

*Local Project Administration Manual & Reference Guide*

# **Advertise & Award**



**MaineDOT**

*Integrity - Competence - Service*

*2016 Edition*

# Advertise & Award

Construction work on projects with federal and state money is performed primarily by contractors hired through competitive bidding. A low-bid process must be used by law; contractors in a specific geographic area cannot be singled out. (The exception to the bidding requirement is “force account” work, covered in Section 8 of this manual.)

When design and other preliminary engineering work is done, the municipality or other local agency managing a project may advertise for construction bids after MaineDOT has approved the final plans, specifications and estimate (PS&E) and given construction authorization.

This section explains the bidding process and includes the following:

- A summary of the required steps (pages 9-1 to 9-4);
- A flowchart (page 9-5);
- A checklist (page 9-6);
- Sample request to award construction contract (page 9-7); and
- Sample Notice of Intent to Award (page 9-8).



➔ **Remember:** If you put your project out to bid without receiving MaineDOT’s authorization, you will jeopardize **ALL** of the money from MaineDOT for the project.

## 9.1 Bidding Requirements

MaineDOT in most cases requires projects with federal or state money to be put out to bid. During competitive bidding, municipalities and other local agencies must go by MaineDOT’s Standard Specifications – specifically, sections 102 and 103:

<http://www.maine.gov/mdot/contractors/publications/>

General procedures include the following:

- Municipalities may seek bids through a **Notice to Contractors** advertised in at least one regional newspaper. The notice provides a deadline for sealed bids, time and location of the bid opening, location and description of the work, and pre-qualification requirements.
- Projects also may be advertised on municipal **websites** and on the MaineDOT website, which will post the Notice to Contractors: [www.maine.gov/mdot/contractors/](http://www.maine.gov/mdot/contractors/)
- The advertise period must be at least **three weeks**; approved plans and specifications must be available to bidders for at least that long before the bid opening.
- A city, town or other local agency may benefit from holding a **pre-bid conference** enabling contractors to view the project and submit questions, but this is not required.

- ❑ **Questions** from bidders must be submitted in writing to the bid contact person listed in the Notice to Contractors, at least 48 hours before the bid opening.
  - ➡ The local administrator should repeat the question and provide the same answer to all bidders through amendments or at the pre-bid conference.
  - ➡ Amendments should be posted online, if that is how a project is being advertised.
- ❑ During the bidding period, the MaineDOT project manager must sign off on any bid **amendments** that change the approved plans or specifications.
- ❑ The Notice to Contractors must specify the **date and time** at which sealed bids will be opened and publicly read. If that date is changed, bidders must be notified through addenda and an announcement made before the originally scheduled date and time.

## 9.2 Bidder Pre-qualification

Contractors must demonstrate that they are capable of completing certain types of projects before being awarded construction contracts, as follows:

- If the estimated construction cost is **greater than \$300,000**, contractors must meet MaineDOT's pre-qualification standards: [www.maine.gov/mdot/contractors/prequal/](http://www.maine.gov/mdot/contractors/prequal/)
- If the estimated construction cost is **less than \$300,000**, pre-qualification is not required. To be awarded a contract, the low bidder must demonstrate successful completion of projects with similar size and scope.

➡ Any contractor prohibited from receiving federal money **cannot** bid on federally funded projects. Check with MaineDOT to see if a bidder is “debarred.”

## 9.3 Bid Opening

All sealed bids received in accordance with the terms of the advertisement are opened and read publicly at the time and place specified in the Notice to Contractors or any bid amendments. Usually, only the total price of each bid is read.

A contract must be awarded to the lowest responsive and responsible bidder for the amount of the bid. A bid is considered responsive if it meets the requirements of the advertisement and project specifications.

**Remember:** Negotiating with the apparent successful bidder before awarding a contract is **prohibited**. *Doing so will jeopardize the money for your project.*



If a municipality or other local agency deems the lowest responsive bid to be unacceptably high, **ALL** bids must be **rejected**. In such a case, the local administrator must notify the MaineDOT project manager. The work may be re-advertised after adjustments are made in consultation with MaineDOT.

