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## **CHAPTER 15**

# **CONSTRUCTION ADVERTISING AND AWARD PROCEDURES**

<b>15.1</b>	<b>OVERVIEW .....</b>	<b>2</b>
<b>15.2</b>	<b>DEPARTMENT ISSUED NOTICE TO PROCEED .....</b>	<b>2</b>
<b>15.3</b>	<b>PREPARATION OF THE PROJECT BID PROPOSAL .....</b>	<b>3</b>
<b>15.3.1</b>	<b>Bundling Multiple Projects.....</b>	<b>3</b>
<b>15.3.2</b>	<b>Bid Alternates .....</b>	<b>3</b>
<b>15.3.3</b>	<b>Contractor Qualifications .....</b>	<b>3</b>
<b>15.3.4</b>	<b>Federal and State Construction Contracting Requirements.....</b>	<b>4</b>
<b>15.4</b>	<b>ADVERTISING OF THE PROJECT .....</b>	<b>6</b>
<b>15.4.1</b>	<b>Bid Addendums .....</b>	<b>8</b>
<b>15.4.2</b>	<b>Davis-Bacon Act Wage Rate Tables.....</b>	<b>8</b>
<b>15.5</b>	<b>BID OPENING &amp; EVALUATION .....</b>	<b>9</b>
<b>15.5.1</b>	<b>Evaluation of Bids for Award.....</b>	<b>9</b>
<b>15.5.2</b>	<b>Bid Rejection.....</b>	<b>9</b>
<b>15.5.3</b>	<b>Bid Concurrence from the Department.....</b>	<b>10</b>
<b>15.5.4</b>	<b>Award Exceptions.....</b>	<b>10</b>
<b>15.6</b>	<b>CONTRACT AWARD AND EXECUTION .....</b>	<b>10</b>
<b>15.7</b>	<b>RESOURCES.....</b>	<b>11</b>

## 15.1 OVERVIEW

This **Chapter** outlines the general process for LAs that advertise and award construction contracts under the Department's LAP program. LAs advertising, awarding, and administering Federal-aid eligible construction contracts must develop and follow procedures and processes in compliance with **Chapters 120 and 337, F.S. and 23 CFR 635**, and attain LAP Certification as described in **Chapter 7** (where applicable).

LAs may advertise and award contracts for construction projects provided the following conditions are met:

- The LA meets Federal and State requirements for the advertisement, selection of lowest responsive and responsible bidder, and award of the contract as established through the LAP Certification process.
- The LA has an approved Plans, Specifications & Estimates (PS&E) package; **LAP Construction Checklist Form No. 525-010-44**; and Federal authorization has been received.

A *responsive bidder* is one that meets all the requirements of the advertisement and proposal. A *responsible bidder* is one that has the financial wherewithal and is physically organized and equipped to undertake and complete the contract.

The approved PS&E package as described in **Chapter 20** and as required for Federal authorization of the construction phase must incorporate the LAs' contract terms and conditions. This **Chapter** identifies the requirements and guidelines the LAs must follow to develop the contract terms and conditions of the bid, also known as "front end" or "Division One" bid documents. The contract terms and conditions development is treated separately in this **Chapter** for the purposes of organization and better distinction of those Federal and state requirements related to Federally funded construction contracting language.

## 15.2 DEPARTMENT ISSUED NOTICE TO PROCEED

The District LP Teams issue an NTP to the LA for each LAP project. NTPs may not be issued unless both Federal and state funding approvals have been received by the District LP Team. All LAs are required to advertise a project within 30 days of the NTP per the terms of the **LAP Agreement (7B)**. Timely contract award is critical for maintaining financial activity on Federal projects per **Chapter 5 and 6** and **23 CFR 630.106(a)(5)-(6)**.

