

LESSON FIVE-THE BIDDING PROCESS

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INTRODUCTION

Construction contracts are traditionally awarded to the contractor who submits the lowest bid. If all the bidders on a specific project are equally qualified, and if their bids are based on the same set of bid documents, then price is the only variable. Bidding is therefore a fair and reasonable way to select the contractor for a construction project. When the contractor is selected on this basis, the agreement form used is generally AIA Document A101, Owner-Contractor Agreement (Stipulated Sum).

Alternatively, an owner may negotiate a contract with a general contractor or construction manager selected on the basis of qualifications alone, or qualifications and a fee proposal. In that case, the agreement is usually based on the *cost of the work plus a fee*, with a *guaranteed maximum price*, such as AIA Document A111. Using this method, competitive bidding is limited to subcontractors.

Whether bids for a project are relatively high or low depends on many factors. A competitive climate, in which many bidders compete for few projects, usually results in lower prices. On the other hand, an extremely short bidding period, a short construction period, or unusual or ambiguous requirements can all contribute to higher bid prices from all contractors.

Contractors are normally informed that a project is available for bids by advertisement or by an invitation to bid. The instructions to bidders included in the bid documents cite necessary qualifications for bidders, bid date and location, and other administrative details.

There are many legal rules and requirements applicable to bidding. Architects must pay particular attention to procedures for dealing with:

1. Informalities and irregularities
2. Selection of alternates
3. Mistakes in bids
4. Determination of the successful bidder

This lesson discusses the bidding process and its potential problems.

BIDDING ENVIRONMENT

Supply and Demand

The economic law of supply and demand applies to construction as much as to any other element in a free market. When demand exceeds available supply, construction products and services are relatively expensive. Conversely, when supply exceeds demand, prices usually decrease.

In most localities, there are relatively few qualified contractors available for any given size and type of project. If many owners want to build at the same time and the supply of contractors is limited, demand for contractors' services is high, and bid prices therefore increase. Each contractor is aware that many other projects are available, and he or she need not submit a very competitive bid.

Architects must therefore be knowledgeable about the level and type of activity in the local

construction market. They may suggest either accelerating or delaying a bid date, to avoid a bidding environment in which many similar projects are available to contractors. Owners usually benefit from lower prices if their projects are bid when other similar work is scarce.

Labor Rules and Construction Methods

Most contractors have relatively small full-time staffs. When necessary, they hire workers from local trade union hiring halls or, if a project has nonunion labor, from the available labor pool in the area. At times, certain skilled workers may be fully engaged on projects already under construction. An architect considering a steel structure, for example, may find the available supply of iron workers is insufficient to accommodate a new project at the bid date. If such workers have to be recruited and brought into the area, prices will increase. In that case, the architect may decide to change the structure to concrete, if concrete workers are available.

Specific construction methods are not equally popular everywhere. Attitudes in this regard are shaped by local traditions, the availability of certain materials, or local contractors' experience. It is generally unwise for an architect to design for, or specify the use of, materials and methods that are unusual in a specific locality. If contractors are inexperienced with the specified materials or methods, bid prices may be unusually high.

TIME ALLOWED FOR BIDDING

Contractors need adequate time to study bid documents and prepare bids. Otherwise, they must include contingencies, which may lead to unnecessarily high bids.

The optimum length of time depends upon many factors, such as a project's size and complexity and the number of similar projects being bid at the same time. In general, two weeks is the minimum time necessary to prepare a bid. Three or four weeks, or more, may be justified in some circumstances. There is usually very little improvement in the quality and accuracy of bids prepared during a lengthy bidding period, as compared to a brief one. In practice, general contractors are dependent on subcontractors for many components of a bid. Subcontractors usually do not submit their prices until the last minute, to avoid giving their competition advance information and being undercut, as a result.

An owner can improve the quality of bids by providing an adequate number of sets of contract documents to bidders. It is important that subcontractors and suppliers who are bidding have access to documents. Providing bid documents to local *plan rooms*, and listing projects with services such as F.W. Dodge facilitates access and can speed bid preparation.

