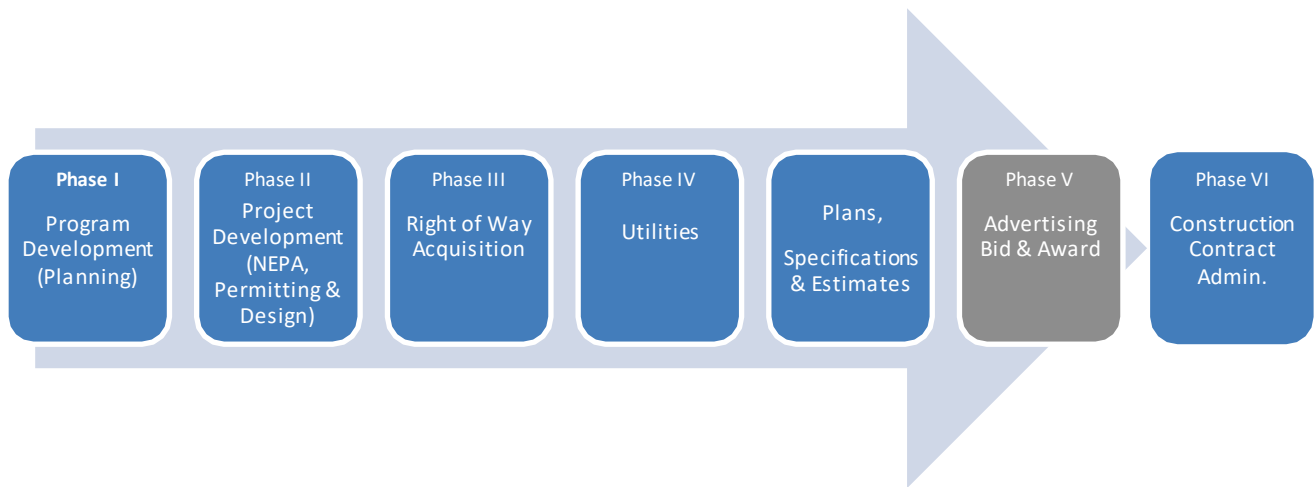


Chapter 15. Advertising, Bid and Award Procedures

This chapter specifies how certified local public agencies (LPAs) may operate under a Master Certification Agreement with ODOT and use FHWA approved processes to their procedures to advertise, bid and award construction contracts for federal-aid projects.

In the sequence of project development, advertising, bid and award generally occurs in Phase V, after the completion of plans, specifications, and estimates (PS&E). See Section C, Chapter 11 of this manual for PS&E information.



A. OVERVIEW

The PS&E documents are used to advertise, bid and award the construction contract. Advertising, bid and award is the responsibility of the certified LPA as identified in the Master Certification Agreement. The LPA's approving authority must approve the plans and specifications, and a professional engineer licensed in the State of Oregon must seal and date the plans and specifications.

NOTE: If any special federal funds are used on a LPA project there may be additional eligibility requirements such as a special contract language or specifications. This special contract language may cover additional reporting requirements for the LPA and the contractor.

B. APPLICABLE LAW

The certified LPA shall maintain procedures that follow all appropriate laws, regulations and other requirements applicable to federal-aid projects including but not limited to:

All non-Title 23 requirements such as:

- National Environmental Policy Act (NEPA) and other environmental laws and requirements (Section C, Chapter 6, Environmental Process/Permits)
- Uniform Relocation Assistance Act (Section C, Chapter 7, Right of Way)
- Civil Rights Act of 1964 and other Civil Rights laws and requirements including the DBE Program (Chapter 8, Civil Rights- EEO/OJT; Section A; Chapter 7, Title VI Program)
- Davis Bacon Act and other labor laws and requirements, Oregon Bureau of Labor and Industries (BOLI) laws Chapter 16, Construction and Contract Administration
- Common Rule (49 CFR 18) with respect to procurement
- Lobbying Prohibition (49 CFR 20)
- Suspension and Debarment USDOT Order 4200.5E 03-15-2010 (replaces revoked 49 CFR 29)

And selected Title 23 requirements:

- Competitive bidding requirements 23 USC 112
- Preconstruction Activities 23 CFR 630
- Required Contract Provisions, Form FHWA-1273, 23 CFR 633
- Buy America requirements 23 CFR 635.410 (Section C, Chapter 11, PS&E; Chapter 16, Construction and Contract Administration)

State statutes apply to the extent they do not conflict with federal laws and regulations, ORS 279A.030. State laws include ORS chapters 279A and 279C. OAR 137-047, 731-005, 731-007, and 734-010.

