

**Manuals Committee
Meeting Agenda**

Wednesday, January 4, 2024 (Immediately after Standards Committee Meeting)
Meeting Location: 1334 Smith Street, Charleston, WV in Lower-Level Conference
Also meeting virtually via Google Meet. E-mail distribution includes instruction.

Call to Order

Unfinished Business – Manuals discussed at last Committee meeting.

TITLE	Champion
3rd time to Committee. Discussed in September & November <i>Contract Award Manual.</i> This is an update of the 2021 manual; the revisions include changes to 2023 Standard Specifications and for special provision updates for Disadvantage Business Enterprises. The revisions to the manual are shown in redline. It has been updated per comments at the last meeting.	S. Danberry

New Business

TITLE	Champion
None	

Next Meeting Date: Wednesday, March 13, 2024.
Deadline for submissions: February 14, 2024.

Adjournment

Revised
2023

2021

West Virginia Department of Transportation Division of Highways Contract Administration Division

CONTRACT AWARD MANUAL



DRAFT

Contents

Overview	1
Section I: Proposal Development	2
Proposal Contents.....	3
Proposal Cover Sheet	3
Index of Proposal Contents	3
Proposal Acceptance Notice	4
Proposal Work Category Checklist	4
Schedule of Items.....	4
Proposal Forms and Time for Completion	4
FHWA 1273 Required Contract Provisions	5
Special Provisions	5
Supporting Information and Documents	5
Contract Plans	5
Proposal Checklist Items	6
Internal Quality Review.....	6
FHWA Approval (Full Oversight Projects Only)	6
Funding in Place	6
Section II: Advertisement	6
Contractor Prequalification.....	6
Contractor Questions During Advertisement	7
Pre-Bid Meeting	7
Bidder's Responsibility	7
Section III: Award.....	8
The Bid Opening.....	8
Evaluation of Proposals.....	8
Lowest Responsible Bidder	9
Tied Bids.....	9
Disadvantaged Business Enterprises.....	10
Bid Analysis	10
Clarifications	11
Award	12
Expedited Award.....	13



Bid Protest.....	13
Section IV: Supporting Documents & References	14



DRAFT

Overview

The Contract Administration Division (Division) of the West Virginia Department of Transportation, Division of Highways (Department) is responsible for the procurement of construction projects managed by the Department. These projects reflect the investments in the State's infrastructure, as conceived by the Department and funded through a combination of Federal, State and Local funds. This Manual illustrates how the Division progresses construction projects from development to construction. Reference to the State and Federal requirements which govern the process are provided. This manual governs construction projects managed by the Contract Administration Division.

The procurement of public infrastructure projects must comply with State and Federal statutes and the regulations and policies which support them. Collectively, these documents guide the Division staff through the steps to promote a transparent, fair, and competitive procurement process. Stewards of public funds are obligated to promote these principles and to manage with integrity. The contractors must have confidence that the Department's contract award process will provide equal opportunity, without bias or favor. Section IV provides links to relevant documents.

This Manual captures the business workflow performed by Division personnel, offering readers a general understanding of the work performed. The mechanics of how the Division performs their day-to-day responsibilities is provided in a companion document titled "Contract Award Procedures Manual".

The procurement of transportation projects can be defined by three steps: (1) Proposal Development, (2) Advertisement, and (3) Award. Each of these steps will be discussed in the following sections of this Manual.



Figure 1 Schematic of Procurement Workflow



DRAFT

Section I: Proposal Development

The proposal is the collection of documents assembled by the Division that describes the work to be performed and the requirements the qualified contractor must comply with for their bid to be considered responsive. The proposal document must be publicly advertised with direction on where it can be found (whether digital or hardcopy). A contractor then submits a bid in response to the advertised proposal, and by doing so, agrees to the proposal terms and conditions. The proposal represents the terms of the contract between the contractor and the Department.

Prior to the proposal development, the Design Project Manager finalizes the design drawings, often referred to simply as the “contract plans”, assembles the unique instructions to the contractor for the project, known as special provisions or specifications, and produces an estimate detailing the cost of the work. These materials form the Plans, Specifications and Estimate, or PS&E, package. The submittal of the PS&E package to the Division triggers the development of the proposal.