TIME ALLOWED FOR COMPLETION OF CONSTRUCTION

Bidding documents must clearly state an owner's requirements concerning the length of the construction period, so that contractors can determine the amount of labor and equipment necessary to complete the required work in a timely manner.

A predetermined date of completion is a factor over which an architect often has little or no control. For example, a school board may require that a new school be ready for occupancy

at the beginning of the school year, or a developer may require that an office building be completed in time to satisfy occupancy commitments made to prospective tenants. An owner may establish the length of a construction period based on financing requirements and other business factors.

When an unrealistically short construction period is demanded by an owner, the required number of workers and the amount of equipment required to meet such a schedule tends to congest the construction site. Efficiency therefore decreases and progress is impeded. When contractors are forced to work overtime or provide additional shifts for long periods of time, similar problems occur. Doubling the number of workers and working hours is inefficient and does not result in twice as much work.

If a construction schedule is unrealistic, a contractor's problems may be further compounded when the proposed contract contains provisions for *liquidated damages*. For example, a contract may stipulate a construction period of 300 days with \$5,000 damages per day payable to the owner for each additional day required to complete the project. If a contractor estimates that it will take 320 days to complete the work, he or she will probably add \$100,000 (\$5,000 x 20 days) to the bid price to allow for payment of the potential liquidated damages. Therefore, the owner may pay for contingencies that never occur.

Contractors have an economic interest in constructing projects in the shortest possible time. However, an unrealistically short construction period may result in higher bid prices, with no apparent benefit to the owner.

Finally, the bidding documents should make clear the means and extent to which the contract will provide for extending the allotted construction period to allow for delays caused by *acts of God*, such as a tornado, earthquake, or other events beyond the control of owner and contractor.

EFFECTS OF UNUSUAL REQUIREMENTS

Role of Supplementary Conditions

The purpose of supplementary conditions is to modify the general conditions of the contract because of unusual or special circumstances or to accommodate specific project requirements. Contractors familiar with the AIA General Conditions, Document A201, expect the supplementary conditions to cite the special requirements of a project.

A contractor may learn, for example, that he or she will be required to purchase property insurance for the project, rather than the owner, who normally provides such insurance. Under these circumstances, the cost of such insurance must be included in the bid price. Modifying provisions of the general conditions may result in greater risk to the contractor, as well as increased cost. For example, a contractor may have to assume the risk that actual subsurface conditions will differ from those anticipated and shown in the contract documents.

The supplementary conditions may restrict the contractor to certain working hours, or to a certain portion of the site. These factors will influence the contractor's bid. The owner may be exempt from sales taxes or regulatory agencies' fees, and these unique conditions will likewise influence the contractor's bid. Bidders must therefore

carefully study the supplementary conditions.

Role of Pre-Bid Conference

A pre-bid conference provides a practical way to inform contractors about unique or special aspects of a project. An architect can describe important factors that contribute to a project's success, but which may not be evident from the construction documents. For example, the reasons for certain design decisions are not generally apparent from simply studying the construction documents. By itself, a detail or system may not appear to be the optimum solution; however, when considered in the overall design context, it may clearly be the best choice. Only the architect understands the rationale behind all elements of the contract documents. Information conveyed to contractors at a pre-bid conference may preclude substitution of other solutions or details.

Contractors usually have a relatively short period of time in which to familiarize themselves with documents that may have taken months to prepare, so it is unlikely that they will immediately grasp all the nuances of the design. Properly conducted pre-bid conferences can avoid potential misunderstandings by providing the architect an opportunity to explain the design intent and to discuss anticipated results with contractors.

At pre-bid conferences, the architect and owner can reiterate the instruction to bidders, outline the bid documents and highlight unusual provisions, conduct site tours, and record questions from bidders. Answers to questions must be formalized in an *addendum* to become part of the bid documents.