If any provisions or policies operate contrary to federal requirements including, Title VI of the Civil Rights Act of 1964, and prevent responsible, qualified bidders from submitting bids, then such provisions or policies shall not be applicable to federal-aid projects. Refer to 23 CFR 635.112(d).

Under state and federal law, construction contracts are to be based upon competitive bids and federal law requires the contract to be awarded to the lowest responsible bidder. Refer to 23 USC 112 and ORS 279C.335. Exceptions to competitive bidding, for example, design-build, construction manager/general contractor (CMGC) or other alternative contracting methods require approval. See the Certified LPA Approval Authority Matrix form 734-5191. No LPA shall bid in competition or enter into a subcontract with private contractors. Refer to 23 CFR 635.112(e).

FHWA's Contract Administration Core Curriculum Manual contains additional details regarding federal bidding requirements.

C. PROCEDURES

The Certification Program Office along with the regional Local Agency Liaison (LAL) will monitor LPA compliance with the following process points for advertising, bid and award procedures. The ODOT Procurement Office also provides technical advice and support to the Certification Program as needed.

C.1. Prior to Bid Advertisement

ODOT's regional LAL must have received the complete PS&E submittal package as described in the Certified LPA PS&E Submittal & Completeness Checklist (see Section D of this Manual). Upon ODOT's approval, the LAL will forward the applicable documents to ODOT's Program and Funding Services and FHWA for authorization of construction funds.

Following FHWA's authorization of the funding, the LAL will issue written approval to the certified LPA to proceed with advertising the project for bids. The LPA cannot advertise until the notice to proceed is received.

C.2. Prequalification

FHWA recommends certified LPAs prequalify prime contractors. Unless otherwise approved, ODOT requires that certified LPAs use prequalified prime contractors as part of the Certification Program. Certified LPAs can use ODOT's list of prequalified prime contractors or the LPA may use their own prequalification process of prospective bidders, as approved by ODOT. In the event that a LPA does not have an ODOT approved process in place, the LPA must use ODOT's list of prequalified prime contractors.

If a contractor is prequalified with ODOT, then that contractor is presumed qualified with any other public agency for the same kind of work. Refer to ORS 279C.435.

Note, if the certified LPA decides to prequalify prospective bidders, the LPA shall have written procedures for mandatory prequalification by using one of the following methods:

- The LPA may use its own procedures and the LPA's Local Contract Review Board shall adopt such procedures and a contractor prequalification form for prime contractors ORS 279C.430 or use the Attorney General Model Rules OAR 137-049- 0220; 137-049-0370;
- Utilize ODOT's Prequalification Procedures specified in the Oregon Standard Specifications for Construction, APWA Oregon Chapter, current edition; OAR 731-007-0530 OAR 734, Division 10, and ODOT's procedures and form concerning prequalification of prime contractors.

No procedures or requirements for qualifications or licensing of contractors may operate to restrict competition, prevent submission of a bid, or prohibit consideration of a bid submitted by any responsible contractor, whether resident or nonresident of the state. Refer to 23 CFR 635.110(a) and (b).

Prequalification of contractors shall be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating. Refer to 23 CFR 635.110(c).

C.3. Solicitation Documents and Project Specifications

The certified LPA shall clearly identify in the bidding documents those requirements which the bidder must assure are complied with to make the bid responsive. If the bidder fails to comply with these identified bidding requirements, such failure shall make the bid non-responsive and not eligible for award consideration. Refer to 23 CFR 635.112(h).

Per ORS 279C.365, all contracting agency's solicitation documents (which may include a separately bound bid booklet) for a public improvement contract shall include:

- The option for the contracting agency to reject any bid not in compliance with all prescribed public contracting procedures and requirements, and may reject for good cause all bids upon a finding by the agency that it is in the public interest to do so
- Information addressing whether a contractor or subcontractor must be licensed under ORS 468A.720
- 23 CFR 635.110(b) and (c) state that contractors need not be licensed at time of bid letting but must obtain required license by contract execution

NOTE: Residence requirements as found in ORS 279A.120 are in conflict with 23 CFR 635.110 and 23 CFR 635.112 and must not be used in certified LPA projects.

