

EPROCUREMENT BIDDING/BONDING GUIDELINES

INTRODUCTION

A coalition of organizations deeply involved in the procurement and bonding processes of public projects, has joined together on a set of common principles addressing the use and impact of electronic methodologies in the procurement process. The **Associated General Contractors of America (AGC)**, the **American Road & Transportation Builders Association (ARTBA)**, the **American Subcontractors Association (ASA)**, the **Construction Management Association of America (CMAA)**, the **Surety Association of America (SAA)** and the **National Association of Surety Bond Producers (NASBP)**, representing the supply side of construction industry stakeholders, have developed the following document to assist public owners implementing electronic procurement as guidance regarding methodologies and system characteristics that respect the interests of all parties. The stakeholders acknowledge that the advent of electronic procurement and bonding offers unprecedented opportunities to reduce processing costs, enhance transparency and increase efficiency for all parties. Such electronic methodologies, however, must be open, interoperable and have adequate security and privacy safeguards to preserve and promote the integrity of a competitive procurement environment. At a minimum, electronic methodologies within the procurement/bond process should adopt clear procedures that reduce confusion and that allow access to all qualified bidders. Further, any process should not affect the legal rights and responsibilities of all parties: owners, construction managers, contractors, sureties and bond producers. This document serves to establish common parameters for all public owners in the electronic procurement and bonding process.

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GENERAL PRINCIPLES

Public entities should work toward development of an open standard for electronic bidding that fosters interoperability. Ideally, such a standard would be implemented easily by any party working with any number of technology providers who have implemented the standard. Public entities should not require the exclusive use of proprietary authentication technologies, but rather they should require a protocol that can integrate with a variety of systems that meet the required standards. Implementation of proprietary authentication technologies may increase costs and limit bidder access by placing an undue burden on parties to obtain and implement multiple technologies and systems to satisfy the requirements promulgated by each public entity.

Further, AGC, ARTBA, ASA, AASHTO, CMAA, SAA and NASBP recommend that the following be taken into consideration by public entities considering the utilization of electronic methodologies during the contract procurement process:

- **ELECTRONIC PROCUREMENT/BONDING GENERALLY:** Implementation of an electronic procurement methodology should include requirements to file bonds electronically (either/both at the time of the initial bid-bond and/or final bond). Such requirements should be phased in over a reasonable period of time, so that parties not yet automated may continue to submit paper/hard copy documents. This will provide a needed transition period and ensure fair and equal opportunity to all bidders.
- **INFORMATION AVAILABILITY:** Procurement information on proposed projects, including project announcements, project plans and specifications, addenda, reports of bid results, and the award itself must be readily accessible to all interested bidders. Bidders should be permitted to request any clarifications to plans and specifications in sufficient time to permit issuance of addenda. All addenda should be issued in sufficient time to allow processing by the bidders. Addenda and/or any changes to the proposed project should be publicly available and electronically issued to each registered holder of procurement documents.

- **RELIABILITY:** The methodology for transmittal of bids or proposals must be available to all interested and qualified construction service organizations and the probability of system failures should be taken into account and minimized. Special attention should be given to ensure system reliability and accessibility, particularly at the critical period of high network traffic when submittal deadlines occur. Policies dealing with computer and/or network problems – either by the recipient of the bid/proposal or the entity submitting the bid/proposal – must be developed and distributed/communicated to all interested parties in advance as reasonably as practicable.

- **SECURITY/PRIVACY:** Security and privacy are among the most serious concerns of contractors related to the submittal of the bid or proposal. Bidders involved in the procurement must have confidence that their electronic submittal will remain confidential to both the owner and other bidders until the designated opening time. A “lock box” mechanism – similar in application in the hard copy environment – that prevents third parties from gaining access to the electronic submittal is recommended. An accounting house or other governing legal authority should certify the system’s security.

- **DOCUMENTATION:** The process for submission of required procurement documents must be as simple as possible. Any documentation required prior to submission of price information should be isolated and delivery allowed ahead of the deadline for the bid or proposal.

- **AUTHENTICATION/VALIDATION:** The electronic procurement methodology includes authentication, validation and receipt information. The process must be able to ensure that a communication from a particular bidder has originated from that individual bidder only and that the data has not been and cannot be altered. The contractor, likewise, must have assurance that its communications are delivered only to the intended recipient. The bidder must be able to receive a date and time stamp validation that it has been delivered.

- **COMPATIBILITY:** The procurement methodology employed by the receiving entity should permit the use of electronic procurement software and operating systems that are generally available to the contracting community at a reasonable price and fully compatible with the bidder's systems.

- **ETHICS IN PROCUREMENT:** Any electronic procurement methodology and process must maintain the highest ethical standards to protect the viability of the public procurement process. For example, the bid amount of one competitor should never be divulged to another prior to the opening of bids. In addition, because all bid submissions are final, a procuring agency must not permit the auctioning of bids for a construction contract to lower prices, at any time.