## 9.4 Bid Review

After the bid opening, the local project administrator or qualified designee must review the bids for errors and discrepancies. This analysis should include the following:

- Reviewing unit bid prices for obvious mathematical or material unbalancing that may cause doubt about a contractor’s ability to meet the project specifications.
- See Section 103.1.2 of *MaineDOT’s Standard Specifications* for definitions.
- Checking unit prices – numerical and written – to ensure that they agree. (In they differ, the written unit price applies.)
- Checking all mathematics, including multiplication of unit price and quantity, for total item cost and summing items for total bid;
- Reviewing bid and alternatives to ensure that the apparent low bidder meets the requirements of the bid and available funds.



If irregularities in a bid proposal are found, the reviewer may deem them curable or non-curable.

➤ See Section 102.11 of *MaineDOT’s Standard Specifications*: “*Bid Responsiveness.*”

## 9.5 “Non-curable” Bid Defects

Defects and discrepancies found in bid documents are “non-curable” – meaning that a contractor will have no chance to correct them – if they cast doubt on a bidder’s total bid amount or the bidder’s ability to complete the work within the contract timeframe. A bid must be **rejected** if any of these non-curable defects is found:

- The bid and bid guaranty are not delivered to the precise location and by the precise time set forth in the Notice to Contractors or any applicable bid amendment;
- The bidder is debarred or otherwise ineligible to bid on the project;
- The bid is not signed by a duly authorized representative of the bidder;
- A bid guaranty meeting the specifications for the project is not submitted;
- The unit or lump sum price for any item is missing or is illegible;
- The bid contains any conditional or alternate bidding language, including the right to accept or reject an Award of the Contract;
- The bidder submits more than one bid for the same contract, or the bidder and any related entity each submit a bid for the same contract;
- There is substantial evidence of collusion by the bidder; and
- The bidder fails to comply with any provision in the bid documents that expressly indicates that such non-compliance will cause bid rejection.

## 9.6 “Curable” Bid Defects

Not all defects will nullify a bid proposal. A bidder may be given the opportunity to correct certain “**curable**” defects within a set amount of time, when:

- The bidder only signs one of the Contract Agreement Offer & Award forms;
- The bid is not submitted either on forms provided by the agency in charge of the project or on identical copies thereof;
- The total sum of the items provided in the Schedule of Items is missing;
- Prices or signatures on the bid or bid guaranty are not in ink;
- A defect doesn’t raise a significant question about the total bid amount or the bidder’s ability to complete the work.

## 9.7 Bid Award

A municipality or other local public agency has **30 days** after bid opening to deliver a written Notice of Intent to Award to the lowest responsive, responsible bidder. That bidder must meet certain conditions before the contract may be awarded – including a requirement for the prime contractor perform at least **30 percent** of the value of the contract with its own forces.

☞ See Section 103.3 of *MaineDOT’s Standard Specifications*, “*Post-Bid Qualification*,” and Section 104.5, “*Subcontracting*.”

The local administrator must send the MaineDOT project manager a letter or email with the recommended bid award. The document should contain a summary of the bid review and a bid tabulation with the engineer’s estimate and all bids with unit prices. MaineDOT’s approval is required before the contract is awarded. (See sample **Communication 16**, on page 9-7.)

☞ A contract **cannot** be awarded without MaineDOT’s approval.

A contract generally must be executed within 14 days after the apparent low bidder has met all conditions of award. After a contract is executed, copies of the award notice and signed contract must be sent to the MaineDOT project manager.

