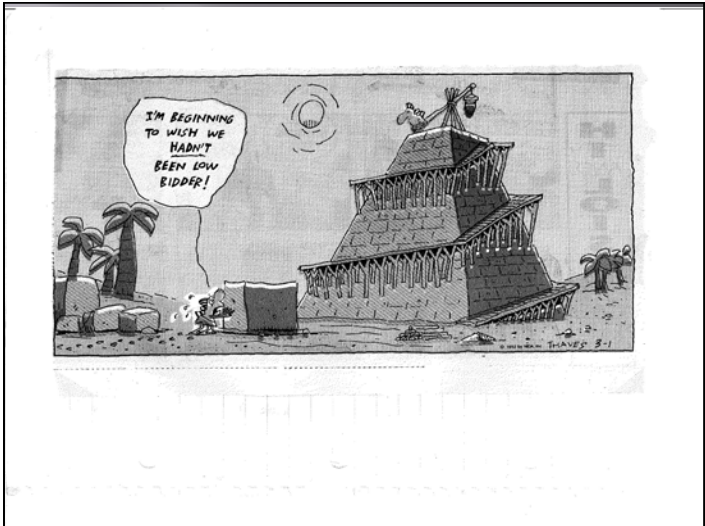


BIDDING YOUR COUNTY PROJECT

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Rapid City SD
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Purpose of Bidding

Statutory competitive bidding requirements are enacted for the benefit of the public and taxpayers to invite competition; to prevent favoritism, fraud, corruption, improvidence, extravagance, and collusion; and to secure the best work or supplies at the lowest price practicable. Competitive bidding requirements "promote honesty, economy, and aboveboard dealing in the letting of public contracts."

First the Law

- ❑ Where is the bidding law?
- ❑ Can be a Frustration!
- ❑ Generally - Most State's have a smattering of bidding laws in various statutes and differ depending on the jurisdiction.
 - In ND 92 statutes containing counties and advertising/bidding.
- ❑ Add to that overlapping requirements from professional standards and potential federal law issues.

The Good News

- ☐ Luckily your projects usually will fall into a few well defined chapters of law.
- ☐ What do most of attendees at LTAP usually do?
- ☐ Design & Construction of:
 - Machines, Roads, Bridges & Buildings

The Common Misconception

- ☐ It is NOT the lowest bid...
- ☐ It is the lowest RESPONSIBLE bid!
 - Colorado 30-20-622
 - Iowa 26.10
 - Kansas 19-214
 - Missouri 227.100
 - Montana 18-1-102
 - North Dakota 24-05-04.2
 - Nebraska 39-1620
 - South Dakota 15.2024
 - Wyoming 16-6-102

Low Bid Not Accepted

- ☐ Frequently litigated!
- ☐ Frequently Dismissed!
- ☐ “Courts should not interfere with the determination of the authorities involved in such matters when the determination as to who was the lowest reliable and responsible bidder is made in good faith..... The exercise of discretion is provided for and expected.
 - McNichols v. City and County of Denver 274 P.2d 317

The Process

- ☐ Starts with the government decision to go ahead with the project.
- ☐ Larger projects will require professional services. (engineer or architect)
 - Typically trigger by \$ value or type of project
- ☐ First the advertisement for services
 - Commonly called:
 - Requests for Proposals (RFP)
 - Request for qualifications

Selection Based On Fees?

- ❑ Traditionally Un-Ethical
- ❑ Section 11 -- The Engineer will not compete unfairly with another engineer by attempting to obtain employment or advancement or professional engagements by competitive bidding . . .
- ❑ Then comes:
- ❑ National Soc. of Professional Engineers v. United States, 435 U.S. 679 (US 1978)

US Supreme Court holding

- ❑ A complete ban on competitive bidding violates Sherman Act’s prohibition on conspiracies to restrain commerce
- ❑ What’s the Ethical Rule now?
- ❑ “nothing contained in the NSPE Code of Ethics, policy statements, opinions, rulings or other guidelines prohibits the submission of price quotations or competitive bids for engineering services at any time or in any amount.”
- ❑ However, State Rules are still in play...

