

CHAPTER 22 - LOCAL ADVERTISING AND AWARD PROCEDURES

22.1 GENERAL

22.1.1 This process is used by Local Agencies operating under Local Agency Certification who choose to advertise and award construction contracts. (Procedures for right of way demolition and removal contracting are included in **Chapter 12 – Right of Way Procedures**).

22.1.2 Local Agencies administering construction contracts should develop and follow procedures and processes in compliance with **Chapters 120 and 337, Florida Statutes**.

Local Agencies may execute contracts for construction projects provided the following conditions are met:

- A. The Local Agency meets Federal guidelines for the advertisement, selection of the lowest responsible bidder, and award of the contract.
- B. The Local Agency is certified by The Florida Department of Transportation (Department) for the advertisement and award of construction contracts.

22.1.3 The Federal Aid Management Office will also assign a Federal Aid Number (FAN).

22.1.4 The Department will monitor compliance based on the procedures in this chapter for bid advertising and processing of projects.

22.2 FUNDING

Before a contract is advertised, construction funds must be authorized by the FHWA through the Departments Federal Aid Management Office and encumbered by the LAP Administrator or designee through the Contract Funds Management system. A copy of the funds approval email must be retained with the **LAP Agreement for Quality Assurance Review**.

22.3 BIDDING PROCEDURES

22.3.1 No Local Agency will be permitted to bid in competition or enter into sub contracts with private contractors. The Local Agency is prohibited from establishing any procedures or requirements for qualification or licensing of contractors that might restrict competition, prevent the submission of bids, or prohibit consideration of bids submitted by any responsible contractor. This applies whether the contractor is a resident or a nonresident of the State.

22.3.2 The Local Agency is responsible for the pre-qualification of prospective bidders. A Local Agency may use the Department's pre-qualification procedure that is specified in **Rule 14-22 F.A.C.**, or use contractors that are pre-qualified by the Department. There will be no procedure or requirement for bonding, insurance, pre-qualification, qualification, or licensing to prohibit the contractor from submitting or awarding a bid based on residency where the work is to be performed. The Local Agency shall certify that the Department's prequalified contractors will be used to perform LAP projects when on the National Highway System (NHS) or State Highway System (SHS). However, when the project is on the NHS or SHS, and the contract is under \$250,000, then a prequalified contractor is not required, per the **Department's Standard Specifications 2-1, Prequalification of Bidders**.

22.3.3 Disadvantaged Business Enterprise (DBE) participation and utilization is strongly encouraged on all LAP contracts regardless of whether or not a specific DBE goal is established on a particular contract.

22.4 PREPARATION OF PROJECT PROPOSAL

22.4.1 Each bid shall be made on the forms provided by the Local Agency and shall be signed by the bidder with the signature in full. If the partnership makes the proposal, the proposal shall contain the name of each partner and shall be signed in the firm's name, followed by the signature of the person authorized to sign. If a corporation makes the proposal, the officer(s) with authority to sign contracts shall sign the proposal in the name of the corporation. The address of the bidder should be printed on the proposal. A unit or lump sum price, as required in the proposal, shall be submitted on each item of work included in the group or division for which bids are requested. Each unit or lump sum price shall be written in figures. The following may cause the bid to be rejected for being irregular: (a) any price omission on items shown in the proposal form, (b) any written addition to the form of bid, (c) any condition, limitation, or provision that is not officially invited in the proposal, or (d) special provisions.

22.4.2 At a minimum, the project proposal shall contain the following items:

- A. Bid Proposal

- B. Bid Solicitation Notice
- C. Non-Collusion Certification
- D. Bid Bond
- E. Debarment Certification

22.4.3 The Non-Collusion Certification and the Suspend/Debarment Certification are included in the language of the sample proposal in the **Appendices** to this chapter. If the Local Agency uses the standard proposal form included in the **Appendices**, the bidder signing that proposal will cover the signature requirement of the Non-Collusion Certificate and the Suspend/Debarment Certification. No further signature will be required. In addition, the Local Agency should include the **DBE Bid Package (Form 275-030-11)** in the proposal. When issued, all specification packages must include the Payment to Sub-Contractor Specification (**The Department's Standard Specifications for Road and Bridge Construction 9-5.6**).

22.4.4 If the Local Agency does not use the standard proposal form, it must include the non-collusion and debarment language in its proposal.

22.4.5 FHWA requires that all subcontracts at any tier be in writing, as per **23 CFR, Section 635.116(b)**. This includes contracts between the prime contractor and its subcontractors, and contracts between subcontractors and their agents. Each of these subcontracts also must physically contain the following documents. None of these documents can be included by reference only.

