

# Chapter 46      **Local Advertising and Award Procedures**

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

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

## **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 responsible bidder with the lowest responsive bid, 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](#).

No project can be advertised until the following items have been completed:

- PS&E has been approved.
- The environmental document has been approved.
- The project's right of way has been certified.
- Project Disadvantaged Business Enterprise (DBE) and Training goals have been established.
- Construction funds have been authorized by Local Programs.
- A contract number has been obtained from the Region Local Programs Engineer.
- FHWA has authorized the project in FMIS.
- The Region Local Programs Engineer has concurred with advertising the project.

## **46.2 Procedures**

**.21 Funding** – A Local Agency Agreement and construction funds must be authorized by the Local Programs 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.

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 *Standard Specifications* M 41-10. If another procedure is used, it must be approved by FHWA prior to use. When an agency does not prequalify prospective bidders, they should afford ten days after notification for the low bidder to provide evidence of capability to perform the work.

When evaluating whether or not the Bidder is qualified to perform the work the following information should be considered:

- Experience
- Personnel
- Equipment
- Financial Resources
- Performance Record

Qualifications must, at 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](#) and [Chapter 44](#).

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 Specifications* Section 1.02.6.

**.24 Advertising of the Project** – Federal aid projects shall 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 responsible bidder with the lowest responsive bid unless the agency decides that all bids are to be rejected. Local Programs must concur when rejecting all bids. An advertisement period less than three weeks may be approved in special cases when justified. Shortened advertisement periods shall be no less than two weeks and require approval from FHWA. Approval must be properly documented in the project file. 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 USC 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 ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 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, national origin, or sex 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 if **minor** shall be approved by the CA local agency prior to transmittal to all the plan holders. A **major** addendum, which constitutes a change that significantly affects the cost of the project to the FHWA or alters the termini, character, or scope of the work requires HQ Local Programs approval. 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.

Negotiation with contractors, during the period following the opening of bids and before the award of the contract is not permitted.

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 *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 *Standard Specifications* Section 1 02.7, 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. All agencies that have projects with mandatory DBE goals must submit the bid tabs, the DBE Utilization Certification and the DBE Written Confirmation Document of the apparent low bidder to the Region Local Programs Engineer (LPE) to obtain concurrence to award before the contract is officially awarded to the apparent low bidder. Failure to gain LPE concurrence prior to award on every project with DBE goals and subsequent award of a contract to a nonresponsive bidder will jeopardize the project's federal funding. For more information on DBE program requirements, see [Chapter 26](#).

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

On projects where the lowest responsible bid exceeds the engineer's estimate, it is the local agency's decision whether or not to award the project. Reasons for justifying award:

- There was adequate competition for the project location and/or type of work.
- The project is essential to the public interest (safety, emergency repair, etc.).
- There was a significant error in the engineer's estimate.
- If 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](#).

The original 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 responsible bidder with the lowest responsive bid. 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 System for Award Management (SAM) at [www.sam.gov/portal/public/sam](http://www.sam.gov/portal/public/sam) to determine if a contractor and or a supplier has been excluded from bidding on a federal aid contract. The results of that search will be documented to the project file. SAM 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 with a Zero DBE goal, see [Appendix 46.43](#). For an example of an award letter for a contract that has an identified DBE goal, see [Appendix 46.44](#). The information contained in the body of these examples must be included in the local agency letter.

**.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.

An example 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, DOT Form 272-056 (if applicable).
- DBE Written Confirmation Document, DOT Form 422-031 (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](#) Advertisement – Example
- [46.42](#) Local Agency Funds – Award Letter Example
- [46.43](#) Zero Goal – Award Letter Example
- [46.44](#) Mandatory Goal – Award Letter Example
- [46.45](#) Contract Bond – Example
- [46.46](#) Request for Concurrence to Award - Example



**Invitation to Bid**

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 ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 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, national origin, or sex 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.

**Design Approval Documentation**

[Agency Name]

[Project Title]

All items on the appropriate design matrix have been followed. Items that have been reviewed and addressed include:

- Traffic Data
- Pavement Design Criteria
- NEPA
- \*Right of Way (See Appendices 25.174 & 25.175)
  - No ROW Needed - See Appendix 25.176
  - ROW Needed – PS&E consistent with ROW Plan
- Project Cost Estimate

\*If Right of Way needs change at any time, the following documents are required to be updated or re-evaluated:

1. Design Approval
2. Project Prospectus
3. NEPA

The [title of the approving authority as outlined on the agency's Certification Acceptance Agreement or Responsible Charge for Non-CA agency] has reviewed and approved the Design Documentation.

\_\_\_\_\_  
Name  
Title  
Agency

\_\_\_\_\_  
Date

Date

Principle, Title  
Company Name  
Address  
City, State, Zip

Contract Number  
Project Title  
Federal Aid Number

Dear:

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

As a part of entering this contract, the contractor agrees to take all necessary and responsible steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises (DBE) have an opportunity to participate in the performance of this contract.

The award of this contract was made with the understanding that (Company Name), will provide the following items prior to submitting the signed contract for execution:

1. 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 and mailing address.

Send this information to (Local Agency name and address). Failure to provide this information prior to execution will result in forfeiture of the bidder's proposal security.

The Contractor shall submit a Small Business Enterprise (SBE) Participation Plan prior to commencing contract work. Although the goal is voluntary, the outreach efforts to provide SBE maximum practicable opportunities are 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 award.

Sincerely,

Local Agency

cc: Region Local Programs Engineer

## Appendix 46.44 Mandatory Goal – Award Letter Example

Date

Principle, Title  
Company Name  
Address  
City, State, Zip

Contract Number  
Project Title  
Federal Aid Number

Dear:

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

As a part of entering this contract, the contractor agrees to take all necessary and responsible steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises (DBE) have an opportunity to participate 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 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 and mailing address.

Send these two items to (Local Agency name and address). Failure to provide this information prior to execution will result in forfeiture of the bidder's proposal security.

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 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, mechanic, 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



Washington State  
Department of Transportation

Request for Concurrence to Award

Project: \_\_\_\_\_

FHWA Project Number: \_\_\_\_\_

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 Utilization Certification
- DBE written confirmation
- 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