**REQUEST FOR QUALIFICATIONS
ARCHITECTURAL SERVICES
CASS COUNTY COMMISSION**

The Cass County Commission is seeking Statements of Qualifications from architectural firms to provide professional services for the planning and design of a new county jail. Interested firms should submit the information requested below to the Cass County Commission Office, 211 9th Street South, Box 2806, Fargo, ND 58108 by 5:00 PM on Friday, the 19th of June, 1998. Direct any questions to Bonnie Johnson, County Coordinator, Cass County Commission at (701) 241-5720. The successful firm will be expected to prepare all construction documents, specifications, and follow through the bidding and construction process to project completion. The facility shall be designed for maximum staff efficiency and to enhance employee and inmate security. A preference will be given to a design which will allow for future expansion and which will consider the historical nature of the properties located at or near the proposed site.

- 1) Firm name, business address, telephone number, type of organization and when established.
- 2) Firm staff organization, names and resumes' of principals.
- 3) Specific qualifications and technical competence of the firm for this project.
- 4) A minimum of five references for completed projects, including brief description of project and name, title and telephone number of knowledgeable owner/representative.
- 5) Proximity to and familiarity with the area in which the project is located.
- 6) Past record of performance of the firm regarding quality of work, ability to work within budget restraints, and ability to meet schedules.
- 7) Other material that further qualifies the firm for this project.

After review of the submissions, the Cass County Board of Commissioners will select three firms which they will interview at a later date. Fees for architectural services will not be a criteria in the preliminary selection process, but will weigh heavily in the negotiation stages after the final three selections are made. If the fees are not satisfactory or not reasonably competitive as submitted by the County's first choice, the County will retain the right to repeat the negotiation process with other finalists. The County is obtaining professional services only and reserves the right to reject any or all submissions and to waive any minor irregularities in the submissions.

Invitation to Bid

- ❑ Road Projects generally straight forward.
- ❑ So too Road machinery.
- ❑ Couple of hurdles though:
 - Usually not allowed to use trademarks.
- ❑ Make sure you give yourself options in the invitation to bid!

Example:

- ❑ Option for multiple purchases.

Building Projects

- ❑ Building projects may require multiple prime bids depending on State.

Example:

- ❑ In ND Must bid out general, electrical and mechanical separately
- ❑ Unless
- ❑ They are under 25K or
- ❑ Single bid is lower then the multiple combinations

Advertisements

- ❑ Time limits vary depending on the project! Statute specific.
- ❑ Always Minimum times!
- ❑ Positive – ND Supreme Court
- ❑ Bidder cannot complain about defect in timing if they submitted a bid.
 - Baukol Builders v. County of Grand Forks,
 - 2008 ND 116

INVITATION TO BID

Sealed Bids for the Cass County Courthouse West Addition, Phase II Project, Fargo, North Dakota, will be received by Ms. Bonnie Johnson, County Administrator, until 2:00 PM, local time, Thursday October 7, 2010. Bids must be delivered before the time and date indicated above to the County Auditor's Office in Cass County Courthouse, 211 9th St. South, Fargo, North Dakota 58103. Bids will be publicly opened and read aloud.

Multiple Prime Bids will be received for General, Mechanical and Electrical Work.

All Bids shall be in accordance with Bidding Documents prepared by Foss Architecture & Interiors, Fargo, North Dakota.

Bidding Documents may be examined at the following locations until Bid opening time:

- Foss Architecture and Interiors, Fargo, North Dakota
- North Dakota Builder's Exchanges in Fargo, Bismarck & Grand Forks.
- Minnesota Builders Exchanges in Minneapolis, St. Paul, St. Cloud & Duluth
- South Dakota Builders Exchanges in Sioux Falls & Aberdeen.
- Reed Construction Data (formerly CMD) Plan Room, New Hope, Minnesota.
- McGraw Hill/ Dodge Plan Room, Edina, Minnesota.
- They may also be available on Dodge/Plans website. www.mghims.com

Bidding Documents, including any addenda issued, may be obtained through Mathison's Plan Exchange, www.mathisons.com, Fargo, ND. Contractors will be charged the actual costs for printing from this exchange. Bidding Documents may also be obtained by prime Bidders only from the Architect in electronic PDF format on a CD. Any addendum will be issued electronically via e-mail to registered plan holders. Any prime Bidders should contact the Architect to be included on planholders list. Also, digital copies, and online takeoff will be available through the Fargo-Moorhead Builders Exchange. Subbidders are urged to use the F-M Builders Exchange. Partial sets of Bidding Documents may be obtained through Mathison's Plan Exchange.

