

Advertise & Award

Construction contractors on locally administered projects must be hired through competitive bidding. Municipalities and other local agencies by law must use a low-bid process; they cannot favor bidders by region or negotiate with any bidder before awarding a contract.

When design, permitting and right-of-way work are finished, the local agency administering a project may advertise for construction bids after MaineDOT has signed off on the final plans, specifications and estimate package (PS&E) and issued written construction authorization.

Chapter 8 provides guidance on the requirements for advertising for competitive bids, opening and reviewing bids, and awarding a construction contract. It contains the following:

- A summary of the bid process (pages 8-1 to 8-5);
- A checklist (page 8-6);
- Bid award flowchart (page 8-7);
- Sample award request (page 8-8); and
- Sample Notice of Intent to Award (page 8-9).



Caution: If you advertise a project for construction without MaineDOT's written authorization, you will risk forfeiting MaineDOT's entire share of the funding for the project.

8.1 Bidding Guidance

Except for Force Account work (covered in Chapter 9), projects with federal and state funding require competitive bidding. Sections 102 and 103 of MaineDOT's *Standard Specifications* govern the process: www.mainedot.gov/contractors/publications/standardspec/

General procedures include the following:

- The local agency administering a project must issue a Notice to Contractors that has a project description, deadline for sealed bids, time and place of bid opening, bidding requirements, and the basis of award.
- Projects should be advertised on municipal websites and on MaineDOT's website.
- Newspaper advertisements also may be used, if required locally, but are not mandatory.
- The bidding period must be at least **3 weeks**, but it can be longer if an agency so chooses.
- The agency administering a project may hold a **pre-bid meeting** at its discretion to let contractors view a project and submit questions. It can be mandatory or optional.

- Questions** must be submitted in writing to the contact person in the Notice to Contractors at least 48 hours before bid opening. The person answering should repeat the question and provide the same answer to all bidders through written amendments, posted online.
- During the bidding period, the MaineDOT project manager must sign off on any bid amendment that changes the approved plans or specifications.
- Changes to the date or the time of bid opening must be communicated to bidders by bid amendment and an announcement made before the original date and time.

8.2 Bidder Prequalification (Revised)

A bidder must demonstrate an ability to carry out a project successfully to be awarded a contract. Prequalification is recommended in order to ensure that a contractor can perform the work.

- If the estimated construction cost is **greater than \$600,000**, a local agency should use one of the following methods:
 - A bidder may be listed in an appropriate MaineDOT prequalification category; or
 - If a bidder is not already prequalified by MaineDOT, a local agency may perform a project-specific prequalification; or
 - If a local agency has a procurement ordinance that spells out contractor qualification requirements, the agency may follow that ordinance.
- When performing a project-specific prequalification, a local agency should consider a contractor's past performance, safety record and bonding capacity. MaineDOT may be able to provide past contractor evaluations to assist with this process.
- If the estimated construction cost is **less than \$600,000**, a bidder should demonstrate successful completion of projects of similar size and scope to be awarded a contract.

A local agency must verify that a bidder is not debarred, disqualifying the bidder from working on government contracts. Debarment status can be verified at the federal [SAM.Gov](https://www.sam.gov) website.

8.3 Bid Guaranty

Each bidder must provide a bid guaranty for **5 percent** of the bid amount, which must be stated in the Notice to Contractors. Failure to submit a bid guaranty causes the rejection of a bid.

A bid guaranty, payable to the agency administering a project, must be one of the following:

- Bid bond issued by an insurer licensed by the State of Maine;
- Cashier's check;
- Certified check;
- U.S. Postal Service money order.

A bid guaranty serves to ensure that the low bidder will honor its bid and enter into a contract. The amount of the guaranty is forfeited if a bidder refuses to enter into a contract.

8.4 Bid Opening

Sealed bids received in response to a Notice to Contractors are publicly opened and announced at the time and place specified in the notice or a subsequent bid amendment. Usually, only the bidder name, bidder location, and the total bid amount are read.

NOTE: Sealed bids are **confidential until the public bid opening!** Do not open prior to that day.

Unless a local agency intends to reject all bids, the agency must award a contract to the lowest responsive and responsible bidder for the bid amount, as set out below:

- A bid is considered responsive if it meets the requirements of the Notice to Contractors and project specifications.
- A bidding contractor is considered responsible if it has the financial and technical capacity to perform the work and satisfy the terms of the contract.

