

**SECTION 14 DISTRICT RECOMMENDATION FOR AWARD/REQUESTS TO REJECT BIDS****14.1 PURPOSE**

This section provides guidance to the staff involved in the preparation of the District Recommendation for Contract Award and the Requests to Reject Bids.

**14.2 RESPONSIBILITIES****14.2.1 PROJECT MANAGER**

Reviews the award recommendation/request to reject bids prior to submittal to DES-OE.

**14.2.2 PROJECT ENGINEER, DESIGN ENGINEER, DISTRICT OVERSIGHT ENGINEER, AND CONSTRUCTION ENGINEER**

- Performs an independent unbalanced bid analysis prior to preparation of the award recommendation for submittal to DES-OE, and provides evaluation to the project manager, district project engineer, design engineer, oversight engineer, and construction engineer for the evaluation of submitted bids.
- Seeks independent bid summary review from the structure construction engineer when structures are involved.
- Documents discussions with bidders for clarification of bid items in question.
- Provides information or clarification needed by DES-OE pertaining to items identified as mathematically and/or materially unbalanced.

**14.2.3 DISTRICT OFFICE ENGINEER**

- Acts as liaison for DES-OE and the district to resolve issues in a timely manner.
- Performs an independent unbalanced bid analysis prior to preparation of the award recommendation for submittal to DES-OE.
- Signs or concurs with the award recommendation or request to reject bids.

#### 14.2.4 DES-OE

- Performs quality assurance reviews on district recommendations and requests to reject bids to ensure unbalanced bid analysis are performed.
- Works with the DOE to resolve issues.

### 14.3 COMMUNICATIONS WITH BIDDERS PRIOR TO BID OPENING

Pre-bid opening communications with bidders should be limited to contacting potential bidders to make them aware of the project location, work type and bid opening date. It's permissible to ask them if they plan to bid and if not, why not.

Avoid bidder discussions regarding contract specifics that could be construed as bidder's inquiries, potential addenda, CCO's etc. Refer these type of questions through the bidder inquiry process.

### 14.4 DISTRICT RECOMMENDATION

DES-OE is responsible for preparing and processing the documents needed to award a contract or reject a bid. Within one business day after bid verification, the DES-OE Awards Unit posts the bid opening results in the Bid Summary Results website; [http://dot.ca.gov/hq/esc/oe/planholders/oe\\_bidsum\\_result.php](http://dot.ca.gov/hq/esc/oe/planholders/oe_bidsum_result.php).

This bid summary shows each bid item, the total bid, and the listed subcontractors for each bidder on a project.

Districts/regions are responsible for recommending award of the contract or requesting rejection of bids. The recommendation to award is required for all projects. Unless extended by the DES-OE Awards Unit, the recommendation or request to reject bids is due within five business days after bid opening. The recommendation to award for informal bid contracts is due one business day following the bid opening. Recommendations are sent by e-mail: [HQ.DES.OEAwardRecommendation@dot.ca.gov](mailto:HQ.DES.OEAwardRecommendation@dot.ca.gov). The recommendation is not to be revealed to bidders or external agencies. The Department's Awards Manual, Chapter 17 has examples of award recommendations and requests to reject bids.

The district/region shall use the following procedures to prepare all contract award recommendations. See Table 14-1, Special Bid Situations for more information.

The district must use the bid summary to perform an unbalanced bid analysis to determine whether to recommend award to the apparent low bidder. The district may also recommend rejecting an individual's bid or request rejecting of all bids, in the event that none of the bids are acceptable. District personnel are encouraged to confer with DES-OE and appropriate Headquarters divisions before deciding whether a bid is acceptable.

The district is required to contact the apparent low bidder, at a minimum. DES-OE recommends that the three lowest bidders (when there are at least three or more bidders) be contacted to discuss factors which may have influenced the bid and to gain insight into the contracting community's interpretation of the plans, specifications, and estimate and to identify discrepancies in submitted bids. Only personnel who are normally involved in the Award Recommendation process should participate in the discussion with the bidder(s), and all information must be kept confidential until the contract is executed or all the bids are rejected.

