

# Chapter 15 **Advertise and Award Project**

## Content

	Section	PAGE
15.1	Introduction .....	1
15.2	Definitions of Terms/Acronyms.....	2
15.3	Approval for Local Agency to Administer Projects .....	5
	Significant NHS Projects .....	5
	All Other Projects .....	6
15.4	Project Advertisement.....	6
	Introduction.....	6
	Prequalification of Contractors .....	7
	Procedures .....	8
15.5	Contract Bid Opening .....	8
	Introduction.....	8
	Requirements .....	9
	Procedures .....	9
15.6	Contract Award.....	11
	Introduction.....	11
	Bid Analysis Process .....	11
	Award Procedures .....	13
	Post-Award Reviews.....	13
	Termination of Contracts .....	14
15.7	Award Package.....	14
15.8	References .....	15

## Figures

## PAGE

Figure 15-1:	Advertise & Award Project Flowchart .....	1
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## Exhibits

Exhibits applicable to this chapter can be found at:

<https://dot.ca.gov/programs/local-assistance/guidelines-and-procedures/local-assistance-procedures-manual-lapm>

[\*Exhibit 15-A: Local Agency Construction Contract Administration Checklist\*](#)

[Exhibit 15-B: Resident Engineer's Construction Contract Administration Checklist](#)

[Exhibit 15-C: Local Agency Project Advertising Checklist](#)

[Exhibit 15-D: Bid Tabulation Summary Sheet \(Sample\)](#)

[Exhibit 15-G: Constuction Contract DBE Commitment](#)

[Exhibit 15-H: DBE Information — Good Faith Efforts](#)

[Exhibit 15-I: Local Agency Bid Opening Checklist](#)

[Exhibit 15-L: Local Agency Contract Award Checklist](#)

[Exhibit 15-M: Detail Estimate](#)

# Chapter 15 Advertise and Award Project

## 15.1 INTRODUCTION

This chapter, [LAPM Chapter 16: Administer Construction Contract](#), and [LAPM Chapter 17: Project Completion](#), are for use by local agencies who administer federal-aid construction projects under an Administering Agency-State Agreement. When a locally sponsored project is within the state right of way (R/W) and the state (Caltrans) is the administering agency, the state's Construction Manual is used.