**All contract awards shall be concurred with by the District LP Administrator prior to contract execution as detailed in the following sections.**

## **15.3 PREPARATION OF THE PROJECT BID PROPOSAL**

Although a project is funded through the Department, the LA prepares its bid documents following its standard procurement process. The LA is responsible for compliance with all local, state, and Federal requirements. The [Local Agency Program Checklist for Construction Contracts Form No. 525-010-44](#) (**LAP Construction Checklist**) is used by the Department to monitor compliance with identified requirements. The **LAP Construction Checklist** is inclusive of the most common Federal and state requirements or those that present the highest risk to eligibility to receive Federal funds and is described in additional detail in **Section 15.3.4**. FHWA also posts a matrix of contract provisions relevant to both Federally funded construction and service contracts located here: <http://www.fhwa.dot.gov/construction/contracts/provisions.cfm>.

### **15.3.1 Bundling Multiple Projects**

Multiple Federal-aid projects may be bundled into one advertisement and contract award as a cost and time savings. Multiple projects of the same work type in one jurisdiction and/or proximity of projects are two of the most common ways to bundle projects for advertising and award. Contact the District LP Administrator for additional information.

### **15.3.2 Bid Alternates**

Bid alternates are allowed as a mechanism to control costs and/or time on a project. Additional information on alternative contracting may be found in **Chapter 16** and the **FHWA Contract Administration Core Curriculum Manual** or by contacting the District LP Administrator.

### **15.3.3 Contractor Qualifications**

The LA is prohibited from establishing any procedures or requirements for qualification or licensing of contractors that might restrict competition, prevent the submission of bids, or prohibit consideration of bids submitted by any responsible contractor. This applies whether the contractor is a resident or a nonresident of the State of Florida.

The LA shall certify that the [Department's prequalified contractors](#) established in accordance with **Rule 14-22 F.A.C.** will be used to construct LAP projects located on the NHS, the SHS, or if the project is a Class B or C project as defined in **Chapter 17.4**. However, when the project is on the NHS or SHS **and** the contract is estimated to cost less than \$250,000, then a Department prequalified contractor is not required, per the

**Department's Standard Specification 2-1, Prequalification of Bidders.** If a project bid is estimated to cost less than \$250,000, but bids come in higher than the \$250,000 threshold; the LA is not required to re-advertise the project if prequalification was waived in the initial bid.

The LA is responsible for the prequalification of prospective bidders on local roadways ("off-system"). They may use their agency prequalification procedure, or the Department's prequalification procedure (**Rule 14-22 F.A.C.**). There shall be no procedure or requirement for bonding, insurance, prequalification, qualification, or licensing to prohibit the contractor from submitting or awarding a bid based on residency or tax receipts where the work is to be performed. Contractors must meet Federal and state bid performance and payment bonding requirements under **2 CFR 200.325** and [255.05 F.S.](#)

When a LA does not prequalify prospective bidders, the LA must include enough information in the bid package to enable the bidders to provide evidence of its capability to perform the work. Qualifications requested in the construction bid package must be fair and consistent. Evaluations performed by LAs should consider experience, personnel, equipment, financial resources, and performance record, or some combination thereof.

### 15.3.4 Federal and State Construction Contracting Requirements

All items identified on the **LAP Construction Checklist** must be addressed when compiling the construction bid package. The checklist is inclusive of the most common Federal and state requirements, or those that present the highest risk to eligibility to receive Federal funds. The LA is responsible for compliance with all local, state, and Federal requirements.

As part of the continuing effort to streamline processes and support statewide best practices, **LAP Division One Specifications** for LAs are documents available for incorporation into LAP construction project bid packages. The documents, available in Microsoft Word 1997-2003 format (.doc), include standard contract language for items found on the **LAP Construction Checklist** that also appear in the **FDOT Standard Specifications for Road and Bridge Construction**. FDOT Specifications are reviewed by FHWA and FDOT legal and meet the contractual requirements for use on Federal-Aid Highway Program projects. Use of the full **LAP Division One** documents is not mandatory, but may save the LA time and effort in researching and developing contract language that meets Federal and state requirements. The LAs must determine if adaptation of the Department's specifications qualify for an engineer's sign and seal under **Chapter 471 F.S.**

Two versions of the **Division One Specifications for Local Agencies** document are available for use on LAP projects:

1. **LADIV1-OFFSYS** is for LAP Class D projects.
2. **LADIV1-ONSYS** is for use on LAP Class A, B, and C projects. This version includes the required language for synchronization with FDOT Division Two and Division Three specifications that are required for use on these class projects.

