CHAPTER 14

ADVERTISEMENT, CONTRACT LETTING AND AWARD
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NOTE: This Chapter has associated appendices and forms that can be found on the Procedures for Locally Administered Federal Aid Projects (PLAFAP) manual website at: www.dot.ny.gov/plafap
14.1 INTRODUCTION

This chapter describes the various phases of the contracting process including: soliciting of bidders (advertising), bid opening, bid analysis identification of the lowest bidder, and contract award and documentation for locally administered federal aid transportation construction contracts. The Sponsor must have an approved Construction Management Plan (CMP) prior to contract award, appropriately revised to reflect project staffing and be signed by the NYSDOT Regional Local Project Liaison (RLPL), or appropriate designee (See section 12.2.2).

The following federal regulations apply:

- Advertising for bids and proposals (23 CFR 635.112);
- Method of Construction (23 CFR 635.104);
- Participation by Disadvantaged Business Enterprises in US Department of Transportation Financial Assistance Programs (49 CFR 26); and
- Equal Employment Opportunity (EEO) on Federal and Federal-Aid Construction Contracts (Including Supportive Services) (23 CFR 230)

When a discrepancy exists between federal, State and municipal laws, rules and/or regulations, Federal law prevails; with the exception that State and municipal laws, rules and/or regulations may be more strict and therefore have precedence.

14.2 ADVERTISING

Advertising for all Federal aid construction contracts must meet federal requirements and foster competitive bidding. When the contract bid documents, including Plans, Specifications and Estimate of quantities (PS&E), have been assembled and the Sponsor receives Federal Authorization to Proceed\(^1\), the Sponsor is required to advertise the contract for bidding (23 CFR 635.112). The NYS requirement for publicizing the solicitation of bids for a construction contract is that it be advertised (i.e. New York State Contract Reporter, newspaper, etc.) for at least three weeks (15 business days) prior to the opening of the bids. The sponsor is encouraged to place additional advertisements in appropriate publications if desired. Advertising costs should be charged to the construction phase.

The advertisement must identify the Disadvantaged Business Enterprise (DBE) contract goal, if applicable. In the event that a 0% DBE goal is established, NYSDOT strongly encourages the use of DBE contractors wherever possible.

14.2.1 New York State Contract Reporter (NYSCR)

The New York State Contract Reporter\(^2\) is an exclusively online publication requiring electronic submission of advertising content. To comply with federal requirements, all contracts with New York State (including locally administered Federal aid projects) for the procurement of goods and services must be published in the NYSCR. Contracts to be awarded on a sole source\(^3\) or single source\(^4\) basis must also be published and have prior approval from Main

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1 The Sponsor could forfeit Federal reimbursement if the advertisement of a contract takes place prior to receiving a Notification to Proceed.
2 [http://www.nyscr.org](http://www.nyscr.org)
3 Sole source is a situation in which only one contractor can supply the goods or services.
Office Local Programs Bureau. There is no fee for advertising or for viewing ads on the site. Sponsors must be registered prior to submitting advertisements and may do so from the NYSCR website.

Once a Sponsor is granted access, they will receive a password and instructions for ad submission. The system can accept bid specification documents in Word, Excel, Power Point or PDF formats as attachments (up to 50 MB) to be published with the advertisement. When an advertisement is successfully submitted, an ad number is assigned by the system and the municipality is notified of the particular issue in which it will appear, along with other details. A confirmation page showing these details can be printed. Additionally, the NYSCR can capture and provide in an Excel format, registered users who viewed, bookmarked, opened bid documents, or opted to receive bid update notifications for the advertisement, including their contact information. All information exchanges with the Contract Reporter (email confirmations, downloaded spreadsheets, screen captures of advertisements, etc.) should be printed and kept in the project file.

The NYSCR is published weekdays and new solicitations appear every morning. Any advertisement submitted successfully to the NYSCR system on a given day appears the following business day. Advertisements submitted Friday, Saturday or Sunday appear on Monday, as long it is not a major holiday.

The earliest bid due date allowed in the ad insertion form shall be 15 business days, or 21 calendar days after the advertisement is published. The insertion date, publication date and earliest due date can be calculated in the Publication Calculator Tool on the web site. If an earlier bid due date becomes necessary, the municipality must get approval from the RLPL, along with help from the NYSCR, which can be sought through the Contact Us link.