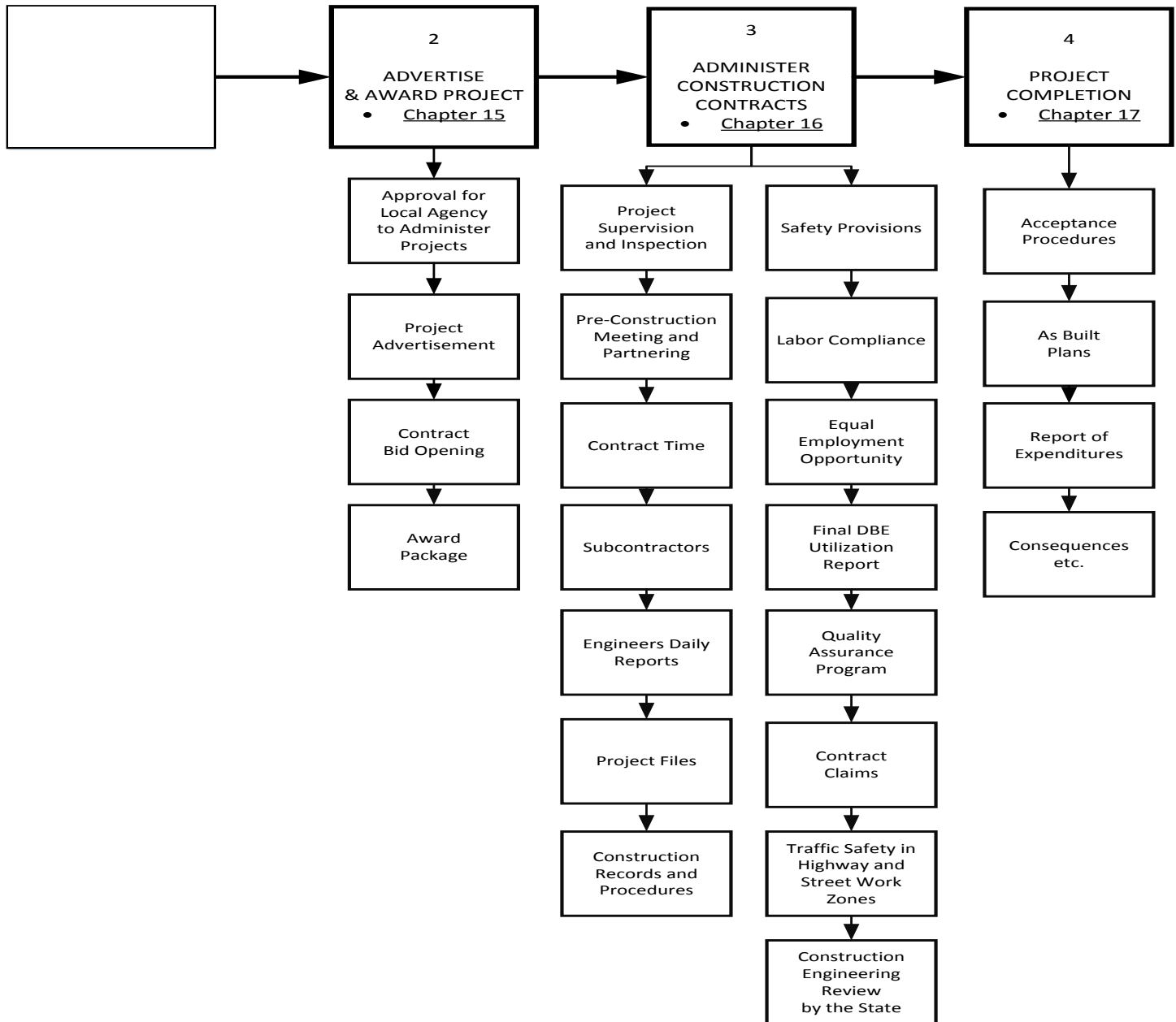


Figure 15-1: Advertise & Award Project Flowchart

This chapter covers the activities beginning with advertising of a construction contract and continuing through the bid opening, award, and detail estimate procedures. It has been prepared mainly as a guide for administration of federal-aid contracts by local agencies. Each local agency Resident Engineer (RE) should be familiar with the contents of this chapter, [LAPM Chapter 16: Administer Construction Contract](#), and [LAPM Chapter 17: Project Completion](#) before administering such contracts.

## 15.2 DEFINITIONS OF TERMS/ACRONYMS

**AASHTO** – American Association of State Highway and Transportation Officials.

**AC** – Advance Construction is a project authorization technique that allows the Federal Highway Administration to authorize a project without obligating Federal funds. FHWA is required to fully obligate the federal share of a federal-aid project at the time it executes a project agreement. Under an AC authorization, FHWA approves a project as being eligible for Federal funding but does not commit to funding the project. As such, the project must meet all Federal requirements except for the requirement to obligate funds.

**ASTM** – American Society for Testing and Materials.

**Administering Agency** – The state or a city, county, other public agency, or nonprofit organizations, that advertises, opens bids, awards and administers the contract. They are frequently called local agency or agency and were previously called responsible agency.

**Bid Rigging** – A conspiracy to disrupt or circumvent the competitive environment by establishing a competitive advantage for certain bidders.

**CCO** – Contract Change Order.

**CE** – Construction Engineering. This phase includes the work of project advertising<sup>1</sup> through construction, preparation of as-built plans, final estimates, and payments. This phase must be authorized prior to advertising, and CE must be separately identified in this authorization.

**CFR** – Code of Federal Regulations

**Contingencies** – An amount of funds usually a small percentage of the detail estimate, set aside for unforeseen items or quantities of work not specified in the contract documents, but required to complete the project. The percentage used for contingencies varies depending on the type and scope of work.

**Contract Administration** – Includes advertising, opening bids, award, and execution of the contract; control of work and material; and making payments to the contractor.

**Contractor** – The person or persons, firm, partnership, corporation, or combination thereof, who have entered into a contract with the administering agency, as party or parties of the second part of his/her or their legal representatives.

**DBE** – Disadvantaged Business Enterprise. A for-profit small business concern that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. One or more such individuals must also control the management and daily

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<sup>1</sup> CE includes advertising only if not included in PE phase and only after authorization date.

business operations. These individuals must be citizens (or lawfully admitted permanent residents) of the United States and (1) any individual who a federal-aid recipient finds to be a socially and economically disadvantaged individual per 49 CFR 26 on a case-by-case basis, or (2) who are either Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans (persons whose origin are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka), Women, or any other group found to be socially and economically disadvantaged as determined by the Small Business Administration (see 49 CFR, Part 26).

**Department of Transportation** – The Department of Transportation of the State of California, as created by law, also referred to as Department, State, or Caltrans.

**District** – A subdivision of the department organized to administer the affairs of the Department for a specific geographical area and for the local agencies in that area (see [Exhibit 2-A: Caltrans District Local Assistance Office](#)).

**DLA** – Division of Local Assistance (Caltrans Headquarters unit only).

**DLAE** – The District Local Assistance Engineer, the individual in each district responsible for providing services and assistance to the local agencies.

**E-76** – Federal-aid Program Document titled: Authorization to Proceed Form.

**EA** – Expenditure Authorization number.

**EEO** – Equal Employment Opportunity.

**ER** – Emergency Relief.

**Finance Letter** – A document required by Local Program Accounting (see [Exhibit 3-O: Sample Local Federal-Aid Project Finance Letter](#)) and submitted by the administering agency to Caltrans with information required as backup for the federal-aid/state project agreement.

