



Section 10 – Construction Authorization and Letting

BID PROPOSALS

Bid proposals must include a number of federal provisions and documents (See [Figure 10-1](#)). The provisions are explained in detail in the *Missouri Standard Specifications for Highway Construction* and the *Required Federal Aid Provisions & Federal Wage Rates* publications furnished by MoDOT. Additional provisions are explained in the *Federal Highway Administration Form 1273* publication. All three of these documents are available free of charge on MoDOT's web site at <http://www.modot.mo.gov>. The local agency can also contact the MoDOT district representative to obtain the current edition of these publications and determine whether any other required documents should be included in the bid proposal.

WAGE RATE

Federal Davis-Bacon prevailing wage rate determinations are required on all federal contracts except when the project is located off the federal-aid highway system. Local projects that are located on roadways classified as local roads or rural minor collectors are exempt from the Federal Wage Rate requirement. However, other federal-aid provisions still apply. If other federal funds are being used on a project located off the federal-aid highway system, Davis-Bacon rates may be required by the other federal agency that provides funds. Davis-Bacon determinations may be obtained from MoDOT. The most current version of the federal wage rates will be provided to the local agency when the authority to advertise is granted. The local agency must use the applicable state or federal wage rates effective on the tenth day before the letting for all projects. When state and federal wage rates are both required the higher of the two for each job classification should be used. If the wage rates change between the tenth day and the bid opening date, the wage rates effective on the tenth day will be the rates used for the project. The local agency should request state wage rates from the Industrial Commission, Missouri Department of Labor and Industrial Relations, Box 449, Jefferson City, Missouri 65102 or by calling (573) 751-3403.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

One of the provisions, which must be included, is the Disadvantaged Business Enterprise (DBE) Contract Provisions. All bidding documents must refer to 49 CFR Part 26. The local agency should contact the MoDOT district representative to obtain the current DBE contract provisions. The DBE provisions can be referenced as commonly used forms on the MoDOT website at <http://www.modot.mo.gov/business/manuals/localpublicagency.htm>. To assist the state in achieving goals, it will be necessary for the local agency to set up goals for socially and economically disadvantaged individuals (DBEs). A request must be made to the MoDOT district representative to establish a DBE goal for each project. For small projects or for projects that do not lend themselves readily to subcontract work, the goals may be reduced or even set at zero, but the provision should still be included. The DBE submittal forms shall be completed and submitted with the bid proposal or delivered by the low and second low bidder within three working days after the bid opening date.

If any DBEs shown on the submittal forms are not listed on the MoDOT approved listing, then that DBE's work will not be counted as DBE participation work and may be cause for rejection of the bid. If the bidder does not meet the established goal, award of contract can be made only if this bidder can document and demonstrate good faith effort to meet the goals. MoDOT will review and approve the good faith effort. DBEs must be listed on the MoDOT approved listing at the time of the contract letting (bid opening).

According to the Federal Highway Administration, Title 23 and 29 prohibit any provision on federal-aid projects unless it meets federal requirements. Therefore, any provision setting a DBE/MBE/WBE goal cannot be allowed unless that program meets the requirements of 49 CFR Part 26. Specifically, Part 26 does not permit separate goals for minorities and females without a specific authorization and waiver. Further, federal regulations state that any amount of federal money used on a project makes that project federally funded and the prohibition is applicable.

Therefore, no project funded by federal money, whether administered by MoDOT or any other entity receiving federal funds, can contain an MBE or WBE goal, even if mandated by city ordinance. Any project submitted with such a goal will not be approved for federal funds.

WARRANTIES

The local agency may include warranty provisions in construction contracts in accordance with the following:

1. Warranty provisions shall be for a specific construction product or feature. Items of maintenance not eligible for federal participation shall not be covered.
2. All warranty requirements and subsequent revisions shall be submitted to MoDOT for advance approval.
3. No warranty requirement shall be approved which in the judgment of MoDOT, may place an undue obligation on the contractor for items over which the contractor has no control.

Routine warranties or guarantees provided by a manufacturer are valid. Contractors' warranties or guarantees providing for satisfactory in-service operation of mechanical and electrical equipment and related components for a period not to exceed 6 months following project acceptance are permissible.

ENVIRONMENTAL CLEARANCES

A copy of the Corps of Engineers 404 Permit, Farmland Conversion Impact Statement, concurrence from the SHPO that Section 106 requirements have been satisfied, and the FEMA Floodplain Development Permit should be included in the bid proposal. More information on environmental issues can be found in Section 4.