To complete the proposal development and prepare the document for advertisement, the Division augments the PS&E package with additional information. Proposal contents should include, as applicable:

- Proposal Cover Sheet
- Index of Proposal Contents
- ~~Contractor's Proposal Form~~ Proposal Acceptance Notice
- ~~Notice to All Bidders~~
- Proposal Work Category Checklist
- Schedule of Items
- ~~Acceptance of Proposal Forms~~ Bidding Requirements
- FHWA 1273 Required Contract Provisions
- Special Provisions
- Right-of-Way Statement
- Utility Status Report
- Bridge Engineer's Statement
- District Construction Statement
- Environmental Permits and Clearances
- Job Classifications and Wage Rates
- ~~West Virginia DBE Listing of Contractors~~
- Contract Plans

When reviewing the Proposal Contents, the Division should ensure the following have been completed or are in place:

- Internal Quality Review
- FHWA Approval (FHWA Full Oversight Projects according to the Stewardship and Oversight Agreement)
- Funding in Place

The proposal contents are briefly described in the text that follows.



West Virginia

Department of Transportation

DRAFT

Proposal Contents

Section 102.2 ~~Contents of~~ Proposal Forms of the West Virginia Department of Transportation, Division of Highways, Standard Specifications Roads and Bridges (Standard Specifications) states “~~P~~the proposal forms will be available on Bid Express and will show the location and description of the proposed work, the approximate estimates of the various quantities of work to be performed, for materials to be furnished, the amount of the proposal guaranty, the number of working days or date on which the work is to be completed, and the date, time and place of opening of proposals. The proposal form will also include any special provisions or requirements not contained in the Standard Specifications”. This specification language introduces the proposal contents; the remainder of this section discusses the contents of the proposal and the checklist items.

Proposal Cover Sheet

The cover sheet for the proposal provides essential information such as the call number, the ~~contractor's name and federal employer identification number (FEIN), the dollar amount for the bid~~ Project Number(s), the Project Name and the Department's Disadvantaged Business Enterprise (DBE) goals for the project ~~and the contractor's West Virginia license number~~. It includes the date and time when bids are opened (the letting), ~~and the project name and number along with other important notices to prospective bidders.-~~

The DBE project goal, if required, is set by the Department's Civil Rights Compliance Division, and establishes a percentage of work that must be performed by DBE-qualified firms. The State maintains a roster of DBE-qualified companies. The Division includes a link to this roster in the proposal as a reference for bidders.

The proposal will include a time and date for the bid opening, often referred to as the letting date. For projects with Federal funding, the length of time for the advertisement must comply with CFR 635.112 (b) “*to provide a minimum advertisement period of three weeks*”. Full oversight projects must receive approval from FHWA for shorter durations. For projects with only State funds, the advertisement period is two weeks and may be reduced for emergency projects at management discretion. The time frame provides ample time for contractors to perform due diligence and prepare a responsive and responsible bid. To perform due diligence, the contractor needs sufficient time to study the plans and documents, conduct a site visit, solicit pricing from subcontractors and suppliers, obtain bonding and prepare their pricing.

The contractor must be licensed in the State of West Virginia prior to submitting a bid on State-funded projects. (Statute Chapter 21, Article 11-6(a)). For Federally funded projects, the contractor may submit the bid without a license, but must obtain licensure prior to the award of the contract.

Index of Proposal Contents

Each component of the proposal and its corresponding page number are provided in the index of proposal contents for quick reference.



DRAFT

Contractor's Proposal Form Proposal Acceptance Notice

The ~~Contractor's Proposal form~~Proposal Acceptance Notice highlights the requirement for the Contractor to build the project according to the plans. The form includes the proposal guaranty amount, which is the financial guaranty by the contractor that they will honor their bid. ~~In most cases, the guaranty takes the form of an electronic bid bond. However, a certified cashier's check in the amount specified in the proposal, made payable to the West Virginia Division of Highways, will also be accepted.~~

The ~~Contractor's Proposal Form~~Proposal Acceptance Notice also contains details regarding compensation for harm or loss for claims brought against the contractor arising from the performance of the work.

