

# Local Agency Program & Florida Highway Administration Certification & Recertification Computer Based Training

## Module 5 Part 2 – Other Program Requirements

On Federal Oversight projects, FHWA:

- Authorizes project for advertisement
- Approves addenda
- On State-delegated projects, the STA performs these functions on behalf of FHWA and there's a minimum 3 week advertisement requirement.

The FDOT construction checklist should be completed prior to advertising for bids.

Assurances beforehand include:

- PS&E approved
- Clearances complete, for example Utility, Right of Way, and Railroads, OR proper coordination in contract
- Relocations complete
- Public hearing & environmental processes complete
- Other agency reviews complete

When advertising for Bids:

- Assure that all potential bidders will receive addenda
- Major changes approved by Division on full involvement (FHWA Oversight) projects prior to issue
- Inform Division of minor changes prior to Concurrence in Award

FHWA oversight project is a project monitored at the plans, specifications, and estimate stage by FHWA as required by 23 U.S.C. 106 (C) (3)

The FHWA policy is for all oversight federal-aid construction projects and requires all paper bids to be opened publicly and read aloud either item by item, or by total amount. If a bid is not read, the bidder is to be identified and the reason for not reading the bid announced.

Note: The STA does not need to forward bid tabulations for non-NHS projects.

Reasons for not reading a bid include the bid itself being non-responsive, often called "irregular," or the bidder is determined to be not responsible. The difference between a responsive bid and responsible bidder is that:

- A responsive bid is one that meets all the requirements of the advertisement and proposal; while
- A responsible bidder is one who is physically organized and equipped with the financial wherewithal to undertake and complete the contract.

Some reasons for not reading a bid due to bidding irregularities may include:

- Failure to sign the bid,
- Failure to furnish the required bid bond,
- Failure to include a unit bid price for each item,
- Failure to include a total amount for the bid,
- Failure to prepare the bid in ink,
- Failure to submit a non-collusion affidavit,
- Failure to commit to the achievement of the DBE contract goals or demonstrate good faith efforts to do so, or
- Inclusion of conditions or qualifications not provided for in the specifications

A bidder may be deemed not responsible because of:

- past unsatisfactory performance,
- failure to meet the STA's qualification requirements,
- State or Federal suspension/debarment action.

A determination of non-responsibility by the contracting agency should be documented in writing and the contractor should be given a "due process "to respond to such charges. A determination of non-responsibility should be done prior to the receipt of bids. While 49 CFR 29.510(b)(2) indicates that participants may not be required to check the non-procurement list, the STA is highly encouraged to develop a procedure for verifying the eligibility of participants prior to the award of the contract.

Bid tabulations for NHS Projects must be submitted to the FHWA Division; Certified by STA Officials.

It should provide details on 3 low bidders and the total amount on all bidders.

Bid Price Data is required for all contracts valued greater than > 500,000 dollars or for improving highway safety; or for highway beautification. This data may be submitted electronically.

Bid analysis is the basis for justifying contract award or rejection of the bids. A proper bid analysis helps to ensure that funds are being used in the most effective manner.

Title 23 CFR 635.114(a) requires Federal-aid contracts to be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting the criteria of responsibility. This requirement applies to all Federal-aid highway construction projects. For Federal-aid projects which are determined to be "delegated projects," the STA may act for FHWA in the bid analysis and award process, but must follow the justification and documentation procedures of 23 CFR 635.114 (b - j) by documenting the project files.

Whether the contract is subject to FHWA oversight or not, there must be formal documentation of the analysis and rationale for contract award, or rejection of the low or all bidders. For state-delegated contracts, that documentation must meet the requirements of 23 CFR 635.114 (b-j).

This guidance is for all Federal – Aid highway construction projects. Bid Rigging is a conspiracy to disrupt or circumvent the competitive bidding environment by establishing a competitive advantage for certain bidders.

FHWA encourages the STAs to make a conscientious effort to check for bid rigging activities.

An evaluation is required over time, which means that the STA must have a database.

