When Bad Things Happen to Bids
Strategies for Ensuring a Successful Public Works Project

Mike Purdy
Michael E. Purdy Associates, LLC
(206) 762-2699 (office)
(206) 295-1464 (cell)
mpurdy@mpurdy.com

Free e-mail Subscription to my Blog:
http://PublicContracting.blogspot.com

Join Almost 1,500 Subscribers
Agenda

1. Why Aren’t Bidders More Careful?
2. Is Your Bidder Playing Games?
3. Will the Real Low Bidder Please Stand Up?

Agenda - Why Aren’t Bidders More Careful?

1. Why do Bidders Make Mistakes?
2. Missing Bid Prices
3. Conflict Between Numbers and Words
4. Bid Calculation Errors
5. Claims of Error
Why do Bidders Make Mistakes?

- How long do you give bidders to prepare their bids?
- Why do bidders prepare their bids at the last minute?
- What are you requiring bidders to submit with their bid?

Missing Bid Prices

- What types of bid prices do you typically request?
  - Additive Bids
  - Deductive Bids
  - Alternate Bids
    - Ask for differential bid price on Bid Form
Missing Bid Prices

How should you handle a bid marked as follows?

<table>
<thead>
<tr>
<th>“No Bid”</th>
<th>Left blank</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Zero”</td>
<td>“0.00”</td>
</tr>
</tbody>
</table>

Is a bid non-responsive if a bid price is omitted?
- Why or why not?

Do your bidding documents require a bid on all items?
Conflict Between Numbers and Words

- Should you:
  - Ask for price in Numbers and Words?
  - ONLY ask for price in Numbers?

<table>
<thead>
<tr>
<th>BASE BID</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improvements as shown on the plans</td>
</tr>
</tbody>
</table>

TOTAL LUMP SUM BASE BID PRICE:

Nineteen thousand four hundred sixty-two and 77/100

(Base Bid Price - in Words)

Conflict Between Numbers and Words

- Why do price conflicts occur?
- What if you can’t read a Lump Sum amount in Numbers only?

Base Bid

$981,572.66

$ 178,200

- How many Unit Price items are there?
- Is a bid non-responsive if Words not filled in?
- Do you have a statement of precedence?
Bid Calculation Errors

- Why should the unit prices should take precedence over extended amounts?

- What do your bidding documents require?

- Do you check and correct math for all bidders?
  - May change order of bidders
Claims of Error

- What are the 2 types of errors made?

- Did the bidder provide timely notification?
Claims of Error

- What should you evaluate?

- Should you let bidder off the hook?

  - Yes
  - No
  - Maybe
Claims of Error

- May bidder claiming error bid on the re-advertised project?

Agenda
- Is Your Bidder Playing Games?
  1. Bid is Too Low
  2. Unbalanced Bids
  3. Conditioned or Qualified Bids
Bid is Too Low

- Can you spell “C H A N G E   O R D E R”?

Bid is Too Low

- Meet with the bidder
Bid is Too Low

- Ensure bidder understands scope of work

Bid is Too Low

- Offer the bidder option to withdraw bid
- What is best for bidder, public agency, and project?
- What about the bid guaranty?
Unbalanced Bids

- What is an unbalanced bid?

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Engineer’s Estimate</th>
<th>Bidder A</th>
<th>Bidder B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified excavation 30,000 CY</td>
<td>$9.50 / $285,000</td>
<td>$10.00 / $300,000</td>
<td>$0.01 / $300</td>
</tr>
<tr>
<td>Embankment Borrow 10,000 CY</td>
<td>$5.00 / $50,000</td>
<td>$4.50 / $45,000</td>
<td>$25.00 / $250,000</td>
</tr>
<tr>
<td>Bid Price</td>
<td>$335,000</td>
<td>$345,000</td>
<td>$250,300</td>
</tr>
</tbody>
</table>


Unbalanced Bids

- Why do bidders unbalance their bids?
- What is the risk to the contractor?
- How can an unbalanced bid cost you more?
Unbalanced Bids

What should you do about unbalanced bids?

Dear Bidders,

We have evaluated your bid and have determined that you have materially unbalanced certain prices in the bid. In accordance with the bidding documents, we have therefore determined that your bid is non-responsive, and it will not be considered further.

Sincerely,

Contracting Manager
Public Agency

Do your bidding documents address unbalanced bids?
Conditioned or Qualified Bids

- What is a conditioned or qualified bid?

**Bid Form:**
- Modifying Bid Form
- Not using required Bid Form
- Not completing Bid Form

**Scope of Work:**
- Bidding on work not specified
- Not bidding on all work specified

**Bidding Documents:**
- Conditioning the bid price, scope, schedule, or conditions
- Noting exclusions to the bid that are required in the bidding documents
Conditioned or Qualified Bids

Do all comments on the Bid Form or accompanying letter automatically condition a bid?

- Yes
- No
- Maybe

Conditioned or Qualified Bids

What happens if a bidder conditions its bid?