EFFECTS OF AMBIGUOUS DOCUMENTS AND ARBITRARY REQUIREMENTS

If construction documents are ambiguous and there are two or more reasonable interpretations, a bidder will usually choose the less expensive one. For example, if neither paint nor stain is specified for interior wood trim, a contractor would probably be justified in omitting the cost in his or her bid, despite the fact that no other finish is specified and interior wood trim is usually painted. If the contractor were subsequently asked to paint or stain the trim, a change order to reflect the additional cost would be required.

Some architects have special provisions in the contract documents to cover situations where more than one interpretation is possible. For example, they may state that contractors are to base their price on the most difficult or most expensive alternative wherever more than one interpretation is possible. Other documents may require contractors to bring all questionable aspects of the contract documents to the architect's attention prior to the bid date or else waive future claims for extra costs.

Arbitrary requirements may also affect bid prices. If the specifications require unnecessarily complicated procedures or cumbersome or restrictive methods of construction, or if the phraseology is obscure, bidders will increase their bids to meet these requirements. The contract sum will consequently reflect these higher prices. If during the course of construction, the contractor and architect agree on simplified procedures, methods, or language, the owner will receive little or no credit for these revisions.

ADVERTISEMENT AND INVITATION FOR BIDS

Public agencies are usually required by law to solicit competitive bids from qualified contractors. To do so, they publish legal notices in one or more newspapers.

Local laws at the project locations may specify requirements for an advertisement for bids. The following items are often included:

1. The name and location of the project.
2. The name and address of the owner and architect.
3. The date and time that bids are due, as well as the location.
4. The nature and scope of the project, as well as whether a single general contract or multiple trade contracts are required.
5. A description of the project. Normally the description includes the size of the project, principal materials and construction systems, and other pertinent technical data.
6. Whether or not bids will be opened and read publicly. On many publicly funded projects, bids are required to be read aloud or a tabulation of bids provided.
7. Where and how bidding documents may be obtained, including the type and amount of bid deposit, if any, required to obtain them.
8. The names and locations of places where bidding documents may be inspected by

interested bidders.

9. Details about proper procedures for submitting bids.
10. The type and amount of bid security, if any, that is required.
11. Whether or not the owner has the right to waive informalities in the bidding process or to accept a bid other than the lowest. On publicly funded projects, owners usually are not permitted to accept bids that do not conform precisely to requirements or to accept any but the lowest bid.
12. The date the advertisement was first published and the name and address of the party responsible for publishing it.

The text of an advertisement for bids is usually included in the project manual as a matter of information and record. See pages 5-8 and 5-9.

When projects are privately financed, invitations to bid are often used instead of public advertisements. The architect recommends contractors who are known to be skillful, responsible, qualified, and likely to be interested in bidding the project, based on its size and type. If the owner concurs, those contractors are sent an invitation containing information substantially the same as that found in a typical bid advertisement.

Invitations should be sent to as many contractors as necessary to provide adequate price competition. Usually, six bids are adequate, but the number may be more or less depending on the nature of the project and the level of activity in

TYPICAL ADVERTISEMENT FOR BIDS

Bids are invited from qualified contractors licensed in Virginia on the following basis:

PROJECT NAME AND LOCATION

*Grandcondo Management Building
11 Suffolk Street
Arlington VA 22206*

NAME AND ADDRESS OF OWNER

*Grandcondo Unit Owners Association
15 Suffolk Street
Arlington VA 22206*

NAME OF ARCHITECT

*Charles McCarthy, AIA
3004 Vine Street
Alexandria VA 22304*

SUMMARY DESCRIPTION OF THE PROJECT

The Project is to house the management and maintenance staffs of the Grandcondo. There will be approximately 2,700 square feet under roof, divided approximately 1/3 to office and 2/3 to maintenance. Construction will be concrete footings, brick and block bearing walls, wood rafters, and asphalt shingles. The office will be finished with gypsum drywall over wood framing. The maintenance area will be semi-finished, with exposed, painted block and some gypsum drywall over wood framing. There are toilet facilities and a unit kitchen. There is an unroofed, outdoor yard area that will be walled in. There is considerable free area around the Project location.