**FSTIP** – Federal Statewide Transportation Improvement Program.

**HPMS** – Highway Performance Monitoring System.

**Headquarters** – The Headquarters office of the Department located at 1120 N St., Sacramento, CA 95814.

**Invoice** – A detailed list of expenditures that an administering agency requests reimbursement for with federal funds, pursuant to the Local Agency-State Agreement (see [LAPM Chapter 5: Invoicing](#), [Exhibit 5-B: Sample Federal-Aid Invoice with Two Appropriations & Different Reimbursement Rates \(Except for STIP and ATP Projects\)](#)).

**ISTEA** – Intermodal Surface Transportation Efficiency Act of 1991. ISTEA was an Act signed by the President on December 18, 1991, providing authorization for six (6) years for highways, highway safety, and mass transportation. ISTEA was superseded by TEA-21 in 1998 and by SAFETEA-LU in 2005.

**LRH** – Last Resort Housing.

**Local Agency** – A California city, county or other local public agency. In many instances this term is used loosely to include nonprofit organizations.

**Local Agency-State Agreement** – Agreement between the State and local agency. Generally refers to the Master Agreement and all supplemental agreements (Program Supplements) to the Master Agreements. These agreements are required for the State to provide reimbursement to the local agency for all federal-aid projects.

**Locode** – Numeric identifier for each local agency or administering agency (assigned by the Division of Local Assistance).

**LPP** – Local Programs Procedures. Documents used for deployment of new procedures and policies between updates of Local Assistance manual, guidelines and programs. Each procedure is numbered according to calendar year and order in which released.

**MPO** – Metropolitan Planning Organization.

**NHS** – National Highway System, a specially Designated Highway System established by the Intermodal Surface Transportation and Efficiency Act of 1991 and adopted by the United States Congress.

**Office Engineer** – Chief of the Headquarters or District Office of Office Engineer. The office engineering unit is responsible for insuring that the PS&E is complete, biddable and buildable.

**PE** – Preliminary Engineering, this phase includes all project initiation and development activities undertaken after its inclusion in the approved FSTIP through the completion of PS&E. It may include preliminary Right of Way engineering and investigations necessary to complete the NEPA document.

**PS&E** – Plans, Specifications & Estimate.

**Prequalification** – The AASHTO defines prequalification as a means of predetermining job experience and work capacity and to identify individuals and organizations from which the agency may accept a bid. The AASHTO also has encouraged the use of prequalification procedures in its 1981 Suggested Guidelines for Strengthening Bidding and Contract Procedures.

**RAP** – Relocation Assistance Program.

**R/W – Right of Way.** This phase includes the work necessary to appraise and acquire project right of way, relocate individuals or businesses, and revise or relocate utilities.

**Report of Expenditures** – Collectively refers to the following final report documents: Final Inspection of Federal-aid Project (FIF 7/96), Final Invoice, Final Detail Estimate, Change Order Summary (containing liquidated damages/contractor's claims, date of completion, date of acceptance by City or County), Final Report of Utilization of Disadvantaged Business Enterprise (DBE), Materials Certificate, and Report of Completion of Structures if bridges were constructed.

**Resident Engineer** – A qualified engineer who is empowered to administer the construction contract. Pursuant to California professional engineering licensing requirements, the resident engineer may be unlicensed provided their work is performed under the review of a licensed engineer.

**Responsible Charge-** A full time, public employee of the contracting agency qualified to ensure that the work delivered under contract is complete, accurate, and consistent with the terms, conditions, and specifications of the contract shall be in responsible charge of each contract or project.

**S&H Code** – California Streets and Highways Code.

**SHA** – State Highway Agency (Caltrans).

**SAFETEA-LU** – Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users signed into law by President George W. Bush on August 10, 2005, with guaranteed funding for highways, highway safety, and public transportation totaling \$244.1 billion. SAFETEA-LU represents the largest surface transportation investment to date. SAFETEA-LU was built on the foundation established by the two preceding Federal Transportation Acts: ISTEA and TEA-21.

**Supplemental Work** – Work that is anticipated but because of its uncertainty, cannot be included as a contract item e.g., additional staking, utility work, etc. If supplemental work is determined to be needed, a change order is required to include it in the contract. This work should normally be part of the contingencies.

**Surety** – A security against loss or damage or for the fulfillment of contract obligation, bond.

**TEA** – Transportation Equity Act for the 21<sup>st</sup> Century. Enacted on June 9, 1998, which authorized the federal surface programs for highways, highway safety, and transit for the six year period 1998-2003.

### 15.3 APPROVAL FOR LOCAL AGENCY TO ADMINISTER PROJECTS

#### Significant NHS Projects

Caltrans must approve the local agency's construction administration procedures before a local agency can advertise the construction of a federally financed significant NHS project (see [LAPM Chapter 7: Field Reviews](#) for the determination by the DLAE of which NHS projects will be considered significant). The procedures should be discussed in general at the field review and detailed written procedures shall be approved by the DLAE before the local agency will be allowed to administer any construction contracts for the project. Additionally, a local agency shall not advertise the project until it has received in writing an Authorization to Proceed with construction from Caltrans (see [LAPM Chapter 3: Project Authorization](#)).

