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)

Public Bidding Process Review

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