LIQUIDATED DAMAGES

The amount of project costs that will be eligible for federal participation will be reduced by the amount of any liquidated damages assessed against the contractor. In determining the amount eligible for participation, the amount of liquidated damages will first be deducted from the amount of construction engineering claimed and then from construction costs if the amount of liquidated damages exceeds the amount of construction engineering. In determining this deduction, a minimum amount will be used as shown in the following table. Local agencies may therefore wish to set the amounts of liquidated damages either equal to or greater than this schedule in order not to lose any federal participation. The liquidated damage rate must be included in the bid proposal.

SCHEDULE OF DEDUCTIONS FOR EACH DAY OF OVERRUN IN CONTRACT TIME

ORIGINAL CONTRACT AMOUNT (OR THE ENGINEER'S ESTIMATE OF THE TOTAL CONSTRUCTION COST)

<u>From More Than</u>	<u>To and Including</u>	<u>Assessment per day</u>
\$ 0	\$25,000	\$475
25,000	50,000	475
50,000	100,000	500
100,000	500,000	700
500,000	1,000,000	950
1,000,000	2,000,000	1,100
2,000,000	3,000,000	1,225
3,000,000	4,000,000	1,625
4,000,000	5,000,000	2,025
5,000,000	6,000,000	2,425
6,000,000	7,000,000	2,825
7,000,000	8,000,000	3,225
8,000,000	9,000,000	3,625
9,000,000	10,000,000	4,025
10,000,000	70,000,000	4,300

CONTRACTOR REQUIREMENTS

The bid proposal must also stipulate that the prime contractor on a project must perform with its own organization, contract work amounting to not less than 30% of the total original contract price. A prime contractor must have a fully responsive contractor questionnaire on file with the Missouri Highways and Transportation Commission (MHTC) at least seven (7) days prior to the bid opening date if this project involves roadway or bridge work. To get on the approved contractor listing prior to letting, click on the following link:

http://www.modot.mo.gov/pdf/business/Contractor_Questionnaire.pdf. The following sentence could be inserted into the contract that would allow contractors not on the listing to submit a bid for the project. “Section 102.2 of the Missouri Standard Specifications for Highway Construction, 2004 Edition will be waived for this project.” This statement should only be used on proposed improvements that do not contain roadway or bridge construction (i.e., landscaping, sidewalks, bicycle path, etc.). If this waiver is not inserted in the contract and the bidder is not on MoDOT’s listing, the bidder cannot be awarded the project. The project may be awarded to the second low bidder.

The bid proposal must also stipulate that second-tier subcontracting will not be permitted on the project. It will be the responsibility of the contractor to insure that subcontractors do not subcontract any portion of the work.

If the specifications call for contractor-furnished borrow, the contractor must ensure that all environmental requirements have been satisfied for use of the borrow site. To eliminate possible delays, the local agency shall specify in the engineering services contract that a proposed borrow site be investigated. The project sponsor must provide written certification to the MoDOT district representative, including clearance letters and other evidence of coordination with the appropriate regulatory agencies, that the proposed land disturbance site has been cleared of environmental concerns under all applicable federal and state laws and regulations. More information on obtaining environmental clearance for borrow sites can be found in Section 4.

The following Title VI Civil Rights Assurances notification must be included in the invitation to bidders in the front of all bid proposals and in any magazine advertisements, newspaper advertisements, invitations for bids mailed to prospective bidders and suppliers, and any other means of obtaining submission of bids for work or materials.

“The County/City/Organization of _____ hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full 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.”

CONTRACTOR LETTING AND AWARD

To obtain construction authorization, the local agency must submit PS&E, all environmental clearances, and the right-of-way clearance certification statement to MoDOT. Authorization will not be granted until right of way is cleared and railroad and utility agreements are executed. Projects on railroad right of way or crossing railroad right of way require written approval from the Railway Company of the final plans prior to construction authorization. Local agency-state agreements must also be executed before construction authorization will be given. Any supplemental agreements pertaining to the preliminary engineering of the project must be submitted, fully executed, prior to construction authorization. Projects utilizing MoDOT funding must receive bid award concurrence from the MHTC.

A project cannot be advertised for letting until MoDOT has issued construction authorization.

PS&E approval, DBE goal approval, and construction authorization will enable the local agency to advertise for bids. Competitive bidding will be required except where work by local agency forces or utility companies has been authorized. All bids must be publicly opened and read and award made to the lowest responsible bidder, provided acceptable bids are received. MoDOT must approve any request to reject any or all bids after the project sponsor has submitted written justification.

PROFESSIONAL LICENSURE, CERTIFICATION, BUSINESS LICENSURE, AND WORK PERMITS

Any permitting or licensing criteria for contractors, subcontractors, and suppliers must be submitted to MoDOT for advanced approval. MoDOT must review all submissions and approves them only if they do not unduly restrict or limit any firm's ability to bid on and receive award of federal-aid projects. If, at any time, modifications are made to the approved requirements, MoDOT will have to approve the revised requirements prior to use.

