

ADVERTISE, BID AND AWARD OF CONSTRUCTION PROJECTS

CHAPTER 7

The approved bid package (without cost estimate) is prepared by the local agency for advertisement. The contractors responding to the advertisement are required to submit sealed bids in competition with other contractors to win the right to construct a project. Documents that must be included in the bid package are:

- CDOT Form 606 – Anti-Collusion Affidavit
- CDOT Form 1413 – Bidders List
- CDOT Form 1414 – Anticipated DBE Participation Plan
- Bid schedule

Documents due to the Local Agency by the low responsible bidder by 4:30 p.m. on the fifth calendar day after bid opening are:

- CDOT Form 605 – Contractors Performance Capability Statement
- CDOT Form 621 – Assignment of Anti-Trust Claims
- CDOT Form 1415 – Commitment Confirmation (For each DBE listed in the Form 1414)
- CDOT Form 1416 – Good Faith Effort Report (If the DBE goal has not been met)

7.1 Obtain Approval for Advertisement Period of Less Than Three Weeks

The minimum advertisement period is three weeks. A shorter advertisement period must be authorized in conformance with 23 CFR 635. The Local Agency shall contact the CDOT Project Manager for approval.

7.2 Advertise for Bids

The Local Agency shall include the following in the bidding and advertising documents package (see Appendix A for copies of the forms):

- CDOT Form 606 – Anti-Collusion Affidavit
- CDOT Form 1413 – Bidders List
- CDOT Form 1414 – Anticipated DBE Participation Plan

- DBE Project Special Provision
- DBE Standard Special Provision
- OJT Standard Special Provision
- Davis Bacon Wage Determination
- FHWA Form 1273 – Required Contract Provisions, Federal-Aid Construction Contracts (A reference to this form is acceptable in the bidding and advertisement package.)

The advertisement for bids should include the following language:

“An EEO-1 Report must be submitted to the Joint Reporting Committee if the contractor and subcontractors meet the eligibility requirements (29CFR 1602.7). For additional information regarding these federal requirements, please refer to: <http://www.eeoc.gov/employers/eo1survey/faq.cfm> .”

and:

"The [insert local agency name], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 US.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

The Local Agency bonding requirements or procedures may be used if approved by the CDOT Agreements Unit of the Contracts and Market Analysis Branch.

The specifications shall provide for the Local Agency's Contractor to name CDOT as an "additional insured" on its general liability and automobile liability policies.

Specifications or bidding procedures cannot provide preference to local contractors.

The bid package is sent to the CDOT Project Manager for coordination and review. The Project Manager will forward a copy to the Resident Engineer if requested. Upon approval, the Project Manager submits the Concurrence to Advertise in writing to the Local Agency.

The Local Agency must receive the concurrence prior to advertising the project. The CDOT Project Manager will send copies to the following CDOT personnel:

- Resident Engineer
- Region Project Engineer
- Region Materials Engineer
- Region Civil Rights Manager
- Office of Financial Management and Budget
- Business Programs Office
- Contracts and Market Analysis Branch, Agreements Unit
- Center for Accounting, Projects and Grants
- Records Management

Note the following public notice (advertisement) requirements:

1. The advertisement period will be for a minimum of three weeks.
2. The advertisement can either be published in a newspaper of general circulation, the official county paper where the work is being done, or electronically on a bidding website of widespread knowledge to the contractors (as approved by CDOT). If the advertisement is by official county paper, in the instances where a project spans several counties, the advertisement should be placed in the official newspaper of each county. It is highly recommended that advertisement be made once in a newspaper of statewide circulation. CDOT uses the *Daily Journal* and occasionally the *Denver Post* and *La Voz*.
3. If the Local Agency has established a project number different from the State's, the advertisement and bidding documents should show both project numbers.
4. The advertisement must show the Disadvantaged Business Enterprise (DBE) goal that has been established for the project.

5. Projects on CDOT right of way require CDOT contractor prequalification. For roadway projects not within CDOT right of way, prequalification is recommended. The advertisement shall state prequalification requirements. The CDOT prequalified contractor list is available at <https://www.codot.gov/business/bidding/Prequalified%20Contractors> .

The Local Agency may use the CDOT proposal package and contract that include the above information. A copy of this information may be obtained from the Project Manager.

7.3 Distribute “Advertisement Set” of Plans and Specifications

The Local Agency must provide the plans and specifications to the person responsible for showing the project. For Local Agency projects that include the construction of a major or minor structure, one set of plans and specifications shall be forwarded to Staff Bridge per Section 19.6 of the *Bridge Design Manual*.

