

Memorandum

DEPARTMENT OF TRANSPORTATION

Project Development Branch
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DATE: February 24, 2010

TO: Rick Gabel, Director of Staff Services

FROM: Tim Aschenbrener, Project Development Branch Manager

SUBJECT: Policy Memo 21 – Ensuring Bidding Competition

This Policy Memo 21 updates and replaces Policy Memo 21, dated August 13, 2004.

Guidelines for Ensuring Bidding Competition

With few exceptions, all public construction contracts in Colorado must be awarded by competitive bidding. C.R.S. § 24-92-103. A similar rule applies to public construction contracts funded by the federal government. 23 C.F.R. § 635.104.

Following are guidelines to provide consistent decision making in managing projects to ensure bidding competition.

Definitions and Basic Instructions:

- Project Budget — The budget in the project at the time of advertisement
- Commission Budget — The approved Commission Budget. Note that resurfacing, bridge, and safety projects are examples of projects that do not have Commission Budgets, because they are pool projects.
- Commission Maximum — 15 percent over Commission Budget.
- Pool Budget — The current budget for projects from pools. (Note: For pool projects, assume the budget at advertisement is the project budget)
- Multiple Bid Schedules – Two or more bid schedules provided for a single project, on each of which the bidder must submit a bid:
 - Schedule A — The bid schedule for the originally planned project before cuts are made to meet budget (largest project).
 - Schedule B — The bid schedule for the project with reduced limits or scope.
 - Schedule C — The bid schedule for the project reduced even more than Schedule B (smallest project when there are 3 alternatives).

General Considerations — The Guidelines below best reflect conditions when the Project Budget and the Commission Budget are the same. If the current Project Budget is greater than the Commission Budget, the Commission Budget Controls.

Step 1 Carefully Manage Budgets. Each Region should review cost estimates and carefully manage its budget for the overall program during the design process. For some programs, such as Surface Treatment and Safety, Commission approval is for a pool of projects each year. This allows the Regions the opportunity to move funds between projects without Commission approval. If necessary, contingency projects that could use excess funds can be identified.

- NOTE: If resolution is not obtained in Step 1 above, the Region is to proceed either to Step 2 or to Step 3 below. The Regions may use some discretion on the *less than 10 percent* or *greater than 10 percent* guidelines for choosing between Step 2 and Steps 3 & 4.

Step 2 The project has a final total cost estimate from the Cost Estimating Unit less than 10 percent over Commission Budget or Project Budget after Step 1.

The Program Engineers have the option of going to advertisement over budget, or deciding to cut back the project before advertisement and then add work back in if lower than expected bids are received and a request to retain bid surplus funds is made as described in the Construction Manual Section 103 and the Project Development Manual Section 8.27 (as revised by Construction Bulletin 2010-2 and Design Bulletin 2010-4).

Guidelines to Cut Back Projects:

- (1) Get all clearances for the original length of work and show original length of work on plans.
- (2) The Region Civil Rights Office(CRO) will review the original project estimate and any subsequent cut back project estimates for establishing DBE goals, and take into consideration any differences, before determining the final Contract DBE Goal for the project.
- (3) Instead of deleting portions of the plans, line out items on the plans and tabulations which were in areas cut back or eliminated from the work. Other options such as separate tabs or clearly identified footnotes are also acceptable. Add notes on the plans at each location cut back that “Work may be added if funds become available”. This assures that all bidders are aware at the time of bid that work may be added in later. Lined out items should be work similar to the work in the remainder of the plans. The Region must submit a request to retain funds as per Design Bulletin 2010-2/Construction Bulletin 2010-4 or the Revised Project Development Manual/Construction Manual. This request should document that cut back locations and items were clear on the plans, and the note about work being added if funds become available was in plans.
- (4) If work is added to the Contract, the bid schedule, revised to include the proposed added work, will need to be analyzed for material unbalancing according to subsection 102.07(e). The Engineering Estimates Unit will perform the material unbalancing analysis using the additional quantities shown on the plans. If material unbalancing is detected, the proposed added work will not be pursued.
- (5) If work is added to the Contract, that work will be added by Change Order. The Change Order shall include all items of work to be modified or added for the additional work. The Region CRO will be advised of any change order adding work to a project when a contract is awarded under a GFE process.
- (6) **Project extensions at a later date are highly discouraged. If pursued, project extensions must meet the criteria laid out in the Construction Manual.**

Step 3 The project has a final total cost estimate from the Cost Estimating Unit greater than 10 percent over the Commission Budget or Project Budget after Step 1.

