



Highway Division Project Delivery Leadership Team Operational Notice



OPERATIONAL NOTICE NUMBER PD 08	ORIGINAL EFFECTIVE DATE April 1, 2001	REVISED EFFECTIVE DATE June 5, 2018	REVIEW OR RESCIND DATE June 5, 2021	REVIEWING POSITION PDLT
OPERATIONAL NOTICE TITLE Bid Opening to Notice to Proceed			TOPIC / PROGRAM Procurement Processes	

PURPOSE:

To provide guidance and clarification of the processes, roles, and responsibilities occurring during the timeline between Bid Opening and Notice to Proceed for ODOT OPO – Central Procurement transportation projects.

OVERVIEW/DIRECTION:

This operational notice provides guidance in the process of contract award from Bid Opening to Notice to Proceed, including guidance on developing the Construction Engineering Budget.

ABBREVIATIONS:

- FHWA: Federal Highway Administration
- OTC: Oregon Transportation Commission
- OPO-Con: ODOT Procurement Office – Construction Contracting Section (Central Services Division)
- OPL: ODOT Office of Project Letting, Traffic - Roadway Section (Technical Services Branch)
- PM: ODOT Project Manager
- AM: ODOT Area Manager
- LAL: ODOT Local Agency Liaison
- BDU: ODOT Bridge Delivery Unit

DEFINITIONS:

Bid Analysis - The bid analysis identifies differences in pricing between the Engineer’s Estimate and the low bidder. When the low bidder’s unit price is substantially different than the Engineer’s Estimate, the bid analysis compares unit prices for bid items between the bids received for a project in an attempt to identify the cause or a consistent trend. 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. The bid analysis identifies and documents possible mathematical or material unbalancing of bid items. Unbalancing 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.



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This document is relayed to OPO Con then 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 at <http://www.fhwa.dot.gov/programadmin/contracts/core03.cfm#s3A14>.

Construction Engineering Budget – Construction Engineering 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
- BOLI Fees (OAR 839-025-200 – 0230).

Engineer's Estimate – The Engineer's Estimate is the final estimate used for analysis and contract award of low responsive bidder. The Engineer's Estimate includes a review of the PS&E Estimate, accounts for economic market changes (especially for items such as asphalt and steel) between PS&E and Bid Opening, and includes addenda item changes. **In all cases, ODOT's policy is to keep the EE confidential and is not to be disclosed to any potential bidder in whole or part.**

Final Bid Evaluation – The Final Bid Evaluation includes the Bid Review by OPO-Con and the Bid price analysis performed by OPL and is used to determine bid award or rejection of all bids.

PROCESS/ACTION REQUIRED:

1. **Bid Opening** - OPO-Con oversees the bid opening and public reading of the bids. All interested parties are invited to attend the bid opening. (See Specification Section 00120.65).



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- 2. Bid Review** - Within a few hours after bid opening, OPO – Con posts the Preliminary Bid Results on the Website, http://www.oregon.gov/ODOT/CS/CONSTRUCTION/Preliminary_Bid_Results.shtml and proceeds to review the bids. The objective of the bid review is to determine that the bids received are complete and that the bidder is responsive and responsible and has met all of the requirements specified in the solicitation documents (see Specification Section 00120.70, 00120.90, and 00120.91). OPO - Con completes the bid review process within 1-2 working days after bid opening, including entry of bids into the database, review of proposals, production of bid tabulation reports, and rejection of non-responsive bidders. OPO - Con will notify OPL of the apparent low responsive bidder at which time OPL will analyze the bids.
- 3. Bid Analysis** - 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.

OPL summarizes the results of this analysis 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 – Con 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. Process for Proceeding with Award or Rejection of all bids

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

When OPO-Con and OPL have completed the bid review and bid analysis, recommend award in the *Bid Evaluation and Recommendation*, and the low bidder's proposal is determined responsive, OPO-Con will proceed with award of the contract.

If the OPL bid analysis indicates a flawed procurement (such as unbalanced bids) and the Bid Evaluation and Recommendation is to reject the bids, see the process below when the Bid Evaluation is to reject all bids.

The Oregon Transportation Commission has authorized the Highway Division Administrator to award projects, with concurrence from FHWA on oversight projects, when the low responsive bid is less than 110% of the Engineer's Estimate.



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

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

- The AM/LAL or other authorized representative will provide within one (1) working day (three days for Local Agency Projects) of receiving the Final Bid Evaluation, written notice to OPO-Con indicating whether there are funds available for the additional project cost (needed before Notice of Intent to Award can be posted).

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

- AM/LAL or other authorized representative will provide within one (1) working day of receiving the Final Bid Evaluation, written notice to OPO-Con indicating concurrence to reject all bids.
- OPO-Con will prepare a Public Interest Finding supporting rejection of all bids and send recommendation to State Traffic Roadway Engineer, Highway Division Administrator, and FHWA if an oversight project.

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

- Region/BDU/LAL will prepare a written justification of why all bids should not be rejected and confirm funding to cover additional cost if awarded. This justification should be sent to OPO-Con within 3 days of receiving Final Bid Evaluation.
- OPO-Con will forward the written justification to the State Roadway Engineer, whereupon after discussions with Region/BDU, OPL, LAL, local agency, and other involved parties, will prepare a final recommendation on behalf of Technical Services to award or reject all bids.
- The State Roadway Engineer's recommendation will be sent to OPO-Con within three (3) days of receiving Region's justification from OPO-Con.
- OPO-Con will review materials and based upon best business practices for the Department will forward a recommendation letter to award or reject to the State Traffic Roadway Engineer, Highway Division Administrator, (also to FHWA if a full-oversight project).

