

CONTRACTORS, ASSOCIATIONS AND THE BIDDING PROCESS

The process utilized to obtain quotes from contractors for work is called a bidding process. The bidding process is intended to satisfy a number of needs and to allow contractors to introduce themselves to an association. It should result in securing the best price, terms, quality, product and supplier based upon the competition between the contractors. Price is not the only purpose. The process includes a multitude of tangible and intangible factors. The more tangible material provided, the more likely that the contractor will be perceived as one who the association wishes to hire. This article attempts to address and identify from a legal perspective what is desirable or undesirable in the bidding process.

UNDERSTANDING THE BIDDING PROCESS

Associations and association managers should understand this process. They should request bids in a formal manner. Association bid requests should list all documentation to be provided by a contractor. It should include all the items listed in this article. Most associations have not followed a proper formal process. Consequently, it may become the responsibility of the contractor to voluntarily provide the materials.

A bid should contain all of the information and material necessary to fully identify and evaluate the contractor, the work to be done, the price, the work specifications or drawings, plus a contract which includes all of the criteria, requirements, rights and obligations that would be set forth in a contract prepared by an attorney representing the user.



The previous paragraph generally states what is to be included in a bid. More often than not associations do not receive adequate information as a bid. They receive a single sheet form bid proposal, which form had been purchased at a local office supply store, and had been filled in by

the contractor. The form identifies the contractor, often times generally and without any supporting information, includes a very sketchy description of the work to be provided, the price which the association is to pay, and a signature line and acceptance statement for the association. This single document is meant to be a contract, and may be a contract if signed and accepted by the association. However, the lack of details or sufficient terms and the inadequacy of the document make it unacceptable for association use.

BID CONTENTS

If the bid process is to be effective it should result in a clear understanding of everything that is agreed to and all of the various rights and obligations between the parties. To accomplish this a bid should contain the following:

1. A formal bid letter offering to perform specified services for specified dollars. The proposal may include options with respect to services to be performed and may include optional price additions or reductions predicated upon the optional work;
2. Detailed drawings and specifications showing and describing the work to be performed;
3. Brochures, specification sheets, drawings, standard installation instructions for major components, appliances or manufactured items, installation instructions for specific manufacturer's products.
4. A complete contract intended to be used, containing all contract provisions generally accepted by attorneys (AIA Contractors form contract). It should name the contractor and the association and incorporate all of the specifications, drawings, directions, instructions and materials. It should be signed by the contractor with a signature line for the association.
5. An addendum sheet detailing exclusions or

limitations with respect to the contract and the specifications.

6. A copy of all relevant insurance policies or certificates of insurance, with a supplemental attachment detailing special insurance included or provisions that are limiting or not included.



7. Copies of surety bonds or information detailing availability.

8. References for similar work and references generally including names, addresses and phone numbers of parties who may be contacted.

9. Brochures, advertisements and other information regarding the contracting organization, its makeup, work history, including details on principals involved, bank references and specific detailing of past work.

The material within each separate category listed above can be substantial in volume and detail. Comprehensive materials are appropriate in bidding a \$500,000.00 project. Is it excessive with respect to a \$500,000.00, \$5,000.00, \$500.00 or \$50.00 bid? No. The same information and material should be provided and should be considered no matter what the cost or effort. However, practical rather than legal considerations dictate that there be some flexibility and probably reduction in those requirements depending upon the circumstances and the costs of the project. It is possible, however, to meet many of these requirements with some creativity and thought so as to meet the needs and requirements of any association.

One must recognize that the association should have and evaluate all of the information identified, no matter what the nature of the work or no matter what the cost. Recognizing that need, we will now address some of the specific items listed to further expand on what should be provided.

