

## Construction Bids and the Bidding Process

By Ariana A. Vugrek, Myer Law, P.C.

What is a bid and how does it become a contract? When is a bid binding on the bidder? What should you do before preparing a bid and what should you include in a bid? How can you increase your chances for becoming a successful bidder? This article will attempt to respond to these and other questions about construction bids and bidding practices for both private and public projects.

A contractor's bid is an offer to perform a specified scope of work for a fixed price. A private work bid becomes a binding contract when it is accepted orally, in writing or by the parties' conduct. Since construction contracts should always be in writing (and may subject a contractor to disciplinary action if they are not), the best practice is to obtain the customer's signature on a bid containing appropriate and required contract provisions (a topic for another article). A contract can be formed if a customer orally accepts or approves a bid at a meeting or over the phone. It is also possible to enter into a binding contract without a customer's definitive oral approval of a bid by accepting a down payment or by commencing work at the customer's request. To avoid misunderstandings or disputes, a contractor should always obtain a customer's signature on a written contract memorializing the terms of an oral agreement. All bids should have an "expiration date" (e.g. "This bid is good for 30 days and it must be signed and delivered to Contractor within that period to be binding on Contractor.").

For public works subject to competitive bidding requirements, a general or direct contractor's bid becomes a binding contract when the public agency awards the contract to the successful bidder. A notice of that award is sufficient to bind the contractor to its bid even if the public agency has not yet signed the contract. A subcontractor's bid for a competitively bid public work project can be binding if the general contractor incorporates it into its bid and is awarded the contract. Although a bid must normally be accepted to bind the bidder, courts will not allow a subcontractor to withdraw a public work bid in these circumstances based on the expectations of the parties when the bid is submitted.

Before preparing a bid, make sure you obtain all project documents (plans, specifications, addenda, schedules, equipment or material lists, etc.). Your bid should identify plan sheets, specification sections and details applicable to your scope of work. Familiarize yourself with project requirements for bonding, insurance, licensing and MBE/WBE goals. If you find inconsistencies between plans and specifications, or are unsure that a specification section applies to your work, ask for clarification in writing. Attend pre-bid job walks even if they are not mandatory. Take advantage of any reasonable opportunity to meet your potential customer and learn about their special needs or expectations.

When reviewing subcontractor bids, general contractors must verify that there are no gaps in the overall scope of work. Pay particular attention to bid exclusions. For example, don't use a roofing subcontractor's bid excluding gutters unless your bid includes another subcontractor's price for gutters. If a bid is disproportionately low in comparison to other bids for the same trade, scrutinize that bid and ask the bidder to verify its accuracy and completeness. If construction documents are incomplete for a private work project (e.g. because the owner has not finalized material selections), build in an allowance for any incomplete categories in the bid. Periodically review your overhead costs and labor burden to keep mark ups and labor rates up-to-date. For private work, include rate sheets with unit prices to be charged for extra labor and equipment.

If a "bid sheet" is included in the construction documents, or if the owner has asked that bids be submitted in a particular format, use that format as it often makes it easier for the owner to evaluate the numbers (and failure to do so may raise a "red flag" that the contractor will be difficult to deal with on the job). Most private owners will allow a contractor to submit a supplementary bid in the contractor's own format. If so, it is fine to submit both the bid sheet and a supplemental bid in the contractor's preferred format. Avoid construction jargon and irrelevant details in the bid, and be sure to proofread your bid for spelling and grammar.

In a clear, straightforward, polite and professional manner, a private work bidder should explain the work to be performed and provide prices for major work items. Include your company's qualifications, the number of workers needed to complete the project, names of your subcontractors, a payment schedule and acceptable methods of payment (e.g. credit card or wire transfer), potential nuisances such as loud noises, parking requirements, a line item cost breakdown, a list of all equipment to be used, expected start and finish dates and labor or material guarantees or warranties. If appropriate, break down the project into phases describing how each phase will be completed and the cost for each phase. Consider including references from prior customers who were satisfied with your work. Cost estimating software can prevent speculation in a bid, but may not be an affordable option for smaller contractors.

The above is not an exhaustive summary of items and information to include in your bid. Among other things, this article does not describe deadlines and procedures for withdrawing or correcting a public work bid, or essential provisions to include in a private work bid so that it will become a binding and legally compliant contract when signed

by the customer. You should consult an experienced construction law attorney to verify that your bids and bidding procedures and practices are appropriate for your trade, specialty or customer base.

Myer Law attorneys Raymond A. Myer and Ariana A. Vugrek have over 45 years of combined experience representing contractors, suppliers, owners, architects and engineers in construction-related matters ranging from the preparation and negotiation of contracts to litigation in state and federal courts. Myer Law provides this information as a service and it does not establish an attorney-client relationship with the reader. This article is not a substitute for legal advice. Since laws change frequently, you should contact an attorney to before using this information. Raymond A. Myer and/or Ariana A. Vugrek can be reached by phone at 805.962.0083, or by email at [rmyer@myerlawpc.com](mailto:rmyer@myerlawpc.com) or [avugrek@myerlawpc.com](mailto:avugrek@myerlawpc.com), or visit our website ([www.myerlawpc.com](http://www.myerlawpc.com)). February 2016.