AVAILABILITY OF DOCUMENTS

Documents will be available after 8:00 AM on September 20, 1995.

ISSUING OFFICE

*GUOA
Attn: Sheila Dubois
15 Suffolk Street
Arlington VA 22206
703-555-5555*

DEPOSIT

*\$25.00 per set of Documents.
Make check payable to Grandcondo Unit Owners Association.
Deposit will be refunded (less cost to replace damages) for sets returned in good condition at the end of the bid period.*

SUBBIDDERS

Bidding documents will not be issued to Subbidders.

COPIES OF BID REQUIRED

One.

BID SECURITY

None required.

NAME OF PARTY TO RECEIVE BIDS

*Jackie Hays, President
Grandcondo Unit Owners Association
15 Suffolk Street
Arlington VA 22206*

TIME AND DATE FOR RECEIPT OF BIDS

October 12, 1995 at 12 Noon.

BIDS TO BE HELD OPEN

Bids may not be withdrawn for 90 days from October 12, 1995.

BID OPENING

Bids will be opened and read publicly on October 12, 1995, at 1:00 PM at the Issuing Office.

QUALIFICATIONS OF CONTRACTORS

Bidders must be licensed in Virginia. They must also submit, upon request, a certified statement, with appropriate references, indicating that they have completed at least three projects in the last three years, each with a contract value of at least \$250,000.

BONDS

A Performance Bond/Labor and Material Payment Bond will each be required in an amount equal to 100 percent of the Contract Sum. The form of the Bonds will be AIA Document A311, Performance Bond and Labor and Material Payment Bond, 1970 Edition. Bonds will be written to the benefit of the Grandcondo Unit Owners Association.

AGREEMENT

AIA Document A107, Abbreviated Owner-Contractor Agreement Form for Small Construction Contracts-Stipulated Sum, 1987 Edition.

CONTRACT TIME

Contract Time from Notice to Proceed until Substantial Completion will be 130 calendar days.

the local construction industry. The invitation to bid should also be included in the project manual.

INSTRUCTIONS TO BIDDERS

General

The Instructions to Bidders, AIA Document A701 (see Documents Package) is designed for use with the General Conditions, AIA Document A201. Its purpose is to establish the basic requirements for bidding.

The Instructions to Bidders defines important terms, either directly or by reference to definitions in the AIA General Conditions, in order to avoid ambiguity. For example, the bidding documents comprise the following:

1. The advertisement or invitation for bids.
2. The instructions to bidders and any supplementary instructions.
3. The bid form.
4. Sample bidding and contract forms.
5. The proposed contract documents, including addenda, if they are issued prior to receipt of bids.

The AIA Instructions to Bidders also provides that each bidder, by submitting a bid, implicitly states that he or she understands the bidding documents, has visited the project site, and has become familiar with the local conditions under which the work is to be performed. Local conditions in this context include ordinances,

labor rules, and physical conditions. This statement by bidders is useful in avoiding claims for additional costs for work required by conditions not anticipated. Each bidder also states that the bid is based, without exception, on the information in the bidding documents. Consequently, bidders may not base their bid price on substitute materials even if they consider them to be equal to those specified.

Bidding documents are normally issued only to prime contractors in complete sets to prevent subcontractors from submitting bids based on partial documents related only to their part of the project. For example, an electrical subcontractor using only the electrical drawings and specifications might not be aware of important requirements, such as connections to equipment contained in the mechanical drawings or in Division One of the specifications, and might not include the cost of such requirements in his or her bid.

Role and Timing of Addenda and Substitutions

The AIA Instructions to Bidders requires bidders to request, at least 7 days prior to the bid date, that the architect clarify any unclear or ambiguous conditions existing in the drawings and/or specifications. For example, if the contract documents are inconsistent and show two different types of carpeting for the same floor area, a contractor might inadvertently base his or her bid on the more expensive one. If the architect's intent is to use the less expensive carpet, the bids will be unnecessarily high.

