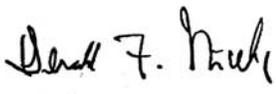


 <b>DEPARTMENTAL POLICY</b> State of Tennessee Department of Transportation	<b>Policy Number : 355-02</b>
<b>Approved By:</b> 	<b>Effective Date:</b> <b>September 1, 2004</b>
<b>SUBJECT: Awards of Construction Contracts</b>	

**RESPONSIBLE OFFICE:** Construction Division

**AUTHORITY:** TCA 4-3-2303 If any portion of this policy conflicts with applicable state or federal laws or regulations, that portion shall be considered void. The remainder of this policy shall not be affected thereby and shall remain in full force and effect.

**PURPOSE:** This policy establishes guidelines for awarding highway construction and maintenance contracts in accordance with TCA 54-5 and Federal Highway Administration policies and regulations where applicable.

**APPLICATION:** Chief Engineer, Assistant Chief Engineer (Operations), Director of Construction, Director of Maintenance.

**DEFINITIONS:**

**Apparent Low Bid** – The lowest bid on an individual contract as read out at the public opening and reading of bids or as tabulated from written or electronic bids received prior to opening of bids.

**Assistant Chief Engineer (Operations)** – The Chief Engineer’s assistant engineer who oversees activities and responsibilities of the Construction, Maintenance and Material and Tests Divisions.

**Bid Review Committee** – A committee appointed by the Commissioner to review bids in accordance with awards criteria contained herein.

**Chief Engineer** – The Chief Engineer of the Tennessee Department of Transportation.

**Commissioner** – The Commissioner of the Tennessee Department of Transportation.

**Director of Construction** – The Director of the Construction Division of the Tennessee Department of Transportation.

**Director of Maintenance** – The Director of the Maintenance Division of the Tennessee Department of Transportation.

**Engineer’s Estimate** – The Department’s final estimated project cost prepared prior to receiving bids on the project.

**Instructions to Bidders** – Detailed instructions on submitting bids including time, place, legal requirements and grounds for rejection of bids. Instructions to Bidders are bound in each Proposal Contract and posted on the Departments website for each bid letting.

**Irregular Bid** – Any bid received that does not meet all requirements of the Instructions to Bidders, violates any provision contained in TCA 54-5 or fails to comply with the Department’s prequalification of bidders.

**Lowest Responsible Bid** – The lowest bid that meets legal criteria for submitting bids.

**Mathematically unbalanced bid** - a bid containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder’s anticipated profit, overhead costs, and other indirect costs.

**Materially unbalanced bid** - a bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to TDOT.

**Proposal Contract** – the form furnished by the Department for use by the Contractor in submitting his bid. The Proposal Contract contains “Instructions to Bidders”, Bond forms, Signature forms, Prevailing Wage rates, Contract provisions, Specifications and other applicable and pertinent forms as required.

**POLICY:** The Director of Construction and his staff will review all bids received on state highway construction and maintenance contracts and make recommendations to the Commissioner regarding the award or rejection of bids on each individual contract. Apparent low bids will be reviewed for compliance with the provisions contained within the Proposal Contract, mathematical and material unbalancing, and comparative cost and may be reviewed for any other appropriate matter.

This policy is to assist in determining whether bids received are responsive. The responsibility of the bidder is not addressed in this policy.

When the Apparent Low Bid on the contract exceeds the Engineer’s Estimate by ten percent (10%) it will be further reviewed by the Bid Review Committee. In addition, when the Apparent Low Bid on the contract is deemed irregular and the difference between the irregular bid and the next lowest bid exceeds ten percent (10%) or \$50,000.00 whichever is less, it will be further reviewed by the Bid Review Committee. Furthermore, at his discretion the Director of Construction may forward any bids not meeting the above criteria to the Bid Review Committee for further review and recommendation.

The Bid Review Committee will consist of at least three of the following: the Chief Engineer, the Assistant Chief Engineer over Operations, the Director of Construction, the Assistant Directors of Construction, the Bid Analysis Manager and when reviewing maintenance contracts, the Director of Maintenance or their designees. The committee may use resources from the Estimating Section, the Programming Division, the Design Division and other Divisions and entities as deemed necessary.