- A. **FHWA Form No. 1273, Required Contract Provisions Federal Aid Construction Contracts**, and
- B. The minimum wage rates for the contract as required by **Title 29 Code of Federal Regulations (Davis-Bacon Wage Rates)**.

22.4.6 Implementation of the DBE and EEO programs are also Federal contract requirements. Refer to **Chapters 14 and 15**.

22.4.7 The contractors must pay Davis-Bacon predetermined wage rates to all covered workers on Federal-aid projects that are located on a Federal-aid highway. The Davis Bacon requirements do not apply to force account work performed by highway agency forces. The applicability of Davis-Bacon to a transportation enhancement project depends on the relationship or linkage to a Federal-aid highway. If a project is "linked" to a Federal-aid highway based on proximity or impact (i.e. without the Federal-aid highway the project would not exist), then the Davis-Bacon requirements apply. If the project is not "linked" to a particular Federal-aid highway and is eligible based solely on

function (i.e. a transportation facility, such as an independent bike path, the restoration of a railroad station, etc.), then the Davis Bacon requirements do not apply. However, the Davis-Bacon requirements apply to all projects that are physically located within the existing right-of-way of a Federal-aid highway, regardless of the transportation enhancement characteristics.

22.4.8 A Local Agency may use volunteer labor under their direct control as a force account effort.

22.4.9 The wage rates used will reflect the latest rates approved by the U.S. Department of Labor (USDOL). The effective date for Federal rates is determined as follows:

- A. Federal Wage Rates. This data is received from the USDOL, who publishes it in a document entitled "General Wage Determinations Issued under the Davis-Bacon and Related Acts." The USDOL issues modifications weekly. To minimize the possibility of out-of-date Federal wage rates at the time of bid opening, the Local Agency developing the construction documents should access the wage rates through the following link seven (7) working days before the advertising date:

<http://www.dot.state.fl.us/construction/Wage.shtm>

- B. Modifications published by the USDOL less than 10 days before the bid opening will be effective unless the Local Agency determines that there is not sufficient time before the bid opening to notify bidders. The Local Agency should insert a report of the determination in the contract file. No report is necessary if the notification is published after bid opening.
- C. If the contract has not been awarded within 90 days after bid opening, any modification published before award will be effective unless the Local Agency receives approval of an extension of the 90-day period from the USDOL. The Local Agency must support this request with factual evidence that the extension is necessary, proper, and in the public's best interest.

22.5 ADVERTISING OF PROJECT

22.5.1 Federal aid projects previously authorized by the FHWA will be advertised for at least three (3) weeks before the opening of bids. The three-week advertising period begins when the first of two (2) advertisements is published. If a Local Agency wants

an advertising period of less than three (3) weeks, written approval from FHWA for the shorter period must be in the project file. The project will be advertised in the official legal publication for the Local Agency, and if necessary, other newspapers to give the widest possible coverage proportionate to the size of the project. The Local Agency may also opt for additional notification.

22.5.2 Bidding opportunities will be given on a nondiscriminatory basis to all qualified bidders regardless of State or Local Agency boundaries, race, gender, color, religion, age, disability, marital status, or national origin.

22.5.3 No bidder will be disqualified or prevented from competitive bidding by restricting the purchase of a surety bond or insurance policy from any surety or insurer outside the state who is authorized to do business with the State.

22.5.4 The Local Agency will comply with the standard **USDOT Title VI Assurances** by including the following language in the solicitations for bids: "The Local Agency of _____ hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprise will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, gender, religion, age, disability, marital status or national origin in consideration for an award."

22.5.5 If an addendum is necessary during the advertising period, the Local Agency will submit the addendum to the District LAP Administrator. On FHWA oversight projects, the District LAP Administrator will submit the addendum to the Federal Aid Management Office for FHWA authorization before transmittal to the individual contractors holding the plans, specifications, and bid document data. Each bidder shall present a written notice of receipt for each addendum received along with the bid.

22.6 BID OPENING

22.6.1 The Local Agency will publicly open and announce all bids it receives by total amount in accordance with the terms of the advertisement.

22.6.2 If any bid received is not read, the Local Agency must publicly announce the name of the bidder and the reason for not reading the bid at the bid opening.

22.6.3 The Local Agency's contracting office must submit adequate justification for rejecting any bids to the District LAP Administrator. The District LAP Administrator will then provide justification to the Federal Aid Management Office for agreement.