A contractor may propose an equally good, but less expensive, *substitution* for a material, system, or product. Bidders who propose substitu-

tions must submit technical documentation to the architect for review and evaluation at least 10 days before the bid date. If a substitution is acceptable to the architect and owner, the architect will issue an *addendum* to all bidders at least 4 days prior to the bid date. Only substitutions approved by addenda may be used as a basis for bid prices. Bidders must acknowledge in their bids that they have received and bid on all addenda issued. Bidders should only rely on information appearing in addenda, never on information provided orally.

By providing a procedure for addenda and substitutions, the AIA Instructions to Bidders provides a means for the architect to control costs and reduce errors and potential future claims. See page 5-12.

Bidding Requirements

QUALIFICATIONS OF BIDDERS

Either before or after the bid date, contractors may be required to prove that they are qualified to perform the work required by the bidding documents. Factors to be considered may include the scale and type of projects completed, a financial statement, physical plant (machinery and equipment), and personnel (especially supervisory staff). The quality of a bidder's work can be evaluated by reputation, references, and visits to recently completed projects.

Some public agencies maintain lists of contractors whom they have investigated and *pre-qualified*. Under certain circumstances, only pre-qualified contractors may bid on the

agency's projects. Similarly, if a contractor is bondable, it indicates that a surety company has investigated many of the factors mentioned above and has pre-qualified that contractor to be financially capable.

FORM AND COMPLETENESS OF BIDS

Normally, bidders must submit their bid on the form included in the bidding documents. This procedure allows the owner to compare bid proposals on the same terms and conditions. Bids must be either typed or written in ink, with the price shown in both numerals and words. If there is any discrepancy between them, the words prevail over the numbers. If the bid documents include alternates, each must be bid. If the project is divided into several separately identified parts, of which some are awarded while others are not, a bidder may withdraw his or her bids if he or she is not awarded a contract for all the parts. Finally, every bid proposal must be signed by a person legally authorized to bind the contractor. If the contractor is a corporation, appropriate officers must sign, and the corporate seal should be applied. A partner should sign on behalf of a partnership. See pages 5-13 and 5-14.

On occasion, bidders may attach a list of qualifications or exclusions to their bids. Because the AIA Instructions to Bidders requires bidders to furnish bids based solely on the bid documents, the submittal of qualifications or exclusions violates the bidding requirements. The owner can either reject the bid, rebid the project, or award the contract and adjust the contract sum by change order if the qualifications or exclusions affect cost. The latter option is not permitted on publicly funded projects.

TYPICAL ADDENDUM

ADDENDUM #1

March 6, 1995

TO DRAWINGS AND PROJECT MANUAL FOR
GRANDCONDO MANAGEMENT BUILDING
DATED FEBRUARY 8, 1995
CHARLES McCARTHY, AIA, ARCHITECT

This Addendum covers changes to the Drawings and Project Manual and will become a part of the Contract Documents. Bidder shall include all effects which these items may have on its proposal.

Sheet A1 - Site/Roof Plan

Item 1.

Delete base course shown under the portland cement concrete paving in 2/A1, 3/A1 and 4/A1.

Item 2.

The sanitary outlet from the building has been relocated on the same line, but to the south of the building.

Sheet A2 - Floor Plans

Item 3.

In Room 107-Restroom, Room 110-Lockers, and Room 111-Washroom, delete ceramic tile as the wall finish. Instead, use finish #1 - Drywall Painted. For both the walls and the ceilings in the above rooms, use:

*IPS-12: 1st Coat - Latex Primer (TT-P-650)
 2nd Coat - Polyester epoxy (TT-C-545)
 3rd Coat - Polyester epoxy (TT-C-545)*

Not less than 4.0 mils dry film thickness

This change is also reflected on Sheet A5, Elevations 11, 13, 15, 16, and 17.