SPECIFICATION CONTENTS

First is the area of specifications. If there are architectural drawings or engineering specifications which have been prepared, they should be incorporated by reference or attached. If there are problems or omissions in the

specifications, the problems or omissions should be set out in the bid. If there are limitations on the work, workmanship or materials, these should be explained, listed or detailed. If it is a system or article of manufacture which can be installed in accordance with either standard industry specifications or manufacturer's specifications, the manufacturer's specifications or industry specifications should be attached. The quantity of each material should be specified if the bid is a unit price or if quantity is relevant and the basis for pricing. Each item supplied or function undertaken should be listed including a listing of separate trades, tradespeople and work done by each trade. If specifications and drawings are not provided, and if there are not standard instructions for installation or construction, then the contractor should qualify the specifications to state that it is built at the direction of purchaser in a particular manner and configuration. The manner and configuration should be sketched and, to the greatest extent detailed as to avoid later challenge. The association, at acceptance, should sign and initial these changes.

Where the same work is repeated for the same or different clients, standard format specifications can be created to avoid the need to write new specifications each time. This extends to installation of standard roofing systems, from a shingle roof to all types of membrane roofs. The installation instructions can be provided with the specific roof system identified. If it is a shingle roof, the shingle weight, type, size, configuration, model or part number and manufacturer can be listed.

**DETAILED
SPECIFICATIONS
REQUIRED**

The underlayment type, weight and manufacturer can be listed, such as Johns Manville or equivalent, 15# fiberglass base mates, 50# fiberglass base mates used in all valleys. Any installation methods which may be optional should be listed as included or excluded. Flashing, the types and kinds should be listed. The material to be used should be listed and identified. Standard flashing configuration drawings and installation drawings and instructions for a particular flashing configuration which will be or can be used can be provided. You may specify that the entire shingle roof is installed strictly in accordance with standard procedures and methods set forth in the

NRCA (National Roofing Contractors Association) Steep Roofing Manual, 1984 edition (or most recent year).



Landscaping can be specified in great detail. Separate specifications can be drafted in paragraph or page form for installation of shrubs, trees, flower beds and wood-tie retaining walls. Separate detailed instructions can be drafted for grass fertilizing, including fertilizing methods and materials, grass cutting, methods used, standards for cutting, frequency, crew size and equipment utilized. A plumber can draft a specification which details something as simple as a washer replacement and reinstallation and packing on a faucet.

CONTRACT CONTENTS

The contract can be a comprehensive document such as the AIA (American Institute of Architects) contractors contract. This contract includes most provisions wanted by the parties. It can be modified as necessary to eliminate portions, change the focus and detail of portions, or change certain responsibilities. Any contract should clearly identify the parties; clearly identify the work; the price for the work; how and when payment is to be made; any acceptance conditions or requirements for the work; the period in which the work is to be performed or completed; including days and time; requirements for termination; for nonperformance or nonpayment which reasonably allow either party to terminate before completion if warranted, detailed insurance requirements; and places for signature by appropriate, authorized individuals. The continuing question is whether this volume and requirement is reasonable for small volume work or repetitive work. The answer remains yes and there are ways to satisfy those needs.

CONDITIONS REQUIREMENTS

The contractor who does small work or repetitive work might pre-qualify with the association. A standard packet of material can be provided and identified. It can include the insurance policy or insurance certificate, information about the company and/or individuals, including any promotional material. It can include standard specifications, drawings and descriptions for certain types of repetitive work that may be anticipated. Even roofing can be specified somewhat generally, as done previously in this article. It may even set out a price schedule for that work. There is no reason why the price schedule cannot be qualified for certain potential problems. There is no reason why ranges of prices for particular matters could not be set forth. A standard form of agreement can be prepared and submitted with the pricing specifications and details to be by way of exhibits or attachments to that standard form contract. All of these items can be submitted, reviewed and approved. Subsequently, a simple bid incorporating all of those items and including if necessary additional specifications and the pricing can be submitted. If the work is small and very repetitive, the general bid for on-going work can be accepted within the parameters and subject to the requirements that all of these contractual obligations be in place. Work within those groups can be requested by work order on an on-going basis and can then be performed without delay upon receipt of a work order.



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