

1. Definitions for the purpose of the following procedure:

	Delivery Method		
	Internal ODOT (IN sourced)	External Consultant (OUT sourced)	Local Program Produced
Project Leader (PL) =	ODOT Project Team Leader	ODOT Consultant Project Manager (CPM) or ODOT Project Team Leader (PTL)	ODOT Local Agency Program Liaison (LAPL)

PROCEDURE:

1. All members of a Project Development Team (PDT) have the responsibility to maintain the confidentiality of the project estimate from project inception, through PS&E submittal and formal contract award.

2. After PS&E pre-letting submittal, but before bid opening, a Senior Estimating Engineer within the Technical Services Pre-Letting Unit will prepare the Engineers Estimate. During this process, the following rules will be adhered to:
 - a. The *Project Estimate* will be reviewed and refined by an ODOT Senior Estimating Engineer into the *Engineer's Estimate*. If the Senior Estimating Engineer needs clarification regarding any of the project parameters, he/she will contact appropriate resources. For outsourced and local program projects, all necessary communication will be routed through the Project Leader (PL).
 - b. The goal of setting the final EE is to establish an estimate that is deemed to be a “fair” value for the project to the project “owner.” The EE considers factors such as; prior bid item cost history, project difficulty and locale, expected level of competition, current market pricing trends, magnitude of the project, uniqueness of work type, etc.
 - c. The Senior Estimating Engineer will communicate the final total value of the EE via confidential e-mail to the Project Leader no later than one week prior to bid opening.
 - d. It shall be the responsibility of the PL to initiate any needed actions and/or responses to Final EE. This includes confirmation of adequate funding if the EE has increased as well as desired communication regarding significant estimate changes.
 - e. In all cases, the ODOT Final Estimator has the final say in establishing the EE.
3. Immediately after bid opening the Project Estimator will evaluate the submitted bids following the procedure outlined in the memo: "[*POLICY: Bid price evaluation and recommendation*](#)". The evaluator will consult with others within ODOT and/or the consultant and/or the local agency, as needed, to develop their final recommendation.
4. The final estimator's recommendation shall be communicated to the Construction Contracts Manager via the Bid evaluation template letter. This communication will contain confidential information and specifics regarding the Engineer's Estimate and the evaluation of the bidder's prices.
 - a. In the case of a recommendation to award, the CCS will normally initiate the formal award process.
 - b. In the case of a recommendation to reject the low bid, or all bids, the CCS will normally allow comment from the Region or Local Agency regarding this decision prior to making their final determination.
 - c. Detailed EE information may be provided to appropriate individuals (i.e. Project Leader, Project Manager) in the case when the Region or Local Agency is considering a rebuttal to the Estimating Unit recommendation.
5. The Bid Evaluation Letter also will contain recommendations regarding the monitoring of specific items and quantities during construction. If the bid is awarded, this information shall be forwarded by the CCS to the appropriate Project Manager for use during project construction.