



## Ohio Revised Code

### Section 5525.01 Advertisement for bids - awarding of contracts - ODOT letting fund.

Effective: October 3, 2023

Legislation: House Bill 33

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Before entering into a contract, the director of transportation may advertise for bids for two consecutive weeks in one newspaper of general circulation published in the county in which the improvement or part thereof is located, but if there is no such newspaper then in one newspaper having general circulation in an adjacent county. In the alternative, the director may advertise for bids as provided in section 7.16 of the Revised Code. The director shall advertise for bids in such other publications as the director considers advisable. Such notices shall state that plans and specifications for the improvement are on file in the office of the director and the district deputy director of the district in which the improvement or part thereof is located and the time within which bids therefor will be received.

Each bidder shall be required to file with the bidder's bid a bid guaranty in the form of a certified check, a cashier's check, or an electronic funds transfer to the treasurer of state that is evidenced by a receipt or by a certification to the director of transportation in a form prescribed by the director that an electronic funds transfer has been made to the treasurer of state, for an amount equal to five per cent of the bidder's bid, but in no event more than fifty thousand dollars, or a bid bond for ten per cent of the bidder's bid, payable to the director, which check, transferred sum, or bond shall be forthwith returned to the bidder in case the contract is awarded to another bidder, or, in case of a successful bidder, when the bidder has entered into a contract and furnished the bonds required by section 5525.16 of the Revised Code. In the event the contract is awarded to a bidder, and the bidder fails or refuses to furnish the bonds as required by section 5525.16 of the Revised Code, the check, transferred sum, or bid bond filed with the bidder's bid shall be forfeited as liquidated damages. No bidder shall be required either to file a signed contract with the bidder's bid, to enter into a contract, or to furnish the contract performance bond and the payment bond required by that section until the bids have been opened and the bidder has been notified by the director that the bidder is awarded the contract.

The director shall permit a bidder to withdraw the bidder's bid from consideration, without forfeiture



of the check, transferred sum, or bid bond filed with the bid, providing a written request together with a sworn statement of the grounds for such withdrawal is delivered within forty-eight hours after the time established for the receipt of bids, and if the price bid was substantially lower than the other bids, providing the bid was submitted in good faith, and the reason for the price bid being substantially lower was a clerical mistake evident on the face of the bid, as opposed to a judgment mistake, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, or material made directly in the compilation of the bid. In the event the director decides the conditions for withdrawal have not been met, the director may award the contract to such bidder. If such bidder does not then enter into a contract and furnish the contract bond as required by law, the director may declare forfeited the check, transferred sum, or bid bond as liquidated damages and award the contract to the next higher bidder or reject the remaining bids and readvertise the project for bids. Such bidder, within thirty days, may appeal the decision of the director to the court of common pleas of Franklin county and the court may affirm or reverse the decision of the director and may order the director to refund the amount of the forfeiture. At the hearing before the common pleas court evidence may be introduced for and against the decision of the director. The decision of the common pleas court may be appealed as in other cases.

There is hereby created the ODOT letting fund, which shall be in the custody of the treasurer of state but shall not be part of the state treasury. All certified checks and cashiers' checks received with bidders' bids, and all sums transferred to the treasurer of state by electronic funds transfer in connection with bidders' bids, under this section shall be credited to the fund. All such bid guaranties shall be held in the fund until a determination is made as to the final disposition of the money. If the department determines that any such bid guaranty is no longer required to be held, the amount of the bid guaranty shall be returned to the appropriate bidder. If the department determines that a bid guaranty under this section shall be forfeited, the amount of the bid guaranty shall be transferred or, in the case of money paid on a forfeited bond, deposited into the state treasury, to the credit of the highway operating fund. Any investment earnings of the ODOT letting fund shall be distributed as the treasurer of state considers appropriate.

The director shall require all bidders to furnish the director, upon such forms as the director may prescribe, detailed information with respect to all pending work of the bidder, whether with the department of transportation or otherwise, together with such other information as the director considers necessary.



In the event a bidder fails to submit anything required to be submitted with the bid and then fails or refuses to so submit such at the request of the director, the failure or refusal constitutes grounds for the director, in the director's discretion, to declare as forfeited the bid guaranty submitted with the bid.

The director may reject any or all bids. Except in regard to contracts for environmental remediation and specialty work for which there are no classes of work set out in the rules adopted by the director, if the director awards the contract, the director shall award it to the lowest competent and responsible bidder as defined by rules adopted by the director under section 5525.05 of the Revised Code, who is qualified to bid under sections 5525.02 to 5525.09 of the Revised Code. In regard to contracts for environmental remediation and specialty work for which there are no classes of work set out in the rules adopted by the director, the director shall competitively bid the projects in accordance with this chapter and shall award the contracts to the lowest and best bidder.

The award for all projects competitively let by the director under this section shall be made within ten days after the date on which the bids are opened, and the successful bidder shall enter into a contract and furnish a contract performance bond and a payment bond, as provided for in section 5525.16 of the Revised Code, within ten days after the bidder is notified that the bidder has been awarded the contract.

The director may insert in any contract awarded under this chapter a clause providing for value engineering change proposals, under which a contractor who has been awarded a contract may propose a change in the plans and specifications of the project that saves the department time or money on the project without impairing any of the essential functions and characteristics of the project such as service life, reliability, economy of operation, ease of maintenance, safety, and necessary standardized features. If the director adopts the value engineering proposal, the savings from the proposal shall be divided between the department and the contractor according to guidelines established by the director, provided that the contractor shall receive at least fifty per cent of the savings from the proposal. The adoption of a value engineering proposal does not invalidate the award of the contract or require the director to rebid the project.