

POLICY IMPLEMENT
STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION

P.I. Number D-08

Bid Analysis and Recommendation to Award Procedures

INDEX FILING CODES

References:

29 Del.C. Ch. 69

23 CFR 635

Rejection of Unbalanced Bids, FHWA Memo, July 29, 1987

Bid Analysis and Unbalanced Bids, FHWA Memo, May 16, 1988

Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation, FHWA, October 7, 2021

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Effective: February 28, 2025

Primary Responsibility: Chief Engineer

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I. Purpose

The purpose of this guidance is to establish uniform procedures for bid analysis and for making a recommendation to award or reject the proposal submitted by the contractor for design-bid-build contracts. Design-Build and Construction Manager/General Contractor (CM/GC) contracts will be awarded based on the procedures outlined in the Request for Proposal (RFP).

II. Definitions

“Engineer of Record” – The Delaware Professional Engineer who designed the work and prepared the plans as required by 24 *Del. C.* §2830.

“Major Bid Items” - The items that comprise the top 80% of the Engineer’s Estimate.

“Materially Unbalanced” - A bid is materially unbalanced if there is a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the State.

“Mathematically Unbalanced” - A bid is mathematically unbalanced if the bid is structured on the basis of nominal prices for some work and inflated prices for other work. Each element of the bid must carry its proportionate share of the total cost of the work plus profits.

III. Policy

The Engineer of Record is primarily responsible for conducting the bid analysis. The applicable DelDOT Construction Section shall also assist in the bid review. On FHWA Projects of Division Interest ("PoDI"), Federal Highway Administration ("FHWA") involvement shall be in accordance with the PoDI Stewardship & Oversight Plan for the project. The Bid Tabulation provided by Contract Administration shall be kept confidential and seen only by those involved in the bid analysis and approval process. Per 29 *Del C.* §6962(d)(13)a., if the contract is to be awarded to the lowest responsive and responsible bidder, it shall be awarded within 30 days of the bid opening.

IV. Procedures

- Step 1.** Conduct an analysis to examine the reasonableness of all bid prices, with written documentation for Major Bid Items that differ from the Engineer's Estimate (EE) by more than 20%. This analysis may include consideration of specific construction techniques anticipated on the specific project, accounting for current bidding practices on current jobs, review of the basis of the EE, review of the historic bid price range, and comparison to the Representative, Minimum, and Maximum bids. Particular focus should also be given to the following scenarios:
- a. Items with quantities that are based on rough estimates, such as undercut, rock excavation, etc.
 - b. Overly high bid prices for items that may be underestimated.
 - c. Overly low bid prices for items that may be overestimated.
 - d. An overly high price for Initial Expense and/or other items that are paid early in the contract which may be identified as front-loading. Front-loaded bids shall be rejected.
- Step 2.** For the items identified in Step 1 that are concluded unreasonable, check the quantity calculations for accuracy. This check will serve as the basis for determining if the bid is unbalanced.
- Step 3.** Determine if the bid is mathematically unbalanced. **See Attachment A.**
- Step 4.** If the bid is found mathematically unbalanced; determine if the bid is materially unbalanced. A materially unbalanced bid shall be rejected. **See Attachment A.**
- Step 5.** A bid may be also rejected, depending on the seriousness of the following:
- Unacceptable high cost.
 - The dissemination of part or whole lump sum costs into other item(s), or vice versa.
 - Front-loading of bid resulting in an advance payment, which is prohibited by law.
 - All bids may be rejected based on the best interests of the Department.

Pre-Award Meeting

In the process of the bid analysis, there may be a need to meet with the apparent low bidder to address any questions or provide clarifications on their bid. Contract Administration will make all the necessary arrangements for the meeting.

Award Recommendation Approval Process

Based on the results of the bid analysis, the project team will recommend award or rejection of the proposal. The recommendation letter shall contain the summary of the basis for the recommendation with appropriate approval as shown in the sample documents included here as Attachment B. Any noteworthy issues raised during the bid analysis review between the project design and construction personnel (and FHWA personnel if required by a PoDI agreement for the project) are to be included in the recommendation letter.

V. Justification

The procedures outlined above have been found to produce a recommendation to award that is well documented, in the best interest of the State, and meets state and federal requirements.

VI. Effective Date

This policy shall become effective immediately after signature by the Secretary.

DELAWARE DEPARTMENT OF TRANSPORTATION
POLICY IMPLEMENT NUMBER: D-08
TITLE: Bid Analysis & RTA Procedures

() Policy Implement Number has been reviewed for form, content and meets all legal and administrative requirements currently in effect, approved by the Delaware Department of Transportation Directors, and signed by the Secretary of Transportation.

(X) Policy Implement Number **D-08** has been revised, reviewed for form, content and meets all legal and administrative requirements currently in effect, approved by the Department of Transportation Directors, and signed by the Secretary of Transportation.

() Policy Implement Number is deleted effective with the signature of the Secretary of Transportation.