All contracts shall specify the minimum percentage of work that a contractor must perform with its own organization. This percentage shall not be less than 30 percent of the total original contract price excluding any identified specialty items. Refer to 23 CFR 635.116(a).

a. Engineer's Estimate

FHWA discourages disclosure of the Engineer's Estimate. ODOT policy requires that the Engineer's Estimate be kept strictly confidential. The certified LPA shall ensure that the Engineer's Estimate for a particular project is not published. Placing a cost range in the project advertisement for each project is preferable. The purpose of the range is to provide information to bidders regarding bonding requirements.

b. Addenda

Following advertisement, the LPA may change a solicitation document only by issuing written addenda. The solicitation document shall specify how the LPA will provide notice of addenda and how the LPA will make the addenda available. The LPA must issue addenda within a reasonable time to allow prospective bidders to consider the addenda in preparing their bids.

The LPA must submit addenda requests to the ODOT regional LAL for any addenda that contain a major change to the approved plans or specifications during the advertising period ***before*** transmitting the addendum to the individual contractors holding bid documents. The LAL will then coordinate with FHWA or within ODOT for final approval as needed.

FHWA must also approve addenda for “major changes” in scope and all changes to project limits. Major change means a change that will significantly affect the federal funds of the project or alter the scope of work. The certified LPA will ensure that all potential bidders receive the approved addendum as expeditiously as possible. Refer to 23 CFR 635.112(c) and OAR 137-049-0250.

For changes that are not major, the certified LPA must retain copies of addenda in the project file.

For a summary of LPA changes that may trigger ODOT or FHWA approvals, refer to the Approval Authority Matrix form #734-5191 linked in Section D of this manual at part V. Detailed/Final Design (2), part VII. Advertisement, Bid, and Award (2.), and part VIII. Construction (2a-i).

c. Clarification, Request for Change

Clarification of any provision of the solicitation, request for a change, or protest of the specifications or contract terms and conditions, may be made by a bidder in writing prior to the deadline for submitting requests for changes. Refer to OAR 137-049- 0260(1)-(2).

d. Solicitation Protest

A prospective bidder may file a protest with the LPA if the prospective bidder believes that the procurement process is contrary to law or that a solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name. Under OAR 137-049-0260, if a prospective bidder fails to timely file such a protest, the prospective bidder may not challenge the contract on grounds under this subsection in any future legal or administrative proceeding.

The LPA shall evaluate the protest if it contains all the required information and consider the protest and issue a decision in writing. The decision shall be issued no less than three business days before bids are due, unless a written determination is made by the LPA that circumstances exist that require a shorter time limit.

e. Cancellation

A certified LPA may cancel a solicitation for good cause if the LPA finds that cancellation is in the public interest. A copy of the cancellation shall be sent to the ODOT regional LAL. For compliance review purposes, the LPA's cancellation procedures should include the following items:

- Cancellation of solicitation at any time prior to signing contract;
- Finding that cancellation is in the public interest and is documented;
- Notice of cancellation; and
- Process for disposition of bids if solicitation canceled prior to and after opening bids;

If the project contains a DBE goal, the LPA must also notify the ODOT Office of Civil Rights of the cancellation.

C.4. Advertisement Process

a. Advertising for Federally Funded Projects

Certified LPAs must receive written approval from the ODOT regional LAL prior to advertising the project for bid. The LPA shall advertise for a minimum of three-weeks prior to the opening of bids unless otherwise approved by ODOT. The three week advertisement period begins when the advertisement is published. Refer to 23 CFR 635.112.

b. Larger/Complex Projects

Projects with cost estimates of \$10 million or more, or extremely complex projects, may have an advertisement period greater than three weeks to permit prospective bidders adequate time to prepare a responsive bid proposal. Also, for more complex projects, scheduling a pre-bid conference to address prospective contractors' concerns and questions is considered good industry practice. If a pre-bid conference is scheduled, adding two weeks to the advertisement length is recommended. This allows time for the conference and subsequent amendments to be prepared and distributed prior to bid opening, if necessary.