Many STAs rely on a system like BAMS to analyze bids and help detect collusion. STAs may also have their own system or process to detect collusion.

The most common types of Bid Collusion include:

Complementary Bid -- a pattern of consistently high bids, or non-responsive bids

Territorial allocation -- consistent wins by a vendor within a specific area (county or region of the state)

Joint venture -- not the typical equal legal partnership. Under this scheme, a contractor submits a high bid for a project that he has already agreed to be a subcontractor to the successful bidder

Bid rotation -- coordinated pattern of win or lose bid responses (bidder consistently wins every 10th bid)

Other things to look for include:

- the number of contract awards to a specific firm
- variations in the unit prices submitted by the same bidder for different projects

For Post-Award Bid Evaluation;

- An evaluation period is for approximately 5 years
- Select an adequate number of projects and,
- Question whether there are abnormal bid patterns

If for any reason, a person feels that bid rigging or fraud has occurred, they should contact the nearest USDOT/OIG office. This may be based on a suspicion or actual evidence of fraud, waste, and abuse in any project funded by FHWA. Title 23, Section 302, requires STAs to be fully equipped and organized to carry out the Federal aid program.

Responsibility for seeing that the project is completed in accordance with approved plans and specs rests with the STA. If consultant inspection is used by STA, there must still be an assigned STA employee responsible. This person would not need to be on site every hour of every day but must be contactable in the event of disputes, emergencies, etc. Local projects may be administered by local agency but must have a designated public employee in responsible charge. STA is still responsible for overall project.

A Suspension and Debarment (or S/D) action ensures that the Federal Government does not conduct business with a person or a company who has an unsatisfactory record of integrity and business ethics. The S/D actions are administered government-wide; consequently, a person excluded by one Federal agency is excluded from doing business with any Federal agency.

Causes for debarment include:

- Conviction for fraud
- violation of anti-trust
- embezzlement, theft, forgery, bribery, falsification of records
- serious violations of agreements that threaten the integrity of a public agency program
- doing business with persons known to be debarred
- failure to pay debts

Debarment requires due process, and extends for 6 months to 3 years

Suspension is an immediate short-term (12 months) action taken to protect the government while the long-term debarment process takes place. Debarment clock begins at the suspension date.

Debarred firms and/or individuals are prohibited from ANY contract requiring the consent of the USDOT.

They are also barred from Lower tier transactions exceeding \$25,000 or where a person can exert critical influence.

## Review Questions

A Request for Proposals is advertised by the city and specifies a local preference for local contractors to encourage business development in their region. Is this allowable for projects that will be receiving federal funds?

The answer is NO, local preference is not allowed under federal requirements.

Can a construction company debarred by the Department of Defense do business with a local government receiving federal aid on a project?

The answer is No, suspension and debarment actions are administered government wide.

# LINKS

LAP Website

<http://www.dot.state.fl.us/projectmanagementoffice/LAP/default.shtm>

Florida Statutes

<http://www.leg.state.fl.us/statutes/>

Wage Tables and related info

<http://www.dot.state.fl.us/construction/wage.htm>

Federal Statutes and Regulations

<http://www.fhwa.dot.gov/programadmin/contracts/core02.cfm#s2A02>

Environmental Process Acronyms

<http://www.fhwa.dot.gov/programadmin/contracts/coregloss.cfm>

FHWA 1273

<http://ecfr.gpoaccess.gov/cgi/t/text/textidx?c=ecfr&rgn=div6&view=text&node=23:1.0.1.7.22.1&idno=23>

Civil Rights Act of 1964

[http://www.fhwa.dot.gov/environment/title\\_vi.htm](http://www.fhwa.dot.gov/environment/title_vi.htm)

Section II.1 EEO

<http://www.fhwa.dot.gov/programadmin/contracts/core02.cfm#s2A02>

Davis Bacon Act

<http://www.gpo.gov/davisbacon/>

Federal aid policy guide 6011.10 has additional information:

<http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>

“Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation”

<http://www.fhwa.dot.gov/programadmin/contracts/ta508046.cfm>