The written construction administration procedures should cover the following items:

- Construction Management personnel and procedures
- Consultant use and selection
- Employee in Responsible Charge
- Project advertisement, bid opening and award procedures
- Pre-Construction Procedures
- Subcontracting
- Traffic Safety procedures
- Materials Testing
- Change order review and approval procedures
- Oversight procedures if a State highway is involved
- Maintenance of records and Access
- Estimates and Progress Payment

The DLAE will consult with Headquarters DLA for assistance with the review and approval of the local agency procedures.

### All Other Projects

Approval by Caltrans of the local agency's construction administration procedures will not be required for all other projects. However, each agency that administers a federal-aid construction project will be required to complete [Exhibit 15-A: Local Agency Construction Contract Administration Checklist](#) before their Request for Authorization to Proceed with Construction will be approved. A local agency shall not advertise a project until it has received in writing an Authorization to Proceed with construction from Caltrans (see [LAPM Chapter 3: Project Authorization](#)).

## 15.4 PROJECT ADVERTISEMENT

### Introduction

One of the most basic tenets of Federal aid contracting is that construction contracts are to be awarded competitively to the contractor which submits the lowest responsive bid. Project advertisement is the process used in soliciting such competitive bids from contractors.

This federal mandate is set forth in 23 U.S.C. 112 and reinforced by 23 CFR 635.114(a) which requires:

*Federal-aid contracts shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting the criteria of responsibility as may have been established by the SHA.*

These principles are the basis for Federal assistance to the state highway construction programs.

On locally administered projects, the construction engineering is performed by local agency personnel, unless arrangements are made to hire a consultant. If a consultant is used, the local agency must still designate an employee of the agency as the person in responsible charge of the project.

Construction engineering for locally administered projects shall be performed in accordance with the requirements found in [LAPM Chapter 16: Administer Construction Contract](#) of this manual.

Each local agency and all of its contractors, subcontractors, and vendors shall take all reasonable steps to assure that DBEs have equitable opportunity to compete for and perform contracts (see [LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises](#)).

Warning: No project shall be advertised for bids, nor shall any project work (by contract or other than contract) be undertaken, and no materials shall be purchased on any federal-aid project, prior to issuance of Authorization to Proceed by FHWA. Violation of this requirement shall result in the project being ineligible for federal funding.

Only one exception to this requirement can be made. It is for emergency relief projects involving emergency repair/opening of a facility. For more information on emergency relief projects see the [Local Assistance Program Guidelines \(LAPG\), Chapter 11: Emergency Relief](#).



Advertising costs shall be charged to the preliminary engineering work authorization if such authorization has been requested and has been established for the purpose of federal reimbursement.

### Prequalification of Contractors

The Federal Highway Administration (FHWA) permits the use of a prequalified list of Prime Contractors developed by the local agency, in accordance with 23 CFR, Section 635.110(a), "Licensing and Qualifications of Contractors". The use of a prequalification list and process is optional and not required.

If a local agency wishes to utilize such a prequalification process on Federal-Aid projects, advance approval must be granted by the FHWA Division Administrator (California Division) for use on Federal-Aid projects. As such, the local agency would submit a package to their District Local Assistance Engineer that would include an overview of their proposed process with timelines, the typical Responsibility Statement and Questionnaire that prospective Contractors would be submitting, and the criteria by which prospective Contractors would be evaluated for inclusion on the prequalified list

Per 23 CFR 635.110(b), no procedure or requirement for bonding, insurance, prequalification, qualification, or licensing of contractors shall be approved which, in the judgment of the Division Administrator, may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by any responsible contractor, whether resident or nonresident of the State or locally designated area wherein the work is to be performed.

It is particularly important that if a prequalification process is used on a given project, enough time is allowed between the initial advertising and the bid opening to allow a prospective bidder a reasonable opportunity to attain their prequalification (if not already prequalified).

Nationwide, the use of a contractor prequalification process typically consists of one of two basic methods:

- Contractors are prequalified on a project by project basis. In such a case, local agencies may set their own threshold for when (which projects) the prequalification process is used – for example a project over a certain dollar amount, or for a project that is particularly time sensitive, etc.
- Contractors are prequalified on a programmatic basis, in which a prospective Contractor may apply to become prequalified for a finite time period – usually one or two years – with provisions for renewal (of that prequalification) before or after that time period has elapsed. Once prequalified, such Contractors would be eligible to bid on any project for that local agency during that active period in which they are deemed prequalified.

The administration of a project specific (Item 1 above) Contractor prequalification process is eligible for Federal participation, as long as it can be directly attributed to a specific federal project or projects for which the prequalification process will be utilized. This work would be invoiced against either the Preliminary Engineering (PE) phase, or if occurring on a specific project after the Federal authorization (E-76) is received for Construction/Construction Engineering, the Construction Engineering (CE) phase of work. Local agencies should consult

with their District Local Assistance Engineer staff regarding federal participation for contractor pre-qualification.