The Bid Review Committee may consider such mitigating factors as need, prior efforts to secure a lower price, public safety, deficient bridges, severely deteriorated pavements and the needs of local governments that are participants in the ownership and/or funding of the project.

The committee's recommendation will be duly recorded.

**REVIEW PROCEDURE:**

(a) Irregular Bids

The Director of Construction and staff will review all bids received for highway construction and maintenance contracts. Each bid shall be checked for irregularities as described in Instructions to Bidders and subsection 102.09 of TDOT's Standard Specifications for Road and Bridge Construction. Bids determined to be irregular will be not considered for award.

When the Apparent Low Bid is determined to be irregular for reasons other than material unbalancing, the next lowest bid will become the Apparent Low Bid and will be reviewed as provided herein. From this review, a recommendation will be made on whether to award the contract to the new Apparent Low Bidder or to reject all bids on the contract. This determination will depend on comparison with the Engineer's Estimate, the difference in the irregular bid and the lowest responsible bid, the urgency of completing work on the contract, seasonal limitations, potential scheduling conflicts and other matters that may affect public needs and/or in the public interest.

(b) Review for Cost

All contracts having Apparent Low Bids that exceed the Engineer's Estimate by ten percent (10%) or more, will be deferred to the Bid Review Committee for further review and recommendation. The Bid Review Committee will review both the bids received and the Engineer's Estimate on all bid items taking into account any local market conditions that may materially affect the cost of these items. After substantive review, the Chairperson of the Bid Review Committee will document its findings and make a recommendation regarding the award or rejection of some or all bids on each contract.

(c) Unbalanced Bids

Individual line items will be reviewed as well as the overall pricing on each contract. If review of a line item suggests an unbalanced price, the quantity of that item shall be verified. If the quantity proves to be incorrect, the total bid on the contract shall be recalculated using the correct quantities. Corrected totals for all bidders will be compared to determine if the bid is materially unbalanced.

TCA 54-5-118 states "Any and all bids may be rejected, in the discretion of the commissioner, and they shall be rejected if the best bid is not deemed reasonable and fair to the state." Subsection 102.09 of TDOT's Standard Specifications for Road and Bridge Construction states

further that “proposals may be rejected by the Commissioner if any of the unit prices contained therein are obviously unbalanced, either excessive or below the reasonable cost analysis value”.

Mathematically and materially unbalanced bids are illustrated in the following examples:

Example: In computing earthwork quantities, the Department omits from the earthwork balance a cut area that contains approximately 25% of the material to be excavated on the project. Due to this error, the bid quantity of borrow material is significantly greater than what is actually needed to complete embankments. The Contractor detects the error and increases his unit price bid on excavation knowing the excavation quantity will overrun by 25% or more and reduces his unit price bid on borrow material since significantly less will be needed. His increase in profit on excavation is greater since that item will overrun more than his decrease in profit on the borrow item will underrun.

The Contractor’s bid is still lowest when corrected earthwork quantities are used. The Contractor’s bid is mathematically unbalanced.

In the above example, the Contractor increases his profit by unbalancing his unit price bids on earthwork items that he knows are incorrect but is still lowest bidder when corrected quantities are used. Where obvious unbalanced bid items exist, a bid found to be mathematically unbalanced, but not found to be materially unbalanced, may be awarded.

Example: Using the above example, if the mathematical unbalancing is such that the Contractor is no longer the lowest bidder when corrected excavation and borrow quantities are assumed, then his total bid does not “result in the lowest ultimate cost to TDOT” and is both mathematically and materially unbalanced.

When a low bid is determined to be both mathematically and materially unbalanced, all bids will be rejected.

(d) Recommendation to Commissioner

After thorough review of the bids by the Director of Construction and Bid Review Committee when applicable, the Director of Construction will advise the Commissioner of his and the committee’s findings and recommend the appropriate action on the contract. The Commissioner will award or reject bids on each contract in accordance with TCA 54-5-116 which shall be documented by his signature on the bid tabulation. In all cases, the Commissioner’s decision will be final.

All bids on any individual contract will be consider rejected if the Commissioner has not made award within 30 days after being received as per TCA 54-5-116.

(e) Confidential

As required by state law, all documentation regarding evaluations and cost remain confidential until the contract is awarded.