Item 4.

Delete the vinyl base in the following rooms in the maintenance area: 109, 112, 113, 114, 115, 116, and 119.

TYPICAL BID FORM

FROM:

Name of Bidder _____

Address _____

Telephone _____

Area Code

Telephone Number

TO:

ATTENTION:

A2.01

BASE BID: The undersigned, having inspected the construction site and familiarized him/herself with all conditions likely to be encountered affecting the cost and schedule of work, and having examined all of the Contract Documents, hereby proposes to furnish all labor, materials, tools, equipment, and services required to perform all of the work in strict accordance with the Contract Documents as prepared by

for the

for the Base Bid Sum of:

(Use Words)

Dollars (\$ _____)

(Use Figures)

and if this proposal is accepted, will execute a formal contract equal in form to that bound in the Contract Documents, to this effect.

A2.02

ADDENDA: The undersigned further acknowledges receipt of addenda as listed below and represents that any additions or modifications to, or deletions from the work called for in these Addenda, are included in the Base Bid Sum, and Unit Prices if affected thereby.

ADDENDUM NO.

DATED

ADDENDUM NO.

DATED

(NOTE: If no Addenda have been received, write in "NONE.")

A2.03 *DECLARATION: The undersigned declares, by executing this Proposal, that:*

- A. *This proposal shall remain valid, for acceptance by _____ for a period of not less than thirty (30) days from the bid due date.*
- B. *All requirements concerning licensing and all other local, state, and national laws have been or will be complied with and that no legal requirements will be violated in the execution of the work if the proposal is accepted.*
- C. *No person or persons or company other than the firm listed below or otherwise indicated hereinafter have any interest whatsoever in the proposal or the contract that may be entered into as a result thereof. This proposal is submitted in good faith, without collusion or fraud.*
- D. *The person or persons signing this proposal is/are fully authorized to sign on behalf of the conditions and provisions thereof.*

SUBMITTED THIS _____ DAY OF _____

NAME OF FIRM _____

STREET ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

OPERATING AS: (Complete, and strike out words that do not apply)

A CORPORATION UNDER THE LAWS OF THE STATE OF _____

A PARTNERSHIP (GIVE FULL NAMES OF ALL PARTNERS)

ENCLOSED: One (1) construction schedule

TIMELINESS OF BIDS

The AIA Instructions to Bidders provides rules for timely submission of bids. They are designed to preclude bidders from obtaining a competitive advantage by submitting a bid after the established deadline. Bids must be in writing and transmitted by mail, courier, fax, or electronic mail to the stipulated person and place prior to the established deadline. Bids received orally or over the telephone should not be considered.

There have been cases where bids were submitted one minute past the deadline and consequently rejected. When this circumstance is challenged in court, the ruling is usually based on whether the late bidder obtained any advantage. If bids had not yet been opened at the time of the late submission, and if the rejected bid was only slightly late, a court would probably consider it to be a legitimate bid.

Bids for private work can be opened publicly or privately. Bids for public work must be opened publicly. If opened publicly, amounts for bids and alternates are read aloud and a written summary is distributed to bidders upon request.

The AIA Instructions to Bidders states that the owner has the right to reject any or all bids. The low bidder is not automatically awarded the contract. Bids must be evaluated, and a contract may be awarded to a contractor other than the low bidder. This may occur even on publicly funded work, since instructions to bidders usually state that the award will be to the *lowest responsible* or *lowest and best* bidder. However, under such circumstances, the owner and architect must be able to substantiate that the low bidder is, in fact, not responsible.

VALIDITY OF BIDS

A valid bid must conform to the requirements of the advertisement or invitation to bid and the instructions to bidders. If a bid proposes more, less, or work other than that required in the documents, it may be considered unresponsive. Objectionable deviations may be concerned with the form of the bid, the work itself, time for performance, bonding requirements, or terms of the proposed contract. Many owners have funding limitations. If all the bids are for an amount greater than the available funds, they may all be rejected by the owner even if they are otherwise proper.