## 9.8 Rejection of Lowest Successful Bid

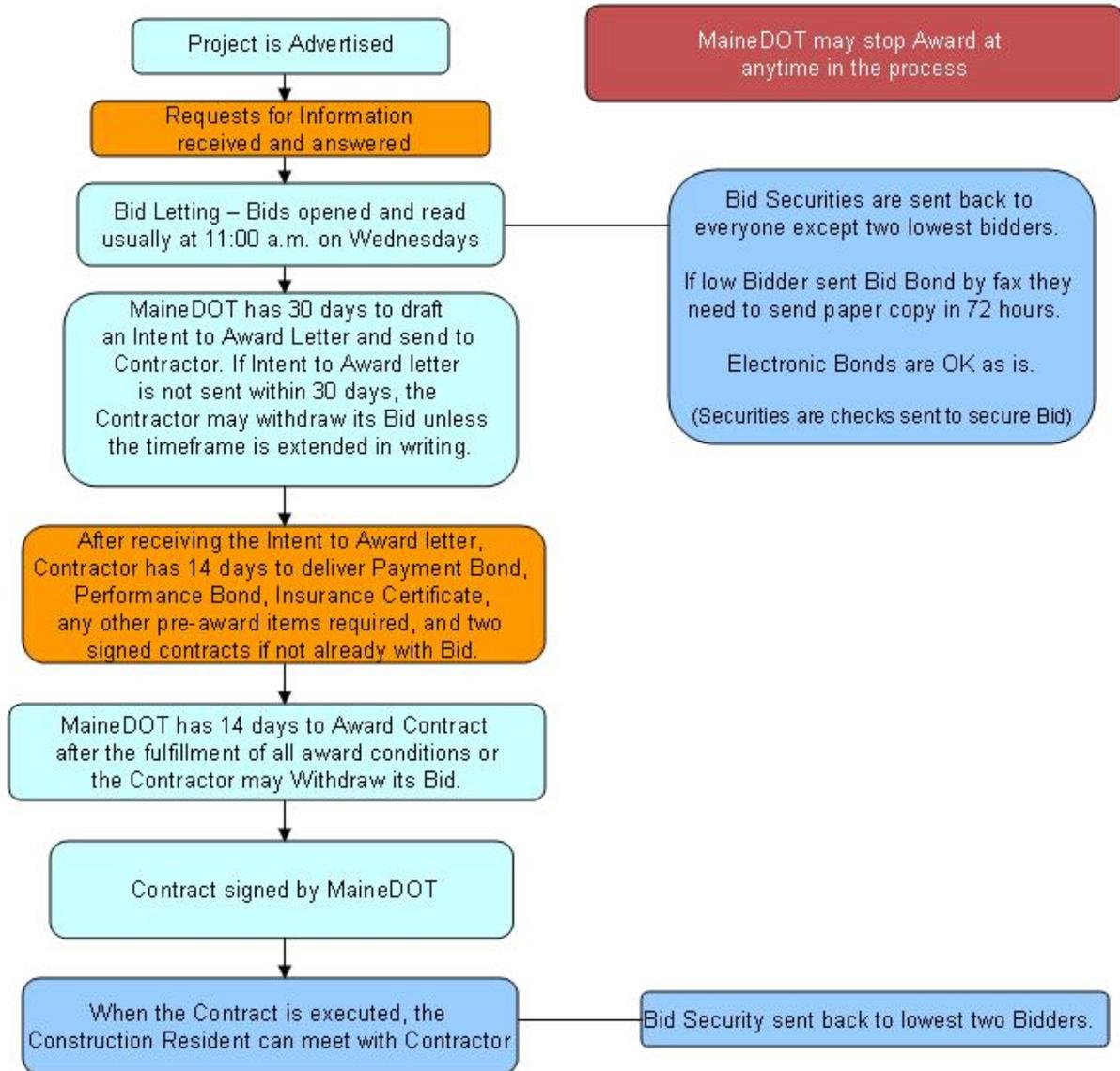
If the apparent successful bidder fails to fulfill the conditions of award within the time provided, the bidder forfeits the award. If that happens, the local project administrator has three options, which should be considered in consultation with MaineDOT:

- Award the contract to the responsible bidder with the next lowest responsible bid;
- Reject all bids; and/or
- Re-advertise the project.

☞ See Section 103.6 of the *Standard Specifications*, “*Failure to Fulfill Award Conditions*.”