Any questions or requests for assistance can be made online through the Contact Us link or by calling Empire State Development, Procurement Assistance Services/NYSCR at (518) 292-5266.

14.3 AMENDMENTS

An amendment is a formal modification of a proposed contract, issued after the advertisement publication date, but prior to the opening of bids. There shall be a process to ensure all plan holders and NYSDOT receive amendments when issued. This can be accomplished by either having bidders acknowledge amendments in their bid submittals or by distributing amendments by certified mail. The following should be considered when a Sponsor is contemplating amending a contract:

- If significant changes to the scope and/or scale are necessary, the Sponsor should seek advisement from the RLPL (changes may require FHWA approval). If the changes are not allowed to be incorporated by amendment the Sponsor should cancel the contract, redesign the project and then re-let it.
- An amendment should be issued when either of the following errors are discovered:
  a. Any contract pay item quantity change of ±20%.

4 Single source is when two or more contractors can supply the goods or services, but one is selected over the others because of distinguishable expertise, previous experience with similar contracts, etc.
5 https://www.nyscr.ny.gov/register.cfm
6 https://www.nyscr.ny.gov/contactUs.cfm
b. Any contract pay item quantity change, multiplied by the estimated unit price (or change in a lump sum item), which alters the total engineer’s estimate by more than ±1%.

c. DBE goal incorrectly stated in the contract.

d. EEO goal incorrectly stated in the contract.

14.4 **BID LETTING AND BID ANALYSIS**

In accordance with 23 CFR 635.113(a), “All bids received in accordance with the terms of the advertisement shall be publicly opened and announced either item by item or by total amount. If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the letting.” If the proposal includes alternate bidding procedures, the contract budget and alternate bidding award procedures must be declared prior to opening bids and the announcement of the apparent low bidder (see Section 12.5.9). After all bid totals have been read aloud, the apparent low bidder will be announced, and all bidders informed that award will be pending a complete bid analysis including mathematical verification and affirmation that the low bidder is responsible. The Bid Analysis shall be concluded and Contract Award shall be made within 45 days as noted in §140 of the State Finance Law.

Negotiation with a low bidder (i.e. adjusting quantities, changing unit prices, adding and subtracting work, etc.) prior to contract award is prohibited [23 CFR 635.113(a)].

14.4.1 **Bidder Responsibility**

For all Federal aid contracts, determination of whether or not a business entity is a ‘responsible bidder’ is made using the guidelines established by NYS Governor’s Executive Order #170, whereby a contractor/vendor may be deemed ‘not responsible’.

The following must be verified as part of the bidder responsibility review:

- For all contracts the *New York State Uniform Contracting Questionnaire* (CCA-2) is used in the qualification of an entity as a “responsible bidder.”
- United States General Services Administration’s *List of Debarred, Suspended, or Voluntarily Excluded Firms Ineligible for Federal Aid*.
- NYS Department of Labor’s monthly *List of Employers Ineligible to Bid on or be Awarded any Public Work Contract*.
- NYS Department of State’s *Corporation/Business Entity Database* to ensure that Corporations, Professional Corporations, Limited Liability Companies and Limited Liability Partnerships have proper authority to conduct business in New York State.
- Office of Safety and Health Administration (OSHA) website for *safety violations for a given firm*.

The NYSDOT Contract Pre-Award Unit is responsible for reviewing and approving the CCA-2 questionnaire. After the low bidder is determined, the Sponsor should contact the RLPL as soon as possible to see if a CCA-2 is on file for the bidder. If not, a questionnaire shall be

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7 [https://www.sam.gov/portal/SAM/##11](https://www.sam.gov/portal/SAM/##11)
8 [https://dbr.labor.state.ny.us/EDList/searchPage.do#](https://dbr.labor.state.ny.us/EDList/searchPage.do#)
completed by the low bidder and submitted to the Contract Management Bureau as instructed. A copy of the CCA-2 questionnaire is on NYSDOT’s website. Similar checks must be conducted on subcontractors (see Chapter 15). RLPLs should access the “Letting and Awards System” (LAS) database in order to confirm that a vendor has an approved CCA-2 on file.

14.4.2 Bid Analysis

The Sponsor must conduct a bid analysis to ensure that the apparent low bid is responsible and reasonable and that the contract award will best promote the public interest. A bid analysis generally consists of a comparative review with the Engineer’s Estimate to determine if item quantities and prices are accurate and if assumptions made during the estimate process were valid.