NEGOTIATED CONTRACTS

For *cost of the work plus a fee* contracts, the general contractor (GC) or construction manager (CM) selected by the owner solicits bids from subcontractors when the bid documents are ready. On *fast-track* projects, certain trades requiring long lead times, such as structural steel, curtain wall, or elevators, may be bid in advance of other trades. After the GC or CM receives and evaluates the bids, they are submitted to the owner for approval. For *stipulated sum* contracts, the owner has limited opportunity to approve subcontractors and no opportunity to approve the subcontractors' bid amounts, before entering into an agreement with the GC.

Waiver of Informalities and Irregularities

PRIVATE WORK

Under the provisions of the AIA Instructions to Bidders, an owner has the right to waive any irregularity or informality of any bid proposal and

to accept the bid that he or she believes to be in his or her best interests. This right should only be exercised with regard for the integrity of the bidding process. It should not be used to promote favoritism, nor as a subterfuge to allow a bidder to gain additional time or information in order to manipulate subcontractors and prices for a successful bid.

The crucial considerations are the significance of the deviations from the provisions of the instructions to bidders and the extent of the potential damages to other bidders resulting from the waiver of irregularities.

PUBLIC WORK

Agencies that award contracts from publicly funded projects have a duty to procure the best quality construction at the lowest price, consistent with budget limitations and other constraints imposed by law. Everything they do is subject to public scrutiny and criticism, and the agencies must avoid even the appearance of impropriety. As a result, public officials are very meticulous about the bid form and the bidding process. They are unlikely to waive informalities or irregularities in the bidding process, which could be construed as favoritism in violation of the public trust. Under these circumstances, it is not uncommon for an unsuccessful bidder to file a legal action, preventing a bid award, and, consequently, delaying the project.

Alternates

TYPES

Alternates are changes to specific parts of the drawings or specifications that allow an owner to

tailor bid proposals to fit the available funds, or to allow a choice between alternative materials or equipment. Alternates may be either additive (an addition to the base bid) or deductive (a deduction from the base bid). Additive alternates are preferable, because credit to the contract sum for deleted work is usually less than the additional cost for the installation of the same work.

SELECTION PROCEDURES

The AIA Instructions to Bidders gives an owner the right to accept any alternates, in any order or combination. The low bidder is determined by the sum of the base bid and the cost of additive alternates, and the credit of deductive alternates. An owner may choose alternates calculated to buy the most (or best) construction for the available funds, or may select a combination of alternates that appear to be in his or her best interests. An owner should not select alternates merely to manipulate the bidding process to give one bidder an advantage at the expense of the others.

To avoid such manipulation, public agencies may prescribe that alternates be accepted or rejected in order of priority as they appear in the bid documents. For example, a public agency could not accept the base bid plus alternates 4 and 5 without first accepting alternates 1, 2, and 3.

Unit Prices

Where the quantity of a particular type of work is unknown, or varies from that shown in the contract documents, the cost of the work may be determined on the basis of *unit prices*. The units involved, such as cubic yards of concrete, must be described accurately, and base quantities must

be reasonably easy to determine. Often, the contract documents specify the quantity of materials on which to calculate the base bid. Bid forms should provide space to list all unit prices that a contractor is required to quote. Since prices for added work may be different from those for deleted work, all unit prices should be quoted as either *additions to* or *deletions from* the contract. Unit costs cannot be used to determine the low bid, but rather to adjust costs once the contract is awarded.

Withdrawal or Correction of Bids

By submitting a bid, each bidder agrees not to modify or withdraw the bid for a specified period of time after the bid date—usually 30 to 60 days. If a bid is submitted before the due date, however, it may be withdrawn and resubmitted within the original bidding period and before the bid opening.