# Maine Department of Transportation Bid Award Process

Section 103



## CHECKLIST: ADVERTISE AND AWARD

- Receive authorization to advertise from MaineDOT project manager**
- Advertise the Notice to Contractors** (3 week minimum advertise period)
  - Advertising in regional or statewide newspaper is traditional practice
  - Notice can be posted to municipal website and MaineDOT contractors website
  - Notice must have date and location of the opening of sealed bids
  - Basis of Award must be clearly defined, so low bidder is apparent after bids are opened
- If a bidder submits a question:**
  - Distribute the same answer to all bidders in writing, with the question repeated
- Determine contractor qualifications:**
  - For contracts of \$300,000 or more, low bidder must be pre-qualified by MaineDOT
  - For contracts of less than \$300,000, low bidder must demonstrate “successful completion of projects with a similar size and scope”
- Issue addendum, if documents are modified or if answering a Request for Information**
  - If there is not enough time for bidders to make changes, then delay the opening
- Open and publicly read aloud all bids at the designated time**
  - Prepare bid tabulation sheet
  - Check submitted bids for tabulation errors
  - Complete bid and bidders’ tabulation sheet
  - Determine the lowest responsive bid
- Review all bids for bid defects**
  - Go by the curable/non-curable language in MaineDOT Standard Specification 102.11
  - If a defect is not specifically listed as non-curable in the bid documents, it is curable
  - Verify that contractors are licensed as legally required by the State of Maine
- Determine the apparent successful bidder**
  - Return bid securities to everyone except for the two lowest bidders
  - Notify the second bidder that securities will be held until contract execution
- Send award recommendation to MaineDOT project manager (Communication 16)**
  - Tabulation of bids
  - Engineer’s estimate
  - Completed Contractor DBE Utilization Form (*federally funded projects*)
- Receive MaineDOT approval in writing of recommended award**
- Award contract**, in accordance with Section 103 of MaineDOT’s Standard Specifications:
  - Send Notice of Intent to Award to apparent successful bidder
    - If contract cost exceeds \$125,000, bidder has 14 days in which to deliver required payment bond and performance bond
    - Bidder also must provide certificate of insurance, which applies to all projects
  - Sign contract
  - Notify all unsuccessful bidders
- Send copy of signed contract to MaineDOT project manager**
  - Return bid securities to the first and second bidders

**NOTE: THIS MAY BE SENT BY E-MAIL**

Date

\_\_\_\_\_, Project Manager  
Maine Department of Transportation  
Bureau of Project Development, Multimodal Program  
16 state House Station  
Augusta, ME 04333-0016

**Subject: Construction Award Request**  
MaineDOT WIN\_\_\_\_\_

Dear \_\_\_\_\_:

Attached for your review are the bid tabulations and latest engineer's estimate for **[project scope, WIN]** in the Municipality of \_\_\_\_\_. **[name of contractor]** is the apparent successful bidder. We recommend that the project be awarded to that contractor.

In making this request, we acknowledge that we cannot send the Notice of Intent to Award to the apparent successful bidder without your written approval.

If you need additional information, please let me know.

Sincerely,

\_\_\_\_\_, Local Project Administrator  
Municipality of \_\_\_\_\_

Enclosures:

1. Bid tabulations
2. Cost estimate

[DATE]

[Firm name]

[Firm address]

**Subject: NOTICE OF INTENT TO AWARD**

**Project: [Insert project location]**

**WIN: [Insert WIN]**

**Description: [Insert description]**

Your company is the apparent successful bidder for the subject project. Upon receipt of your properly executed certificate of insurance, payment bond **[use if contract >\$125,000]**, performance bond **[use if contract >\$125,000]**, two signed Contract, Agreement, Offer, & Award Forms, a copy of this letter and projected payment schedule, we will sign the agreement, and you will have a written contract.

We will sign both originals provided with your submission and send one original agreement to you via certified mail. We will be in contact with you concerning a notice to proceed with the work.

**Contract Amount:** \_\_\_\_\_

If you have any questions on contract procedures, please feel free to contact me at [phone].

***If federal money, include this statement:***

**Note that the prime contractor and subcontractors on Federal contracts must have accounts set up with Elation Systems for payroll processing. If you do not already have an account, please register for one, at your earliest convenience, using the information in Special Provision, Section 104.**

Sincerely,

MUNICIPALITY OF [INSERT NAME]

By \_\_\_\_\_

[Name, Title]

Local Project Administrator