7.4 Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement

To ensure competitive bidding, the person responsible for showing the project must provide all bidders with an equal opportunity to view the proposed construction site and should conduct each of the project showings in a similar manner. It is important to provide each prospective bidder with identical information. This helps to avoid favoring one company over the other. It is preferable that the same person conducts each of the project showings; however, if that is not practical, ensure that identical information is communicated to each attendee.

7.5 Open Bids

Bids will be opened in accordance with Section 103 of the *CDOT Standard Specifications*.

Immediately after bid opening, the Local Agency shall provide to the apparent low bidder the following CDOT forms (see Appendix A):

- Form 605 – Contractors Performance Capability Statement
- Form 621 – Assignment of Antitrust Claims, required on all projects
- Form 1415 – Commitment Confirmation, if DBE goals are greater than zero, or if the bidder has voluntarily made commitments
- Form 1416 – Good Faith Effort Report, if DBE goals are not met

The apparent low bidder must submit these completed forms to the Local Agency by 4:30 p.m. on the fifth calendar day after the date of bid opening. A Form 1415 shall be obtained from each DBE listed on Form 1414. The bidder shall complete Section 1 and the DBE shall complete Section 2 of Form 1415.

With CDOT concurrence, the Local Agency may reject any or all bids depending upon a number of factors.

7.6 Process Bids for Compliance

Submittals to the Local Agency by All Bidders

The following CDOT forms must be submitted by all bidders with their bids:

- Form 606 – Anti-Collusion Affidavit
- Form 1413 – Bidders List
- Form 1414 – Anticipated DBE Participation plan (if DBE contract goal is greater than zero)

If these forms are not submitted, the bid is considered non responsive and shall be rejected.

Submittals to the Local Agency by Apparent Low Bidder

The apparent low bidder must submit the following CDOT forms:

- Form 605
- Form 621
- Form 1414 (If the Bidder has not obtained any DBE commitments, it shall still submit Form 1414 documenting zero anticipated participation.)

If a DBE goal greater than zero has been set for the contract or if the bidder has voluntarily made commitments, the apparent low bidder must submit:

- Form 1415
- Form 1416, only if commitments do not meet contract goal

If a DBE goal greater than zero has been set for the contract, the award is contingent upon approval of the Contractor's DBE participation (or good faith effort) by the CDOT Civil Rights and Business Resource Center (CRBRC).

The Form 1415 and Form 1416 must be submitted by 4:30 p.m. the fifth calendar day following bid opening by the apparent low bidder. All other forms must be submitted prior to CDOT concurrence to award.

Submittals by the Local Agency to CDOT CRBRC

The Local Agency shall submit all Form 1413s and Form 1414s to the CRBRC, email to CDOT_hq_dbeforams@state.co.us along with a copy of the Project Special Provision identifying the goal. The CRBRC will issue a determination of the good faith efforts of the Contractor within two weeks of the receipt of all fully completed DBE documentation. If the CRBRC determines a Contractor has not made good faith efforts, CDOT will seek to hold the appeal hearing within one week of receipt of the hearing request and issue a determination within two business days thereafter.

The Local Agency shall also submit Forms 1415 and Form 1416 for the apparent low bidder and the bid result sheet, which contains the bidders, the amount of their bids and the percentage of DBE participation.

The documents shall be submitted to the CRBRC (at the email above) at the time the request is made for CDOT Award concurrence.

Review of Commitment Submittals

CDOT will review the Form 1414 – Anticipated DBE Participation Plan, and each Form 1415 – Confirmation Commitment, submitted by the apparent low bidder to the Local Agency to ensure that the commitment is valid and has been properly calculated.

CDOT may investigate or request additional information from the Local Agency in order to confirm the accuracy of a commitment. If the total estimated eligible participation of the commitments does not meet the contract goal, CDOT may request a Form 1416 from the bidder.

Review of Good Faith Effort

If the total eligible participation of Form 1414 and all supporting Form 1415s does not meet the contract goal, CDOT will review the Form 1416 – Good Faith Effort Report and all supporting documentation submitted by the apparent low bidder to the Local Agency in order to determine whether good faith efforts to obtain DBE participation have been demonstrated. CDOT will use 49 CFR Part 26, Appendix A as a guide for determining whether good faith efforts have been made to meet the contract goal. If the Civil Rights and Business Resource Center determines that the bidder did not make good faith efforts, the bidder is entitled to administrative reconsideration with CDOT's Chief Engineer.

The process for reconsideration is set forth in the Good Faith Effort Appeal Process, which is an Appendix I to the DBE Program Manual found at: <https://www.codot.gov/business/civilrights/dbe/dbe-documents/dbe-program-manual>. A copy of the Good Faith Effort Appeal Process will be included in the written notice from CDOT.