The documents do not satisfy all requirements of the **LAP Construction Checklist** but do compile requirements found in the **FDOT Standard Specifications for Road and Bridge Construction** published by the Department. In addition, not all the FDOT Specifications included in the documents are required for each LAP project. LAs may omit those non-applicable requirements as needed. References to LA processes or procedures may need to be added for consistency with the bid package. The LA is responsible for addressing all conflicts between their construction specifications and what is provided in the **LAP Division One** documents.

**Figure 1: Specs on the Web**



The document files are located on the Departments ‘**Specs on the Web**’ at: <https://fdotewp1.dot.state.fl.us/SpecificationsPackage/Utilities/Membership/login.aspx?ReturnUrl=%2fSpecificationsPackage%2fdefault.aspx>. **Specs on the Web** is a web application that creates specification packages for transportation projects including provisions that are required with Federal-aid projects. Each file is downloadable and may be formatted or edited as needed. To download the document, visit the website and select the ‘Browse’ hyperlink associated with either document. Both document files will be updated bi-annually by Central Office during the rollout of the **FDOT Standard Specifications for Road and Bridge Construction**, which is also published on a bi-annual basis.

In addition to contracting language identified in the **LAP Construction Checklist**, the LAs are also required to specify the bid terms in compliance with Federal and/or State requirements. Some general requirements are listed here:

- Each bid shall be made on the forms provided by the LA and shall be signed by the bidder with the signature in full.
- If a corporation makes the proposal, the officer(s) with authority to sign contracts shall sign the proposal in the name of the corporation.
- The address of the bidder should be printed on the proposal.
- A unit or lump sum price, as required in the proposal, shall be submitted on each item of work included in the group or division for which bids are requested.
- Each unit or lump sum price shall be written in figures.
- Causes for bid rejection must be clearly defined by the LA. Common causes listed in Federal and State guidelines include:
  - Any price omission on items shown in the proposal form.
  - Any condition, limitation, or provision that is not officially invited in the proposal.
  - Failure by the contractor to meet project qualifications.
  - Contractors suspended, debarred and/or otherwise disqualified from bidding on Federal and/or State contracts.

**Section 15.3** is not inclusive of all local, State, and Federal requirements, laws, and rules the LA may need to comply with. It would be impossible to republish all of the existing requirements within the **LPM**. The Department certifies a LA to advertise, award, and administer LAP construction contracts with the reasonable expectation that the LA develops procedures and processes in compliance with local, State, and Federal requirements including **Chapters 120 and 337, F.S.** and **23 CFR 635**. Additional assistance may be requested from the District and/or State LP Administrators as needed.

## 15.4 ADVERTISING OF THE PROJECT

Federal-aid construction projects shall be advertised for a minimum of three (3) weeks or four (4) weeks before the opening of bids. The advertising period begins when the first of two (2) advertisements is published.

For projects that do not require a FDOT prequalified contractor, the LA complies with the minimum three (3) week regional advertisement for FHWA and also with:

- **255.0525 F.S. Advertising for Competitive Bids or Proposals** requires the solicitation of competitive bids or proposals for any county, municipality, or other political subdivision construction project that is projected to cost more than

\$200,000 shall be publicly advertised at least once in a newspaper of general circulation in the county and/or regionally where the project is located at least **21 days** prior to the established bid opening and at least five (5) days prior to any scheduled pre-bid conference.

- **255.0525 F.S.** for construction projects projected to cost more than \$500,000 shall be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least **30 days** prior to the established bid opening and at least five (5) days prior to any scheduled pre-bid conference.