Law shall require no contractor, regulation, or practice to obtain a license or permit before submission of a bid or before a bid may be considered for award of a contract.

BIDDER QUALIFICATION LANGUAGE

Federal-aid contracts must be awarded based on the lowest responsible and responsive bid submitted by a bidder meeting the criteria of responsibility approved by MoDOT. Any qualifying or other criteria to determine the responsibility of contractors, subcontractors, and suppliers must be submitted to MoDOT for advanced approval. If any modification is made to the approved requirements, MoDOT will have to approve the revised requirements prior to use.

Prequalification of contractors may be required as a condition of submission of a bid or award of contract only if the period between the date of issuing a request for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating or approval. All prequalification criteria must be submitted to MoDOT for approval in advance of the date of issuing a request for bids. Prequalification cannot include any criteria that may operate to restrict competition, to prevent any responsible contractor from submitting a bid, or to prohibit the consideration of a bid submitted by any responsible contractor, whether resident or nonresident of the state wherein the work is to be performed. The bidders must be familiar with and aware of the requirements in 23 CFR Section 635.110, 635.112, and 635.114.

Requirements for the prequalification, qualification, or licensure of contractors that operate to govern the amount of work which may be bid upon by or awarded to a contractor shall be approved only if based upon a full and appropriate evaluation of the contractor's capability to perform the work.

Contractors who are currently suspended, debarred or voluntarily excluded under 49 CFR part 29, or otherwise determined to be ineligible shall be prohibited from participating in the Federal-Aid Highway Program.

To satisfy federal requirements, projects must be advertised one time at least 21 days before the bid opening. This advertisement should be placed in a newspaper having a general circulation in the area of the project. FHWA administrative guidelines also allow advertising projects online. Provided that the Local Agency notifies all interested bidders about the website and the website is readily accessible to all interested bidders. Internet advertising is acceptable for federal-aid projects as a supplement to traditional means. Additionally, the local agency should ensure that requirements of state statutes governing local agency operations are also satisfied. The local agency should advise MoDOT of the first advertising date and the time and location of the bid opening as soon as these are determined. A sample advertisement is shown as [Figure 10-2](#).

The information contained in the plans and specifications (bid proposal) that was approved as part of the final plans package must not be altered prior to being made available to prospective bidders. Any revisions to the plans or bid proposal made after the MoDOT final plan approval date must be submitted to MoDOT for review and approval as an addendum to the final plans package. Approval of the addendum must be attained prior to making the revised plans or bid proposal available to prospective bidders. Failure to receive prior approval of an addendum to the bid package may jeopardize the federal funding for the project. The local agency is required to receive confirmation from every bidder that they have received their copy of the addendum that was issued.

Local agencies may use a bidding procedure called additive alternates to help keep the awarded contract amount within budget. Under this procedure, the local agency submits its construction budget for the federal-aid portion of the project (that is, the amount of funding the agency has available for construction) and also separates the “base-bid” items and the “additive alternates” in the engineers estimate. The “additive alternates” are items that will be selected if the “base plus alternates” price is within budget. The local agency must clearly specify the priority of alternates which will be considered and indicate that the award will be based on the lowest responsive bid. This budgeted amount will be used to help determine which contractor the project will be awarded to, as the agency will be required to award the project to the contractor who can provide the most amount of work (base bid plus alternates) that is within the agency’s budget.

Each bidder shall file an anti-collusion statement at the time of the bid. The local agency will provide the anti-collusion statement to each prospective bidder. Failure to submit the anti-collusion statement as part of the bidding documents will make the bid non-responsive and not eligible for award consideration. (See [Figure 10-3](#) for an anti-collusion statement example.)

All bids will be evaluated based on 23CFR Subsection 635.114. MoDOT concurrence must be obtained prior to the award of contract. The sponsors must have MoDOT concurrence to reject bids and re-advertise for bids.

The request for MoDOT concurrence should be accompanied by (contact the appropriate district representative for the number of copies to submit):

Per district requirement please submit

- a cover letter from the sponsor requesting MoDOT concurrence in award
- a tabulation of all bids received
- the executed anti-collusion statements from the first and second low bidder
- the DBE submittal forms for the first and second low bidder
- itemized bid forms from the first and second low bidder (with asterisks placed by the items that the DBE will perform)

Itemized bid subtotals shall be shown for roadway items, signals, lighting, signing, striping, and bridges.

Justification should be provided with any request for concurrence in award if the lowest responsible bid is more than 10% higher than the project estimate.

Following the award of contract, the local agency should submit two fully executed copies of the contract to MoDOT. This submittal should include complete contracts similar to the bid proposals, with the addition of signatures, insurance, and bond forms.

No work is to be initiated on any part of the project until FHWA approves (obligates) federal funding and MoDOT notifies the local agency to proceed.