If the chief engineer determines that a good faith effort to achieve the contract goal was not demonstrated, he or she will issue a written notice of the finding and direct the Local Agency to work with the next low bidder.

Form 1417 – Approved DBE Participation Plan

If CDOT finds that the apparent low bidder has met the contract goal or made good faith efforts to do so, CDOT CRBRC will issue Form 1417 to the Local Agency and to the bidder documenting the approved commitments and copy the CDOT PM.

Form 1417 – Approved DBE Participation Plan

If CDOT finds that the apparent low bidder has met the contract goal or made good faith efforts to do so, CDOT CRBRC will issue Form 1417 to the Local Agency and to the bidder documenting the approved commitments and copy the CDOT PM.

Submit Required Documentation for CDOT Award Concurrence

The Local Agency must review bids for reasonable conformance with estimate and unbalancing prior to award. The Local Agency must obtain CDOT concurrence before the project can be awarded (contact the CDOT Award Officer in the Agreements Unit of the Contracts and Market Analysis Branch). The Local Agency letter to the Agreements Unit must document its review of the bids, address the budget status of the project and the means of resolving any budget deficits, specify which bidder it is recommending for award of the project, and state what documentation has been sent to the CRBRC. The letter must also include a review of the project schedule which lists the IGA Expiration Date, the construction performance period end date, and an evaluation whether the time frame of the construction project can be accomplished within the IGA period.

The Local Agency must send the bid review letter, the construction timeline evaluation and the following documents in electronic format to the Agreements Unit (see Appendix A):

- Form 605
- Form 606
- Form 621
- Form 1413
- Form 1414 (from all bidders)
- Form 1415
- Form 1416 (if goal is not met)
- Financial Statement
- Bid Tabulation

A copy of the bid review letter and the construction timeline evaluation should be sent to the CDOT Project Manager.

- Project Manager
- Resident Engineer
- Region Program Engineer/Finals Engineer
- Civil Rights and Business Resource Center (CRBRC)
- Region Civil Rights Program and Project Analysis Office
- Records Management Manager
- Center for Accounting, Projects and Grants
- Contracts and Market Analysis Branch

7.8 Approve Rejection of Low Bidder

With CDOT concurrence, the Local Agency may reject the low bidder.

7.9 Award Contract

Following the concurrence of the CDOT Award Officer in the Agreements Unit of Contracts and Market Analysis Branch, the Local Agency sends a letter to the Contractor issuing the Notice of Award and the invitation to the Preconstruction Conference. Copies are sent to the CDOT Project Manager and Resident Engineer.

Once the local agency receives the concurrence letter of award from the Agreements Unit, the local agency shall draft a contract for the project work. If the local agency used the *CDOT Standard Specifications for Road and Bridge Construction*, performance and payment bonds should also be obtained from the successful bidder by the local agency. Each bond shall be in a penal sum equal to the nearest integral one hundred dollars in excess of the sum of the original bid items plus all force account items specified by an asterisk in the project special provisions to be included in the payment and performance bonds. In addition, the successful bidder shall provide a certificate of insurance indicating coverage in the types and limits described in subsection 107.15 of the Standard Specifications.

The Contract shall be signed and returned by the successful bidder together with the contract bonds and insurance certification (if using CDOT specifications). The Contract will not be considered effective until it has been fully executed by all of the parties to the Contract.

An executed original Contract should be retained by the local agency and another executed original should be provided to the Contractor. A copy should also be sent to CDOT, usually the Project Manager or Resident Engineer.

Notify Office of Federal Contract Compliance Programs of Award

In accordance with 41 CFR 60-4.2, the prime contractor and all subcontractors are required to give written notice to the Office of Federal Contract Compliance Programs within 10 working days of award of a construction contract or subcontract in excess of \$10,000. Additional information is provided at the following link:

<http://www.dol.gov/ofccp/regs/compliance/preaward/cnstnote.htm> .

7.10 Provide “Award” and “Record” Sets of Plans and Specifications

The Local Agency provides the award sets of plans and specifications to the CDOT Project Manager for distribution. The distribution within CDOT is as follows:

- Region Program Engineer/Finals Engineer
- Region Project Files
- Project Manager
- Specialty Units

The Local Agency shall also submit an 11” x 17” record set stamped by a Colorado Registered Professional Engineer within 30 days after award. The CDOT Project Manager will forward the record set to CDOT Records Management.

Finalize Project Construction Administration Checklist

If the Local Agency Contract Administration Checklist is revised, signed copies shall be distributed as shown on the checklist.