22.7 EVALUATION OF BIDS FOR AWARD

22.7.1 After the bid opening, the Local Agency official forwards all bids to the office within the Local Agency that is designated to evaluate bids. This office verifies that all bidders have properly submitted and executed all required bid documents. The Local Agency then reviews all bids for accuracy, checks for conformance to the engineer's estimate, etc., and confirms tabulations.

22.7.2 Negotiations with contractors are not permitted during the advertisement, award, or execution period of the contracting process.

22.7.3 The Local Agency shall prepare a tabulation of bids showing the item details and total bid for all responsible bids. A responsible Local Agency official should certify that these tabulations are correct.

22.7.4 The Local Agency may reject the bids in the following circumstances: (a) where the low bid exceeds the engineer's estimate by an unreasonable amount, (b) where obvious unbalancing of unit prices has occurred, or (c) where competition is considered to be poor for the size, type, and location of the project.

22.7.5 The Local Agency may award the contract (with the Department's agreement) if there are exceptional circumstances such as those listed below:

- A. Where the competition is good or
- B. Where the project is essential to the public's interest (safety or public, emergency repair, etc.) and deferring it would endanger that interest or
- C. Where the engineer's estimate is clearly in error by a significant amount or
- D. Where re-advertising would likely result in higher bids because the plans and specifications already contain all possible cost-reduction measures. Before awarding a project which exceeds the engineer's estimate by a significant amount, the Local Agency must document the exceptional circumstances of the award in its project files.

22.7.6 If the Local Agency determines that the lowest bidder is not qualified, it must document this information in the project file before making an award to the next lowest responsive bidder, providing the next lowest bid is otherwise acceptable.

22.7.7 The LAP Agreement must be supplemented if the award amount is greater than the authorized amount (see **Chapter 5**).

22.7.8 The Local Agency must submit one originally signed **Local Agency Program Supplemental Agreement (Form No. 525-010-32)** to the District LAP Administrator for retention in the project file. The District LAP Administrator will forward a copy to the Federal Aid Programs office. The Local Agency is responsible for submitting an additional supplemental agreement form or copy if they need an executed supplemental agreement for their files.

22.8 AWARD OF CONTRACT

22.8.1 After the Local Agency has tabulated and evaluated bids according to the procedures described above, it must submit a recommendation to the District LAP Administrator that the construction contract be awarded to the lowest responsible bidder.

22.8.2 It is important that the Local Agency thoroughly reviews all submitted individual surety bonds in order to establish their authenticity.

22.8.3 Before notifying the contractor of the award, the Local Agency must post its intent to award (as stated in **Chapter 120, Florida Statutes**) and must have received the concurrence to award. The Local Agency is also responsible for resolving any protests that are filed.

22.8.4 On FHWA oversight projects, the FHWA must sign the concurrence letter. This will be processed through the Federal Aid Management Office.

22.8.5 Exempt projects do not require FHWA concurrence. Concurrence of award letters on exempt or certification acceptance projects are prepared by the District LAP Administrator and signed by the District Secretary or designee. The District LAP Administrator will then forward copies of the concurrence of award letter to the Local Agency.

22.8.6 The Local Agency will prepare and forward an official award letter to the Contractor with a copy to the District LAP Administrator.

22.8.7 All letters must be identified in the subject area with the following: Financial Project Number, Federal Aid Number, and County.

22.8.8 Before the award of the contract, the District LAP Administrator or designee must encumber funds equal to the award amount through the Contract Funds Management System. A copy of the funds approval e-mail must be retained with the **LAP Agreement**

for the Quality Assurance Review.

22.9 EXECUTION OF CONTRACT

22.9.1 State law requires that a Local Agency may not carry out a contract with any contractor who is not registered or licensed in accordance with State laws.

22.9.2 The designated Local Agency office prepares the necessary documents and forwards them for execution by the successful bidder and the proper officials of the Local Agency.

22.9.3 The Local Agency must submit a copy of the executed contract to the District LAP Administrator.

22.10 SUBMITTAL OF AWARD DATA

Within 10 days after award, the Local Agency must submit the following information to the District LAP Administrator:

- A. Tabulation of Bids
- B. Engineer's Estimate
- C. Award Letter to Contractor
- D. Estimated Completion Date or Number of Working Days for Contract

22.11 APPENDICES

22.11.1 *DBE Bid Package (DOT Form No. 275-030-11)*

<http://formserver.dot.state.fl.us/MiscRepository/forms/27503011.pdf>

22.11.2 *Sample Contract Documents (DOT Form No. 375-020-44)*

<http://formserver.dot.state.fl.us/MiscRepository/forms/37502044.pdf>