For further information and discussion on prequalification of bidders, see the AASHTO publication on Suggested Guidelines for Strengthening Bidding and Contract Procedures (which is also available in the FHWA Contract Administration Core Curriculum).

## Procedures

Prior to project advertisement, the administering agency shall certify that their final PS&E package complies with all applicable federal and state regulations and procedures (see [Exhibit 12-C: PS&E Certification](#)). Local agencies should also complete and retain the [Exhibit 15-C: Local Agency Project Advertising Checklist](#) in the project files prior to requesting an Authorization to Proceed. All administering agencies must submit a completed Request for Authorization with the PS&E Certification before they can receive verification that construction has been authorized by Caltrans.

Upon receipt of Authorization to Proceed for construction by Caltrans, the local agency can proceed to advertise the project.

During the advertising period, the administering agency shall notify all prospective bidders of PS&E addenda in the same manner as all other nonfederal-aid projects. For award of federal-aid contracts, the local agency is required to certify that all bidders certify receipt of all addenda. The administering agency shall ensure free and open competition. The advertisement period is determined by the administering agency. A minimum advertisement period of three weeks is required for all federal-aid projects. Caltrans District Local Assistance Engineer may approve shorter periods in special cases where justified with a local agency's [Exhibit 12-F: Cost – Effectiveness/Public Interest Finding](#). The advertising period begins with publication of a Notice to Contractors in a newspaper receiving wide local circulation. The Notice shall identify the DBE goal. The administering agency is responsible to approve and issue all addenda to the PS&E during the advertising period.

The local agency shall assure that all updated estimates are fundable from available local or federal resources.

As soon as the project is advertised, the local agency shall furnish the DLAE with one copy of the as advertised plans and special provisions or two copies if structures (bridges) are involved.

## 15.5 CONTRACT BID OPENING

### Introduction

The contract bid opening is a public forum for the announcement of all bids, and is that point in time where the bids are opened and read aloud. It is also the last moment that bids can be accepted. No bids can be accepted during or after bids are opened. Normally the advertisement/bid documents will state a final time in which bids can be accepted. For the bidder, the reading of the bids confirms whether his bid is successful. For the local agency and the general public, this forum establishes the cost to build the project. The bid opening requirements as outlined below apply to all federal-aid highway construction projects.

## Requirements

FHWA policy requires all bids to be opened publicly and read aloud either item-by-item or by total amount. If a bid is not read, the bidder is to be identified and the reason for not reading the bid announced.

Reasons for not reading a bid include the bid itself being nonresponsive, often called irregular or the bidder is determined to be unreliable. Responsive bid and responsible bidder are defined as:

“A Responsive bid is one that meets all the requirements of the advertisement and proposal, while A Responsible bidder is one who is physically organized and equipped with the financial ability to undertake and complete the contract.”

Some reasons for not reading a bid due to bidding irregularities include:

- Failure to sign the bid
- Failure to furnish the required bid bond
- Failure to include a unit bid price for each item
- Failure to include a total amount for the bid
- Failure to prepare the bid in ink
- Failure to submit a completed addenda certification statement
- Failure to submit a non-collusion affidavit
- Failure to commit to the achievement of the DBE contract goals or demonstrate good faith efforts to do so
- Inclusion of conditions or qualifications not provided for in the specifications
- Submission of a materially unbalanced bid

The above examples do not include all possible bidding irregularities. The local agency's standard specifications govern regarding what constitutes a bidding irregularity. Accordingly, the local agency's bidding documents should clearly identify those requirements with which the bidder must comply to make the bid responsive.

Just as the bid may be rejected for being irregular or unresponsive, a bid may also be rejected on the grounds that the bidder is not a responsible bidder. A bidder may be deemed not responsible because of past unsatisfactory performance, as evidenced by failure to meet the local agency's qualification requirements, or because of State or federal suspension/debarment action. The administering agency should check to see if a contractor is suspended or debarred from federal contracts. A publication titled, A Listing of Parties Excluded from Federal Procurement and Nonprocurement Programs is available electronically in the internet at: [www.sam.gov](http://www.sam.gov)

Note: Contractor's Debarment and Suspension Certification is part of [Exhibit 12-H: Sample Bid](#).

In summary, a successful bid opening should identify the responsible bidder submitting the lowest responsive bid.

## Procedures

The administering agency shall follow its own procedures for bid opening, provided such procedures include:

- As bids are received, they shall be logged in and stamped with the time and date.

- The bids shall be retained in a secure place until the designated time and place for public 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 aloud, the name of the bidder and the reason for not reading the bid aloud 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 shall not be permitted.