Negotiating price, after opening bids and before awarding a contract, is **prohibited**. Doing so will cause an agency to forfeit the federal and state money for a project. An agency may only negotiate with the successful bidder, if necessary, after formally awarding a contract.



If the agency overseeing a project deems the lowest responsive bid to be unacceptably high, after consulting with MaineDOT's project manager, the agency must reject **ALL** bids. The work may be re-advertised after the scope of work is adjusted, in cooperation with MaineDOT.

8.5 Bid Analysis

After bids are opened, either the local project administrator or a qualified designee, such as a consultant, must check them for errors and discrepancies. This analysis should cover the following:

- Checking the multiplication of unit price and quantity, as well as the total sum of items. In case of discrepancies, unit prices govern.
- Reviewing unit prices for mathematical or material unbalancing that casts doubt on a bidder's ability to perform the work for the bid price.
- ➔ Refer to the *Standard Specifications*, Section 103.1.2 (Unbalanced Bids).
- Checking numerical and written unit prices. If they differ, go by the *written* unit price.
- Reviewing the base bid and bid alternates to make sure the apparent low bidder meets the requirements set out in the bid documents.

If the bid analysis finds defects in a bid proposal, the reviewing agency may deem them either **curable** or **non-curable**, as set out in sections 8.6 and 8.7, on the next page.

- ➔ Refer to the *Standard Specifications*, Section 102.11 (Bid Responsiveness).

8.6 Non-curable Bid Defects (Revised)

Defects are “non-curable” – meaning that a bidder cannot correct them – if they cast doubt either on the total bid amount or on a bidder’s ability to carry out the contract successfully, as set out in MaineDOT’s *Standard Specifications*, Section 102.11.1 (Non-curable Bid Defects).

A local agency must reject a bid containing any of the following **non-curable** defects:

- The bid and bid guaranty are not delivered to the precise location and by the precise time specified in the Notice to Contractors or an applicable bid amendment;
- The bid is not signed by a duly authorized representative of the bidder;
- The unit price and bid amount for any item are missing or illegible or (if applicable), a lump-sum price is missing or illegible;
- A bid guaranty specified in the bid documents is not submitted with the bid;
- The bid is not submitted on current forms provided by the local agency in charge of the project or on identical copies thereof;
- A bidder submits more than one bid for the same contract, with two different prices;
- A bidder and a related entity each submit a bid for the same contract;
- A bid has conditional or alternate language, such as the right to reject a contract award;
- A bidder is debarred or otherwise disqualified from bidding on government contracts;
- The agency advertising a project finds substantial evidence of collusion by a bidder;
- A bidder fails to comply with any provision stating that non-compliance will result in rejection of a bid.

8.7 Curable Bid Defects

Not all discrepancies will disqualify a bid proposal. A local agency may allow a bidder to correct **curable** defects within a certain amount of time, when:

- The total amount of the bid is missing from the Schedule of Items, but each item has a unit price or a bid amount;
- Prices or signatures on the bid or bid guaranty are not in ink;
- A bidder signs only one of the two Contract Agreement, Offer & Award forms;
- A bidder fails to acknowledge receipt and consideration of bid amendments;
- A defect doesn’t raise a significant question about the total bid amount or the bidder’s ability to complete the work.

8.8 Contract Award

Unless the bid documents specify otherwise, the local agency administering a project must deliver a Notice of Intent to Award to the apparent low bidder within **30 days** of the bid opening. If the award timeframe is not met, a bidder may withdraw its bid without penalty.

Before awarding a contract, a local agency must ensure that the apparent low bidder meets all conditions in the bid documents and MaineDOT's *Standard Specifications*. Examples include delivering bonds, providing insurance certificates, fulfilling prequalification requirements, and documenting that the prime contractor will perform at least **30 percent** of the contract value with its own forces.

➡ Refer to the *Standard Specifications*, Section 103 (Award and Contracting).

The local administrator must send the MaineDOT project manager a letter or email with the recommended bid award. The document should contain a bid tabulation with the engineer's estimate and all bids with unit prices. MaineDOT's approval is required before the contract may be awarded. (*Refer to the example language found in Letter 16, on page 8-8.*)

A contract generally must be executed within **14 days** after the low bidder has met the conditions of award. MaineDOT's project manager must receive copies of the award notice and contract.