The RTD may approve the option to reduce the Project Scope to fit within budget.

OR

The RTD may seek approval (Commission, MPO, or transfer funds as appropriate) to amend the budget

OR

The Region shall prepare a set of plans with multiple schedules. Contractors would be required to submit a bid for each of the multiple schedules:

- (1) Schedule A would be for the entire original project.
- (2) Schedule B would be for the project after project reductions are identified and made.
- (3) Schedule C (if used) would be for a third, even smaller, project when bids are unpredictable.
- (4) Include the special provision, *Multiple Bid Schedules*, to identify that the project has multiple schedules. The special provision can be found on the web page listed below.
- (5) The maximum estimate spread between schedules should be 15 percent for 2 schedules, or 30 percent for 3 schedules. Greater deviations must be approved by the Chief Engineer before advertisement. The minimum estimate spread between schedules should be 5 percent. Do not use more than 3 schedules.
- (6) The Region CRO must be specifically advised that there will be multiple schedules advertised when a DBE goal is requested. Contract DBE Goals shall be established by the Region Civil Rights Office for each of the different schedules. These goals may or may not be the same.

Examples of multiple schedule projects

- Overlay project with bid schedules for 2 miles and 2.5 miles
- Bridge project with and without landscaping
- Shouldering project with embankment only and with surfacing included

Step 4 Award Procedure when the “Multiple Schedules” process in Step 3 is used: Prior to the bid opening the Design Project Manager must contact the Engineering Estimates Manager (303-757-9293) and the Award Officer (303-757-9006) to determine the highest bid that would meet the Project or Commission Budget. This bid amount will be considered the Maximum Acceptable Bid. For Example:

- The Project or Commission Budget minus Force Account, MCR, CE, PE, ROW, Utilities and all other non-bid items = Maximum Acceptable Bid
- This Maximum Acceptable Bid will be announced immediately prior to bid opening.

If a bidder does not bid on all schedules, his bids will be rejected and set aside.

At the bid opening, the maximum acceptable bid will be announced. Then the total bid will be read for the smallest schedule (Schedule B or C) for each bidder. After all bids for the smallest schedule have been opened and read, the apparent low bidder for that schedule will be announced. Then, if one or more bids on the next larger schedule (Schedule A or B) is at or less than the maximum acceptable bid, then the bids for that schedule will be read for each bidder and the apparent low bidder for that schedule announced. Then, if one or more bids on the largest schedule (Schedule A) is at or less than the maximum acceptable bid, the bids for that schedule will be read for each bidder and the apparent low bidder for that schedule announced. Bids will be read only for the smallest schedule if none of the bid schedules receives a bid at or less than the maximum acceptable bid.

The project selection process shall use the following guidelines unless otherwise established in the project special provisions:

- If only the smallest schedule receives one or more bids at or under the Maximum Acceptable Bid, select the low bid for that schedule.
- If the low bid for the smallest schedule is over the Maximum Acceptable Bid, but results in a total cost less than 110 percent of the Project or Commission Budget, select the low bid for that schedule.
- If the low bid for the smallest schedule is over the Maximum Acceptable Bid, and results in a total cost greater than 110 percent of the Project or Commission Budget, pursue either Commission Action or other appropriate means to supplement the funding. Appropriate means to supplement the budget are described in Section 1.07 of the *Project Development Manual* under the part titled *Formal Budget* on page 1-15. Otherwise, adjust and readvertise the project.
- If two or more schedules receive one or more bids at or under the Maximum Acceptable Bid, select the low bid for the larger schedule.

Transport Note — When using Multiple Bids and requiring the contractors to bid on all of the schedules, separate Prime Projects must be set up in Transport e.g. 14980ALT-A & 14980ALT-B. Contact Janie Valdez at 303-757-9540 if you have any questions.

Projects which use multiple bid schedules as described in Step 4 above must include the following special provisions:

- (1) *Multiple Bid Schedules* based on the work sheet found at the *Innovative Contract Provisions* web page listed below.
- (2) *Commencement and Completion of Work* based on the appropriate one of the three work sheets found at the *Innovative Contract Provisions* web page listed below.

The *Innovative Contract Provisions* web page is found at:

<http://www.dot.state.co.us/DesignSupport/Construction/2005SpecsBook/2005%20Innovative%20Specs/2005innov.htm>

Maintenance and Safety Pool Projects (Striping, etc):

Use the same procedures that have been used in the past.

I concur.

SIGNATURE ON FILE
Chief Engineer

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Date