Notice to All Bidders

~~In the Notice to All Bidders, the Department provides essential information for the prospective bidders. As an example, when the Department moved to electronic bidding, the Notice to All Bidders stated that electronic bidding had become mandatory with paper bids no longer accepted.~~

Proposal Work Category Checklist

The Proposal Work Category Checklist (Checklist) is a list of categories of work that are included in the proposal. Contractors and subcontractors are required to be prequalified in the categories of work included on the Checklist to perform the work on the project.

Schedule of Items

The Schedule of Items is a list of every pay item anticipated for the project and the estimated quantity of that item to be used. The contractor is required to affix their unit price to each pay item in the schedule. The summation of the contractor's unit prices and the quantity for all items represents their bid price for the project.

Proposal Forms and Time for Completion

The proposal contains a series of forms the contractor must complete for their bid to be considered responsive and may vary by project. Examples of the most common forms required by the Division include:

- The contractor's affidavit that the contractor has not colluded or taken any action to obstruct free competitive bidding
- The contractor's plan for DBE participation
- Certification of Equal Employment Opportunity (EEO) - confirmation that the contractor is in good standing on previous contracts and as an employer
- Acknowledgment that domestic materials for designated products will be used
- The contractor's West Virginia Contractor License number for State-only funded projects
- The contractor's affidavit regarding a drug and alcohol-free workplace
- Contractor acknowledgment of each amendment to the proposal
- The contractor's uncompleted workload form (if the contractor is above their prequalification limit) Contractor acknowledgement that they will perform work amounting to not less than 30 percent of the total contract cost and are prequalified at time of bid to perform that work.



DRAFT

The time for completion of the work is included in the proposal. Time is an essential element of the contract and must be clearly stated in the proposal. The primary method to specify contract time is a fixed calendar day for the completion date.

Failure to provide the completed forms may result in the contractor's bid being declared non-responsive.

FHWA 1273 Required Contract Provisions

For Federally funded projects, the 23 CFR 633.102 requires Specification FHWA 1273 to be physically incorporated in each Federal-aid highway construction contract and subcontract. The document contains standard contract provisions required by the Federal government such as labor laws, civil rights provisions, conditions for subletting portions of the work, making false statements in connection with the work, requirements relating to debarment and ineligible participants and prohibiting the use of contract funds for lobbying.

The FHWA 1273 language satisfies CFR 635.112(g) which requires contractors to certify pursuant to 49 CFR Part 20 that no contract funds will be used for lobbying, and 49 CFR Part 29 regarding whether the contractor is, or has been, suspended or debarred. The language of FHWA 1273 stipulates that by the action of submitting a bid, the contractor is making the required certifications.

Special Provisions

The Special Provisions section captures a variety of requirements considered essential to the project but not contained in the Standard Specifications. Examples include:

- ~~Cargo Preference Act~~

- Disadvantaged Business Enterprises (DBE) Utilization
- Federal Equal Employment Opportunities (EEO) construction contract specifications
- West Virginia Affirmative Action goals
- Davis-Bacon wage requirements
- Prompt Payment requirements for subcontractors and suppliers.

The special provisions may also include modifications to the Standard or Supplemental Specifications that are necessary to build the project as intended.

Supporting Information and Documents

The proposal often contains project specific documents including the right-of-way agreements for property easements and acquisitions, the status of utilities within the project limits, the environmental permits, clearances and commitments, and information regarding load posted structures. This information is project specific and is provided to the bidders for their information and use.

Contract Plans

The contract plans depict the location and description of the proposed work in enough detail for the contractor to build the project. These are the detailed engineering drawings which describe the physical construction work to be performed during the project. The plans also contain general notes and references to supplement the drawings.



DRAFT

Proposal Checklist Items

Internal Quality Review

Once the proposal has been drafted, it undergoes a thorough internal quality review by managers in the Division to ensure the document is complete and correct. This quality review serves to reduce the potential for amendments, delays, or cancellations of the advertisement, disputes, claims or extensions of contract time.