For projects that require FDOT prequalified contractors, the local will comply with the minimum three (3) week regional advertisement for FHWA and also with:

- **337.11(3)(a) F.S.** requiring two (2) newspaper advertisements for all contracts under \$250,000 or any contract less than \$500,000 that has prequalification requirements waived.
- **337.11(3)(b) F.S.** requires that on all construction contracts greater than \$250,000, the bid solicitation notice is provided to all prequalified contractors at least two (2) weeks before the date bids are scheduled to be received.

Provided the LA places the advertisement for all contracts under \$250,000 in a newspaper and that advertisement runs for at least once a week for no less than two (2) consecutive weeks, and the first publication of the advertisement is placed in the newspaper within 14 days of the letting, compliance with the statutory requirement has been met. Coverage should be proportionate to the size of the project and must be regional to meet **23 CFR**. The LA may opt for additional notification.

Bidding opportunities will be given on a nondiscriminatory basis to all qualified bidders regardless of State or LA boundaries, race, gender, color, religion, age, disability, marital status, or national origin.

No bidder will be disqualified or prevented from competitive bidding by restricting the purchase of a surety bond or insurance policy from any surety or insurer outside the state who is authorized to do business with the State of Florida. **Negotiations with contractors are not permitted during the advertisement, award, or execution periods of the construction contracting process.**

Department cost estimates are confidential per [337.168, F.S. Confidentiality of official estimates, identities of potential bidders, and bid analysis and monitoring system.](#)

*A document or electronic file revealing the official cost estimate of the department of a project is confidential and exempt from the provisions of s.*

*119.07(1) until the contract for the project has been executed or until the project is no longer under active consideration.*

It is up to the LA's legal counsel to determine if the LAA is required to disclose the cost estimate under Florida's broad public records laws. The Federal regulations do not stipulate confidentiality. They allow the states to make the decision to keep estimates confidential.

### **15.4.1 Bid Addendums**

If an addendum is necessary during the advertising period, the LA shall submit the addendum to the District LP Administrator for review and concurrence prior to publication. On FHWA oversight projects, the District LP Administrator will submit the addendum to FHWA for approval per the oversight plan. Bidders must present written notice of receipt of each addendum received along with the bid.

### **15.4.2 Davis-Bacon Act Wage Rate Tables**

The contractors must pay Davis-Bacon Act predetermined wage rates to all covered workers on Federal-aid construction projects exceeding \$2,000 on roadways that are functionally classified as Federal-aid highways. The Davis-Bacon requirements do not apply to force account work performed by LA forces. The application of wage rates on a LAP project depends on the relationship or linkage to a Federal-Aid Highway and the Federal fund types (e.g. Transportation Alternatives, Highway Safety). Additional information on wage rates may be found in **Chapter 10**.

The wage rates used will reflect the latest rates approved by the USDOL. The effective date for Federal rates is determined as follows:

- Federal wage rates are received from the USDOL, who publish the "General Wage Determinations Issued under the Davis-Bacon and Related Acts." The USDOL issues modifications weekly. To minimize the possibility of out-of-date Federal wage rates at the time of bid opening, the LA developing the construction documents access the wage rates through the following link seven (7) working days before the advertising date: <http://www.fdot.gov/construction/Wage.shtm>
- Modifications published by the USDOL less than 10 days before the opening of bids will be effective unless the LA determines that there is not sufficient time before bid opening to notify bidders. The LA inserts a report of the determination in the contract file. No report is necessary if the notification is published after bid opening.



- If the contract has not been awarded within 90 days after bid opening, any modification published before award will be effective unless the LA receives approval of an extension of the 90-day period from the USDOL. The LA must support this request with factual evidence that the extension is necessary, proper, and in the public's best interest.

## 15.5 BID OPENING & EVALUATION

The LA will publicly open and announce all bids it receives by total amount in accordance with the terms of the advertisement. If any bid received is not read, the LA must publicly announce the name of the bidder and the reason for not reading the bid at the bid opening.

The LA's contracting office must submit adequate justification for rejecting any bids to the District LP Administrator. The District LP Administrator may also provide the justification to the State LP Administrator and/or the FHWA as needed.