c. Publication in Newspaper/Trade Journal

The advertisement must be published at least once in a minimum of one newspaper, of general circulation in the area where the contract is to be performed and in as many additional issues and publications as the contracting agency may determine. If the contract has an estimated cost in excess of \$125,000, the advertisement must be published in at least one trade newspaper of general statewide circulation such as *The Daily Journal of Commerce*. Internet advertising is supplemental to print advertising. See FHWA's Contract Administration Core Curriculum Manual for more information. Refer to ORS 279C.360.

d. Nondiscriminatory Procedures

The certified LPA's advertising policies shall afford nondiscriminatory bidding procedures to all qualified bidders regardless of national, state or local boundaries and without regard to race, color, religion, sex, national origin, age, or handicap. Refer to 23 CFR 635.112(d).

e. Proof of Advertisement

The LPA is responsible to ensure that proof of advertisement is retained in the project file.

C.5. Advertisement Content

Per ORS 279C.360, all advertisements for public improvement contracts must state:

- The public improvement project;
- The office where the specifications for the project may be reviewed;
- The date that prequalification applications must be filed under ORS 279C.430 and the class or classes of work for which bidders must be prequalified;
- The date and time after which bids will not be received, which must be at least five days after the date of the last publication of the advertisement;
- The name and title of the person designated for receipt of bids;
- The date, time and place that the contracting agency will publicly open the bids; and
- That the contract is for a "public work" subject to ORS 279C.800 to 279C.870 and the federal Davis-Bacon Act;

a. Buy America

While not a requirement, ODOT recommends notifying bidders of Buy America Requirements in the advertisement. ODOT's ad states "All federal aid projects have Buy America requirements per 23 CFR 635.410."

b. Cargo Preference Act

ODOT also recommends notifying bidders of Cargo Preference Act requirements in the advertisement, as all federal-aid projects are subject to 46 CFR 381.

c. Title VI

The certified LPA shall comply with the standard U.S. Department of Transportation (USDOT) Title VI Assurances by including language in the advertisement. ODOT uses this sample language:

"The Oregon Department of Transportation is an Equal Opportunity and Affirmative Action Employer."

“The policy of the Oregon Department of Transportation is to provide equal opportunity for participation in its contracting activities to all persons and firms in compliance with applicable Federal and State laws, rules and regulations.”

d. DBE

The certified LPA shall include the DBE goal percentage per project, even if the goal is 0%. Example: “This project contains a 0% DBE goal.”

e. Prequalification

Information regarding prequalification is required in the advertisement for bid.

f. Percentage of Work

ODOT includes a statement requiring the prime contractor to perform at least 30% of the original contract amount. Example: “All projects require the contractor’s own organization to perform at least 30% of the awarded contract amount.”

g. Mandatory Pre-Bid Conference

If the LPA is requiring a mandatory pre-bid conference, the advertisement must include the date, time and location as well as the fact that the pre-bid conference is mandatory.

C.6. Bid Opening

All bids received in accordance with the terms of the advertisement shall be publicly opened and read aloud either item-by-item or by total amount. Oregon statute also indicates that bids must be “opened publicly” by the contracting agency immediately after the deadline for submission of bids. After having been opened, the bids must be made available for public inspection.

If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the letting. Refer to 23 CFR 635.113(a) and ORS 279C.365(3)(c).

The LPA shall not consider bids, withdrawals, or modifications that are not in compliance with the terms of the solicitation. Bids, withdrawals or modifications that are late do not comply with the terms of the solicitation and shall not be considered.

Negotiation with contractors, during the period following the opening of bids and before the award of the contract is not permitted. Refer to 23 CFR 635.113(a).

C.7. Bid Responsiveness Review

The certified LPA must verify proper submission of all required bid documents by the lowest bidder. The bid review provides the foundation for substantiating the contract award or rejection of bids. A thorough bid review will help ensure proper and effective use of federal funds. The LPA shall review and certify the bids as being complete and responsive to ensure good competition and the receipt of the lowest possible price.

a. Bid Content Sufficiency

The bid meets all the terms of the solicitation. Refer to 23 CFR 635.113(c)(1).

b. Bid Figures

The bid item and total cost figures have been verified for accuracy. Refer to 23 CFR 635.114.

c. Revisions

If there have been revisions by addendum, the contractor must use the correct bid sheets and the bidder must comply with all identified requirements in the bid document. Refer to 23 CFR 635.112 and ORS 279C.370.

d. Bid Security

Bid security must be received as discussed in Section C, Chapter 11, Subsection 3(c) of this manual.

e. Pre-Bid Meeting

If a mandatory pre-bid conference was held, the contractor's attendance must be verified.

f. Subcontractor Disclosure Form

The subcontractor disclosure form must be submitted with the required information within the required filing time deadline. Refer to ORS 279C.370.