FHWA Approval (Full Oversight Projects Only)

Once the review process is complete, the Division solicits approval from the Federal Highway Administration (FHWA) for full oversight projects. The FHWA identifies full oversight projects based on size, location, complexity, and risk. In these cases, the FHWA does not delegate their responsibilities to the State, and the FHWA must approve the proposal prior to advertisement. See CFR 630.205.

Funding in Place

Finally, the Division confirms with the Department's Programming Division that funds for the project have been secured. The project cannot be advertised without the funding in place.

In summary, the proposal may be advertised for bids after the internal quality review is completed, FHWA has approved the PS&E package (if necessary), and the funding is in place.

Section II: Advertisement

The advertisement stage of the process is the time frame during which a proposal is made available to the public until the final date and time when the contractor must submit their bid.

The State of West Virginia has statutes which direct the Commissioner to publish the proposal as a Class II legal advertisement (Chapter 17, Article 4-19(b)). The statutes also require the advertisement to be published in at least one daily newspaper in the City of Charleston. The legislation helps to ensure a wide distribution of the advertisement and to ensure equal opportunity for all contractors. In turn, this process should promote healthy competition in the marketplace. The reference to a Class II legal advertisement is further defined by Chapter 59, Article 3-2(a) of the State statutes.

The legislation describing advertising requirements pre-dates electronic bidding. Electronic bidding has changed the way contractors look for work, in that proposals and bids are posted and submitted electronically from a web browser. The Department now requires the use of Bid Express® to post proposals and receive bids. The service allows contractors to easily review the postings of all proposals from a web browser.

Contractor Prequalification

Contractors must be prequalified to submit a bid. To become prequalified, a contractor must submit a Contractor's Prequalification StatementApplication. The Department uses the prequalification process to ensure bidding firms have the experience, ~~equipment, and resources~~ to deliver the contract work. A contractor will be issued a Certificate of Qualification, ~~the amount of incomplete work they may have~~



~~under contract at any one time, and which sets forth~~ the type of work for which they are qualified to perform. See Section 102.1 of the Standard Specifications and Chapter 17 Article 4-19(d) of the statutes. The Contractor's Prequalification ~~Statement Application~~ is available on the Department's website.

The Department will only accept bids from contractors who are prequalified and eligible to bid. ~~A contractor may request approval to bid in excess of the allotted amount as noted by the Certificate of Qualification. The Department has the discretion to make decisions on the bidder's requests which it deems are in the best interest of the State of West Virginia. See Section 102.3 of the Standard Specifications.~~

Contractor Questions During Advertisement

During the period of advertisement, the contractor may have questions regarding the contents of the proposal and may submit those questions to the Department using the Bid Express® platform. See Section 102.~~16.19~~ of the Standard Specifications.

For instance, the contractor may believe the proposal lacks clarity, contains ambiguities, does not reflect existing conditions, or may be missing information. Regardless of the nature of the inquiry, the Department offers contractors the opportunity to seek clarification by submitting questions.

Department responses to the questions could be as simple as "bid as is", or the question may require an amendment, which could cause the project letting to be postponed or even require the Division to withdraw the proposal. An amendment is a formal change to the proposal, and contractors are required to acknowledge they have received the amendment as part of the bid submission. It is imperative all bidders have access to the same information. All responses, and all actions, are fully transparent and posted on-line for review by all the prequalified contractors.

Pre-Bid Meeting

The Department may elect to hold a pre-bid meeting during the advertisement period. The meeting may be mandatory or optional for prime contractors. If the meeting is warranted as mandatory, a representative for the prime contractor must attend, otherwise their bid will be rejected.

The meeting is an opportunity for the Department to provide contractors greater insight to the goals of the project, any nuances of the work and contract requirements. This is to ensure a more complete understanding of the work, which in turn should allow the contractors to fairly price the work.

