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**NOTE:** This Chapter has associated appendices and forms which can be found at: [https://www.dot.ny.gov/plafap](https://www.dot.ny.gov/plafap)

Highlighted hyperlink words referenced throughout the Chapter are on the last page under REFERENCE, Web Addresses.
Appendices

Appendix

14-1 BID OPENING, VERIFICATION, AND SPONSOR RECOMMENDATION LETTER
14-2 BRIDGE CONSTRUCTION UNIT COST DATA
14-3 LOCALLY ADMINISTERED FEDERAL AID PROJECT CONTRACT AWARD CHECKLIST
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14.1 INTRODUCTION

This chapter describes the various phases of the contracting process including solicitation of bidders (advertising), bid opening, bid analysis to identify 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 Chapter 12, Section 12.2.2 and Appendix 12-3 of this manual).

The following federal regulations apply to ALL projects:
- 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 regulations, federal law prevails; with the exception when State and municipal laws, rules, and regulations may be stricter and therefore have precedence.

14.2 ADVERTISING

Advertising for all federal aid construction contracts must meet federal requirements and foster widespread competitive bidding. When the contract bid documents, including Plans, Specifications, and Estimate of quantities (PS&E), have been assembled, approved by the RLPL and the Sponsor receives Federal Authorization to Proceed\(^1\) from the RLPL, the Sponsor is required to advertise the contract for bidding in accordance with 23 CFR 635.112.

New York State requires the publication of the solicitation of bids for a construction contract to be advertised in The New York State Contract Reporter (NYSCR) for at least three weeks (15 business days) before the opening of the bids. Additionally, the Sponsor is encouraged to place additional advertisements in other appropriate publications (e.g. local newspapers, trade journals). The use of several forms of advertising publications will help avoid a single bidder, as well as, give more opportunities to fulfill both Disadvantaged Business Enterprises (DBE) and Equal Employment Opportunity (EEO) requirements. Advertising costs should be charged to the construction phase. A Construction Advertisement Checklist and a sample Notice to Bidder – Advertisement to Bid indicates the information to be included in an advertisement (see Appendix 14-7 and Appendix 14-8).

The advertisement must identify the EEO goals for women and minorities in every contract regardless of fund source. The advertisement must identify DBE contract goals (federal funds), if applicable. If a 0% DBE goal is established, NYSDOT strongly encourages the use of DBE contractors wherever possible. If the contract is state-funded (non-federal funds) the advertisement must identify Minority/Women-Owned Business Enterprise (M/WBE) goals.

14.2.1 New York State Contract Reporter (NYSCR)

The NYSCR 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

\(^1\) The Sponsor could forfeit federal reimbursement if the advertisement of a contract takes place before receiving a Notification to Proceed.
federal aid transportation projects) for the procurement of goods and services must be published in the NYSCR. There is no fee for advertising or for viewing ads on the site. Sponsors must be registered before submitting advertisements and may do so from the NYSCR registration website.

Once a Sponsor is granted access, they will receive a password and instructions by email for the ad submission. The NYSCR can accept bid specification documents in Word, Excel, PowerPoint 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. The Sponsor is notified via email of the issue in which the ad will appear. A confirmation page confirming the details of the submission can be printed. Additionally, the NYSCR can capture and provide in an Excel format, a list of 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 NYSCR (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 on a given day appears the following business day. Advertisements submitted Friday, Saturday or Sunday appear on Monday, if it is not a legal holiday.

The earliest bid due date allowed in the ad insertion form shall be 15 business days (Monday-Friday) after the advertisement is published. The insertion, publication, and earliest due dates can be calculated by using the Publication Calculator Tool on the NYSCR’s website. If an earlier bid due date becomes necessary, the Sponsor must get approval from the RLPL, with help from the NYSCR, which can be sought through the Contact Us.

As noted previously, 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.

Contracts to be awarded on a sole source\(^2\) or single source\(^3\) basis must have prior approval from the Main Office Local Programs Bureau (LPB). If approved, they will also need to be advertised.

### 14.2.2 Instructions to Bidders Regarding Proposed DBE Participation

Revision to [NYSDOT Standard Specification Section 102-12](https://www.nydot.state.ny.us), participation indicates that the bidder shall submit DBE commitments with its proposal, including DBE name, address, work category, a brief description of work, and estimated commitment amount. To assist the Sponsor with collecting this information, see Appendix 14-9, Proposed DBE Commitment. (This form will be moved to Chapter 12 in the future.)

