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LEFT HANDED BIDDING

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ABSTRACT

THIS PAPER ATTEMPTS TO RAISE QUESTIONS CONCERNING THE SYSTEM OF COMPETITIVE BIDDING WHICH PREVAILS THROUGHOUT THE UNITED STATES FOR THE AWARD OF PUBLIC CONTRACTS FOR CONSTRUCTION. THE PAPER POINTS OUT THE HUMAN AND BUSINESS INFLUENCES IN THE BIDDING PROCESS AND THE FAILURE OF PUBLIC OFFICIALS TO PROVIDE ADEQUATE MEASURES TO MINIMIZE THOSE INFLUENCES.

LEFT HANDED BIDDING

The systems of bidding which prevails in America today is essentially the same as first promulgated by the Continental Congress in 1789. Contractors have recognized that that system is less than perfect. Owners, particularly, public owners have not.

It will be the purpose of the presentation for which this paper is prepared to examine the influences which this system of bidding brings to bear on contractors and how those influences impact the sum submitted on a bid. It is presumed that bid sum means a lump sum bid. The concepts also apply to unit price bids as well.

One major and immediate point of difference between the attitude of an owner and contractor towards the bid is a concern for its elements.

Frequently major law suits are instituted because of disagreement concerning costs of labor, materials, overhead and profit. In most situations, contractors are concerned only about the bottom line.

A contractor is concerned about the nature of the project and the amount of revenues that at the successful completion of the project will produce. Thus, he looks at the practical factors which will influence his bid. These are:

- The Contractor
- The Competition
- The Owner
- The Engineer

With regard to each of these influences, the Contractor must ask himself a number of non-cost related questions.

THE CONTRACTOR

1. HOW MUCH BUSINESS DOES HE HAVE?
2. WHERE IS THE PROJECT LOCATED?
3. HOW FAR IS IT FROM OTHER WORK?
4. DO WE HAVE A SIMILAR PROJECT GOING?
5. WHAT DO WE KNOW ABOUT THIS TYPE OF WORK?
6. WHAT IS OUR BONDING CAPACITY?
7. WHAT'S ON THE HORIZON?

THE COMPETITION

1. WHO ARE WE BIDDING AGAINST?
2. ARE THEY MAKING MONEY?
3. HOW MUCH WORK DO THEY HAVE IN THE AREA?
4. WILL THEY "BUY" A JOB?
5. ARE THEY NEAR BONDING CAPACITY?
6. WHAT ARE THEIR DEVELOPMENT PLANS?

THE OWNER

1. IS HE AN INSTITUTIONAL BUILDER?
2. WHERE IS HE GETTING HIS FINANCING?
3. WHAT TYPE OF "ENGINEER" DOES HE HIRE FOR AN ON SITE REPRESENTATIVE?
4. WHAT IS OUR EXPERIENCE WITH HIM?

5. WHAT'S HIS TRACK RECORD ON LAWSUITS/ARBITRATION?
6. HOW DOES HE DO ON PAYMENTS?
7. HOW NERVOUS DOES HE GET ON TIME?
8. WHAT IS HIS RECORD ON CLOSEOUT/RETENTIONS?

THE ENGINEER

1. HOW WELL DOES HE DO HIS JOB?
2. DOES HE USE COMPETENT FIELD PEOPLE?
3. DO THE SPECIFICATIONS FREQUENTLY SAY "AS OTHERWISE DIRECTED BY THE ARCHITECT"?
4. IS HE REASONABLE IN:
TIMELY DECISION MAKING?
TIMELY APPROVALS?
DEALING WITH CONTRACTOR/OWNER DISPUTES?
ACCEPTING CONFORMING WORK?
4. WHAT IS HIS TRACK RECORD IN LAWSUITS/ARBITRATION/CLAIMS?

Those who place their faith in the "integrity" of the competitive bidding process, are shocked and dismayed by facts such as these. Somehow, there is a belief that once a solicitation is placed on the street that the good contractors run the work statement through a computer and place all prices on the printed bid form for submission to the Architect or Engineer to be evaluated with the bids of other "nice" contractors.

Many owners and their representatives have no idea of the complexity or danger of the take off process and are unconcerned about bidders' problems. Likewise, preparation of bids is an expensive process and bidders are likely to try very hard to become the "low bidder". This process thus raises other questions:

Who will be the low bidder?

Who wants to be?

Who will left hand bid the project?

LET'S LOOK AT THE PLANS. The following represents what the Contractors see. The clarity of the work statement can be summarized as follows:

FORMULA

E. D. C. B. A.
CLEAR

VAGUE

CLEARLY
AMBIGUOUS

LATENT

CLEAR

Nevertheless, the bidders must calculate a bid and the following formula will help portray its accuracy.

$$3 X - \frac{(J+Y)}{S} + X-Z = B$$

Where:

B= Bid Amount

X= Dollars

J= Judgment

Y= Doubt

Z= Gravy

S= SWAG-WAG

WHAT IS THE BID?

What can the Owner/Engineer do to protect his project from the bidding system?

In a series of projects for which we have been responsible, as the Owners' bidding consultant, we have awarded \$70 million dollars on projects for both vertical and linear construction. These projects have been completed without the need for a single lawyer. They were completed on time, with reasonable quality and on all of them, Contractors made a profit in excess of 15%. Impossible - not so.

What did we do? We:

Did a comprehensive claims review of the contract documents before they were sent to bidders.

Made amendments to clarify patent ambiguities in the specifications and drawings.

Held a mandatory prebid conference (two days) and went over every drawing and specification.

Required bidders to do take off's before the prebid conference and certify that this was done.

Negotiated some items with all bidders and appropriately revised the Contract documents.

Held a pre-award confirmation/review with the low bidder to assure that he understood the intent of the Contract documents.

Held a meaningful pre-construction conference in which most of the pre-bid and pre-award conferences were repeated.

Prayed.

This difference between a good contractor and a bad one is whether there is enough money on the bid to do the work. Statistics show that over a period of time, some 2/3ds of all publicly bid construction projects are awarded at a price less than the actual cost to do the work. The same study by Midwest Research Institute of Kansas City, Missouri, found that the average life of the construction company on bid work was six years. Further, during years four and one half through six, the money received by the failing contractors for new work was used to pay off old bills and the last project bore the losses of the other 4 1/2 years. ie: quality of work was poor, time of performance was lost and subcontractors were not paid. In far too many cases, the protection of the bonds furnished to protect the owner and subcontractor was lost because of technicalities in the enforcement procedure.

SUMMARY The point of this paper is that construction contracting is at best, a risky business.