The following steps must be performed for each contract as part of the bid analysis:

1. Review the bid items that are 25% over or under the Engineer’s Estimate and look for potential errors.

   A significant difference between the Engineer’s Estimate and the total contract or item bid price by the Low Bidder may indicate issues with commodity prices or regional work volume in the construction market. The distribution of bidders may provide an indication of market conditions and competition relative to an individual project. A low total contract bid price by a bidder relative to other bidders closer to the Engineer’s Estimate may suggest a misinterpretation of the bid documents by the Low Bidder; or simply that the Low Bidder has limited work and is bidding work closer to cost.

   Evaluate items with high bid costs to determine if there is an omission or error in the plans or specifications. If something unusual is found, review the quantity to determine if there is a possibility there is an error in the quantity or in the unit price used in the Engineer’s Estimate. If the item appears to be in question, contact the Project Designer/Engineer of Record.

   Evaluate high bid items where the quantity is relatively small, the item may be a low productivity item and may therefore cost more than a typical weighted average or estimated price. The item should be compared with the other bidder’s prices and if it still seems unusual, further analysis is necessary.

   Note circumstances where quantity changes could affect the ranking of the bidders if corrections/changes are made to the quantities. If post award changes are anticipated that would change the ranking of the bidders, it should be recommended that all bids be rejected.

2. Evaluate bids with significant variations from the Engineer’s Estimate, among the bidders, or where obvious unbalancing of the unit prices has occurred. In addition to the 25% differential, as noted in Step 1, review the items having the largest dollar amount differential for jobs with overall bids 15% higher or lower than the Engineer’s Estimate. Include in the review, the analysis of the B portion of an A+B Contract when the difference is more than 50%. For contracts with multiple B time periods, evaluate any B time period that is more than 50% below the Engineer’s Estimate.

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regarding A+B Bidding please refer to §101-02 of the NYS Standard Specifications.).

Determine if any bid prices are obviously unbalanced to the potential detriment of the Sponsor and contract execution. (For example, if the obvious unbalanced bid prices are all for items which will occur at the beginning of the contract, and the Contractor defaulted, the Sponsor may be in a difficult position to recover payments made.)

Base the analysis on verification of quantities, discussions with the Low Bidder, whether the general location of the contract is convenient for the Low Bidder, and whether the apparent Low Bidder will ultimately yield the lowest cost. Also note that unrepresentative pricing affects cash flow and performance incentives. Any discussion with the low bidder during procurement is subject to New York State Procurement Guidelines, as stated in Article 11 of the New York State Finance Law. Negotiations with contractors, during the period following the opening of bids and before the award of the contract shall not be permitted per 23 CFR 635.113(a). Any discussions should be factual in nature without discussion of the other bids or the Sponsor’s contract award intentions. Contacting the low bidder should not be a routine practice.

If the low bidder cannot provide justification for the unbalanced item(s), the contract should be considered for rejection. It may be very difficult to justify the removal of the low bidder with a recommendation to award to the second bidder if items are not significantly unbalanced. Once an award recommendation is reached, detailed justification must be provided to the RLPL. Though the bid may not be desirable, it may be acceptable.

When the Sponsor has some objection to the Low Bidder, or needs more time to evaluate qualifications of the Low Bidder, the RLPL must be notified as soon as possible of the objection with a summary of the justifiable reasons. The RLPL will then notify the NYSDOT MO-Local Programs Bureau (MO-LocalProgramsBureau@dot.ny.gov). If the Sponsor has concerns with a Low Bidder, documentation supporting the concerns should be readily available if requested by NYSDOT.

### 14.4.3 Reasonableness Justification

The Office of the State Comptroller (OSC) requires a reasonableness justification when the apparent low bid is more than 15% higher or lower than the Engineers Estimate. Where the bid is 15% higher, the justification should focus on notable differences between the low bid and Engineers Estimate for specific items and should discuss the apparent reasons such differences exist and any inherent risks. Where lower, the justification should focus on the experience of the Low Bidder and its ability to complete the contract according to NYS Governor’s Executive Order #170. If it is determined that changes to the Engineer’s Estimate would be appropriate based on bid analysis findings, provide descriptions of the revisions to prices for each item that is revised, and a revised total of the Engineer’s Estimate. All revision descriptions must include dollar amounts and not general statements.