### 14.3 AMENDMENTS

An amendment is a formal modification of a proposed contract, issued after the advertisement publication date, and prior to the opening of bids. The Sponsor shall have a process in place to ensure all plan holders and NYSDOT receive amendments when issued. The following should be considered when a Sponsor is contemplating amending a contract:

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\(^2\) Sole source is a situation in which only one contractor can supply the goods or services.

\(^3\) 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.
• If significant changes to the scope or scale are necessary, the Sponsor should seek advice from the RLPL (changes may require FHWA approval if the project is on the NHS or a Project of Division Interest). If the changes are not allowed or appropriate to be incorporated by amendment the Sponsor should cancel the advertisement, redesign the project and then re-let the project.
• An amendment should be issued when the following errors are discovered:
  a. Any contract pay item quantity change of ±20% in Engineer’s Estimate.
  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 goals incorrectly stated in the contract.

14.4 BID LETTING AND BID ANALYSIS

Per 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 before 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 is announced, and all bidders informed that award is 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 New York State Finance Law Section 140 and NYS General Municipal Law Section 105. If the award is not completed within 45 days, the contractor may withdraw their bid from consideration.

Negotiation with any bidder (i.e., adjusting quantities, changing unit prices, adding and subtracting work, etc.) before contract award is prohibited per 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 9 NYCRR 4.170 whereby a contractor/vendor may be deemed ‘not responsible’.

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

• For all contracts, the New York State Uniform Contracting Questionnaire (CCA-2) is used in the qualification of an entity as a “responsible bidder.”
  o The NYSDOT Contract Management Bureau 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 completed by the low bidder and submitted to the Contract Management Bureau as instructed. A link to the CCA-2 questionnaire is on NYSDOT’s website. Similar checks must be conducted on subcontractors (see LPM Chapter 15). RLPLs should access the “AASHTOWare Project Preconstruction” database to confirm that a vendor (contractor and subcontractors) has an approved CCA-2 on file.

• The 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 the proper authority to conduct business in New York State.
  - The Sponsor should print out the result of their search of the above databases and keep in the project files. Acknowledgment of certification is noted in the “Bid Opening, Verification and Sponsor Recommendation” letter (Appendix 14-1) to be provided with the Award Package as noted in Section 14.7.

• Office of Safety and Health Administration (OSHA) website for safety violations for a given firm.
  - In the event, there is an OSHA violation against the low bidder, it should not be an automatic disqualification. Provide a discussion indicating the violation, if it has been addressed or is being addressed as a statement to be provided with the Award Package as noted in Section 14.7.

### 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. The preparation of a Tabulation of Bids (see Appendix 14-4) should be completed to include all bidders. A bid analysis generally consists of a comparative review between the Engineer’s Estimate and the apparent low bidder’s bid to determine if item quantities and prices are accurate and if assumptions made during the estimate process were valid. Information relative to the other bidders in the Tabulation of Bids is of value during the bid analysis if significant variations become apparent between the apparent low bid and the Engineer’s Estimate.

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 apparent low bidder may indicate issues with commodity prices or regional work volume in the construction market. The distribution of bidders may indicate 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 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.

Determine if any bid prices are obviously unbalanced to the potential detriment of the Sponsor and contract execution. (For example, if the obviously 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 apparent low bidder about whether the general location of the contract is convenient for the apparent low bidder and whether the apparent low bidder will ultimately yield the lowest cost.

Any discussion with the apparent low bidder during procurement is subject to New York State Procurement Guidelines, as stated in Article 11 of 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). Discussions should be factual without discussion of the other bids or the Sponsor’s contract award intentions. Contacting the apparent low bidder should not be a routine practice. If the low bidder cannot justify 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 apparent low bidder or needs more time to evaluate qualifications of the apparent 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 an apparent low bidder, documentation supporting the concerns should be provided to NYSDOT.

