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# ENGINEERING INSTRUCTION

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

SUBJECT: REVIEW AND EVALUATION OF CASE I AND II  
BIDS AND HIGH BID ITEMS.

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This Instruction outlines the review and evaluation process for CASE I AND II bids and high bid items from the time of bid opening to the recommendation of contract award to the State Comptroller, clarifies each individual organization or unit's responsibility in the process, and introduces changes which are necessary to comply with FHWA Notice N5080.83 - Combating Inflation in Highway Construction Costs, issued March 2, 1979.

The general events which constitute the review and evaluation process are: (1) After a bid opening occurs, all bids are verified, classified as CASE I (less than or not more than 7% over the Engineer's Estimate) or CASE II (more than 7% over the Engineer's Estimate), and processed by the Department's EDP Bidlet System. (2) The Bidlet System produces various reports which are then used in the award process. (3) The Construction Subdivision coordinates the necessary Regional and Main Office Units Review of high bid items and CASE II projects. (4) When the results of the various reviews are complete, the Construction Subdivision evaluates the review results and recommends either the award of the contract or the rejection of all bids.

## GENERAL

The first action which requires regional participation is the arrival of two reports generated by the Bidlet System. These reports will be sent to each regional office using the Department's computer night-time message delivery system. Therefore, it is imperative that the Region EDP terminal operator activate the Region's terminal at the start of business on the day after a letting so that these two reports will be received and delivered promptly. If these two reports are not available on the day after the letting, the regional EDP terminal operator should activate the region's terminal at the start of business on each subsequent day until such reports are received. Once the Bidlet System is converted from the B5500 to the B7805 computer, the above procedure will no longer be in effect. The new procedure for obtaining these reports will be forwarded to the Regional EDP Liaison Engineer by the EDP Bureau. One report to be received by the region will be a listing of every contract in the bid opening for that region. This report will contain the Comptroller's Contract Number, the County, the Name of the Low Bidder, the Amount Bid, and, when applicable, a designation indicating the Contract is in the CASE II category. This report requires two actions by the region: (1) An identification of the CASE II projects within the concerned region. (2) A determination concerning award to the low bidder.

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The other report to be received by the Region will be a listing of every contract within the Region which contains one or more high bid items. Following this list will be a contract by contract listing of all the high bid items in each contract. A combined listing of all the regional transmissions will be delivered to the Structures Design and Construction Subdivision, and the Construction Subdivision. The Contract identification information which will precede each listing of high bid items will consist of the Contract Number, the P.I.N., County, Number of Bids, Low Bidder, and Bid Amount. Each high bid item will be identified by item number, item description, unit, and quantity. No information will be supplied about the Engineer's estimated unit prices or the contractor's unit bid prices.

This report requires one action on the part of the region: The verification of the estimated quantity for each item in the report.

As a result of these two reports being issued automatically, the regional offices will be expected to respond routinely to these reports.

In addition, each region and any involved main office unit which so requests, will receive from the Construction Subdivision a copy of the estimated prices and bid prices submitted by the bidders to aid in the analysis necessary to comply with the requirements of FHWA Notice N5080.83 and M.A.P. 7.1-5 for CASE II bids. Such information shall be transmitted by mail to the Regional Director or the appropriate Deputy Chief Engineer. Since such information is confidential, pursuant to Official Order #539 and Section 38, Subdivision 2, of the Highway Law, all employees who will have access to this material shall execute a certification, Form PER 74, prior to examination of this material and the certification is to be placed in their Personnel File.

#### LOW BIDDER REPORT - RECOMMENDATIONS & CASE II REVIEWS

The Construction Subdivision will assume that the region recommends award of a CASE I project to the low bidder if no objection is received within 2 working days after the region receives the low bidder report. If, on the other hand, the region has some objection to the low bidder or needs more time to evaluate the qualifications of the low bidder, it must transmit its objection, and a summary of the reasons for its objection, to the Construction Subdivision within two working days after receiving the low bidder report. The message should be sent using the message service to the Construction Subdivision's Terminal Address, C070.