Contractors are encouraged to ask questions during the pre-bid meeting. The Department may answer questions at the meeting and will follow up with additional responses if necessary. The pre-bid meeting must be held sufficiently in advance of the letting to allow the contractors and the Department time to react to the questions and post any responses or amendments to the proposal.

Bidder's Responsibility

The submitting contractor must carefully examine the plans, specifications, special provisions, contract forms and the work site. When the contractor submits a bid, they are asserting they have made such



examinations and agree with the character, quality, and quantity of work to be performed (Section 102.45 of the Standard Specifications).

The contractor further acknowledges the quantities shown on the plans and the schedule of items are only estimates, and that increases or decreases to the quantities are possible. The contractor further agrees to accept their unit prices for the work performed and accepted, unless otherwise provided for in the contract. The Department will make every effort to provide sufficient information to the bidders.

Section 102.127 of the Standard Specifications describes the reasons the Department may deem a proposal to be irregular and therefore rejected. The contractor must carefully follow and comply with all instructions for submitting a bid or they risk having their bid rejected. The integrity of the bidding process is paramount, and Section 102.127 ensures that all bidders are held to the same standard.

Section III: Award

The award stage begins when the date and time for the letting has passed and the bids are opened. The Division then evaluates the low bidder to determine if it is responsive to the proposal requirements, and if it is, they will perform a rigorous bid analysis. The process culminates with a notice to proceed informing the contractor they can proceed with the construction project.

The Bid Opening

The State and Federal regulations require the bid letting to be open to the public, and the submitted bids must be read aloud (Section 102.102 of the Standard Specifications and CFR 635.113(a)). The regulations also require the work to be awarded through competitive bidding, which is achieved by having all contractors submit confidential bids no later than the letting date and time (Chapter 5, Article 22-2(a) and CFR 635.104(a)). A confidential bid and a public bid opening are hallmarks of a fair bidding process.

The electronic bidding system prevents bids from being submitted after the letting time has expired. The bids which are received prior to the deadline are downloaded and securely decrypted from the Bid Express® website. ~~At the bid opening, the Division representative at the bid opening~~ announces the project name and number, the DBE goals for the project and the type of work. The bids are then announced from the lowest price to the highest, including the contractor's name and the total dollar amount of their bid.

Evaluation of Proposals

Immediately following the bid opening, the Division begins to assess all the bids to determine which should be accepted. The review process will examine if the bid is considered responsive and if the bid analysis confirms the bid is valid (see Bid Analysis). The Department always reserves the right to reject all bids if it is deemed to be in the best interest of the State of West Virginia.

The conditions for disqualifying bidders are provided in Section 102.113 of the Standard Specifications, which state:

- A bidder may only submit one proposal for the work, and submitting more than one proposal by an individual, firm or corporation may result in disqualification.



- The bidder is required to provide an affidavit attesting their bid was prepared and submitted without collusion with other bidders (CFR 635.112(f) and Section 102.5.3 (i)15 of the Standard Specifications). Any evidence of collusion among bidders will likely result in both bidders being ineligible to bid future Department work until reinstated.

During the bid review process, the Division will confirm if the contractor is on the debarment list by checking the System for Award Management and the West Virginia Debarred and Suspended Vendor List. Contractors that are currently debarred are not allowed to submit a bid.

The State may not award or renew contracts with vendors which are not in good standing (Article 5A, Chapter 3-10A(b)). The Division will confirm with the Tax Department if outstanding debts are owed to the State.

The State Statutes require a proposal guaranty or bidder's bond to accompany and be submitted with each bid (Chapter 17, Article 4-19(e)). The proposal guaranty is set at an amount equal to no more than 5% of the bid, and not less than \$500.00. Failure to submit a proposal guaranty is cause for rejection of a bid. Electronic bonds are ~~preferred~~required; the Department will accept a cashier's or certified check up until 4:00 PM the day prior to the bid opening. The contractor will forfeit their proposal guaranty if they are determined to be the low bidder, and they fail to execute the contract or agreement. The other bidders' proposal guaranties are released once the Division has secured a fully executed contract or agreement. A contractor may withdraw their bid prior to bid opening without fear of forfeiture.