A reasonableness justification shall include all of the following:

1. Consider the structural assessment review performed by the structural designer, if applicable. Provide justification if the determination does not coincide with the

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"recommendation to award" by the structural designer.

2. Determine whether the contract can be divided into smaller segments or stages of construction, combined with work in a larger contract, or if there are changes in the contract requirements that can be made to reduce the cost of work or produce more competition.

3. Determine whether a contract is essential and whether the delay resulting from cancelling and re-letting would not be in the best public interest. Contracts considered essential include, but are not necessarily limited to safety contracts, which are to correct hazardous conditions to the traveling public, emergency repairs or replacement of damaged facilities.

4. Determine whether a timely award is required in order to complete staged construction, order materials, coordinate with and to allow other contracts (including other governmental and private contracts) to proceed, meet commitments made by the Sponsor, or to complete a facility in its entirety.

5. Determine if a delay would result in a substantial impact on the contract completion date or extend the contract beyond the contract completion date, over the winter and into the next construction season, thereby increasing the contract cost.

6. Determine whether the general location of the contract is saturated with similar types of construction contracts, thus tending to reduce competition.

7. Determine whether a shortage of construction labor, equipment or specialty capability and experience exists in the contract area, resulting in a general increase in bid prices.

8. Make a recommendation as to whether or not to award the contract.

14.4.4 Single Bid Analysis

For all contracts where only one bid has been received, the Sponsor should ascertain the potential for increased bidding if the contract were rebid, by examining the list of plan buyers for other potential bidders. Potential bidders should be contacted for their reasons for not bidding. On the basis of such discussion, determine whether revisions to the contract requirements could result in lower bids through increased competition or clarification of ambiguities. The Sponsor should determine whether the contract is essential and the potential for increased bidding if this contract were to be rebid.

14.4.5 Rejection of All Bids

It may be necessary to reject all bids. Reasons to reject all bids include inadequate competition due to limited number of bidders, high bids due to unclear requirements, or other circumstances that affected the bids received. For example, contracts where additional costs could not be justified, adequate competition was not received (e.g. not enough bids), permits not received, etc. Discussion should include reasons why the Sponsor believes that they will receive better bids if the contract is re-let, or what changes will be made to secure more competitive bid prices like the bidding environment or time of the year when the job will be let. If after consultation with NYSDOT, all bids are rejected by the Sponsor, the Sponsor must notify *all bidders*.
14.4.6 Bidder Error

Occasionally a bidder will inadvertently err so severely that it is not reasonable to expect contract fulfillment. §103(11) of the General Municipal Law (“Advertising for bids; letting of contracts; criminal conspiracies”) sets forth requirements to excuse a bidder for an error in bidding and to proceed to the next lowest responsible bidder:

*Bid mistake; public projects. (a) In all contracts governed by this section, where a unilateral error or mistake is discovered in a bid, such bid may be withdrawn after a showing of the following: (1) the mistake is known or made known to the awarding officer, board or agency prior to the awarding of the contract or within three days after the opening of the bid, whichever period is shorter; and (2) the price bid was based on an error of such magnitude that enforcement would be unconscionable; and (3) the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error; and (4) the error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, goods or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents or materials used in the preparation of the bid sought to be withdrawn; and (5) it is possible to place the public agency, board, officer or subdivision in status quo ante. (b) Unless otherwise required by law, the sole remedy for a bid mistake in accordance with this section shall be withdrawal of that bid and the return of the bid bond or other security, if any, to the bidder. Thereafter, the awarding officer, board or agency may, in its discretion, award the contract to the next lowest responsible bidder or rebid the contract. Any amendment to or reformation of a bid or a contract to rectify such an error or mistake therein is strictly prohibited.*

14.5 PRE-AWARD CIVIL RIGHTS RESPONSIBILITIES

The Sponsor must monitor and report on the contract’s DBE utilization. There are three distinct stages of DBE utilization: goals, commitments, and attainments. Goals are established prior to letting in the contract documents as a percentage of the contract bid price. After contract letting, the contract goal is expressed as a dollar amount. During the pre-award process, the Contractor and the proposed DBEs agree to dollar amount commitments. After contract award, attainments are measured after completion of the work in dollars paid to certified DBEs. In order to comply with Federal aid Civil Rights requirements, NYSDOT utilizes the Civil Rights monitoring and reporting software, Equitable Business Opportunities Solutions (EBO). It is the Sponsor’s responsibility during Pre-Award to confirm that the low bidder has committed to meeting the DBE participation goal, or has demonstrated good faith efforts to do so. If the apparent low bidder has not met the goal, review of good faith efforts and concurrence from the RLPL and NYSDOT’s Main Office (MO) Local Programs Bureau is required. Sponsors should note that in accordance with NYSDOT Standard Specifications §105-21 (Civil Rights Monitoring and Reporting), the Contractor must submit timely, accurate and complete data using EBO.