14.4.3 Reasonableness Justification

When the apparent low bid is more than 15% higher or lower than the Engineers Estimate a reasonable justification is to be included in the bid analysis. Where the bid is 15% higher, the justification should focus on notable differences between the low bid and Engineer’s 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 apparent low bidder and its ability to complete the contract according to 9 NYCRR 4.170. 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. Justify if the determination does not coincide with the “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 canceling 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 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 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. Based on 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 the contract were to be rebid. The Sponsor will provide the RLPL with the analysis and their determination on how they plan to proceed. The RLPL will review the analysis and provide the Sponsor with an acknowledgment and what steps are necessary. If the Sponsor has proposed to rebid the project, then the RLPL will acknowledge indicating that the Sponsor will need to provide a modified contract bid documents as outlined in Chapter 12 of the LPM before receiving authorization to re-advertise the project. If the Sponsor has proposed to not rebid based on their analysis and concurrence with the RLPL, the Sponsor will proceed with the award process.

14.4.5 Rejection of All Bids

It may be necessary to reject all bids. Reasons to reject all bids are:

- inadequate competition due to a limited number of bidders;
- high bids due to unclear requirements;
- bids where additional costs could not be justified; or
- other circumstances such as permits not being received.

A written discussion provided to the RLPL 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, such as the bidding environment or time of the year when the job will be let. If after consultation and written concurrence 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. General Municipal Law 103(11) (“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.

14.4.7 Move to Second Bidder

On occasion, the Sponsor will proceed to the Second Bidder. These occasions are:

- Bidder Error as noted in Section 14.4.6.
- Verified documentation determining that the apparent low bidder is not a ‘responsible bidder’.
- Documented justification of objection to the apparent low bidder by Sponsor.
- Failure of the apparent low bidder to provide adequate and timely documentation to a Good Faith Effort.
- Failure of the apparent low bidder to provide adequate justification to a significantly unbalanced bid proposal.

If the Sponsor moves to the apparent second low bidder, the Sponsor must complete the bidder responsibility and analysis (Sections 14.4.1 thru 14.4.1.3) for the second bidder. Documentation concurring with the move to the second bidder should be provided with the Award package.

14.5 PRE-AWARD CIVIL RIGHTS RESPONSIBILITIES

The Sponsor must monitor and report on the contract’s DBE participation. There are three distinct stages of DBE participation: 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 goal is expressed as a dollar amount. During the pre-award process, the apparent low bidder provided their agreed-upon DBE commitment as a dollar amount. After the contract award, attainment is measured after completion of the work in dollars paid to certified DBEs.

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 apparent 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 (GFE) and concurrence from the RLPL and NYSDOT’s Main Office Local Programs Bureau is required. If the apparent low bidder fails to provide DBE commitment or provide a GFE pre-award, the Sponsor can move to the second low bidder.
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 Equitable Business Opportunities (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 the submittal of the Award Package to the RLPL and *before* award of the contract:

1. After the identification of the apparent 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 DBE EBO Template Construction” 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 review on the Template to determine if the header information has been completed and that the units of measure being used are correct. If there are errors, the RLPL will return the template to the Sponsor for correction. The RLPL will submit the completed Template to localprograms.ebo@dot.ny.gov for upload into EBO.

3. Main Office Local Programs Bureau will notify the RLPL; who will then notify the Sponsor that the Template has been successfully loaded into EBO.

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

5. The low bidder must enter their complete DBE participation package in EBO *within 5 (five) calendar days* from the date of the bid opening, or risk having their bid declared non-responsive.

6. The Sponsor and RLPL must review the pre-award participation data in EBO to confirm that the DBE goal is met.

7. If the DBE goal is not met, the low bidder must provide documentation of Good Faith Efforts (GFE) to the Sponsor. The Sponsor will forward copies and any other additional information, to the RLPL for concurrence with NYSDOT’s Main Office of Civil Rights as detailed in section 14.5.2 titled “Good Faith Efforts (GFE).”

The following pre-award participation data in EBO must be reviewed for completeness and accuracy by the Sponsor:

- All proposed DBEs are listed in the New York State Unified Certification Program (UCP) Directory located at [https://nysucp.newnycontracts.com/](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 there are no NYSDOT Work codes indicated on the DBE’s Certification, if NYSDOT work codes do not match the contract pay items, or if they are not being used, then the NAICS codes should be reviewed against the proposed work.)
- All proposed DBE participation is identified with the correct work type such as construction, material supplier, professional services, etc.
- A completed AAP22 DBE Material Supplier Commitment Information form is submitted for each proposed DBE material supplier as part of the award package; this form can be found at [NYSDOT’s Office of Construction - Forms](https://nysucp.newnycontracts.com/). Information should be entered into EBO.
- A completed AAP23 DBE Trucking Commitment Information form is submitted for each proposed DBE trucking firm as part of the award package; this form can be found at the above website. Information should be entered into EBO.
- All proposed trucking utilization is supported by trucking data entered in EBO.
- All partial items are explained in writing and submitted to RLPL.
• All proposed DBEs acknowledged their respective proposed participation in EBO.