Failure to provide the name, category of work and dollar value of each subcontractor that meets contract value inclusion limits shall result in bid rejection. The certified LPA shall consider the bid of any contractor that does not submit a subcontractor disclosure to the LPA to be a non-responsive bid and may not award the contract to the contractor. An LPA is not required to determine the accuracy or the completeness of the subcontractor disclosure. Refer to ORS 279C.370(3).

g. Prequalification

The contractor is pre-qualified in the required class or classes of work. Refer to ORS 279C.430 and OAR 731-007-0530.

h. Bid Signature

The bid document has been signed by the contractor's authorized personnel. Refer to ORS 279C.375 and Oregon Standard Specifications 00120.40 or LPA's equivalent.

i. Licenses and Registrations

Bidder Registered with the Secretary of State Corporate Division

The contractor's name is registered and active with the Oregon Secretary of State's Corporation Division. The contractor need not be registered at time of bid letting but must be registered prior to execution of a contract.

Bidder Licensed with the Construction Contractor's Board

The contractor must be licensed with Construction Contractor's Board (CCB), and the CCB number must not have expired. The contractor need not be licensed at time of bid letting but must be licensed prior to execution of the contract. Refer to ORS 279C.375(3)(a) and ORS 701.227.

Bidder Licensed with the Landscape Contractor's Board

If it is a landscape project, the contractor must be licensed with the Landscape Contractors Board prior to execution of the contract by the LPA. Refer to ORS 671.520(2), ORS 671.530 and ORS 671.560.

j. Verify that Contractor is not on Ineligible Lists:

- Bureau of Labor and Industries list of Ineligible Contractors
- Construction Contractors Board list of Contractors Not Qualified
- Federal Excluded Parties List: System for Award Management (SAM)

k. Disadvantaged Business Enterprise (DBE) Requirements

For projects with a DBE goal greater than 0%, each bidder must submit a completed, signed, dated DBE Commitment Certification and Utilization form 734- 2785 with the bid. When the DBE goal is greater than 0% and the bidder has failed to submit, sign and date the form, the LPA must find the bidder non-responsive.

When the DBE goal is greater than 0%, the LPA must send the DBE Commitment Certification and Utilization form 734-2785 from all bidders to the ODOT's Office of Civil Rights within two working days of bid opening. DBEs listed by the bidder for participation in the contract must be certified as eligible DBEs as of the time of bid opening. See Section C, Chapter 8 of this manual for more specific information regarding DBE form submission and review requirements.

I. Responsible Bidder under State Statute

Pursuant to ORS 279C.375(3) the certified LPA shall determine whether the bidder has met the standards of responsibility. All public entities awarding public improvement contracts to the lowest responsible bidder must complete and submit a Responsible Bidder Determination form to the State Construction Contractors Board within 30 days of the award.

m. Bidder Determined Not Responsible

A contractor bidding on a project may be deemed not responsible because of past unsatisfactory performance, as evidenced by failure to meet qualification requirements or because of state or federal suspension/debarment action. Any such determination of non-responsibility must be documented and the contractor notified in writing prior to receipt of the bids.

If the low bid is found to be non-responsive or the bidder is not responsible, the LPA shall document the justification for rejection and notify the bidder before awarding to the next lowest bidder. Refer to 23 CFR 635.114(f).

A record of these items must be maintained for justification of award or rejection. The LPA should also document the bidder responsiveness of the low bidder for inclusion in the project file. Refer to 23 CFR 635.114.

NOTE: A **responsive bid** meets all the requirements of the advertisement and proposal, and a **responsible bidder** is one who is physically organized and equipped with the financial wherewithal to undertake and complete the contract.

n. Disqualification

With proper notice to the bidder(s), a LPA may disqualify bidder(s) from receiving an award in accordance with ORS 279C.440. Bidders may appeal disqualification per ORS 279C.445. If the LPA determines that the lowest bidder is not qualified, it shall document those findings prior to awarding the bid to the next-lowest responsible bidder.