14.5.1 The Equitable Business Opportunity Solution (EBO)

*Project entry into EBO is required during pre-award once the low bidder has been identified.* The following steps are to be completed before award of the contract:

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1. After the identification of the low bidder, the Sponsor will immediately submit the “Contract Template” (contract’s items, quantities, low bid prices and apparent low bidder information) to the RLPL, utilizing the “FA Contract Information Template14” and confirm the correct Units of Measure for a seamless upload into the Civil Rights reporting software, EBO.

2. The RLPL will perform a Quality Assurance check on the Template and submit for upload to Main Office Local Programs Bureau. If there are errors, the RLPL will return the template to the Sponsor for correction.

3. The Sponsor will notify the low bidder that the contract has been initialized in EBO.

4. The low bidder must enter their complete DBE utilization package in EBO within 7 calendar days from the date of the bid opening, or risk having their bid declared non-responsive. Beginning January 1, 2017, the requirement will be 5 calendar days.

5. The Sponsor and RLPL must review the pre-award utilization data in EBO to confirm that the DBE goal is met. When the pre-award utilization package is incomplete or fails to meet goals, the sponsor should send a letter to the contractor requesting complete documentation with a deadline of no more than 5 business days.

6. If the DBE goal is not met, then the low bidder must provide documentation of Good Faith Efforts (GFE), and submit it to the Sponsor, who in turn will submit simultaneously to the RLPL, and NYSDOT’s Main Office Local Programs Bureau (localprograms.ebo@dot.ny.gov) for review as detailed in section 14.5.2 titled “Good Faith Efforts (GFE).”

The pre-award utilization data in EBO must be reviewed for completeness and accuracy:

- All proposed DBEs are listed in the New York State Unified Certification Program (UCP) Directory located at: https://nysucp.newnycontracts.com/.
- All proposed DBEs are listed in the UCP Directory to perform the work that they are being proposed to perform (NOTE: If NYSDOT work codes do not match the contract pay items, or if they are not being used, or if there are no NYSDOT codes in the DBE’s Directory listing, the NAICS codes should be reviewed against the proposed work).
- All proposed DBE utilization is identified with the correct work type such as construction, material supplier, professional services, etc.
- All proposed trucking utilization is supported by trucking data entered into EBO.
- A completed AAP22LL DBE Material Supplier Commitment Information form is submitted for each proposed DBE material supplier as part of the award package; this form is located at: https://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/multi-modal/forms.
- A completed AAP23LL DBE Trucking Commitment Information form is submitted for each proposed DBE trucking firm as part of the award package; this form is located at: https://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/multi-modal/forms.

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• All partial items are explained in writing and submitted to RLPL.
• All proposed DBEs acknowledged their respective proposed utilization in EBO.

In the event that the DBE goal was not achieved during pre-award, the low bidder conducted complete, adequate, sincere, results-oriented Good Faith Efforts to achieve it.

14.5.2 Good Faith Efforts (GFE)

If the low bidder does not meet the DBE goal, the low bidder must document that it conducted adequate Good Faith Efforts (GFE) to achieve the goal. This means that the low bidder must show that it took all necessary and reasonable steps which, by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not successful.

Once the low bidder has supplied the GFE documentation, the Sponsor will forward copies, and any other additional information, to the RLPL and NYSDOT’s Main Office Local Programs Bureau for a simultaneous review. Once the Sponsor’s review is complete, they will submit a request for concurrence to award. Once NYSDOT concurs, the Sponsor shall approve the pre-award DBE utilization in EBO and will proceed with its award process.

The Sponsor shall not award until concurrence is received from NYSDOT. Awarding the contract without NYSDOT review and concurrence may result in a loss of Federal aid.