14.5.2 Good Faith Efforts (GFE)

If the apparent low bidder does not meet the DBE goal, the apparent low bidder must document that it conducted adequate Good Faith Efforts (GFE) to achieve the goal.

Once the apparent low bidder has supplied the GFE documentation, the Sponsor will forward copies and any other additional information, to the RLPL for concurrence by NYSDOT’s Main Office of Civil Rights. Once NYSDOT’s review is complete and the Sponsor notified, the Sponsor shall approve the pre-award DBE participation in EBO and will proceed with its award process.

The Sponsor shall not award the project to the apparent low bidder until concurrence is received from NYSDOT of both the GFE and Award Package. Notice to Proceed issued by the Sponsor to the apparent low bidder prior to NYSDOT issuing Authorization to Proceed without NYSDOT review and concurrence may result in a loss of federal aid.

The apparent low bidder should provide a comprehensive GFE package to the Sponsor. The GFE supporting documentation includes, but is not limited to, the following:

• Form AAP-10 D/M/WBE Solicitation Log this form can be found at NYSDOT’s Office of Construction - Forms.
• 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.

At a minimum, the Sponsor should perform the following analysis for GFE and provide a summary when transmitting to the RLPL:

• 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 participation opportunities and compare them against the type of work solicited.
• Ensure all types of DBE firms were solicited including, material supply, manufacturing, fabrication, professional services, etc.
• Cross-reference letters, faxes, AAP-10, etc.

Compare the DBE’s price against:
• Engineer’s Estimate;
• Bid price;
• Weighted Average Item Price Report data;
• Where does the DBE’s price fall in comparison to all the above;
• Contact a sample of the firms listed on the AAP-10 to verify solicitation effort stated in the solicitation log and other documents:
  o 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, Standard Clauses for NYS Contracts to 49 CFR 26.

The Sponsor should discuss any document deficiencies with the apparent low bidder. If the Sponsor is satisfied, the documentation is provided to the RLPL for concurrence with the Office of Civil Rights.

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 from the RLPL 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 and was awarded based on a GFE, 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 in 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.

The DBE Attainment Report from EBO shall be submitted with the Sponsor’s request(s) for reimbursement. See LPM Chapter 5 for reimbursement instructions.

14.6 BRIDGE CONSTRUCTION UNIT COST DATA (if applicable)

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, superstructure replacements, or pedestrian bridges.

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 and 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 Datasheet (see Appendix 14-2 for a sample) must be provided to the RLPL, who forwards them to NYSDOT’s Main Office. The collected data is provided to FHWA for their program analysis.

14.7 AWARD PACKAGE

NYSDOT delegated oversight authority by FHWA, 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, 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 14-3 for the Contract Award Checklist):

- Bid Opening, Verification, and Sponsor Recommendation Letter (see Appendix 14-1) and attachments.
- Proof of Advertising which consists of the ad from the Contract Reporter, local newspaper, and copies of any other advertisements placed, whether in hard copy or electronic media. (see section 14.2 – “Advertising”).
- Copy of all amendments issued:
  - Amendments distribution records showing that all amendments were sent to all plan buyers.
  - A record showing receipt of amendments by plan holders/bidders.
- A list of plan holders.
- Copy of notarized and signed proposal of the verified apparent low bidder.
- Copy of Certificate of Insurances – Workers Compensation and Disability Benefits (see Chapter 12.3.8).
- Copy of bond and/or bid deposit.
- Signed Non-Collusive Bidding Certification (see Appendix 12-1.14).
- Signed Disclosure of Lobbying Activities Forms (see Appendix 12-1.7).
- Copy of the confirmation of an approved CCA-2 New York State Uniform Contracting Questionnaire.
- Certification of apparent low bidder responsibility (see Section 14.4.1 – “Bidder Responsibility”).
- Bid analysis completed by Sponsor (see Section 14.4.2).
- 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, (see Appendix 14-2).
- Documentation demonstrating that the low bidder met their responsibility for Equal Employment Opportunity (EEO) participation (AAP33 from EBO).
- DBE participation – EBO utilized and DBEs have acknowledged work. The Concurrence of proposed DBE participation by the RLPL prior to award.
- GFE documentation, if the DBE goal appears - the Sponsor cannot award the contract until NYSDOT’s Office of Civil Rights concurs with the GFE.
- DBE trucking information in EBO if trucking is utilized from EBO.
- DBE Material Supplier Commitment Information (AAP22), if DBE material suppliers are utilized.
- DBE Trucking Commitment Information (AAP23), if DBE trucking firms are utilized
- Identification of Affirmative Action Representatives in EBO (not required for suppliers)
• 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 Civil Rights Requirements.