### 15.5.1 Evaluation of Bids for Award

After the bid opening, the LA must verify all bidders are both responsive and responsible as defined in **Section 15.1**. The LA verifies all bidders have properly submitted and executed all required bid documents and forms. The LA reviews all bids for accuracy, checks for conformance to the engineer's estimate, evaluates unbalanced bid items, and confirms tabulations.

The LA shall prepare a tabulation of bids showing the item details and total bid for all responsible bids. A responsible LA official certifies that these tabulations are correct and performs unbalanced bid analyses as needed per **23 CFR 635**. It is important that the LA thoroughly reviews all submitted individual surety bonds to establish their authenticity.

### 15.5.2 Bid Rejection

The LA may reject the bids in the following circumstances:

- Where the low bid differs from the engineer's estimate by an unreasonable amount (reasonable conformance pursuant to **23 CFR 635.114(c)**).
- Where obvious unbalancing of unit prices has occurred.
- Where competition is considered to be inadequate relative to the size, type, and location of the project.

The LA shall notify the District LP Administrator when bids are rejected. If all bids are rejected, the project may be re-advertised and will remain eligible for Federal

reimbursement if all Federal requirements continue to be met. **Negotiations with contractors are not permitted during the advertisement, award, or execution period of the contracting process.**

### **15.5.3 Bid Concurrence from the Department**

The LA shall submit the bid tabulation to the District LP Administrator along with all back up documentation and/or justifications needed to support the bid award to the lowest responsive, responsible bidder. If the LA determines that the lowest bidder is not qualified, it must document this information before seeking District concurrence to award to the next lowest responsive, responsible bidder.

The District LP administrator shall review and concur with the award recommendation in writing. FHWA may also need to provide concurrence on oversight projects. Bid concurrence documentation must be uploaded to **GAP**.

### **15.5.4 Award Exceptions**

The LA must document exceptional circumstances of an award in its project files. The LA may award the contract, **with District concurrence**, if there are exceptional circumstances such as those listed below:

- Where the competition is adequate relative to the size, type, and location of the project, but less than three (3) bids were received.
- Where the project is essential to the public interest (safety or public, emergency repair, etc.) and deferring it would endanger that interest.
- Where the engineer's estimate is clearly in error by a significant amount.
- Where re-advertising would not likely result in lower bids because the plans and specifications already contain all possible cost reduction measures.

Before awarding a project which exceeds the engineer's estimate by a significant amount, the LA must seek concurrence from the District LP Administrator. The LAP Agreement may be supplemented if the award amount is greater than the authorized amount at the discretion of the District Program Management Administrator and the LP Administrator. Details regarding supplemental agreements and availability of additional funds are located in **Chapter 5** and the **Work Program Instructions**.

## **15.6 CONTRACT AWARD AND EXECUTION**

Before notifying the contractor of the award, the LA must post its intent to award in accordance with the local rules or ordinances and must receive the District's concurrence to award. The LA is also responsible for resolving any protests that are filed.

The LA will prepare and forward an official award letter to the contractor with a copy to the District LP Administrator. All letters must be identified in the subject area with the following: 1) Financial Project Number, 2) Federal Aid Number, and 3) County in which the project is located.

State law requires that a LA may not carry out a contract with any contractor who is not registered or licensed in accordance with State laws. A LA is **not** permitted to bid in competition or enter subcontracts with private contractors for construction of Federal-aid projects. The designated LA office prepares the necessary contract documents and forwards them for execution by the successful bidder and the proper officials of the LA. The LA must submit a copy of the executed contract to the District LP Administrator in **GAP**.

## 15.7 RESOURCES

It is the LA's responsibility to incorporate construction contracting requirements and periodically verify the contract assurances and/or forms are up to date. Links to all forms, sample forms, templates, and other contract documentation are found on the [LAP Website Forms Page](#).

Specs on the Web:

<https://fdotewp1.dot.state.fl.us/SpecificationsPackage/Utilities/Membership/login.aspx?ReturnUrl=%2fSpecificationsPackage%2fdefault.aspx>.