A bidder may wish to withdraw the bid if, for example, he or she finds soon after the opening that the bid contains substantial mathematical errors. Furthermore, he or she may determine that a large item of work has been inadvertently omitted, or a subcontractor's bid has been misstated. The law recognizes the basic unfairness of binding a contractor to a bid that contains an honest mistake. On the other hand, permitting a bid withdrawal may open the door to manipulation of the bidding process and possible favoritism. Regardless, clerical mistakes, or those caused by the omission of a substantial portion of the work, are usually adequate justification to withdraw a bid.

Even on publicly funded work, the withdrawal of a bid may be allowed. However, changes and

corrections after submittal and bid opening are not allowed. The need to avoid any appearance of favoritism and to serve the public interest in obtaining the lowest price override these considerations. For both private and public work, contractors are responsible for their own errors in judgment. For example, if a contractor estimates that certain work will require one crew three days to complete, but in actuality requires three crews two weeks to complete, the owner bears no legal or financial responsibility. The contractor must either absorb the additional costs or refuse to enter into the contract, with consequential forfeiture of his or her bid security as well as potential legal action.

Determination of Successful Bidder

Paragraph 5.3 of the AIA Instructions to Bidders considers the determination of the successful bidder. It states that the owner intends to award a contract to the lowest bidder if all bidding requirements are met and if sufficient construction funds are available to award such a contract. However, it also states that the owner reserves the right to waive informalities and irregularities in bids and to award a construction contract to someone other than the low bidder.

Contractors are entitled to rely on the integrity of the bidding process. The affirmation of intent to award a contract to the low bidder is important. If a contractor suspects that an owner might award the construction contract based on criteria other than price, there is no incentive to bid competitively.

At times, an owner may make minor changes in the contract documents before the construction contract is signed. If so, such changes and their

effect on the contract sum can be negotiated with the low bidder. If major changes are desired, as for example where all bids are well in excess of the project budget, an owner may reject all bids and rebid the project based on substantially revised contract documents. The original low bidder may not necessarily be the successful bidder on the second bid based on the revised documents.

The Instructions to Bidders also outlines requirements for data to be submitted after the bid date and prior to the award of a construction contract. For example, if they have not been pre-qualified, contractors being considered may be asked to submit a statement of their qualifications.

After the successful bidder has been selected for award of the construction contract, he or she must submit information on suppliers and subcontractors that are proposed for major portions of the work. The owner and architect then have an opportunity to review the general contractor's list and to make reasonable objections to any of the proposed suppliers or subcontractors. Under these circumstances, the contractor may withdraw the name of a supplier or subcontractor and propose a substitute with the bid price being adjusted accordingly. If a substitute supplier or subcontractor is proposed by the general contractor, the owner may either accept the substitution (with modified price) or disqualify the bidder. Once approved, proposed suppliers and subcontractors may not be substituted after the contract award.

Finally, the AIA Instructions to Bidders covers an owner's right to require a Performance Bond and Labor and Material Payment Bond, as provided for in the advertisement or invitation

for bids. The cost of this bond is included in the bid amount. It also describes the form to be used for the contract for construction.

Bid Security

FORM

The advertisement or invitation to bid should state whether a bid bond or a bid security is required, and if so, in what form. Usual forms of bid security include bid bonds, cashier's checks, or certified checks. The advertisement or invitation should also state the period of time for which the securities will be held by the owner.

ADEQUACY

The required amount of bid security may be stated either as a fixed sum of money or as a percentage of the bid price. Normally the amount, using either method, is between five and ten percent of the estimated contract price.

Although all bidders are required to provide a bid security, once the bids are opened owners usually retain only that of the three or four lowest bidders until a contractor actually signs the construction contract. It is unlikely that other bidders would be awarded the contract, and, consequently, it is unnecessary to hold their security. An owner has the right to sign a contract for the lowest bid amount. If the low bidder refuses to sign, he or she must forfeit the bid security with the understanding that the amount of the bid security will fully or partially cover the difference in cost between the low bid and the second low bid to eliminate or minimize the owner's financial loss.