The agency's bidding procedures shall not discriminate against any qualified bidder regardless of political boundaries. No bidder shall be required to obtain a license before submitting a bid or before the bid is considered for award of a contract, which includes federal financing; however, a State contractor's license must be obtained upon award of the contract. The local agency may also withhold payment under such contract until such time as the contractor furnishes proof of a proper license in compliance with State laws. No local agency shall bid in competition with, or enter into a subcontract with private contractors. As bids are received, they shall be logged in and stamped with the time and date. The bids shall be retained in a secure place until the designated time and place for public opening.

The administering agency shall retain the following completed documents for the successful bidder in the project file:

- [Exhibit 15-G: Construction Contract DBE Commitment](#)
- A list of bidders and total amounts bid with an item-by-item breakdown (see [Exhibit 15-D: Bid Tabulation Summary Sheet \(Sample\)](#)) of the three lowest bidders
- The Non-collusion Affidavit (see [Exhibit 12-H: Sample Bid](#))
- [Exhibit 15-I: Local Agency Bid Opening Checklist](#)

Where the lowest bid exceeds the engineer's estimate by an unreasonable amount as defined by established agency procedures, or where competition is considered to be poor for the size, type, and location of project, bids may be rejected unless an award of contract is justified as being in the best interest of the public. See [Section 15.6: Contract Award, Bid Analysis Process](#), and guidelines on [Preparing Engineer's Estimate, Bid Review and Evaluation](#), dated January 20, 2004.

The administering agency shall assure that all bids submitted include a completed addenda certification statement. The addenda certification statement is as follows:

Addenda - This bid is submitted with respect to the changes to the contract included in addendum number/s\_ (Fill in number/s if addenda have been received.)

Warning - If an addendum or addenda have been issued by the administering agency and not noted above as being received by the bidder, this Bid may be rejected.

## 15.6 CONTRACT AWARD

### Introduction

Warning: No project shall be advertised for bids, nor shall any project work (by contract or other than contract) be undertaken, and no materials shall be purchased on any federal-aid project, prior to issuance of Authorization to Proceed by Caltrans or the FHWA. Violation of this requirement shall result in the project ineligible for federal funding.

The contract award is a critical milestone for all federal-aid projects. At this point, the administering agency must have a complete financial package assuring adequate funding for the project. The administering agency shall award federal-aid contracts on the basis of the lowest responsive and responsible bidder. It is the administering agency's responsibility to assure that all successful bidders are licensed contractors upon award of any contract incorporating State or federal-aid funds.

### Bid Analysis Process

The administering agency should conduct a bid analysis for each project. The bid analysis is required for projects on the National Highway System (NHS). The bid analysis is the process performed to justify the award or rejection of the bids and should assure that good competition and the lowest possible cost were received. A proper bid analysis better ensures that funds are being used in the most effective manner. A bid analysis also assists the agency in preparing accurate engineering estimates on future projects.

The bid analysis process is an examination of the unit bid prices for reasonable conformance with the engineer's estimated prices. Beyond the comparison of prices, other factors that a bid analysis may consider include:

- Number of bids
- Distribution or range of the bids
- Identity and geographic location of the bidders
- Urgency of the project
- Unbalancing of bids
- Current market conditions and workloads
- Potential for savings if the project is re-advertised
- Comparison of bid prices with similar projects in the letting
- Justification for significant bid price differences
- Other factors as warranted

The Contract Cost Data publication by Caltrans is available to assist local agencies in preparing accurate engineers estimates. This annual publication is available in electronic form on the Internet. Instructions for downloading this information are located at:  
[http://www.dot.ca.gov/hq/esc/oe/awards/#item\\_code](http://www.dot.ca.gov/hq/esc/oe/awards/#item_code).

Not all of the factors above need to be considered for bids that indicate reasonable prices or show good competition. However, when the low bid exceeds the engineer's estimate by an unreasonable amount, a more thorough analysis should be undertaken to determine if the bids

should be rejected or a justification for award of the contract can be made. In order to justify award of a contract under these circumstances, the following criteria should be examined:

- Was competition good?
- Is the project essential and deferral would be contrary to public interest?
- Would re-advertisement result in higher bids?
- Is there an error in the engineer's estimate?
- Is the increase within the amount programmed in the FTIP?

For NHS projects, written justification shall be included in the project file for projects where the lowest responsible bidder exceeds the engineer's estimate by 10% or more. The justification should explain the reasons for the difference between the engineer's estimate and bid amount, and why it was decided to award the contract.

Regarding the adequacy of competition, the FHWA Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation outlines recommended procedures for preparing engineer's estimates and or reviewing bids prior to award. The web site is at <http://www.fhwa.dot.gov/programadmin/contracts/ta508046.cfm>. Location and availability of bidders should also be considered when determining adequacy of competition. Some projects may be so essential that deferral, even for 60 days, would not be in the public's interest.

Examples of such projects might include:

- Safety projects to correct an extremely hazardous condition where the traveling public is in danger.
- Emergency repairs or replacement of damaged facilities.
- Projects to close substantial gaps in otherwise completed facilities to allow opening to traffic.
- Projects that are critical to staged or phased construction and delay would significantly impact the completion of the whole project.