8.9 Insurance Requirements

The successful bidder on a locally administered project must provide signed, valid and enforceable certificates of insurance as a condition of award. The contractor must procure all insurance from a company licensed or approved by the State of Maine to do business in Maine.

Unless MaineDOT's project manager specifies otherwise, the following minimum insurance requirements apply to the prime contractor and subcontractors on projects funded by MaineDOT:

- Workers' compensation;
- Commercial general liability of \$1 million per occurrence and \$2 million in aggregate;
- Automobile liability of \$1 million per occurrence.

➡ Refer to the *Standard Specifications*, Section 110 (Indemnification, Bonding and Insurance).

8.10 Rejection of Lowest Successful Bid

If the apparent low bidder fails to fulfill the award conditions, the award is forfeited. If this happens, the local agency administering a project has two options, which may be considered in consultation with MaineDOT's project manager:

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

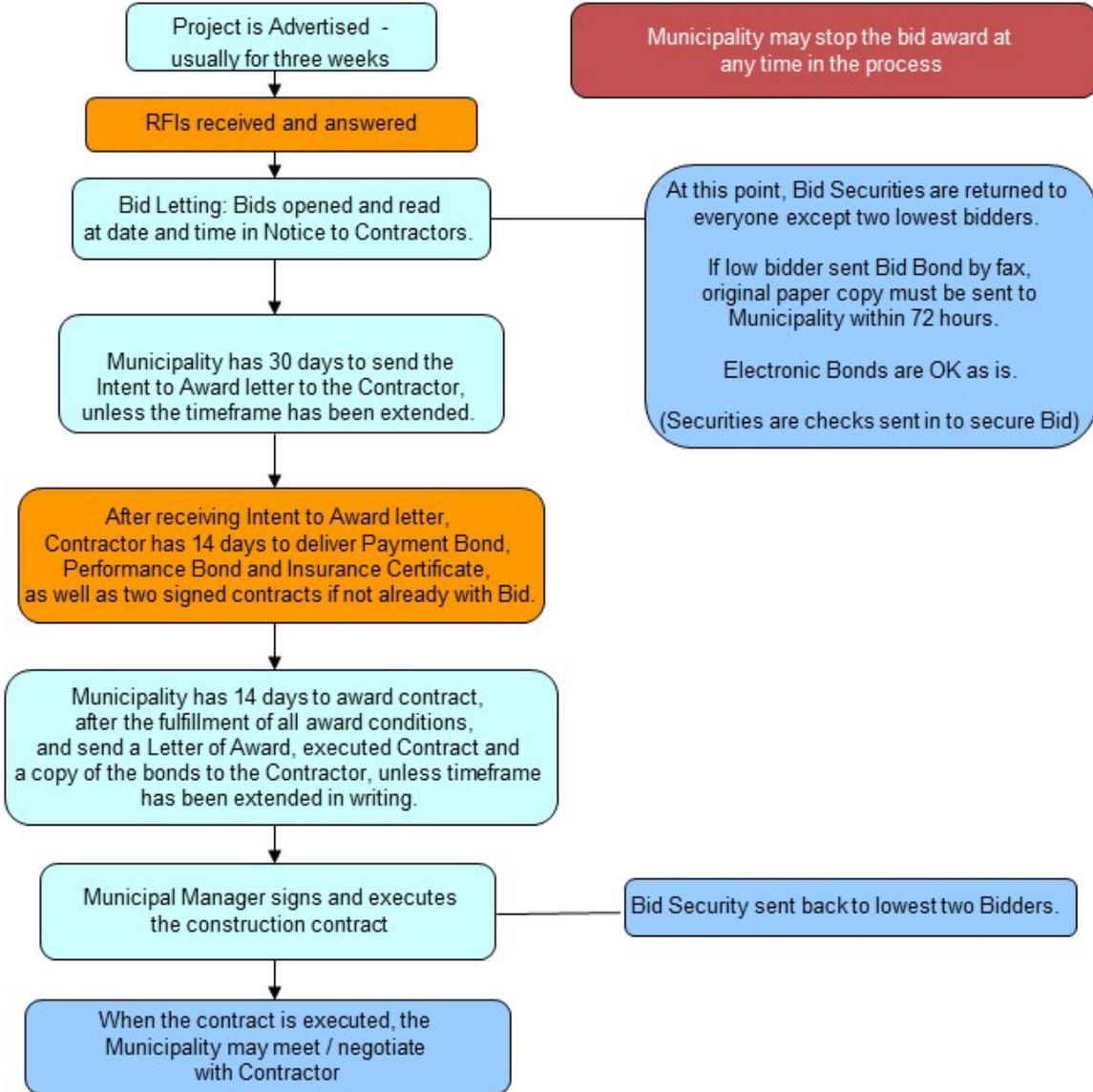
➡ Refer to the *Standard Specifications*, Section 103.6 (Failure to Fulfill Award Conditions).