Lowest Responsible Bidder

The Department is required by State and Federal regulations to accept the lowest responsible bidder (Chapter 5, Article 22-1(e) and CFR 635.114(a)). The bids are opened and compared based on the total price, which reflects the sum of the contractor's unit price per item and the estimated quantities. The contractor submitting the lowest overall cost is declared the low bidder.

A responsible bidder is defined as a contractor that is ready, able and willing to furnish the labor and materials required to complete the contract, complies with all the applicable laws of West Virginia, and has supplied a valid bid bond or proposal guaranty (Chapter 5, Article 22-1(b)(1)). It is not enough to just submit the lowest price - the bidder must also be considered responsible as defined by these statutes.

Tied Bids

In the event there is a tie between the low bidders, where the total price submitted is identical for two or more bidders, the low bidder will be decided by lot, which is described as follows. The Department will place the names of the contractors in a container and have the ~~State Highway Engineer~~Deputy Secretary/Deputy Commissioner draw a name. The drawing will be witnessed by at least three persons, and if time permits, the contractors should be given an opportunity to attend the drawing (48 CFR 14.408-6).

The Department may consider whether each tied bidder is responsive and has complied with all other State and Federal requirements, including labor laws and business concerns, before drawing lots. The Department may remove a bidder from the lot if the bidder is determined unresponsive or out of compliance.



DRAFT

Disadvantaged Business Enterprises

When a proposal contains the requirement for participation by DBEs, the participation goal-plan the contractor submits will be compared to the project goals contained in the proposal. If the contractor's goal-plan meets or exceeds the stated goals in the proposal, and the contractor meets all other requirements in the DBE special provision, the bid is considered responsive (with respect to the DBE special provision) and may be accepted. If the contractor's goals-plan does not meet the stated goals in the proposal, the contractor may be asked to demonstrate that a good faith effort was made to subcontract work to DBE firms, but the efforts were unsuccessful. If the contractor's goals-plan does not meet expectations, the contractor does not meet all other requirements in the DBE special provision, and the contractor cannot demonstrate a good faith effort, the bid may be rejected and awarded to the next lowest responsible bidder or re-advertised.

The Department considers the DBE goals for a project to be an essential component of the work and contractors who fail to make a reasonably good faith effort risk having their bids rejected and their prequalification revoked.

Bid Analysis

The evaluation of the proposals must also include a bid analysis (CFR 635.114(c) & (d)). The CFR requires a thorough and comprehensive bid analysis, and the Department must examine the unit bid prices for reasonable conformance with the Engineer's estimate. If extreme variations exist, the bid must be thoroughly evaluated. Where obvious unbalancing exists, the Department must provide written justification to accept or reject the bid. The bid analysis is the tool to detect whether collusion or bid rigging is occurring, whether the Department has received a fair price for the work, and if any unbalancing of the bids may result in a windfall for the contractor and corresponding disadvantage to the Department.

The Department may scale the level of scrutiny provided by the bid analysis to be commensurate with the complexity and value of the project. The Department is more likely to expend more effort on the bid analysis for projects of significant value or risk, complex projects, and projects with limited competition.

*A **mathematically unbalanced** bid means the bid contains unit prices for items of work that do not reflect reasonable actual costs plus a reasonable proportionate share of profit, overhead and other indirect costs. The contractor may still be the lowest bidder, with the lowest total cost, but how they distributed the costs to the pay items is mathematically incorrect. For example, a contractor that bids one penny as unit price for an item of work has placed the cost for that work in other items. A mathematically unbalanced bid is an acceptable bid (CFR 635.114(d)) provided the result of the unbalancing does not result in a windfall for the contractor and a corresponding increase in cost to the Department.*

*A **materially unbalanced** bid means a bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Department. The contractor has shifted the costs between items of work anticipating a potential windfall from doing so. For example, a contractor believes the quantity of a specific item of work is likely to overrun, so they add money to the unit*



price above the true cost of performing the work. The overrun in actual work performed and corresponding inflation of the price, result in a windfall for the contractor. In some situations, the increased cost to the project is large enough it would change who the low bidder is, if the proposal included the correct quantity of work. In this situation, the bid may be declared materially unbalanced and rejected.

