

Chapter 18

Advertising and Award Procedures

This chapter is used by local agencies wanting the Montana Department of Transportation (MDT) to advertise and award their Federal Highway Administration (FHWA) construction contracts at the service center level or at the regional level. For these agencies, Chapter 19, MDT Administered Projects, will also apply. This chapter is also used by local agencies operating under Certification Acceptance (Chapter 3) and choosing to advertise and award construction contracts themselves. Chapter 20, Local Administered Projects, will also apply to these agencies. All construction contracts must be on a Transportation Commission- approved letting list prior to award.

18.1 General Discussion – State Advertising and Award Procedures

The District Construction Engineer will appoint a MDT Project Manager to administer project construction (Chapter 19). The Project Manager will administer the project using the guidance in the Construction Administration Manual and in the same manner as other federally funded projects.

18.2 Submittals

When MDT is to advertise and award a construction contract on an FHWA project, the local agency will prepare and submit the following documents to MDT. (Additional details on the content and format of these documents are found in Chapter 16, “Plans, Specifications, Special Provisions, and Estimates,”

18.2.1 Contract Plans, Specifications, and Estimates PS&E

The originals and one copy of these shall be submitted to the LAG Certification Liaison. Review of the PS&E and bridge plans by MDT must be scheduled well in advance of the advertising date of the project. MDT review time on complex projects varies between 12 to 18 weeks depending on the type of project and whether the project is advertised by the region or by the service center. Contact the LAG Certification Liaison to coordinate the submittal time of the PS&E and bridge plans and for an advance estimate of the time and cost for the reviews.

18.2.2 Local Agency Letter of Financial Responsibility

See Chapter 16: Plans, Specifications, and Estimates.

18.3 Advertising and Award Procedures

The following process will be used for reviewing contract documents, advertising for bids, evaluating bids, and awarding a construction contract.

- a. The local agency prepares the PS&E package and submits it to the LAG Certification Liaison a minimum of 15 weeks prior to letting.
- b. The LAG Certification Liaison reviews the PS&E and sends it to the MDT Contract Plans Bureau for review and approval a minimum of 13 weeks prior to letting. At this time, an advertising date is set.
- c. After its review, LAG Certification Liaison sends out office copies of the PS&E to the local agency and other offices within MDT for their final review prior to advertising. MDT advertises the project

for at least three weeks. MDT receives bids during the period set aside for bid preparation and receipt.

- d. On the date established in the bid advertisement, MDT opens and reads the bids received.
- e. MDT tabulates and evaluates the bids, and sends the bid results to the LAG Certification Liaison.
- f. The LAG Certification Liaison advises the local agency of the bid results.
- g. The Local Agency Agreement must be supplemented if any overrun or under run occurs beyond the authorized amount. See Section 7.3.
- h. The Montana Transportation Commission awards the construction contract to the lowest responsive, responsible bidder.
- i. The MDT Project Manager administers the project in the same manner as other federally funded projects and in accordance with departmental policy.

18.4 General Discussion- Local Advertising and Award Procedures

Local agencies may let contracts for their projects provided that the following conditions are met:

- The local agency uses the advertising and award procedures outlined in this section to advertise for bids, select the lowest response bid from a responsible bidder, and award the contract.
- A Local Agency Agreement between the state and local agency is in effect, setting forth the conditions under which the project will be constructed.
- The local agency is participating in the cost of the project or has other special interests relevant to the project.
- The local agency is certified for project administration in accordance with Chapter 3, *Becoming Certified to Administer FHWA Projects*.

No project can be advertised until the local agency has approved the PS&E, the environmental document is approved, the project's right-of-way has been certified to the Federal Highway Administration, construction funds have been authorized by the FHWA, and a project number has been obtained from MDT Fiscal Programming Section.

18.5 Procedures

The Local Programs Engineer will monitor local agency compliance with the following procedures for bid advertising and processing of projects.

18.5.1 Funding

A Local Agency Agreement and construction funds must be authorized by the MDT and FHWA before a contract is advertised.

18.5.2 Bidding Procedures

The local agency is prohibited from establishing any procedures or requirements for qualification or licensing of contractors, which prevents the submission of bids or prohibits consideration of bids submitted by any responsible contractor, whether resident or nonresident of the state, except as outlined below.

For all Federal-aid projects, bidding opportunities, on a nondiscriminatory basis, will be afforded to all qualified bidders. 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 and authorized to do business with the state.

18.5.3 Preparation of the Project Proposal

See Section 102 of the *MDT Standard Specification*.

18.5.4 Advertising of the Project

FHWA projects previously approved should be advertised for a four-week period prior to opening of bids. The four-week advertising period begins when the first advertisement is published. If an agency wants an advertising period of less than three weeks, documentation by the local agency and approval by FHWA and MDT for the shorter period must be in the project file. Examples where shorter advertising periods may be appropriate are as follows:

- Emergency correction of roadways or bridges
- To meet the conditions of a fisheries permit
- To meet the conditions of a Bureau of Reclamation Permit (irrigation canal)

The project will be advertised in the official legal publication for the agency and, if necessary, other newspapers to provide the widest possible, coverage commensurate with the size of the project.