Supporting documentation includes, but is not limited to, the following:

• Form AAP-10LL D/M/WBE Subcontractor & Supplier Solicitation Log (See Contract Administration Manual 102-12A15)
• Copies of correspondence, faxes and e-mails sent to prospective DBEs
• Copies of advertisements (e.g., newspaper ads)
• Copies of quotes from non-selected DBEs as well as quotes from the selected non-DBEs

The Sponsor should analyze/present data in a spreadsheet or chart format. At a minimum, the Sponsor should perform the following analysis for GFE:

• Check the DBE certification status of each firm contacted.
  ▪ If the firm cannot be found in the UCP Directory, confirm the certification status with the certifying agency responsible for the firm. Never accept copies, faxes, or scans of certification letters.
• Compare the work in the contract against:
  ▪ Work for which DBEs were solicited
  ▪ Work that the DBEs are listed to perform
• Compare the location of each DBE firm to ensure an exhaustive search was performed for each item, within an appropriate radius of the project in accordance with NYSDOT Standard Specification §102-12(G).
• Identify available utilization opportunities and compare them against the type of work solicited.

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• Ensure all types of DBE firms were solicited including, material supply, manufacturing, fabrication, professional services, etc.
• Cross-reference letters, faxes, AAP-10LL, etc.
• Compare the DBE’s price against:
  ▪ Engineer’s Estimate
  ▪ Bid price
  ▪ Weighted Average Item Price Report data16
• Where does the DBE’s price fall in comparison to all of the above?
• Contact a sample of the firms listed on the AAP-10LL to verify solicitation effort stated in the solicitation log and other documents.
  ▪ When contacted
  ▪ By whom
  ▪ By what method(s)
  ▪ How many times
  ▪ For what work
  ▪ Was quote/bid submitted
  ▪ Were plans provided/made available – how and when
  ▪ Low bidder’s follow through
• Compare all efforts against Appendix A to 49 CFR 2617.

If the Sponsor determines that the low bidder did not conduct adequate GFE, it should present its recommendation with this analysis and supporting documentation to its management as well as to the RLPL in a narrative which should include:

• State the specific non-compliance actions
• Cite the specification and regulation for each non-compliance action or class of actions
• Provide calculations of the amount achieved toward the DBE goal and the difference
• Provide an analysis of the feasibility of the DBE goal
• Provide a timeline or chronology of events
• Calculations of the difference between the first and second low bidders
• Any other relevant information

The Sponsor must follow its administrative process and document its steps and actions. If it is determined that the low bidder did not conduct adequate GFE, the Sponsor may disqualify the low bidder and request concurrence to award to the second low bidder who has successfully met the DBE goal or has submitted sufficient GFE.

The DBE goal is in effect for the duration of the contract. If the DBE goal is not met at the time of award then the Sponsor must ensure Good Faith Efforts are made throughout the life of the contract. The contractor will be required to continue to solicit DBE firms for participation on the contract and document those efforts. The Sponsor will continue collecting the additional GFE documentation from the contractor throughout the duration of the contract, or until the DBE goal is met.

14.6 BRIDGE CONSTRUCTION UNIT COST DATA (if applicable)

16 https://www.dot.ny.gov/divisions/engineering/design/dqab/waipr
Annually, all states are required to submit to FHWA bridge construction unit costs for all new and replacement bridges constructed using any federal funds. The FHWA requirement does not pertain to bridge rehabilitations and superstructure replacements.

The Sponsor must provide to the RLPL an itemized bridge share of the construction costs (as submitted by the successful bidder). A separate itemized share is required for each bridge, and only bridge items shall be included. The Engineer's Estimate as well as other bidder's unit costs should not be included. This data must be provided to NYSDOT when the contract is awarded.

The Bridge Construction Unit Cost Data sheet (see Appendix 14-3 for a sample), along with half-size contract plan sheets (bridge plan view, elevations and sections), must be provided to the RLPL, who forwards them to the NYSDOT Structures Design Quality Assurance Bureau.

14.7 AWARD PACKAGE

NYSDOT, as the supervising agency, is responsible for the construction of all Federal-aid projects. When the project is not on the NHS or State Highway System, NYSDOT is not relieved of overall project responsibility\(^{18}\), thus the Sponsor must submit a Contract Award Package to the RLPL requesting a Concurrence in Award letter.