The recommendation must follow the Award Recommendation letter template posted at <http://des.onramp.dot.ca.gov/office-engineer/office-construction-contract-awards>. Other items to consider that are not already included in the template are:

A justification of significant bid items and the differences in price between the bid items and the Engineer's Estimate should be included in the table provided in the Award Recommendation Letter Template. Each item explanation should be based on the conversation with the bidder(s). The following common responses are not enough to justify large differences in bid item prices:

- The contractor is comfortable with his bid.
- The contractor has experience with this work.
- This is how the subcontractor bid this item.
- The bid is in conformance with other bidders.
- Caltrans estimating practices are usually not correct.
- Compared to the bids, the EE price is high/low.

The item bid cost difference justification must relate to the bidder's strategy for the specific item in question.

- Statement that the low bid has been reviewed for possible mathematical or material unbalancing per 23 CFR 635.102. Following are the U.S. Comptroller General's definitions of mathematically and materially unbalanced bids.
- A bid is mathematically unbalanced if the bid is structured on the basis of nominal prices for some work and inflated prices for other work; that is, each element of the bid must carry its proportionate share of the total cost of the work plus profits.
- A bid is materially unbalanced if there is reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost to the Government.
- If applicable, a statement that local agency funds are (or are not) on deposit in accordance with cooperative agreement(s). If the funds are not on deposit, follow up with a confirmation once the funds are on deposit.
- If applicable, a statement that escrow by the three low bidders was successfully completed.
- If applicable, a statement that the days bid to complete an A+B contract are reasonable.
- If applicable, the Right of Way Certification has been updated.
- Any necessary clearances have been received or permits have been issued.
- Recommendation to award to the lowest responsive and responsible bidder of the bids received or to reject bids including justification for the recommendation.
- Signature or concurrence of the District/Region Office Engineer.
- In the event that there is insufficient funding to award the contract, DES-OE will send the Project Manager a Notice of Funding Shortfall. The district should contact DES-OE Awards Unit to discuss the alternatives identified in the notice. After discussion with the DES-OE Awards Unit, include the District's resolution to the funding shortfall in the award recommendation. Requests to reduce supplemental work or Department-furnished material must be approved by the Office Engineer. Requests to change contingencies must be approved by the Chief Engineer.

- When bids are lower than the Engineer's Estimate, it is inappropriate to add supplemental work items or increase the amount of the existing items or the contingency amount.

#### **14.5 REQUESTS FOR BID REJECTION**

See Chapter 25 of the Awards Manual for bid rejection procedure. Requests for bid rejection must include:

- Description of significant differences between the Engineer's Estimate and the bids received.
- Description of the competition, whether or not it was adequate. Include reasons given by plan holders that chose not to bid.
- Description of any problems with the plans, specifications or estimate
- A review of bidder's inquiries and responses
- Alternatives to bid rejection including supplemental fund vote by the CTC or reduction in supplemental work, Department-furnished Materials or contingencies.
- Description of material changes to the plans, specifications or estimate for the readvertised contract

Disposition of the contract files at DES-OE, e.g. returned to the district, retained in DES-OE or deleted.

#### **14.6 BID RESPONSIVENESS, BIDDER RESPONSIBILITY, AND BID PROTESTS**

Division of Engineering Services - Office Engineer (DES-OE) is responsible to determine the responsiveness of bids, assess the responsibility of bidders, and respond to bid protests. The DES-OE Office Chief of Awards is sub-delegated this authority.

A bid is nonresponsive if it does not conform to the requirements specified in the special provisions, Standard Specifications, and Bid book. Typical issues include:

- unenforceable bid bond
- incomplete information or missing documents
- conflicting information
- modification of the bid documents or qualifications placed on the bid

The term “responsible” refers to the ability of the Department to anticipate the contractor’s successful completion of the work as specified in the contract. Public Contract Code § 1103 states, “Responsible bidder”, as used in this part, means a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract.” Determination of questions as to a bidder’s responsibility requires a formal hearing process (DES Decision Document #48).