C.8. Bid Price Analysis

a. Bid Verification and Correction

All bids shall be reviewed for accuracy with tabulations checked and confirmed. Any corrections to the bid tabulations are made if necessary, in accordance with Sections 00120 and 00130 of the LPA's ODOT approved General Conditions.

b. Bid Tabulations

The LPA shall prepare a tabulation of bids showing the Engineer's estimated bid item values and the bid item details for the lowest three acceptable bids, plus the total bid amounts of all other acceptable bids. Refer to 23 CFR 635.113(b).

c. Conformance with Engineer's Estimate

After bid opening, the LPA shall review "the apparent low bid for reasonable conformance with the engineer's estimated prices." Bids with any extreme variations from the engineer's estimate shall be thoroughly evaluated. Refer to 23 CFR 635.114(c). The bid analysis, following FHWA guidelines, should identify all mathematical and materially unbalanced bid items.

If the LPA finds obviously unbalanced bid items, the LPA shall document its decision to award or reject the bid with a written justification. The LPA may award a bid if it is found to be mathematically unbalanced, but not materially unbalanced. Refer to 23 CFR 635.114(d).

This analysis should result in an Engineers Recommendation of Award to either award to the lowest responsive bidder, award to the next lowest responsive bidder or rebid the project with additional modifications. If the LPA determines that it wants to reject all bids and rebid the project, the decision must first receive ODOT's concurrence.

d. Other considerations

Some additional metrics to review during the Bid Analysis include, but are not limited, to the following:

- Number of bids
- Distribution or range of the bids
- Identity and geographic location of the bidders
- Urgency of the project
- Current market conditions and workloads
- Comparison of bid prices with similar projects in the letting
- Justification for significant bid price differences
- Potential for savings if the project is re-advertised
- Other factors as warranted

If the bid exceeds the engineer's estimate by 10 percent, prior to the LPA awarding the contract, the LPA must contact the regional LAL to ensure sufficient funding is available.

e. Rejection of All Bids

Where the lowest bid exceeds the engineer's estimate by 10 percent or where award of contract is not justified as being in the best interest of the public in accordance with the adopted Local Contract Review Board rules, all bids may be rejected. For further details regarding the engineer's estimate, see FHWA's Contract Administration Core Curriculum Manual.

Resources:

- [Administration Core Curriculum Manual](#)

The certified LPA must define the criteria for rejection of all bids and comply with ORS 279C.395. Any LPA proposal to reject all bids received for a federal-aid contract shall be submitted, with adequate justification, to the Regional Local Agency Liaison who will coordinate with ODOT and FHWA for appropriate concurrence. Refer to 23 CFR 635.114(h).

When all bids are rejected, the documentation in the project file should include the following items for compliance review purposes:

- Reasons for rejection including reference of appropriate local, state or federal law;
- Definition of responsible bidder(s);
- Specific criteria for rejection;
- Written finding for rejecting all bids;
- Written approval from authorized LPA official;
- Notification to all bidders that all bids were rejected; and
- Notification of such rejection to the regional LAL and ODOT's Office of Civil Rights.

C.9. Contract Award Requirements

a. DBE Responsiveness

The LPA must receive approval from ODOT's Office of Civil Rights regarding DBE responsiveness prior to issuing notice of intent to award.

b. Notice of Intent to Award

At least seven days prior to contract award, unless the LPA determines that seven days is impractical, the LPA shall notify each bidder of the contracting agency's intent to award a contract. ORS 279C.375(2). Such notice of intent to award should be documented in the project file.

Please note that if the low bidder was found non-responsive to the DBE goal requirements, and has requested administration reconsideration through ODOT's Office of Civil Rights, the LPA

must postpone sending the notice of intent to award letter to the apparent awardee until the completion of, and the final decision from, the administrative hearing. Bidders may appeal the award pursuant to procedures specified in ORS 279C.460. Please refer to Section C, Chapter 8 of this Manual for additional information.

c. Award

If the execution date is greater than 60 days from bid opening, the LPA shall advise the regional LAL who will advise ODOT's Program & Funding Services. Pursuant to OAR 137- 049-0410, 30 days is standard for time to award, then the execution of contract follows, after all bonding and insurance coverage is in place. For more information, refer to Section 00130 of the certified LPA's ODOT approved General Conditions.

d. Letter of Award

After award by the certified LPA, the contractor must be advised of the award in writing.