The following items are to be included in the Contract Award Package (see Appendix 14-4 for the Contract Award Checklist):

- Proof of Advertising (See section 14.2 – “Advertising”)
- ROW Clearance Certification
- Regulatory Agency, Utility, or RR Permit Status
- Copy of all amendments issued
  - Amendments distribution records showing that all amendments were sent to all plan buyers
- Plan holders list for any contract that received less than three bids
- Memorandum of Bids Sheet (Appendix 14-2)
- Bid Opening, Verification and Sponsor Recommendation Sheet (Appendix 14-1) with mathematical certification attached
- Copy of notarized and signed proposal of the verified apparent low bidder (See section 12.6), including:
  - Copy of certificate of insurances/bond/bid deposit
  - Non-Collusive Bidding Certification
  - Debarment History Certification
  - Disclosure of lobbying activities
- Certification of apparent Low Bidder Responsibility (See section 14.4.1 – “Bidder Responsibility”).
- Bid analysis completed by Sponsor.
- A description from the Sponsor concerning how it intends to inspect and provide QA/QC, as noted in the approved CMP.
- Bridge Construction Unit Cost Data (required for all projects with new or replacement bridges, regardless of the category of highway system) (Appendix 14-3).

\(^{18}\) 23 CFR 635.105
• Documentation demonstrating that the low bidder met their responsibility for DBE participation when goals were established. See NYSDOT Contract Administration Manual (CAM) §102-12 and Chapter 13 titled “Civil Rights Requirements”.

• Documentation demonstrating that the low bidder met their responsibility for Equal Employment Opportunity (EEO) participation (AAP53)

• DBE participation – EBO utilized and DBEs have acknowledged work. Concurrence of DBE participation by the RLPL prior to award.

• GFE documentation, if the DBE goal is not met - Sponsor cannot award the contract until NYSDOT’s MO Local Program Bureau concurs with the GFE.

• DBE trucking information in EBO if trucking is utilized.

• DBE Material Supplier Commitment Information (AAP22LL), if DBE material suppliers are utilized.

• DBE Trucking Commitment Information form (AAP23LL), if DBE trucking firms are utilized

• Identification of Affirmative Action Representatives in EBO (Not required for suppliers).

Sponsors must submit the Award Package, as well as the FA Contract Information Template for upload and review into EBO, prior to award, in order for the RLPL to conduct their review. RLPL will review both items and issue Concurrence in Award letter when all questions and comments have been addressed.

Please note that all projects that do not meet the DBE goals will have to provide GFE documentation to be reviewed and approved by NYSDOT MO Local Programs Bureau.

14.8 CONTRACT AWARD

Federal aid contracts shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting the criteria of responsibility established by NYSDOT, in accordance with “Licensing and qualification of contractors” [23 CFR 635.114(a)]. Award shall be made within 45 days as noted in §140 of the State Finance Law.

The Sponsor must certify in writing that all items in the award documentation package have been addressed and request a Concurrence in Award letter. In support of the Sponsor’s request, the Sponsor must summarize the results of their bid analysis and highlight any irregularities that may have been identified. The summary must include the bid tabulations of the project, showing bid item details for at least the low three acceptable bids and the total amounts of all other acceptable bids (see Appendix 14-2). After receiving the Concurrence in Award letter from the RLPL, the Sponsor may award the contract and schedule a Pre-Construction Kick-off meeting.

For projects on the NHS System, Sponsors must contact the RLPL for additional requirements. Concurrence in award is a prerequisite to federal participation in construction costs and, unless specifically stated otherwise, constitutes authority to proceed with construction [23 CFR 635.114(b)]. The Concurrence in Award Letter must be kept as part of the project record by both the Sponsor and the RLPL.

If FHWA has approving authority, the Sponsor will prepare the Locally Administered Federal Aid Project Award Information Letter (Appendix 14-5) summarizing basic information about the project and bidding process and submit to RLPL for submission to the FHWA Division Office.
14.9 REFERENCES

**Federal Regulations**
- 23 CFR 230
- 23 CFR 635.104
- 23 635.105
- 23 CFR 635.112
- 23 CFR 635.113(a)
- 23 CFR 635.114(a)
- 23 CFR 635.114(b)
- 49 CFR 26

**State Laws, Regulations And Guidance**
- NYS Finance Law – Section 140
- NYS General Municipal Law, Executive Article 5-A
- NYS General Municipal Law, Section 103, Subdivision 11
- NYS Governor’s Executive Order No. 170
- NYS Procurement Guidelines
- NYSDOT Contract Administration Manual §102-12
- NYSDOT Standard Specifications §101-02
- NYSDOT Standard Specifications §102-12
- NYSDOT Standard Specifications §105-21