

# Procurement

## AVOID COMMON BIDDING MISTAKES

by William J. Cea

Public procurement is a highly competitive and scrutinized process which will only be exacerbated by the slow economy and an infusion of public money. Contractors submitting a bid must comply with the public agency's requirements. Failure to do so can be the difference between securing a profitable contract and a rejection. While public contracts must be awarded to the lowest responsive and responsible bidder, there are countless stories of contractors losing lucrative contracts due to silly yet fatal mistakes. Follow this checklist carefully and you will increase your chances of securing public works.

### Public Procurement Principles

It is important for a contractor to understand some fundamental principles of the public procurement process. The purpose of public procurement is to protect the public interest and the taxpayers. An award must be in accordance with the terms of the Invitation to Bid ("ITB") or Request for Proposal ("RFP").

Agencies have wide discretion in awarding a contract, but that discretion is limited when bidders make mistakes. Agencies may waive minor irregularities. If the irregularity is material, however, it cannot be waived. Thus, ensuring the bid is accurate and complete is of paramount importance.

### Common Bidding Mistakes

Even the slightest error or omission can be grounds for rejection. While some of the examples provided below seem obvious, the lessons learned cannot be overstated.

■ **Submittal Deadlines.** The ITB or RFP advertisement will include the specific date, time, and location that the bid is due. If the bid package is not received at the particular office by the date and time specified, it will generally be rejected.

■ **License Requirements.** Most projects require specific licenses and qualifications. Many bids for public construction projects must be accompanied by evidence that the bidder holds the appropriate credentials, unless the work is exempt. As an example, one contractor who relied on a joint venture partner to meet the licensure requirement was surprised to find out his bid was rejected because his partner did not provide evidence of his credential in the bid.

■ **Pricing.** An agency must be able to ascertain the contractor's price. Ambiguity in pricing terms might lead the agency to reject the bid or force a bidder to complete a project at a price that was provided in error. In one case, a bidder relied on administrative staff to insert the bid price and was disappointed to learn that it had been inadvertently omitted from the bid resulting in a rejection.

■ **Insurance and Bonding.** Most public projects require specific

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insurance coverages, and performance and payment bonds. A bidder must be able to demonstrate its ability to acquire the required insurance and bonds, even if it does not have to actually acquire the insurance and bonds until the contract is awarded. The bidder might also have to submit a bid bond or other security at the time of the submittal. A low bidder recently lost a significant state contract by submitting an A- rated bond when the bid called for an A rating.

■ **Execution of Signature Pages.** If the submittal is not appropriately signed, and by a person with authority, the bid will be ineffective. Be meticulous in complying with details; be sure your bid is complete and accurate.

■ **Incomplete Bid Packages.** All required enclosures must be submitted with the bid. Bidders might have to include information showing their financial ability to take on the work. While this information might be exempt from Florida's Public Records Law, enabling the bidder to separate it from the rest of the bid, the information must still be submitted.

■ **Failing to Bid Alternative.** The ITB or RFP may require a bidder to propose an alternative, or make it discretionary. If required, failing to include the alternative may cause the bid to be rejected, even if the agency ultimately does not choose the alternative.

■ **Requesting Clarification.** Where the ITB or RFP is ambiguous, the bidder must request written clarification. Bidders should only rely on a written clarification.

■ **Bidding Through Proper Entity.** The entity that submits the bid must be the same company that will do the work. Contractors have been rejected for submitting a bid under one company name and relying upon an affiliated company's experience to demonstrate competence, credentials, financial capacity, etc.

■ **Failing to Specify Subcontractors.** If a bidder is required to identify subcontractors, the bidder should include their qualifications in the bid and secure firm bids.

### Conclusion

In these uncertain economic times, public projects may provide stable and profitable opportunities. It is imperative, however, to avoid all-too-common mistakes in preparing and submitting bids for these projects. Given the possible consequences of these mistakes, bidders should consider seeking legal counsel for assistance. In addition, assistance from legal counsel can be invaluable in demonstrating responsiveness or protesting an agency's adverse decision.

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