8.11 Checklist: Advertise & Award

- Receive authorization to advertise from MaineDOT project manager.**
- Advertise the Notice to Contractors** (3-week minimum period).
 - Notice should be posted to municipal website and MaineDOT website.
 - A newspaper advertisement may be used, but this is not mandatory.
 - Date and location of the bid opening must be in the notice.
 - Basis of award must be clearly defined, so low bidder is apparent after bids are opened.
- Determine contractor qualifications:**
 - For contracts of \$600,000 or more, the low bidder should be prequalified.
 - For contracts of less than \$600,000, low bidder must demonstrate successful completion of projects with a comparable size and scope.
- Bidders must submit written questions using the Request for Information (RFI) form.**
 - The same answer must be distributed to all bidders in writing, with the question repeated.
- Issue addendum, if documents are modified or if answering a Request for Information.**
 - If there is not enough time for bidders to make changes, delay the opening.
- Open and publicly read aloud all bids at the designated time.**
 - Prepare bid tabulation sheet.
 - Check submitted bids for tabulation errors.
 - Determine the lowest responsive bid.
- Review all bids for bid defects**
 - Go by MaineDOT's *Standard Specifications*, Section 102.11, "Bid Responsiveness."
- Determine the apparent successful bidder.**
 - Return bid securities to everyone except the two lowest bidders.
 - Notify the second bidder that securities will be held until contract execution.
- Send award recommendation to MaineDOT project manager (Letter 16).**
 - Tabulation of bids;
 - Engineer's estimate; and
 - Completed Contractor DBE Utilization Form (federally funded projects).
- Receive MaineDOT approval in writing of recommended award.**
- Send Notice of Intent to Award** to apparent successful bidder.
 - Bidder must provide certificates of Workers Compensation, liability and auto insurance.
 - If contract is \geq \$125,000, bidder has 14 days to deliver performance and payment bonds.
 - Refer to MaineDOT's *Standard Specifications*, Section 110 (Indemnification, Insurance and Bonding).
- Sign contract.**
 - Notify all unsuccessful bidders of such.
- Send copy of signed contract to MaineDOT project manager.**
 - Return bid securities to first and second bidders.

Bid Award Process

Section 103, MaineDOT Standard Specifications



Note: An electronic version is found under the category of “Construction Award Documents” on the MaineDOT Local Project Administration website: www.maine.gov/mdot/lpa/lpadocuments/

[DATE]

[NAME], Project Manager
Maine Department of Transportation
Bureau of Project Development, Multimodal Program
16 State House Station
Augusta, ME 04333-0016

Subject: Request to Award Construction Contract, Federal Project
MaineDOT WIN:

Dear [NAME]:

Attached for your review are the bid tabulations, engineer’s estimate and completed Contractor DBE Utilization Form for [SCOPE, LOCATION] in the Municipality of [NAME]. [CONTRACTOR NAME] is the apparent successful bidder. We request authorization to award the project to that contractor.

In making this request, we acknowledge that we cannot send out the Notice of Intent to Award without written authorization from MaineDOT.

If you need additional information, please let me know.

Sincerely,

[NAME], Municipal Project Administrator

Enclosures:

1. Bid tabulations
2. Cost estimate

Note: An electronic version is found under the category of “Construction Award Documents” on the MaineDOT Local Project Administration website: www.maine.gov/mdot/lpa/lpadocuments/

[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 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]
Municipal Project Administrator

END OF CHAPTER 8