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Remarks and Instructions

The complete manual, revision packages, and individual chapters can be accessed at www.wsdot.wa.gov/publications/manuals/m36-63.htm.

Please contact Stacie Kelsey at 360-705-7383 with comments, questions, or suggestions for improvement to the manual.

For updating printed manuals, page numbers indicating portions of the manual that are to be removed and replaced are shown below.

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Washington State Department of Transportation
Highways and Local Programs
Engineering Services
PO Box 47390
Olympia, WA 98504-7390
www.wsdot.wa.gov/localprograms

Approved By Dave Mounts	Signature /s/
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**Washington State
Department of Transportation**

Local Agency Guidelines

M 36-63.12

January 2012

Americans with Disabilities Act (ADA) Information

Materials can be provided in alternative formats by calling the ADA Compliance Manager at 360-705-7097. Persons who are deaf or hard of hearing may contact that number via the Washington Relay Service at 7-1-1.

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Washington State Department of Transportation
Highways and Local Programs
Engineering Services
PO Box 47390
Olympia, WA 98504-7390
360-705-7383

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Chapter 46 Local Advertising and Award Procedures

This chapter is used by local agencies operating under Certification Acceptance ([Chapter 13](#)) and choosing to advertise and award construction contracts themselves. [Chapter 52](#), Local Administered Projects, will also apply to these agencies.

Local agencies wanting to have the Washington State Department of Transportation (WSDOT) to administer their construction contracts should refer to [Chapter 51](#), WSDOT Administered Projects.

46.1 General Discussion

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

- .11** The local agency uses the advertising and award procedures outlined in this section to advertise for bids, select the lowest responsible bidder, and award the contract.
- .12** A Local Agency Agreement between the state and local agency is in effect setting forth the conditions under which the project will be constructed.
- .13** The local agency is participating in the cost of the project or has other special interests in it.
- .14** The local agency is certified for project administration in accordance with [Chapter 13](#), Becoming Certified to Administer FHWA Projects.

No project can be advertised until the following has been completed:

- PS&E approved.
- The environmental document is approved.
- The project's right of way has been certified.
- Project Disadvantaged Business Enterprise (DBE) and Training goals have been established.
- Construction funds have authorized Highways and Local Programs (H&LP).
- A contract number has been obtained from the Region Local Programs Engineer.

46.2 Procedures

.21 Funding. A Local Agency Agreement and construction funds must be authorized by the H&LP before a contract is advertised.

.22 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.

The prequalification of prospective bidders is the responsibility of the local agency. WSDOT will not prequalify prospective bidders for local agency projects. A local agency may at its option use the WSDOT prequalification procedure specified in the WSDOT Standard Specifications. When an agency does not prequalify prospective bidders, they should afford 10 days after notification for the low bidder to provide evidence of capability to perform the work. The evaluation of capability should include consideration of experience, personnel, equipment, financial resources, and performance record; the information should be sufficient to enable the bidder to obtain the required qualification rating prior to the contract award.

Qualification must, as a minimum, consist of bonding capability as required by state law and compliance with licensing requirements of state law. The local agency may include additional requirements.

When the DBE participation goal is included in the contract provisions, meeting the goal is part of the bidding requirements, as explained in [Chapter 26](#), Disadvantaged Business Enterprises, and [Chapter 44](#), Plans, Specifications, and Estimates.

For all FHWA projects, bidding opportunities, on a nondiscriminatory basis, shall be afforded to all qualified bidders regardless of state boundaries, race, sex, color, or national origin.

No bidder shall 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.

.23 Preparation of the Project Proposal. See WSDOT Standard Specification 1.02.6.

.24 Advertising of the Project. FHWA projects previously approved should be advertised for a three-week period prior to opening of bids. The contract advertisement period shall be as follows: Projects shall be advertised in the local agency's official legal publication at least twice, 20 calendar days prior to the last date upon which the bids will be received. The agency will award

and execute the contract to the lowest responsive bidder unless the agency decides that all bids are to be rejected. Projects must be advertised a minimum of two weeks. Two week advertisement periods require approval from FHWA and must document justification of why a shorter advertisement period is necessary. Examples for requesting shorter advertising periods are as follows:

- Emergency correction of roadways or bridges.
- To meet the conditions of an environmental permit (fish windows).
- To meet the conditions of a Bureau of Reclamation Permit (Irrigation Canal).
- To complete project prior to a school district opening in the fall.

In addition, the justification for the two week ad request should include the following:

- Will the shorter ad period limit the competition?
- Will the shorter ad period increase the overall cost of the project?
- Does the project include a Disadvantaged Business Enterprise (DBE) goal and will it allow the subcontractors sufficient time to submit a bid to the proposal holders?