Unbalanced bids are one of the factors to review in a bid analysis. The two types of unbalanced bids are as follows:

- A mathematically unbalanced bid is a bid that contains lump sum or unit bid items that do not reasonably reflect the actual costs (plus reasonable profit, overhead costs, and other indirect costs) to construct the item, and
- A materially unbalanced bid is a bid that generates reasonable doubt that award to that bidder would result in the lowest ultimate cost to the government.

To detect mathematical unbalancing, the unit bid items should be evaluated for reasonable conformance with the engineer's estimate and compared with the other bids received. There are no definitive parameters (e.g., an amount or percent of variance from the engineer's estimate) that constitutes an unbalanced bid. The degree of unbalancing of a bid may depend on the reason for the unbalancing. Mathematically unbalanced bids, although not desirable, may be acceptable.

The determination of mathematically unbalanced bids may be aided by the use of one of the several computer software packages now available. However, the final decision should not preclude the use of engineering judgment. Care must also be exercised to ensure that unit bids

for mobilization do not mask unbalancing. Also, token bids (i.e., bids with large variations from the engineer's estimate) should be considered as mathematically unbalanced bids and further evaluation and other appropriate steps should be taken to protect the public interest.

There may be situations where the quantity of an item could vary due to inaccuracies in the estimating, errors in the plans, changes in site conditions or design, etc. In such situations, the bids should be further evaluated to determine if the low bidder will ultimately yield the lowest cost. If unbalancing creates reasonable doubt that award would result in the lowest ultimate cost, the bid is materially unbalanced and should be rejected or other steps should be taken to protect the public interest.

### **Award Procedures**

Unless it is a Project of Division Interest, the administering agency shall follow its normal procedures for award of the project and is delegated the authority to determine the lowest responsive/responsible bidder without concurrence to award by Caltrans or the FHWA. Written justification shall be included in the project file for all projects that are not awarded to the lowest bidder. The administering agency shall follow its normal procedures for award of the contract and assure that all federal requirements are followed. A bid analysis is not a requirement but is recommended. The administering agency shall retain the executed contract, document the award date, and the Preconstruction conference minutes. The State shall not participate in resolving disputes between the administering agency and its bidders.

It is the responsibility of the administering agency to verify with the DLAE and RTPA/ MPO that the appropriate amount of federal funds is authorized before the project is awarded. Once awarded, notify the DLAE the 'Notice to Proceed' has been given.

### **Post-Award Reviews**

The administering agency should conduct post-award bid evaluations to assure against bid rigging. An adequate number of projects awarded over a sufficient time period should be evaluated. A period of approximately 5 years should be selected for an initial evaluation to determine if any abnormal competitive bid patterns exist. The following information should be considered in a post-award review for abnormal bid patterns:

- Number of contract awards to a specific firm
- Project bid tabulations
- Firms that submitted a bid and later become a subcontractor on the same project
- Rotation of firms being the successful bidder
- Consistent percentage differential in the bids
- Consistent percentage of the available work in a geographic area to one firm or to several firms over a period of time
- Consistent percentage differential between the successful bid and the engineer's estimate
- Location of the successful bidder's plant versus location of the other bidders' plants
- Variations in unit bid prices submitted by a bidder on different projects in the same bid opening
- Type of work involved
- Number of plans and proposal taken out versus the number of bids submitted

- Any other items that indicate noncompetitive bidding
- On re-advertised projects, if the eventual successful bidder was also low bidder on the first letting

### Termination of Contracts

- a. All NHS contracts exceeding \$10,000 shall contain suitable provisions for termination by the administering agency, including the manner by which the termination will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- b. Prior to termination of a federal-aid contract that is subject to FHWA Full Oversight, the administering agency shall consult with and receive the concurrence of the Caltrans DLAE. In addition, for all other federal-aid contracts the administering agency shall notify the DLAE of the termination. The extent of federal-aid participation in contract termination costs, including final settlement, depends on the merits of the individual case. However, under no circumstances shall federal funds participate in anticipated profit for work not performed.
- c. Except as provided for in paragraph (e) of this section, normal local agency federal-aid plans, specifications, estimates, advertising, and award procedures are to be followed when an administering agency awards the contract for completion of a terminated federal-aid contract.
- d. When an administering agency awards the contract for completion of a federal-aid contract previously terminated for default, the construction amount eligible for federal participation on the project should not exceed whichever amount is the lesser, either:
  1. The amount representing the payments made under the original contract plus payments made under the new contract, or
  2. The amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.
- e. If the surety awards a contract for completion of a defaulted federal-aid contract, or completes it by some other acceptable means, the FHWA considers the terms of the original contract in effect and that the work be completed in accordance with the approved plans and specifications included therein. No further FHWA approval or concurrence action is therefore needed in connection with any defaulted federal-aid contract awarded by a surety. Under this procedure, the construction amount eligible for federal participation on the project should not exceed the amount representing what the cost would have been, if the construction had been completed as contemplated by the plans and specifications under the original contract.