The local agency will comply with the standard USDOT Title VI Assurances by inclusion of the following language in the solicitations for bids:

“The (local agency) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises 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 or national origin in consideration for an award.”

Should an addendum be necessary during the advertising period to correct or add something to the bid or plan data, such addenda shall be approved by the local agency a minimum seven (7) days prior to transmittal to the individual contractors holding the plans, specifications, and bid document data. Each bidder must present with their bid written notice of their receipt of each addendum received.

18.5.5 Bid Opening

All bids received in accordance with the terms of the advertisement will be publicly opened and announced by total amount.

If any bid received is determined non-responsive, the name of the bidder will be publicly announced at the bid opening and the bid amount will not be read.

Adequate justification for rejecting any bids must be documented by the local agency and approved by the Transportation Commission.

18.5.6 Evaluating Bids for Award

The local agency will verify that all required bid documents have been properly submitted and executed by all bidders. All bids are then reviewed for accuracy, unbalancing of bid items, etc., and tabulations checked and confirmed.

In order for a bid to be considered responsive, a bid deposit of at least 10 percent of the total bid proposal must accompany each bid. In accordance with Section 102.07 of the *Standard Specifications*, the Proposal Guaranty will not be conditioned in any way to modify the minimum 10 percent required. When there is a specified DBE goal for the project, the successful bidder will be selected on the basis of having submitted: (1) the lowest responsive bid which has met the DBE goal; or (2) when the DBE participation is less than the specified goal, responsiveness will be determined on the basis of good faith efforts to attain the goal.

The local agency will prepare a tabulation of bids detailing items for all responsive and responsible bids.

The local agency will document the reason(s) for rejecting the low bid and may reject all bids for any reason(s) with Commission approval.

Reasons for justifying an unusual award:

- Where the competition is good; or
- Where the project is essential to the public interest (safety, emergency repair, etc.); or
- Where the engineer's estimate is clearly in error to a significant amount; or
- Where re-advertising would not likely result in lower bids.

If the local agency determines that the lowest bidder is responsive and responsible, it shall document those findings prior to awarding the bid to the next-lowest responsible bidder.

The Local Agency Agreement must be supplemented if any overrun or under run occurs beyond the authorized amount. See Section 7.3.

One originally-signed Supplemental Agreement form must be submitted to the LAG Certification Liaison. This supplemental agreement form will be retained by MDT. It is the responsibility of the local agency to submit an additional supplemental agreement form or copy if they need an executed supplemental agreement for their files.

18.5.7 Award of Contract

After bids have been tabulated and evaluated in accordance with the procedures described above, the construction contract may be awarded to the lowest responsive, responsible bidder.

After award by the Transportation Commission, the local agency must advise the contractor of the award in writing.

18.5.8 Execution of Contract

Local agencies shall not execute a contract with any contractor who is not registered in accordance with state laws.

The local agency prepares the necessary documents and forwards them for execution by the successful bidder and the proper officials of the local agency.

A sample of a standard contract agreement is in Appendix 16.72. The LAG Certification Liaison can furnish these standard forms upon request.

18.6 Submittal of Award Data

Before construction begins, the local agency must submit the following information to the LAG Certification Liaison

- Tabulation of bids
- Engineer's estimate
- Award letter to the contractor
- Notice to Proceed
- Names and addresses of all firms that submit a quote to the successful low bidder (if applicable)

If a DBE has been utilized during this contract then reference DBE utilization certification, Form 272-056A

<http://www.mdt.mt.gov/business/contracting/civil/dbe.shtml>

A revenue report must also be submitted:

- The estimated completion date or the number of working days for the contract
- Failure to submit the above listed information, before construction begins, will result in a delay of reimbursement for the billed cost, until the information is received.

18.7 Appendices

The following documents are available from the Department. Contact the LAG Certification Liaison to obtain the most current version:

- Invitation for Bids
- Bid Bond
- Award Letter
- Notice to Proceed Letter

18.7.1 Sample Submittal of Award Data

18.7.2 Sample Revenue Report

Appendix 18.7.1 Sample Submittal of Award Data

Project Title _____ FHWA Project No. _____

Attached are the following required documents plus any additional information that may be applicable:

_____ Bid proposal from the lowest responsible bidder.

_____ Bid bond.

_____ Noncollusion Plan Certification.

_____ DBE Certification (if required).

_____ Tabulation of Bids.

_____ FHWA cost breakdown showing total project cost, FHWA participation and local agency participation.

_____ Additional documents.

Date

Local Agency Engineer

Date

Approving Authority