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. Affidavits of publication must be in the project file.

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 2000d-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 CA local agency prior to transmittal to all the plan holders. Each bidder shall present with their bid written notice of their receipt of each addendum received.

.25 Bid Opening. All bids received in accordance with the terms of the advertisement shall be publicly opened and announced, either item by item or by total amount.

If any bid received is not read, the name of the bidder and the reason for not reading the bid shall be publicly announced at the bid opening.

Adequate justification for rejecting any bids must be documented by the local agency.

.26 Evaluation of Bids for Award. The local agency shall 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. Any corrections to the bid tabulations are made, if necessary, in accordance with the WSDOT *Standard Specifications* Section 1-02 and 1-03.

In order for a bid to be considered responsive, a bid deposit of at least 5 percent of the total bid proposal must accompany each bid. In accordance with Section 1 02.7 of the *Standard Specifications*, the Proposal Bond shall not be conditioned in any way to modify the minimum 5 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. For more information on DBE program requirements see [Chapter 26](#) of the *LAG Manual*.

The local agency shall prepare a tabulation of bids showing the item details for at least the three lowest acceptable bids.

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

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 advertising again would likely result in higher bids.

If the local agency determines that the lowest bidder is not qualified or deemed non-responsive, it shall document those findings prior to awarding the bid to the next-lowest responsive bidder.

The Local Agency Agreement must be supplemented if any overrun or underrun occurs beyond the authorized amount. See [Section 22.3](#).

One originally signed Supplemental Agreement form must be submitted to the Region Local Programs Engineer. This supplemental agreement form will be retained by WSDOT. 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.

.27 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 bidder. Projects with DBE goals must have concurrence of the Region Local Programs Engineer prior to award. Failure to obtain LPE approval will jeopardize the project's federal funding. Prior to award, agencies must verify contractor status with the Excluded Parties Listing System (EPLS) at www.epls.gov/ to determine if a contractor has been excluded from bidding on a federal-aid contract. The results of that search will be documented to the project file. EPLS is the electronic version of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs (Lists), which identifies those parties that have been suspended, debarred, or otherwise excluded from bidding on federal procurement and nonprocurement contracts. Construction contracts awarded to firms listed on the Excluded Parties Listing will not be eligible for federal-aid reimbursement.

After award by the local agency, the contractor must be advised of the award in writing. For an example of an award letter for a contract that has an identified DBE goal, see [Appendix 46.42](#). The second, third, fourth, and fifth paragraphs must be included in the local agency letter. An award letter for contracts without a DBE goal can be similar but would not include the second, third, fourth, and fifth paragraphs.

.28 Execution of Contract. Local agencies shall not execute a contract with any contractor who is not registered or licensed 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 44.73](#). The Region Local Programs Engineers can furnish these standard forms upon request.

46.3 Submittal of Award Data

Before construction begins, the local agency must submit the following information to the Region Local Programs Engineer:

- Tabulation of bids.
- Engineer's estimate.

- Award letter to the contractor.
- Names and addresses of all firms that submit a quote to the successful low bidder.
- DBE Utilization Certification, WSDOT Form 272-056A (if applicable).
- DBE Written Confirmation Document, WSDOT Form 422-031A (if applicable).

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.

46.4 Appendices

46.41 [Sample Request for Concurrence to Award](#)

46.41a [Sample Advertisement](#)

46.42 [Sample Condition of Award Letter](#)

46.43 [Sample Condition of Award Letter](#)

46.44 [Sample Contract Bond](#)

Appendix 46.41

**Sample Request for
Concurrence to Award**

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

**INVITATION TO BID
LOCAL AGENCY'S LETTERHEAD
DEPARTMENT OF ENGINEERING
WASHINGTON**

Sealed bids will be received by the (Local Agency), at the reception desk located in Room _____ of the _____, Washington until _____ a.m. on _____ and will then and there be opened and publicly read for the construction of the improvement(s).

All bid proposals shall be accompanied by a bid proposal deposit in cash, certified check, cashier's check, or surety bond in an amount equal to five percent (5%) of the amount of such bid proposal. Should the successful bidder fail to enter into such contract and furnish satisfactory performance bond within the time stated in the specifications, the bid proposal deposit shall be forfeited to the (Local Agency).

The right is reserved to reject any and all bids and to waive informalities in the bidding.

Maps, plans, and specifications may be obtained from this office upon payment of the amount of \$_____.

Informational copies of maps, plans and specifications are on file for inspection in the Office of the Local Agency Engineer, (Local Agency), Washington.