The FHWA provides guidance on bid analysis in their publication “Guidelines on Preparing Engineer’s Estimate, Bid Reviews and Evaluation” (Guidelines), originally released in 2004 and updated in 20~~11~~¹⁷. The guidelines provide direction regarding the factors the Division will use during the bid analysis. These factors include:

- Comparison of the bids against the Engineer’s estimate
- The number of bids submitted
- The distribution or range in price of bids received
- The identity and geographic location of the bidders
- The potential for savings if the project is re-advertised
- The bid prices for the project under review versus bid prices for similar projects in the same letting
- The urgency of the project
- The current market conditions and workload
- If there is evidence of any unbalancing of bids
- Any large variances in bid prices compared with the Engineer’s estimate and the other bids
- Is there justification for the variance in pricing
- Any other factor the Department deems important

The bid analysis begins by tabulating the bid item detail for at least the three lowest responsive bids and includes the total bid amount for all remaining bidders (CFR 635.113(b)). The bid item detail reflects the unit price bid for each pay item, extended by the estimate of quantities, for a line item total and project total. The tabulation is generated from the contractor’s electronic bid.

The Division uses proprietary software and expert knowledge to perform the bid analysis. This is investigative work where answers to the bid analysis factors described above, are only indicators of potential problems, and that professional judgement must be applied when processing the findings. Any single finding on its own may not raise a concern, but collectively, several indicators may indicate a trend, or a need for more in-depth analysis. The opposite is also true, such that one indicator does not prove there is a problem with the bid, and the analyst must be able to reason why the contractor priced the work the way they did, or if there is a potential risk for the Department.

The results of the bid analysis are presented to the Award Committee at the Award Meeting.

Clarifications

As part of the bid analysis, the Division may have questions for the contractor regarding their bid and may ask questions to clarify potential misunderstandings. For example, a contractor may bid an element of work much higher than the Department estimated. Rather than assuming the contractor is



mathematically unbalancing a bid, it may be prudent to seek clarification from the contractor to learn if they understood the work correctly or if the Department fully accounted for the complexity of the work.

Seeking clarifications from the contractor is an acceptable tool to use when appropriate and may provide the Department with valuable insight. However, negotiating with the contractor during the period following the opening of the bids and before the award is expressly prohibited by CFR 635.113(a). There can be no change to the terms or pricing of the contract at this time.

Award

The Division holds an Award Meeting to consider the information from the bid analysis, to confirm the bid is responsive, that the contractor is eligible to bid and that the contractor is in good standing. The award meeting results in a recommendation to the State Highway Engineer/Deputy Secretary/Deputy Commissioner, or designee, to accept or reject the bid. The State Highway Engineer/Deputy Secretary/Deputy Commissioner, or designee, carefully considers all information and reaches the final decision.

The Award Committee is led by the State Highway Engineer/Deputy Secretary/Deputy Commissioner (or designee), and comprised of the Deputy State Highway Engineer—Chief Engineer of Construction, the Contract Administration Division Director, the Contract Administration Division Assistant Director(s), the Contract Administration Division Contract Analytics Coordinator, the Contract Administration Division Procurement Section Manager (or designee), the Engineering Division Director (or designee), the Traffic Engineering Division Director (or designee) and the Programming Division Director (or designee). The majority of these members must be present in order for the meeting to be held. Other interested parties or invited guests may also attend the meeting.

The award meeting is the venue for the decision makers to consider all the information and determine the most appropriate course of action. The options include, perform additional analysis of the bid documents and supporting information, seek clarifications from the contractor regarding their pricing or information contained in the supporting bid documents, to accept the bid as submitted, or to reject the bid. The Committee documents the decision (Statute Chapter 5, Article 22-2(b)) and when the decision is to reject the bid, senior management and the FHWA (for a full oversight project) will be briefed prior to taking formal action. The decision to reject a bid is not taken lightly and senior management should always be consulted during the process.