Sponsors must submit the Award Package for review prior to the award of the contract in order for the RLPL to conduct their review. RLPL will review and issue a Concurrence in Award letter when all questions and comments have been addressed.

14.8 CONTRACT AWARD

Federal aid contracts shall be awarded only based on the lowest responsive bid submitted by a bidder meeting the criteria of responsibility established by NYSDOT, in accordance with “Licensing and qualification of contractors per 23 CFR 635.114(a). If the award is not completed within 45 days, the contractor may withdraw their bid from consideration as noted in 140 of the State Finance Law and Section 105 NYS General Municipal 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 from the RLPL. 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 using the Tabulation of Bids (see Appendix 14-5). 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. After receiving the Concurrence in Award letter from the RLPL, the Sponsor may award the contract, provide notification of the award to the RLPL, and schedule a Pre-Construction Kick-off meeting to which the RLPL needs to attend.

For projects on the NHS System, Sponsors must contact the RLPL for additional requirements. See PDM Chapter 4, Table 4-3. Concurrence in the 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 retained as part of the project record by both the Sponsor and the RLPL.
14.9 REFERENCES

Federal Regulations
23 CFR 230 Subpart A—Equal Employment Opportunity on Federal and Federal-Aid Construction Contracts (Including Supportive Services
23 CFR 635.104 Method of Construction
23 CFR 635.105 Supervising agency (NYSDOT)
23 CFR 635.112 Advertising for bids and proposals
23 CFR 635.113(a) Bid opening and bid tabulations
23 CFR 635.114(a)(b) Award of contract and concurrence in award
49 CFR 26 Participation by Disadvantaged Business Enterprises (DBEs)

State Laws, Regulations, and Guidance
9 NYCRR 4.170 Establishing Uniform Guidelines for Determining the Responsibility of Bidders
NYS Finance Law – Section 140 Disposition of deposit accompanying bid
NYS General Municipal Law, Section 103, Subdivision 11 Advertising for bids and offers; letting of contracts; criminal conspiracies
NYS General Municipal Law Section 105 Disposition of deposit accompanying bid
NYS Procurement Guidelines
NYSDOT Civil Rights Forms – Not in Equitable Business Opportunities (EBO)
NYSDOT Contract Administration Manual §102-12
NYSDOT Office of Construction - Forms
NYSDOT Standard Specifications §101-02
NYSDOT Standard Specifications §102-12
NYSDOT Standard Specifications §105-21
PDM Chapter 4, Table 4-3

Web addresses
Corporation/Business Entity Database
https://www.dos.ny.gov/corps/
List of Debarred, Suspended, or Voluntarily Excluded Firms Ineligible for Federal Aid
https://uscontractorregistration.com/?gclid=EAIaIQobChMIgsz--LHv2wIIVVlmGCh2qug_pEAAYASAAEgLb-fD_BwE
List of Employers Ineligible to Bid on or be Awarded any Public Work Contract
https://apps.labor.ny.gov/EDList/searchPage.do
NYSCR Contract Us
https://www.nyscr.ny.gov/contactUs.cfm
NYSCR Registration
https://www.nyscr.ny.gov/register.cfm
New York State Unified Certification Program (UCP) Directory
https://nysucp.newnycontracts.com/
Office of Safety and Health Administration (OSHA)
https://www.osha.gov/pls/imis/establishment.html
The New York State Contract Reporter
https://www.nyscr.ny.gov/
Weighted Average Item Price Report data
https://www.dot.ny.gov/divisions/engineering/design/dqab/waipr