

# Unbalanced Bid Item Processes

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Amy Ramsdell, Delivery & Operations Division Administrator  
Tova Peltz, PE, GE, Statewide Capital Program Engineer

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Joint Committee on Legislative Audits



# 2017-02 Audit Recommendations

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1. ODOT should track unbalanced bid items, either within existing systems or separately.
2. ODOT should include bid item numbers in project changes and track them.
3. ODOT should conduct regular analyses of projects changes related to unbalanced bid items and evaluate whether unbalanced bidding is negatively affecting project costs or bid competition.
4. ODOT should provide Project Managers with more guidance on how to manage unbalanced bid items.

# Examples of Contracting Methods

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- Low Bid (Design-Bid-Build) → 99W: I-5 – McDonald St project
- Best Value Proposer (A + C + D) → I-205 Abernethy Bridge project
- Design-Build → NW Oregon ADA Curb Ramps project
- CM / GC → Rose Quarter project
  
- The focus of the SOS audit 2017-02 was on unbalanced bid items, which only applies to the Low Bid method.

# How we develop and award a low bid package

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- Analyses & design
- Bid Package
  - Plans
  - Specifications
  - Estimate
    - Bid Items → Estimated Quantities & Estimated Bid Prices
- Bid Advertisement
- Bid Opening
  - Review & analysis
  - Recommendation
- Contract Award

# What is an unbalanced bid item?

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An unbalanced bid *item* is an item that is priced significantly different than market pricing or reasonable actual costs – such as a “penny bid,” high bid item, or low bid item.

An unbalanced bid occurs when a contractor includes a variety of unbalanced items in their bid package that collectively aim to gain advantage in the bidding process.

## **Status: *ODOT should track unbalanced bid items, either within existing systems or separately.***

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- Tracking of unbalanced bid items has occurred since 2014.
- All unbalanced bid items are reviewed and analyzed prior to recommending contract award.
- Since the audit, Resident Engineers (construction project managers) are aware of those bid items on their projects.

### **The most common unbalanced bids items:**

- Mobilization
- Temporary Protection and Direction of Traffic
- Extra for Salvaging and Stockpiling Materials
- Construction Survey Work
- Level 3, 1/2-inch ACP
- Bridge Removal Work
- PG 64-22 Asphalt in Level 3, 1/2-inch ACP
- General Excavation
- Removal of Structures and Obstructions
- Air and Noise Monitoring

# Example of a bid review including unbalanced bid items

Low responsive bid value:		\$2, [REDACTED]
Engineer's Estimate (EE):		\$3, [REDACTED]
% of EE:		79.66%
<b>RECOMMENDATION OF AWARD:</b>		<b>YES</b>

## SUMMARY

The Project Controls Office reviewed the bid prices of the low responsive bidder and compared it to the Engineer's Estimate, the bid prices of the other responsive bidders, and a review of the bid documents. Based on our review, we recommend the low responsive bidder be awarded the contract for the following reasons:

- There were no apparent significant problems with the bidding documents.
- The bid item prices are within market trends.
- Four contractor bids are lower than the Engineer's Estimate.

**PCO ESTIMATOR COMMENTS:** The PCO EVALUATION & REGION ENGINEER MONITORING LIST meeting ODOT's standard criteria for review is attached and may have specific comments related to the bid item analysis.

**BID CLARIFICATION STATEMENT:** A bid clarification letter was issued to the low bidder for significantly unbalanced bid items 0150, 0270, 0280, 0320 for additional analysis. The bid items listed are considered low for potential detriment based on the attached clarification letter provided by the bidder. Remarks from the design team are attached or referenced in the estimator comments below.

## **Status: *ODOT should include bid item numbers in project changes and track them.***

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- We now track unbalanced bid items through the duration of construction – including when these items are associated with a contract change order.
- Since 2019 change order codes added to track changes implemented to adjust prices for significant quantity changes of unbalanced bid items.



**Status: ODOT should conduct regular analyses of projects changes related to unbalanced bid items and evaluate whether unbalanced bidding is negatively affecting project costs or bid competition.**

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- Project changes – including contract change orders and bid item overruns – are reviewed and evaluated in the context of unbalanced bid items.
- The prevalence of unbalanced bid items and the inferred impact on bid competition was evaluated by ODOT in 2022-2023 and led to new policy guidance on evaluating and considering unbalanced bids prior to contract award.
- In 2023 ODOT created an unbalanced bid evaluation policy. This policy formalized the guidance for evaluating unbalanced bids and determination on whether to proceed to contract award.

# An outcome of tracking unbalanced bid items → Operational Notice PD-26 – Unbalanced Bid Evaluation

*It is ODOT's intent to maintain a fair and competitive bidding process.*

*ODOT shall analyze bids to identify and address unbalanced bidding practices.*

*All items flagged by the bid analysis process as potentially unbalanced bid items shall be thoroughly evaluated by ODOT, consulting with the design team and construction Resident Engineer as needed.*

*This evaluation may include sending a letter of bid clarification to request further information from the bidder.*

*If ODOT's evaluation indicates that there is a reasonable doubt that award of the bid would result in the lowest ultimate cost to ODOT and the public, steps shall be taken by ODOT to protect the Agency and public interest, as applicable.*



Delivery and Operations Division

## Project Delivery Operational Notice

Operational Notice Number <b>PD-26</b>	Original Effective Date <b>12/1/2023</b>	Revised Effective Date	Review or Rescind <b>12/1/2025</b>	Appointing Authority <b>Statewide Project Delivery Manager</b> David Kim <small>Digitally signed by David Kim Date: 2023.11.28 14:59:56 -08'00'</small>
<b>Unbalanced Bid Evaluation Policy</b>			<b>PCO Bid Analysis</b>	

### Purpose

Establish a standard of practice and guidance for how the Oregon Department of Transportation (ODOT) evaluates unbalanced bids and determines whether to proceed to award or not. This policy is intended to ensure fair competition for contractors in the ODOT construction bidding process and mitigate potential detriment to the state.

# An outcome of tracking unbalanced bid items → Operational Notice PD-26 – Unbalanced Bid Evaluation

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ODOT's Project Controls Office Estimating Team conducts the following review of all bids:

- Performs bid analysis and identify unbalanced bid items.
- Consults with design team, construction Resident Engineer as needed.
- Works with Procurement Office to develop a letter requesting bid clarification to be sent to the bidder.
- Provides information and recommendation to OPO-Construction to award a bid or reject all bids.

# **Status: *ODOT should provide Project Managers with more guidance on how to manage unbalanced bid items.***

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- In 2019 guidance was added to the ODOT Construction Manual:
  - To track unbalanced bid items throughout contract delivery
  - About administering contracts with unbalanced bid items
  - To provide a process for repricing significant changes to quantities of unbalanced bid items.

# Questions?

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