

Navigating the Competitive Sealed Proposal Alternative Delivery Method



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A Balanced Approach to Construction Law.

With the increase in popularity of alternative delivery methods for governmental projects, contractors face the challenge of modifying business development practices to ensure the ability to compete for projects. The opportunity to construct complicated civil projects and many vertical projects requires the ability to respond effectively to requests for proposals for projects bid using a competitive sealed proposal method.

The most basic challenge in responding to a competitive sealed proposal involves the unique nature of each proposal. A cost estimate no longer provides enough information for the owner to select a contractor in a competitive setting. When responding to a competitive sealed proposal, contractors need to sell themselves and their personnel.

Historically, engineering and architectural firms have responded to requests for qualifications with no emphasis on price because the procurement statutes for design professionals requires owners to focus on competency and qualifications for a design scope. Now, under many competitive sealed proposals, contracting firms may need to consider approaching a proposal in much the same manner.

A starting point for each response to a request for a competitive sealed proposal project should be an evaluation of the selection criteria and consideration of the information requested. The next item for consideration is the weight assigned by the owner to each criterium. By evaluating the relative weight of each of the selection criteria, the bidding contractor can determine which items and what information is most important to the owner. Once that understanding occurs, the contractor can focus and direct the information it provides to the items of particular importance to the owner.

Shifting focus briefly, the complaints often stated about competitive sealed proposals tend to circle around the fact that price can be reduced in importance to such a degree that time-tested efficiencies in bidding no longer matters. In line with that complaint are calls to require price be required to have a minimum

percentage of the weighted factors to ensure competitive pricing still controls. While the logic behind these complaints have merit – that the tax paying public deserve to get the best value for their dollars, and by allowing the delegation of price to a lower weight removes that ability – price almost always plays a major factor in an owner’s selection criteria.

With that factor in mind contractors should recognize that a comprehensive and quality estimate for the pricing component of every competitive sealed proposal remains essential to winning a project. However, the other selection criteria may be equally as important as price. If other criteria share equal or similar weight to price, then the contractor must focus on the presentation of those facts for the owner’s consideration.

For example, school projects and water or electrical service extensions into newly developments share an emphasis on schedule. If the selection criteria, for example, provide 40 percent to price and 30 percent to schedule controls and compliance, the contractor’s staff preparing the response should focus significant thought, preparation, and narrative to the contractor’s methods of schedule management. Simply identifying prior projects that have come in “on time and under budget” will not suffice in most of these scenarios. Owners will want to learn about the contractor’s program for material procurement, subcontractor management, the ability to accelerate and other methods that the contractor may utilize to ensure schedule compliance.

In addition to presenting sufficient information, the packaging and presentation of that material will also have an impact. A thoughtful and well-organized sealed proposal will have an impact on a selection committee determining what score to assign a contractor on a particular item. When an owner requests information about contractor’s experience and personnel as a selection criterium, as happens frequently, professional resumes for persons intended to staff the project and a comprehensive and detailed list of similar projects will ensure the contractor earns maximum points. The more

information a contractor can provide that explains similarities as well as the ability to overcome challenges, the better chance the contractor will have for earning full points.

Being cognizant of the type of content requested, as well as the manner of presentation, will allow contractors to better navigate the world of competitive sealed proposals. Developing a file or database of this information will also allow a contractor to more easily compile information for a response. Having these resumes, project lists, and references available and on-file will save countless hours of staff time in preparing responses. Certainly, while preparing one’s first or second response to a competitive sealed proposal may be time consuming and seem almost not worth it to a contractor who has focused on competitive bidding for its history, with experience and implementation of best practices comes efficiencies that will ultimately result in an easier ability to respond to competitive sealed proposals.

Finally, remember that owners have the ability to contact other owners. A contractor who lists a certain project as an example upon which to be judged for similar experience should choose wisely. Owners frequently reach out to other owners to discuss experiences with a contractor and to check the veracity and comprehensiveness of a response. Also, be careful who might be listed as references for a contractor in a proposal. Owners will call those references. Finally, contractors should always be truthful in response to qualification or selection criteria questions. I have seen multiple contractors over the years lose work because the references they provided did not support the comments made about a project in a proposal or contractors were less than truthful or forthcoming about instances in their history involving default or litigation. Because many records are available to the public with a little effort, it’s not difficult to fact-check a proposal for accuracy.

Keeping these ideas in mind may ease the ability to respond to a request for proposal and may allow contractors to transition successfully into the world of alternative delivery methods.

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