Bid protests are typically submitted by bidders as to the responsiveness of the apparent low bid. They may also be submitted by a bidder whose bid has been determined to be non-responsive. DES-OE determines the validity of protests in determining the responsiveness of the low bid.

DES-OE informs the district of determinations of responsiveness and responsibility. A determination of a non-responsiveness bid or a non-responsible bidder results in a bid ranking change and requires the district to revise the District Recommendation based on the new apparent low bid.

**Table 14-1 Special Bid Situations**

In all Bid Situations an Unbalanced Bid Analysis is required.

<b>Special Bid Situation</b>	<b>Response to Special Bid Situation</b>
<p>The district is unable to contact the low bidder or considers such contact as unnecessary or inadvisable.</p>	<p>Each district is required to contact the apparent low bidder, at a minimum. DES-OE recommends that the three lowest bidders (when there are at least three or more bidders) be contacted in order to gain insight into the contracting community's interpretation of the plans, specifications, and estimate and to identify discrepancies in submitted bids.</p>
<p>Analysis of the bid reveals mathematical or material unbalancing.</p>	<p>The district must:</p> <ul style="list-style-type: none"> <li>• Document its findings in the Award Recommendation letter, along with a justification as to why the bidder may/may not be unresponsive.</li> <li>• Contact DES-OE if the unbalancing is material.</li> </ul>
<p>Only one bid is received.</p>	<p>The district is to contact other proposal book holders to inquire as to the reasons for not bidding. This information may be useful in supporting a recommendation to reject the bid or award to the low bidder. The pertinent facts of this investigation should be included in the recommendation</p>
<p>The project has Cost+Time (formerly A+B) bidding provisions.  In Cost+Time projects, the bidder bids on the items as well as the number of days to complete the project. Bidders are compared and ranked on the total.</p>	<ul style="list-style-type: none"> <li>• The district should analyze the low bidder's bid for days to complete the work to determine if the work can reasonably be accomplished within that timeframe.</li> <li>• Discuss the structure portions of the work with DES Design and DES Construction.</li> </ul>

<b>Special Bid Situation</b>	<b>Response to Special Bid Situation</b>
<p>The low bidder has a recent history of contract terminations for cause or documented performance problems on the Department's projects.</p>	<p>The district is to include specific contract history relating to the low bidder's performance problems in the recommendation and request a determination of the bidder's responsibility.</p>
<p>The low bid is 25 percent or more below the Engineer's Estimate.</p>	<p>The district should:</p> <ul style="list-style-type: none"> <li>• Review the Engineer's Estimate for errors in item quantities and/or prices.</li> <li>• Review all bidder's inquiries to see if there is a connection with the errors in item prices.</li> <li>• Contact the low bidder (preferably the three lowest bidders) to discuss significant bid items in relation to the Engineer's Estimate. If the bidder indicates a mistake was made in the bid, document your findings in the award recommendation letter.</li> <li>• Discuss the structure portions of the work with DES Design and DES Construction.</li> </ul>

<b>Special Bid Situation</b>	<b>Response to Special Bid Situation</b>
<p>The low bid is 10 percent or more above the Engineer's Estimate.</p>	<p>The district should:</p> <ul style="list-style-type: none"> <li>• Discuss the bid with the low bidder (preferably the three lowest bidders).</li> <li>• Determine if the competition was adequate. If bidding was limited, the district should contact the proposal book holders who elected not to bid to determine why they did not bid.</li> <li>• Determine if the timing of the bidding influenced the number of bidders or the bid amounts.</li> <li>• Determine if the Engineer's Estimate was realistic (discuss the structure portions of the work with DES-Design and DES Construction).</li> <li>• Determine if the project should be rescope, and determine the consequences of any delay.</li> <li>• Mention the factors resulting in the high bid amounts in the recommendation.</li> </ul>
<p>No bids received.</p>	<p>The district must contact proposal book holders to inquire as to the reasons for not bidding, and DES-OE to discuss alternatives, e.g., scheduling a new bid opening date or rescope the project.</p>