The following is applicable to federal aid projects.

The (Local Agency) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-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.

The improvement for which bids will be received is described below:

*This bolded paragraph cannot be reworded for FHWA funded projects.

Date of Award

To: — contractor —

Project Title

FA No.

Contract No.

This will advise that the contract for the above referenced project has been awarded to your firm at your bid price of \$ _____.

This letter shall become a contract specification at the time of award.

It is the policy of the United States Department of Transportation and the — local agency's name — that Disadvantaged Business Enterprises (DBE), as defined in the specifications for this contract, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, (except as specifically provided in the specifications for this contract) the requirements of 49 CFR 26 apply to this contract.

As contractor, you are agreeing to ensure that DBE as defined in the specifications of this contract have the maximum opportunity to participate in the performance of this contract. In this regard, you are obliged to take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure DBEs are informed of this project and given equal consideration in awarding of work. You are legally bound not to discriminate on the basis of race, color, national origin, or sex in the performance of this contract.

The award of this contract was made with the understanding that the firms listed on the DBE Utilization Certification will be performing the dollar value of work as indicated.

Prior to submitting the signed contract for execution, — Company Name — will provide the following two items:

1. Breakout information for all successful DBEs as shown on the DBE Utilization Certification.

- Correct business name, federal employer identification number (if available), and mailing address.
- List of all bid items assigned to each DBE firm, including unit prices and extensions, indicating any anticipated sharing of resources (e.g., equipment, employees)
- Indicate partial items – specify the distinct elements of work to be performed by the DBE firms and provide a complete description of these partial items.

Note: Total amounts shown for each DBE shall not be less than the amount shown on the Utilization Certification.

2. A list of all firms who submitted a bid or quote in an attempt to participate in this contract whether they were successful or not. Include the following information:
- Correct business name, federal employer identification number (optional), and mailing address.

The contract will be forwarded to you under separate cover. The contract must be signed and returned in accordance with the mailing instructions furnished with the contract documents. Please return these documents within _____ calendar days after the date of award.

Very truly yours,
— local agency —

cc: Region Programs Engineer

Award Date

To: Contractor

Project Title
Federal Aid No.
Contract No.

Dear _____:

This will advise you that the contract for the above referenced project has been awarded to your firm at your bid price of \$_____.

Prior to submitting the signed contract for execution, — Company Name — will provide the following:

- Correct business name, federal employer identification number (optional), and mailing address of all firms who submitted a bid or quote in an attempt to participate in this contract whether they were successful or not.

The contract will be forwarded to you under separate cover. The contract must be signed and returned in accordance with the mailing instructions furnished with the contract documents. Please return these documents within 20 calendar days after the date of the award.

Sincerely

Local Agency

cc: Region Local Programs Engineer

CONTRACT BOND

KNOW ALL MEN BY THESE PRESENTS, That

of _____, as Principal, and _____

as Surety, are jointly and severally held and bound unto the _____
city/county

in the penal sum of Dollars (\$ _____), for the payment of which we jointly and severely bind ourselves, our heirs, executors, administrators, and assigns, and successors and assigns, firmly by these presents.

THE CONDITION of this bond is such that whereas, on the _____

day of _____ A.D., 19 _____, the said _____

Principal, herein, executed a certain contract with the _____
city/county

by the items, conditions and provisions of which contract the said _____

Principal, herein, agree to furnish all material and do certain work, to wit: That _____

_____ will undertake and complete the construction of

according to the maps, plans and specifications made a part of said contract, which contract as so executed, is hereunto attached, is now referred to and by reference is incorporated herein and made a part hereof as fully for all purposes as if here set forth at length. The bond shall cover all approved change orders as if they were in the original contract.

NOW, THEREFORE, if the Principal herein shall faithfully and truly observe and comply with the terms, conditions and provisions of said contract in all respects and shall well and truly and fully do and perform all matters and things by undertaken to be performed under said contract, upon the terms proposed therein, and within the time prescribed therein, and until the same is accepted, and shall pay all laborers, mechanics, subcontractors and material men, and all persons who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work, and shall in all respects faithfully perform said contract according to law, then this obligation to be void, otherwise to remain in full force and effect.

WITNESS our hands this _____ day of _____, 19 _____

PRINCIPAL

ATTORNEY-IN-FACT, SURETY

NAME AND ADDRESS LOCAL OFFICE OF AGENT

APPROVED:

CITY/COUNTY

By: _____
APPROVING AUTHORITY

Date: _____, 19 _____

SURETY BOND NUMBER

CONTRACT NUMBER