() Policy Implement Number _____ is subject to the regulatory process required by the Administrative Procedures Act (29 Del.C. Ch.101) and will begin the regulatory review process after the signature of the Secretary.

Pamela Steinebach

Pamela G. Steinebach P.E., Director, Planning

George O. Lees III

George O. Lees III, Deputy Attorney General
(Approved as to Form/Regulatory Review)

Mark Luszcz

Mark Luszcz, P.E., Chief Engineer, Transportation Solutions

Lanie Clymer

Lanie Clymer, Deputy Secretary

Shanté Hastings

Shanté Hastings, P.E., Secretary

2/20/25

Date of Secretary's Signature

This is an example to illustrate a mathematically unbalanced bid and a materially unbalanced bid. A project had two (2) bidders with two (2) items in question as follows:

During the review, it was concluded that the apparent low bidder (Bidder A) had mathematically unbalanced the bid because \$0.50 per pound of structural steel rehabilitation could not cover its cost and \$16,000 per cubic yard of structural concrete rehabilitation was excessive. In this case, these two (2) items of work do not carry their proportionate share of the total item cost plus profits and therefore, the bid can be concluded as mathematically unbalanced.

Item	Quantity Unit	Bidder A	Bidder B
Structural Steel Rehab.	20,000 lb.	\$0.50/lb.	\$3.00/lb.
Structural Concrete Rehab.	3 C.Y.	\$16,000.00/C.Y.	\$5,000.00/C.Y.
Total Contract Bid Price:		\$1,000,000.00	\$1,030,000.00

Case 1. The quantities were checked, and it was found that the quantities are unlikely to change during construction. Therefore, it is in State’s best interest to award to this apparent low bidder (Bidder A) as it costs less than the other.

Case 2. The quantities were checked, and an error was discovered in the quantity calculations of the structural steel rehabilitation. The correct quantity is now 10,000 pounds. It was also discovered that the quantity for concrete structural rehabilitation was based on an inspection carried out four (4) years ago and the concrete has further deteriorated. The quantity is likely to run to 6 cubic yards. Upon the recalculation based on the likely ultimate quantities, the total bid price is \$1,043,000 for Bidder A and \$1,015,000 for Bidder B. In this case, a mathematically unbalanced bid has turned into a materially unbalanced bid. Based on the analysis there is a reasonable doubt that award to Bidder A will result in the lowest ultimate cost to the State. This materially unbalanced bid shall be rejected, and the contract may be awarded to Bidder B.

MEMORANDUM

TO: Insert Name, Director, Finance

VIA: Insert Name, Deputy Director/Assistant Director/Chief Administering Section or District

FROM: Insert Name, Engineer of Record (internal DelDOT design) or DelDOT Project Manager (consultant design)

DATE: Insert Date

SUBJECT: **RECOMMENDATION TO AWARD or REJECT BIDS**
Contract No.
FAP Project No.
Project Name:
Date of Bid Opening:

The bids for the above project have been jointly reviewed by COMPANY/SECTIONS and we recommend award to the low bidder, Contractor. The low bid price is \$ amount, which is percent% above/below the Engineer’s Estimate of \$ amount. The project bid tabulation had number additional bidders with these bids ranging in price from \$ amount to \$ amount.

The overall project cost is percent% below/above the funded estimate. Additional funding from CMT is/is not required. (See attached funding analysis.)

All bid prices were reviewed, with emphasis on any Major Bid Item prices that differed from the Engineer’s Estimate by greater than 20%. See the attached bid tabulation and analysis spreadsheet for details. (INSERT A+B template here for when that is applicable.)

Conclusions:

The bid analysis team concludes that the apparent low bidder’s bid was neither materially unbalanced nor front-loaded. The quantities for the items reviewed were found to be representative of the contract’s anticipated need. We therefore believe it to be in the best interest of the State to proceed with the award. Please prepare the funding documents and proceed to award the contract to the successful bidder.

Based on an anticipated Notice to Proceed (NTP) date of DATE, and contract duration of DAYS calendar days, the Field Requested End Date (FRED) for the Construction Phase is DATE.

Recommend to Award

Attachment B to Policy Implement -08

Special Notes (if any)

- All bids are to be rejected; or
- There was only one bidder; or
- Low bid greater than 10% above engineer's estimate; or
- Recommend making award to other than low bidder

Endorsement #1

Concurring in Recommendation: Yes No Return for Additional Information

Comments: _____

Deputy/Assistant Director/Chief, Section Responsible for Design **Date**

Endorsement #2

Concurring in Recommendation: Yes No Return for Additional Information

Comments: _____

Director, Section Responsible for Design **Date**

Endorsement #3

Approval of Chief Engineer Required when:

- All bids are to be rejected; or
- There was only one bidder; or
- Low bid greater than 10% above engineer's estimate; or
- Recommend making award to other than low bidder

Chief Engineer **Date**

Endorsement #4

Approval of FHWA, if applicable

Approval

FHWA Division Administrator **Date**