If the committee decides to reject a bid, the bid process may repeat itself with the next bidder until an award is made, or until all bidders are exhausted. Should the Department decide to reject all bids for a Federal-aid project, the FHWA should be consulted for concurrence (CFR 635.114(h)).

The Department may choose to accept a bid which is both mathematically and materially unbalanced but may risk federal participation in the project (CFR 635.114(e)) and therefore must consult FHWA as part of the decision to award such a bid.

The Department retains the right to cancel the award of any contract at any time before the contract is executed by all parties without assuming any liability (Section 103.43 of the Standard Specifications).



The successful bidder will be notified within 30 calendar days from the bid letting, that their bid has been accepted. The Department is limited to 30 days unless they reach an agreement with the contractor to extend the award period and any extension should be agreed to in writing. (Section 103.32 of the Standard Specifications). The contractor is provided the contract documents package to sign and return.

The contractor has 20 days from the date of award to execute the contract and furnish a performance bond (Chapter 17, Article 4-20). Failure to execute the contract and supply the bond is just cause for annulment of the award and forfeiture of the proposal guaranty (Sections 103.98 and 103.109 of the Standard Specifications).

The contractor provides the Division with a fully executed contract, a certificate of insurance and the performance bond. The documents are carefully reviewed by the Department and if acceptable, the contract is presented to the Commissioner for signature (Chapter 17, Article 4-21).

The Division provides notification of the fully executed contract to the contractor, and appropriate Department staff. The notification triggers the District to issue a notice to proceed allowing the contractor to begin work on the project.

Expedited Award

In some instances, a project must be awarded expeditiously due to a quickly approaching completion date, a natural disaster, an emergency, or for reasons the Department deems appropriate. If an expedited award is required, the information that is typically presented during the award meeting (described in the Award section of this Manual) is provided electronically to the Contract Administration Division Director, the Engineering Division Director, the Traffic Engineering Division Director, the Programming Division Director, the ~~Deputy State Highway Engineer~~ Chief Engineer of Construction and the ~~State Highway Engineer~~ Deputy Secretary/Deputy Commissioner (or designee), for recommendation and approval of award. Once approved through the expedited process, the contract is awarded following the same procedure as projects awarded during an Award Meeting (described in the Award section of this Manual).

Bid Protest

A bidder who believes they have been aggrieved by the bidding process may submit a protest to the Division Director after the bids have been opened and not before (Section 103.2 of the Standard Specifications). The bidder must submit a Notice of Protest as soon as possible after the bids are opened, but no later than two business days from the date of the letting. This Notice informs the Department that a formal protest is forthcoming.

The bidder then has ~~five~~seven calendar days from the date of the Notice to submit the Statement of Protest. The complete protest must include the grounds of the protest, legal authorities, and facts including all documents and evidentiary statements in support of the protest. The protest must be complete, clear, and convincing. Note that the ~~five~~seven-calendar day period may be shortened for emergency projects.

The Division Director or designee conducts the analysis of the protest and has ~~five~~30 calendar days from the date the Statement of Protest is received to issue a decision. The Division Director may decide to



conduct a hearing, at their discretion. If the protest has merit, the Department will determine what remedial steps are necessary and appropriate.

Should the bidder wish to appeal the decision of the Division Director, the bidder must submit their appeal within 2 ~~business-calendar~~ days from the date of the decision to the Secretary of Transportation/Commissioner of Highways. The Secretary of Transportation/Commissioner of Highways has ~~five~~10 calendar days from the date they receive the appeal to issue the final decision. The decision of the Secretary of Transportation/Commissioner of Highways is final and conclusive.

All bid protests and appeals must be sent to the Department electronically at:

DOHContractProcure@wv.gov

Section IV: Supporting Documents & References

The following links provide supplemental information and related documents:

1. [West Virginia Contractor Prequalification Package](#)
2. [West Virginia State Statutes](#)
3. [FHWA Code of Federal Regulations](#)
4. [FHWA Guidance on Bid Analysis and Award of Contract](#)
5. [West Virginia 2017 Standard Specification Roads and Bridges](#)
6. [West Virginia Debarred Vendor List](#)

