

# Tips for the Competitive Bidding Process



*By Tim Ducar*

Bidding on a public job can be frustrating. The process the governmental body utilizes to request bids and then to decide can be shrouded in mystery. This article will present insight on the bidding process and shed a bit of light on the process.

Most public bodies follow the Arizona Procurement Code, but not all of them. Partly because of this, depending upon the Request For Proposal, the rules will vary. Requirements in the Request For Proposal must be followed. If a Proposal from bidders is due at 3:00 p.m., and the requesting body requires 10 copies to be submitted, if you submit a Response at 3:10 p.m. or with less than 10 copies, your Proposal probably will be found to be non-responsive and the Proposal will not be considered.

Recently, a contractor I represented found out he was not the successful bidder five days after his competitor was awarded the project. The contractor had 10 days to file a bid protest. He asked for backup documentation from the contracting body, but did not press for the information to be released immediately. He received the information about 10 days later. Any bid protest would have been late and, as a result,

would have had an uphill battle.

With that said, bid protests sometimes work with just a few letters to the correct person. Recently, I represented a roofer who challenged the award of a contract to a competitor. In this situation, we alleged that the architect for the county colluded with the salesman of a particular product to require the salesman's product to be used in the project. Based on information from the salesman and the architect, the Procurement Officer did not consider my client's suggested use of a different product that was an "equal alternate." This requirement eliminated all other roofers who had submitted bids because none of the other roofers were approved to apply the product, including my client. After I pointed out the wrongfulness of the process to the Procurement Manager, the Procurement Manager reversed the Procurement Officer's decision and awarded the contract to my client.

In the event that letters to the correct person do not work, the aggrieved party may commence legal action, often with the Arizona Department of Administration (the forum is dependent upon the public body that issued the Request For Proposal). In the case of the Arizona Department of Administration, a hearing officer will hear the case and submit his or her decision to the Director, who has the ability to accept it or modify it. As in the case with a decision from the Arizona Registrar of Contractors, if the aggrieved party is still not satisfied, that party can seek judicial relief in Maricopa County Superior Court.

If you are not the successful bidder, you will immediately wonder why you were not. You may want to inquire about the scoring process that the public body uses. That is, the public body may put different weights on the different requirements within the proposal. Some of the requirements within the RFP may be mandatory, and some may be discretionary.

Additionally, the actual scoring may have an error. Scoring implies assigning numbers to different criteria. The numbers are weighted, and then added up. This process requires humans to enter the numbers into a spreadsheet. This data entry is subject to mis-entry of numbers, or mis-calculation of numbers.

If you follow the bid requirements closely, aggressively follow up with any requests for clarification, and demand information immediately when denied an award, you will be in a much better position to protect your rights.

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