Each Bid shall be accompanied by a separate envelope containing a Bidder's bond in a sum equal to (5%) five percent of the full amount of the Bid, executed by the Bidder as principal and by a surety company authorized to do business in this state, conditioned that if the principal's Bid be accepted and the contract awarded to him, he, within ten days after notice of award, will execute and effect a contract in accordance with the terms of his Bid and a contractor's bond as required by law and the regulations and determinations of the governing board.

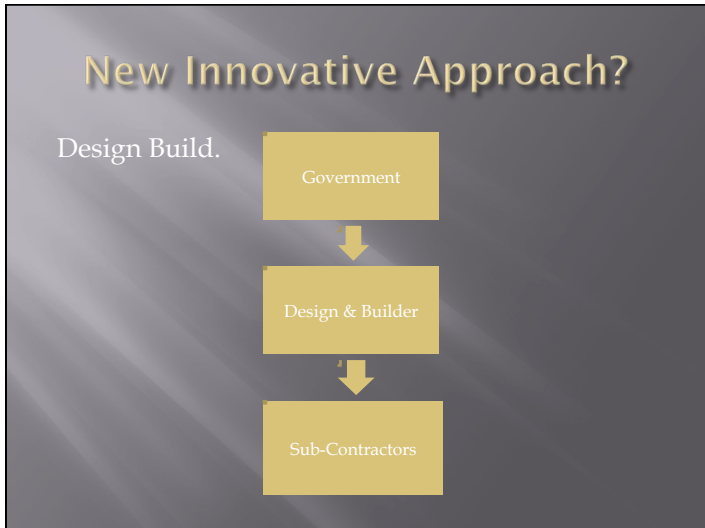
No bids will be read or considered which do not fully comply with the North Dakota bond and license requirements. In compliance with Section 43-07-12 of the North Dakota Century Code, each contractor submitting a bid must have a copy of his North Dakota Contactor's License or certificate of renewal thereof, issued by the Secretary of State enclosed in the bid bond envelope; must be licensed for the highest amount of his total bid combination including add alternates; and such license must have been in effect at least 10 days prior to the date of the bid opening.

No bid will be read or considered which does not fully comply with the provisions herein as to bonds and licenses, and any deficient bid submitted will be resealed and returned to bidder immediately.

Bid security shall be made payable to the Cass County, Fargo, North Dakota. Bid security of two lowest Bidders will be retained until Contract has been awarded and executed, but not longer than 45 days.

The Owner reserves the right to reject any or all Bids and to waive informalities therein.

BY: Ms. Bonnie Johnson, County Administrator.
Cass County – North Dakota.



- ### The Big Day - Bid Openings
- ❑ Bid must be complete!
 - ❑ Must including bond or cashiers check.
 - ❑ Most State’s law is a percentage.
 - Typically 5%
 - ❑ Incomplete bids resealed and returned☺

- ### Handling the opening
- ❑ Generally:
 - ❑ Mistakes before bid opening can be corrected by withdrawing and resubmitting
 - ❑ Mistakes discovered after opening but before award can be corrected if clearly evident on the face.

- ### Handling the opening
- ❑ Mistake discovered after award does not relieve the contractor from performing!
 - ❑ Under contract law -
 - ❑ Offer (i.e. bid)
 - ❑ Opening (i.e. acceptance)
 - ❑ Government has right to bond submitted.
 - Almost never enforced in my experience.

Informalities vs. Bid changes

- ❑ Once bid is accepted you cannot significantly re-negotiate the bid.
- ❑ Bismarck violated the competitive bidding statutes contained in Ch. 48-02, N.D.C.C., when it revised specifications to reduce construction costs and negotiated with the four low bidders without affording other bidders an opportunity to bid on the revised project.
 - Danzel v Bismarck, 451 N.W.2d 127

Minor Informalities

- ❑ Insignificant omissions or nonjudgmental mistakes
- ❑ Form rather than substance
- ❑ NDAC 4-12-10-01

You have the winner – Now What?

- ❑ You enter into a contract.
- ❑ Require a Surety Bond.
 - (Sometimes called a Performance Bond)
- ❑ At least the price of the contract.

Remedies

- ❑ Not much unless fraud or bad faith
- ❑ Maybe costs
- ❑ “we assume that his purpose in bringing suit was to have the invalidity of the proceedings by which the award was made adjudicated and determined as a protection to [himself] and to the public against similar irregularities in the future.” Danzel v Bismarck, 451 N.W.2d 127

Thank you!

Questions or comments?
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