



Public Bidding Process Review

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MARIN

When is bidding required?

- Public Contract Code sets a \$15,000 minimum threshold for construction
 - Public Contract Code sec. 20651(b)
 - Purchase of supplies, equipment, repairs, etc. starts at \$72,400
- Award goes to the lowest responsive, responsible bidder
 - "Responsible" defined as demonstrated trustworthiness, quality, fitness, capacity, experience (Public Contract Code 1103)



[Factors affecting the bidding climate and the bidding pool]

- Construction inflation appears to be slowing after several very tough years
- Appears to be an adequate bidding pool, generally, in the Bay Area
- Some continuing concern re quality and claims-oriented contractors in the publicly bid market
 - Apparently less of a concern in Marin
- Helps to have a reputation as a good public entity to do work for (e.g. timely payment, consistent decision making)



[The bidding process]

- Architect prepares plans and specifications
- Documents made available and advertised weekly for a minimum of 2 weeks
 - Ed. Code 81641
- Bid date is set with a hard deadline to the minute
 - Late bids not accepted (Id.)
- Bids opened and announced



After the bid opening

- **Protests:**
 - Grounds: incomplete or inconsistent bid documents, subcontractor listing errors, "qualified bid"
 - Timing: 5 days after bid opening
 - Decision
- **Board action:**
 - Can waive minor deviations such as omitting one of many signatures
 - Cannot waive deviations affecting price
 - Reject low bid and award to second low bid
 - Reject all bids
 - Award contract



Options when bids come in high

- **Reject and rebid**
 - Always within the Board's rights
- **Reject, redesign and rebid**
 - If bids more than 7% high or 10% low, at no charge by design and management teams
- **Cancel the project**



Fatal errors by bidders

- Delivering bid late
- Not acknowledging addenda
- Not giving a price, including bid alternates
- Not having the appropriate license



Signs of trouble

- No bidders
- Low bid comes in substantially over budget
- Huge bid spread with no cluster of bids around the estimated cost



Challenging situations for Owners

- “Sole-source” specifications
 - Generally not favored (Public Contract Code 3400)
- Material changes to the bid package
 - Requires 72-hour minimum extension (Public Contract Code 4104.5(a))
- Requests to withdraw bid
 - Error in judgment or reading the bid package: no (Public Contract Code 5103(d))
 - “Clerical error”: yes (Id.)
- Awards with alternates
 - Public Contract Code sets out procedure for evaluating who is low bidder (Public Contract Code 20103.8)



More challenging situations

- “Bid protest” by trades council re low bidder's track record of not paying prevailing wage
 - Not basis for rejecting bid
- Low bidder lists more than one subcontractor for a trade, or leaves out a trade that will be more than ½ of 1% of the value of its bid
 - Means the bidder will do the work itself (Public Contract Code 4106)

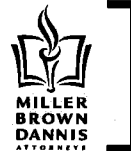


Some other approaches to bidding

- Prequalification (Public Contract Code 20101)
- Bidders' questionnaires
- Multiple prime contracting
- Alternate Project Delivery
 - Design-build (Ed Code 81700)
 - Lease-leaseback (Ed Code 81330, 81335)



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