NOTE: "Award" means approval of award by the appropriate authorities. "Execution" of a contract occurs after the contract "award" is approved.

C.10. Post Award

a. Contract Execution

Certified LPA's shall not execute a contract with any contractor who is not registered or licensed in accordance with state and federal laws. Additionally, contractors must comply with the following requirements for insurance, bonds, and payment of a Prevailing Wage Rate fee to the Bureau of Labor and Industries.

b. Insurance

Prior to the execution of the contract, the LPA shall ensure that contractor has furnished copies of the Certificates of Insurance for the insurance specified in the Standard Specifications and/or Special Provisions. The LPA shall ensure that contractor lists on the Certificate of Insurance as an additional insured the State of Oregon, Oregon Transportation Commission and its members, and Department of Transportation, its officers and employees.

Prior to Notice to Proceed, the contractor shall provide insurance certificates to the LPA for commercial general liability, automobile, worker's compensation, and any other required insurance. Refer to ORS 701.073 as well as the LPA's Master Certification and Supplemental Project Agreements.

c. Bonds

Performance and payment bonds must be furnished by the contractor from a Surety authorized to do business in the State of Oregon. The LPA must provide proof of bonding to ODOT's regional LAL. Bond requirements are outlined in Section C, Chapter 11 of this manual.

d. Payment of Public Works Contract Fee

As required by state law, a public works contract fee must be paid to the Oregon Bureau of Labor and Industries by the public agency that awards a public works contract valued at \$50,000 or higher. The fee requirement applies to public works contracts and is calculated at one-tenth of one percent of the contract value. This amount is determined by multiplying the contract value times .001 to determine the fee amount. The maximum fee is \$7,500, and the minimum fee is \$250. If the contract amount is less than \$250,000, the \$250 minimum fee applies. If the contract amount is over \$7,500,000, the \$7,500 maximum fee applies. Refer to ORS 279C.825.

e. Project Agreement Estimate (Post-Bid Final Estimate)

The Project Agreement Estimate (PAE) is in the same form as the engineer's estimate, but includes the actual bid item values, an adjusted construction contingency value and an adjusted summary of funds. After awarding the construction contract, the LPA submits the PAE to the regional LAL, who will check it and forward it to ODOT's Program and Funding Services for processing with FHWA. The LPA shall include the date of the notice of award to the contractor on the PAE form.

f. Notice to Proceed

Per Section 00130.90 of the LPA's ODOT approved General Conditions, notice to proceed (NTP) will be issued within 5 calendar days after the contract is executed by the LPA. Should the LPA fail to issue the NTP within that time frame, the contractor may apply for an adjustment of Contract Time.

C.11. Record Retention

For records retention requirements, refer to the Code of Federal Regulations, Title 48: Federal Acquisition Regulations System, Part 4 – Administrative Matters, Subpart 4.8 – Government Contract Files, Section 4.805 – Storage, Handling, and disposal of contract files. 48 CFR, Section 4.805. Current regulations require retention of construction contracts for 6 years and 3 months after final payment.

The documents listed in the regulations should be retained by the LPA. The LPA should develop a process for records retention that complies with the federal and state records retention regulations.

The LPA shall ensure that the contractors and subcontractors shall maintain all fiscal records relating to contracts in accordance with generally accepted accounting principles. Contractors and subcontractors shall maintain all other records necessary to clearly document their performance and any claims arising from or relating to their performance under the contract.

C.12. Right to Audit Records

The LPA shall ensure that contractors and subcontractors make all records pertaining to their performance and any claims against the contract accessible to ODOT, FHWA, and the Secretary of State. ODOT, FHWA, Secretary of State Audit Division or designees, shall be entitled to inspect, examine, copy and audit contractor or subcontractor records.

Contractor and subcontractor shall maintain the records and keep the records accessible and available at reasonable times and places for a minimum period of six years from the date of final payment under the contract or subcontract or until the conclusion of any audit, controversy or litigation arising out of or related to the contract, whichever date is later, unless a different period is required by law.

See the Secretary of State’s Retention Schedule; e.g. OAR Chapter 166, Division 150 for counties, 200 for cities, and 300 for state agencies. For project on or affecting a state facility and bridges, reference LPA’s Master Certification Agreement.

Resources:

- [Oregon Standard Specification for Construction](#)
- [Local Government website](#)