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ELECTRONIC PROCEDURES IN THE PUBLIC CONTRACT PROCUREMENT PROCESS

The implementation of the above Guidelines is part of an ongoing linear procurement process. The suggested procedural applications below set forth recommendations in light of the chronology of the process

I. ANNOUNCEMENT OF THE PROJECT

COMMUNICATING THE OFFER

The Internet has created an additional forum for advertising projects. Several states and other procuring agencies have now created a single website that posts notices for projects to be let. Provided that the procuring agency takes reasonable measures to alert all interested parties about the website and the website is readily accessible to all those interested, advertising procurement opportunities and soliciting offers via the Internet is acceptable for public projects as a supplement to traditional means.

The advertisement for an electronic procurement should include all technology that is required to participate electronically including software requirements. The advertisement should provide clear notice of procedures in the event the procuring agency's system malfunctions during the course of the submission of offers/bids.

The coalition of interested stakeholders in the public contract procurement process suggests the following procedures –

- All bidders that have submitted a bid/offer will be notified of the malfunction and provided with: an extended deadline not to exceed two business days after the original date, and an option to withdraw the submitted bid/offer without forfeiture of the bid security. No additional bids/offers will be accepted.
- All remaining bids/offers will remain sealed and confidential until the malfunction is corrected.

- If the malfunction continues for more than two business days after the original deadline, all bids/offers must be returned and the procurement must be rescheduled.

All information, including project announcements, project plans and specifications, addenda and reports of results and award must be readily available and accessible to all interested bidders through a project website. Although project drawings and CAD documents may be available in electronic form, these documents also must remain available in paper form.

ADDENDA AND CHANGES

All bidders must compete in a procurement on the same or comparable basis so that no particular advantage or disadvantage accrues to any potential competitor or to the contracting agency. All information regarding the project, including all addenda and changes, must be updated regularly on the project website. In addition, all plan holders should be notified of changes and addenda to job specifications by e-mail within a reasonable period of time, not less than seven (7) days prior to deadline for submission.

II. SUBMISSION AND EVALUATION

SUBMITTAL

Competitors must have the ability to modify their submittal right up to the time of the submission deadline. The methodology used should include a date and time stamp when submittals are sent and when they are received, and the contractor should be electronically notified of its receipt. Such notification should list the time the bid or proposal was accepted and the name and contact information of the receiving agent/manager.

The methodology should prevent bids from being received after the submittal deadline. Public owners should continue to permit hard copy delivery, at least during a transition period, and allow hard copy delivery as an option in the event

of computer malfunction (as long as the submission is delivered/received within the deadlines previously announced).

CERTIFICATION

Digital signatures or similar encryption methods should be used to ensure the integrity of submittals, and to ensure that the bids or proposals are not altered. A “lock box” process or other similar mechanism is necessary to prevent any third party from improperly gaining access to any private/confidential information regarding the electronic submittal until bids or proposals are opened.

BOND ISSUANCE REQUIREMENTS

Any electronic bonding methodology (whether as part of the initial bid-bond and/or final payment or performance bond) must possess certain essential characteristics, including –

- The methodology maintains the traditional legal relationships and obligations among the parties.
- The filing process ensures the validity and nonrepudiation of all aspects of the bond transaction.
- The methodology includes: (1) a record that sets forth the language of the obligation and (2) the signatures of the surety and principal using electronic or digital signature technology.
- Permits the signing by two or more different parties at different points in time.
- Provides assurance to obligee that, aside from its signature, principal has not altered the bond transaction.
- Ensures the identity and authority of the surety’s attorney-in-fact by incorporating or allowing the incorporation of unalterable electronic powers of attorney, which must be granted by the surety.
- The electronic bond transaction can be stored and retrieved freely by all parties. The vendor will escrow the reader source code upon request.
- The bond transaction must be stored in a secure manner and transmitted using 128-bit encryption to avoid repudiation and tampering.

Suggested characteristics should include:

- Uses ACORD Data Standards. These data standards are applicable to insurance transactions and would ease the data transfer between surety agent and surety company of the bond information.
- Integrates with the variety of systems and processes of the various parties involved in the bond transaction.
- Permits the use of a trusted third party to certify the delivery and signature.

BID OPENING

If the competition is on a low-bid basis, public opening of bids is necessary regardless of the method of submission. All bids should be opened and read in a manner that preserves the integrity and transparency of the bid process.

ELECTRONIC ANALYSIS

If the competition is on a low-bid basis, bid tabulations should be posted on the project website as soon as is reasonably possible after the bid opening. Analysis and treatment of non-responsive bids or proposals should be handled in the same fashion as bids or proposals submitted in hard copy and prior to electronic communications. If the competition is on a low-bid basis, the procuring agency should post the name of the selected bidder on the project website by the close of business on bid day.

III. CONTRACT AWARD AND ISSUANCE OF FINAL BONDS

With respect to projects that are awarded on a low-bid basis, and subject to controlling state law, the contract should be awarded to the lowest responsible bidder. If after the bids are opened, the low bidder claims a substantial error in the preparation of the bid and can support the claim, the owner should consider whether to permit the bid to be withdrawn and the bid guarantee returned. The project website should include the status of the award and, if the project has been awarded to a contractor, the website should include the notice of award.