- 5. Notice of Intent to Award** - When both the bid review performed by OPO – Con 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 – Con webpage at:
<http://www.oregon.gov/ODOT/Business/Procurement/Pages/NOI.aspx>

Once the Notice of Intent to Award is posted, an aggrieved bidder has 3 days in which to file a protest to the award per Specification Section 00130.15 and OAR 731-005-0690 (view OAR language at: <https://secure.sos.state.or.us/oard/processLogin.action>). OPO - Con must resolve the protest before proceeding with award.



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6. **Construction Engineering (CE) Budget** - The PM will develop the CE Budget following the processes described below and as discussed in the ODOT Construction Manual, Chapter 5.

After Notice of Intent to Award, OPO-Con requests the final CE Budget. 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.

Construction Leadership Team Guidelines for Construction Engineering (CE) Budgets:

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

<u>CATEGORY</u>	<u>GUIDELINE</u>
Modernization	Not to exceed 12%
Preservation	Not to exceed 7%
Bridge	Not to exceed 13.5%
Safety	Not to exceed 12.5%
Operations	Not to exceed 14.5%
Other Programs	Not to exceed 11%

CE performed by consultants normally is in the range of 12 to 17%.

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.

Below is the process for establishing a CE budget.

- 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.



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- 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-Con and OPL complete the bid review and bid analysis, and Notice of Intent to Award is posted, OPO-Con will request the final CE budget from the AM/PM/LAL. At this time, OPO-Con will provide the Final Bid Evaluation, bid tabulations, BOLI Fee Amount, and a list of Additional Anticipated Items to the PM/LAL for use in finalizing the CE Budget.
- After the AM/LAL has approved the budget and concurs that sufficient funds are available in the Region or Local Agency budget, the AM/LAL (or designee) will sign the final CE Budget and the PM/LAL will send to OPO-Con, along with any justification for amounts exceeding the Guidelines.
 - The PM/LAL must send the CE Budget to OPO-Con within 3 days (5 days for a local agency project) after receiving the request for CE budget from OPO-Con.

OPO-Con 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 Statewide Project Delivery Manager and the Highway Division Administrator for review and final approval of award.

7. Construction Project Authorization and Formal Award/Rejection

OPO-Con is responsible for preparing the *Summary of Bids Received and Construction Authorization* for each project. The purpose of this document is to provide a summary or overview of the costs that will be



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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
- Construction Engineering Budget
- 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 – See Operational Notice PD-07. Examples of common items include statistical asphalt bonus, AC/PCC smoothness bonus, fuel escalation, oil escalation, or other commodity escalations.

When this document is completed by OPO-Con, it is sent to the Statewide Project Delivery Manager for review and concurrence and on to the Highway Division Administrator 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 Highway Division Administrator elects 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 PM/LAL/BDU, Technical Services, Financial Services, and FHWA personnel after a project is awarded/rejected.

- 8. Contract Booklets** - OPO-Con is responsible for preparing the contract booklets and sending them to the successful bidder. The contract booklets are mailed to the contractor as soon as the contract is awarded by Deputy Director of Highways/OTC, and concurrence of FHWA if a full oversight project. ODOT is



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9. required by specification to provide the successful bidder with Notice of Award and contract booklets ready for execution within 30 calendar days of bid opening (see Specification Section 00130.10).
10. **Completion of the Contract Booklets (By the successful bidder)** - The successful bidder is responsible to deliver back to the OPO-Con, completed and signed contract booklets with all required bonds, insurances and certificates. By specification, the contractor is allowed 15 calendar days from the date the contract award letter is submitted to return them to OPO-Con (see Specification Section 00130.50(a)).
11. **Review and Execution of the Contract (By ODOT)** - OPO-Con 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-Con Manager, or an authorized representative, is required to execute the contract within 7 calendar days of receiving the contract booklets from the successful bidder (see Specification Section 00130.50(b)).
12. **Notice to Proceed** - OPO-Con will issue Notice to Proceed to the contractor within 5 calendar days of executing the contract (see Specification Section 00130.90). In addition, they will provide copies of the Notice to Proceed to the AM, PM, LAL, Construction Section, and other appropriate parties.

ROLES & RESPONSIBILITIES:

Office of Project Letting

- Bid Analysis

ODOT Procurement Office – Construction Contracting Section

- Bid Opening
- Bid Review
- Notice of Intent to Award
- Request Construction Engineering Budgets
- Construction Project Authorization
- Formal Award or Rejection
- Contract Booklets
- Review and Execution of the Contract
- Notice to Proceed



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Construction Project Manager

- Construction Engineering Budgets

REFERENCES:

ODOT Construction Manual - <http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/CM.shtml>

ODOT Local Agency Guidelines Manual - [http://www.oregon.gov/ODOT/HWY/LGS/Certification.shtml#LAG Manual](http://www.oregon.gov/ODOT/HWY/LGS/Certification.shtml#LAG_Manual)

ODOT Specification Sections 00120 and 00130 -
http://www.oregon.gov/ODOT/HWY/SPECS/docs/08book/08_00100.pdf