## 15.7 AWARD PACKAGE

Prior to submitting the first invoice for the construction phase, and within sixty (60) days of contract award, the administering agency must forward the following information as one package to the DLAE:

- [\*Exhibit 15-B: Resident Engineer's Construction Contract Administration Checklist\*](#)
- [\*Exhibit 15-G: Construction Contract DBE Commitment\*](#)



- [Exhibit 15-L: Local Agency Contract Award Checklist](#)
- [Exhibit 15-M: Detail Estimate](#) (based on award)
- [Exhibit 3-O: Sample Local Federal-Aid Project Finance Letter](#) based on the Detail Estimate

The DLAE will review the documents for completeness and accuracy. In addition, the DLAE will provide the project's construction contract award date and [Exhibit 15-B](#) to the Construction Oversight Engineer (COE).

The administering agency's Resident Engineer assigned to the project must complete and sign the [Exhibit 15-B](#). The purpose of this checklist is to assure that the Resident Engineer is familiar with the federal requirements before the construction begins. Deficiencies in contract administration procedures that cannot be corrected may result in withdrawal of federal and/or state funds from the project. If the Resident Engineer is a consultant, the Local Agency Employee in Responsible Charge shall sign the [Exhibit 15-B](#), [Exhibit 15-M](#) and [Exhibit 3-O](#) must be prepared outlining all project costs by Improvement Type Code. If the award amount is more, or significantly less than the amount estimated at the time of construction authorization, the Award Package submitted to the DLAE will be used to update the project agreements. The Authorization to Proceed (E-76) and state-issued Finance Letter will be revised to reflect updated project costs. If additional federal funds for the project's construction phase is needed, the administering agency must submit written approval from the MPO/RTPA (for STBG, CMAQ, etc.) or pertinent DLA Office (for HSIP, HBP, etc.) as part of the Award Package.

Note: Per 23 CFR 630.106 (f) (2), the Federal pro rata or lump sum share may be adjusted before or shortly after contract award to reflect any substantive change in the bids received as compared to the administering agency's estimated cost of the project (Preliminary Cost Estimate) at the time of construction authorization, provided that federal funds are available. FHWA has interpreted the term 'shortly after contract award' to be no more than 90 calendar days after the contract award date.

For future invoices involving the construction phase, the administering agency must maintain the Federal pro rata share as originally authorized for the construction phase, if not adjusted at award.

## 15.8 REFERENCES

- [23 USC 112](#)  
<https://www.gpo.gov/fdsys/granule/USCODE-2011-title23/USCODE-2011-title23-chap1-sec112>
- [23 USC 114\(a\)](#)  
<https://www.fhwa.dot.gov/map21/docs/title23usc.pdf>
- [23 CFR 635](#)  
[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title23/23cfr635\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title23/23cfr635_main_02.tpl)
- [23 CFR Part 40](#)  
[https://www.transportation.gov/sites/dot.dev/files/docs/PART40\\_2012.pdf](https://www.transportation.gov/sites/dot.dev/files/docs/PART40_2012.pdf)

- [23 CFR 630 Subpart C](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr;sid=034a96d52b105f9eb4cbb41d07e23792;rgn=div5;view=text;node=23%3A1.0.1.7.21;idno=23;cc=ecfr)  
<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr;sid=034a96d52b105f9eb4cbb41d07e23792;rgn=div5;view=text;node=23%3A1.0.1.7.21;idno=23;cc=ecfr>
- [49 CFR 26](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)  
[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)
- [California Public Contract Code, Chapter 6, Section 6100](http://www.search-california-law.com/research/ca/PCC/6100./Cal-Pub-Cont-Code-Section-6100/text.html)  
<http://www.search-california-law.com/research/ca/PCC/6100./Cal-Pub-Cont-Code-Section-6100/text.html>
- [California Public Contract Code Section 7106](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PCC&sectionNum=7106)  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PCC&sectionNum=7106](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PCC&sectionNum=7106).
- [DOT, FHWA 1997 Contract Administration Core Curriculum](https://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm)  
<https://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm>
- [FHWA Final Report Process Review on Competition in Bidding and Engineer's Estimate Review - 1991](https://www.fhwa.dot.gov/programadmin/contracts/ta508046.cfm)  
<https://www.fhwa.dot.gov/programadmin/contracts/ta508046.cfm>
- [US DOT/US Dept. of Justice, Suggestions for the Detection and Prevention of Construction Contract Bid Rigging - 1983](https://www.fhwa.dot.gov/programadmin/contracts/dotjbid.cfm)  
<https://www.fhwa.dot.gov/programadmin/contracts/dotjbid.cfm>
- [SAFETEA-LU](http://www.fhwa.dot.gov/safetealu/index.htm)  
[www.fhwa.dot.gov/safetealu/index.htm](http://www.fhwa.dot.gov/safetealu/index.htm)