

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](#) 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 by Region LPE.
- The environmental documents are approved by HQ LP Environmental.
- The project's right of way has been certified.
- Project Training goals and Disadvantaged Business Enterprise (DBE) or Federal Small Business Enterprise (FSBE) are 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** – 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 **must be approved** by FHWA prior to use. If the agency is approved to prequalify prospective bidders, they shall afford a minimum of **twenty** calendar days after notification for the low bidder to provide evidence of capability to perform the work. When approved to utilize

prequalification requirement, the evaluation process of whether or not the Bidder is qualified to perform the work, the following information may be considered:

- Experience
- Personnel
- Equipment
- Financial Resources

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 only with HQLP approval.

Some of the items that may not be included in the consideration are,

- Past Performance
- Past Contract Issues (such as, timely completion, change orders, protests, disputes, and claims)
- Performance on current contracts
- Agency opinions or reviews

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*, WSDOT GSP, and APWA GSP Section 1.02.6 as applicable.

.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 (once per week), 21 calendar days prior to the last date upon which the bids will be received. These advertisements may require additional advertisements in special interest publications such as the Daily Journal of Commerce, trade magazines, or other regional publications utilized by construction contractors, consultant firms, and Disadvantaged Business Enterprises. 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 shall include the following:

- A construction schedule showing the benefit of a shorter advertisement period.
- 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) or FSBE goals and will it allow the subcontractors sufficient time to submit a bid to the proposal holders?
- Justification that the shorten advertisement period will not impact Disadvantaged Business Enterprises or small business' ability to bid on the contract.

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 and a copy of the advertisement 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 the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair 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 if **minor** shall be approved by the CA local agency and reviewed by the Region Local Programs Engineer 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, adds incentives or modifies work item payment methods, 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, confirmed, and certified. Corrections to the bid tabulations shall be made 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 based on of good faith efforts to attain the goal. All agencies that have projects with DBE goals must submit the certified bid tabs, the DBE Utilization Certification and the DBE Written Confirmation Document of the apparent three low bidders 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 assigned mandatory DBE goals must receive concurrence of the HQ Local Programs Engineer prior to award. Failure to obtain LPE concurrence 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 to determine if a contractor or supplier has been excluded from bidding on a federal aid contract. The results of that search must be documented in the Agency's project file. SAM is the electronic version of the Lists of Parties Excluded from Federal Procurement and Non-procurement Programs (Lists), which identifies those parties that have been suspended, debarred, or otherwise excluded from

bidding on federal procurement and non-procurement 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 a DBE goal, see Appendix 46.44. For an example of an award letter with a FSBE goal, see Appendix 46.46. The format and information contained in the body of these examples **must** be included in the local agency letter. Letters shall be on Agency letter head.

.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.

The Region Local Programs Engineers can furnish these standard forms upon request.

46.3 Submittal of Award Data

The local agency must submit the following information to the Region Local Programs Engineer within **30 days** of award:

- Certified 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).
- DBE Bid Item Breakdown, DOT Form 272-054
- Diversity Management & Compliance System (DMCS) contact information as follows,

Agency	Contractor
Name:	Name:
Title:	Title:
Phone:	Phone:
Email:	Email:

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 DBE Goal – Award Letter Example
- 46.44 DBE Goal – Award Letter Example
- 46.45 Contract Bond – Example
- 46.46 FSBE Goal – Award Letter 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 the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair 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.

Appendix 46.42 Local Agency Funds – Award Letter Example

Date

Principle, Title
Company Name
Address
City, State, Zip

Contract Number:
Project Title:

Dear:

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

The contract will be forwarded at a later date. The contract must be signed and returned in accordance with the mailing instructions furnished with the contract documents. Please return within 20 calendar days after the date of award.

Sincerely,

Local Agency

cc: Region Local Programs Engineer

Appendix 46.43 Zero DBE 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 on (Month/Day/Year) at your bid price of \$(total award amount).

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 Federal Small Business Enterprises (FSBE) have an opportunity to participate in the performance of this contract. The award of this contract was made with the understanding that the contractor will develop a FSBE inclusion plan and follow that plan throughout the contract.

Prior to submitting the signed contract for execution, (Awarded Contractor's Company Name) will provide the following items:

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 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 DBE 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 on (Month/Day/Year) at your bid price of \$(Total award amount).

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 contractor acknowledges that the firms listed on the DBE Utilization Certification will be performing the dollar value of work as indicated on the Bid Item Breakdown form.

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

1. Following 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 indicating any anticipated sharing of resources (e.g., equipment, employees).

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

Appendix 46.45 Contract Bond – Example

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 severally 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

Appendix 46.46 FSBE 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 on (Month/Day/Year) 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 Federal Small Business Enterprises (FSBE) have an opportunity to participate in the performance of this contract. The award of this contract was made with the understanding that the FSBE firms will be performing the percentage of work stated in the contract.

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

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 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