The response to a CASE II project designation is due within 10 working days after the estimated and bid prices are received. A CASE II response shall consist of three parts:

- (1) A review of estimated item quantities to assure their reasonableness and accuracy.
- (2) A review of high bid item quantities which will be listed in the high bid items report sent to the regions after a bid opening. Each quantity must be checked for reasonableness and accuracy as noted in (1) above, and, in addition, whenever possible, a site review is strongly recommended. Further discussion of this point will be deferred until the description of the high bid items report.
- (3) A recommendation as to whether or not to award a CASE II project. This recommendation should be based on the criteria found in M.A.P. 7.1-5, Criteria for Recommending

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Award of Contract for Highway and Bridge Construction Projects, Section IV, Sub-section B, omitting criteria 1.f., and FHWA Notice N5080.83. The region's recommendation for award of a CASE II project and the applicable main office unit findings, will be combined and analyzed by the Construction Subdivision. After analysis, the Construction Subdivision will prepare a recommendation for determination by the Assistant Commissioner for Transportation Operations. This recommendation will be prepared and submitted no later than 5 working days after all regional and main office units' recommendations and findings have been returned to the Construction Subdivision. This means that, in general, no more than 20 working days should lapse between the region's receipt of the various reports and a final recommendation being submitted on CASE II projects. Until a decision is reached and the contract is awarded, questions or requests for information regarding the disposition of a CASE II project by the low bidder or other interested parties should be referred to the Contracts Bureau. No statements should be made by the Region as to what the final decision might be.

#### HIGH BID ITEMS REPORT

After receiving this report, high bid items within each contract must be checked for reasonableness and accuracy. If the region does not have the estimated quantity workup sheets needed to make an adequate review of the contract quantities because the project was designed by the main office Design Bureau, Structures Subdivision or a consultant supervised by the Design Bureau or the Structures Subdivision, two choices are available to the region. First, the region may immediately notify the Construction Subdivision that it wishes to have the high bid items reviewed by the Design Bureau or the Structures Subdivision, and the Construction Subdivision will proceed accordingly. Second, if the region wishes to review the high bid item report, it must make immediate arrangements with the Design Bureau or the Structures Subdivision to receive the information necessary to complete the review. The results of this check shall be transmitted to the Construction Subdivision no later than 5 working days after receipt (10 days for a CASE II project.) Processing time will be reduced if the region transmits the results of their high bid items review via the computer message service and transmitting 3 copies of the response. The Structures Design and Construction Subdivision's response, when necessary, will be transmitted via memo. The Structures Design and Construction Subdivision should inform the Construction Subdivision within 3 days after receipt of the high bid items report of the specific jobs in the Letting for which they will provide a response.

The purpose of the review of unit bid price quantities which are considerably in excess of the estimated unit prices is to detect any possible quantity workup errors which could result in a windfall or a reversal in the position of the bidders when corrections are made to the contract quantities. The region should also make an effort to verify the remaining items in the contract for reasonableness and accuracy.

The importance of this review cannot be over-emphasized. Copies of the review are sent to the FHWA and the Comptroller's Office as part of the Final Award Process. Each of these agencies places a great deal of weight on the region's response when making their decision. In addition, orders-on-contracts and final agreements are carefully reviewed by both of these offices for quantity overruns in high bid items.

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Although minor upward adjustments in high bid items are tolerated, they are to be avoided; Large adjustments are intolerable. Recently, the Department has been placed in the extremely embarrassing position of having a number of contracts develop substantial orders-on-contracts within two months of the award date and finding that all of the items involved were high bid items which had been certified as being correct. This type of situation does harm to the Department's reputation and credibility. It should also be borne in mind that this type of situation occurring early in the contract can lead to termination of the contract. Therefore, whenever possible, it is strongly urged that the high bid item review extend beyond the simple numerical checking of the estimated quantities and include a site review and consideration of items that may have been left out of the estimate or items that may have no place in the contract.

The examination of high bid item quantities may be limited to those high bid items which have a significant probability of a meaningful quantity change in order to improve the quality of the region's review. Instead of diluting effort by looking at all high bid items which are selected via a rather arbitrary procedure, the region can concentrate all effort on those items which are most subject to meaningful change. It is, therefore, important that great care be exercised in selecting which items are to be reviewed where time and available staff are critical.

#### IMPLEMENTATION

This new system will be operational with the letting of May 31, 1979.