- Non-responsive bid
- Appeal from low bidder if bid found non-responsive
- Bid protest from second low bidder
Conditioned or Qualified Bids

- What do your bidding documents state?

Bids which are incomplete, or which are conditioned in any way, or which contain erasures, alterations, or items not called for in the Bid Form, or which are not in conformity with the law or with these Instructions, shall be rejected as nonresponsive if the irregularity is material and may be rejected as nonresponsive if the irregularity is not material.

Agenda
- Will the Real Low Bidder Please Stand Up?

1. Additive and Alternate Bids, Allowances
2. Tie Bids
3. Responsive Bids
4. Responsible Bidders
5. Local Bid Preferences
6. Bid Protests and Appeals
Additive and Alternate Bids

- How should you calculate and determine the low bidder?

<table>
<thead>
<tr>
<th></th>
<th>Bidder 1</th>
<th>Bidder 2</th>
<th>Bidder 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base Bid</td>
<td>$100,000</td>
<td>$102,000</td>
<td>$105,000</td>
</tr>
<tr>
<td>Additive 1</td>
<td>$20,000</td>
<td>$15,000</td>
<td>$13,000</td>
</tr>
<tr>
<td>Additive 2</td>
<td>$6,000</td>
<td>$5,000</td>
<td>$3,000</td>
</tr>
<tr>
<td>Total</td>
<td>$126,000</td>
<td>$122,000</td>
<td>$121,000</td>
</tr>
</tbody>
</table>

Allowance Bid Amounts

- What is a Bid Allowance?
  - Pre-determined amount on Bid Form
  - Use sparingly as it is non-competitive pricing

- When should you use an Allowance?
  - Unknown conditions where bidder can’t price the risk

- How should you pay for Allowance work?
  - Time and Materials
  - Monitor usages
Tie Bids

- How often does it happen?
- What’s required by your
  - Laws
  - Policies
  - Bidding documents
- How to break a tie bid
  - Random method

Responsive Bids

Responsiveness vs. Responsibility
Responsive Bids

Material VS. Immaterial IRREGULARITIES

- When should you reject a bid as non-responsive?
  - Reject for material irregularities
  - May reject or accept for immaterial irregularities
Responsive Bids - Subcontractors List

- Subcontractors List Applies to:
  - Projects estimated to cost $1 million or more
  - Subcontractors and/or prime contractor
  - For 3 trades:
    - HVAC
    - Plumbing (18.106 RCW)
    - Electrical (19.28 RCW)

Deadline for submittal of list:
- With bid, or within 1 hour of bid submittal
- Open bids after Subcontractors Lists received

- Responsiveness – RCW 39.30.060
“Failure of the prime contract bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the prime contract bidder’s bid nonresponsive and, therefore, void.”

Tips for a clear Subcontractors List form
- Instructions on completion and deadline for submission
- Space for work to be performed by Contractor
- Space for subcontractor work by Alternates
- Box to check if no HVAC, Plumbing, or Electrical work on the project
- Identify specific trades that must be reported
Responsive Bids - Bid Guaranty

- Forms of Bid Guaranties

- 2 Restrictions on Bid Bond Amounts
  - Dollar Amount Restricted
  - Difference Between Low and Next Low Bid

- No Bid Guaranty
- Insufficient Bid Bond
  - Less than 5%
    - Additives and Alternates
    - Sales Tax
- Inadequate Bid Bond
  - Bid Bond not signed by bidder or surety
  - No Power of Attorney
  - Bid Bond for different project or owner
Responsive Bids
- Bid Guaranty

- When should you take a bid guaranty?
  - Failure to Execute Contract

Responsive Bids
- Bid Received by Deadline?

- Bids submitted:
  - After the bid submittal deadline, and/or
  - At the wrong location
- Should be rejected as non-responsive
- Responsiveness - Generally a material irregularity
Responsive Bids - Bid Received by Deadline?

<table>
<thead>
<tr>
<th>Printed Time Stamp</th>
<th>On Time or Late?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1:59 p.m.</td>
<td>On Time</td>
</tr>
<tr>
<td>2:00 p.m.</td>
<td>On Time</td>
</tr>
<tr>
<td>2:00:00 p.m.</td>
<td>On Time</td>
</tr>
<tr>
<td>2:00:01 p.m.</td>
<td>Late</td>
</tr>
<tr>
<td>2:01 p.m.</td>
<td>Late</td>
</tr>
</tbody>
</table>

Responsive Bids - Bid Form Signed by Bidder?

- No commitment by bidder to perform work
  - Gives advantage to decide whether to take Project or not.

- Responsiveness - Generally a material irregularity
Responsive Bids
- Were the Addenda Acknowledged?

- **Addenda**
  - Significance of Addenda on price and understanding of the project.

- **Responsiveness** – May be a material or immaterial irregularity depending on the facts
  - Addendum only included names of firms who attended the pre-bid site visit
  - New bid form issued with addendum changing quantities

Responsive Bids
- Did Bidder Submit All Documents?

- **Submit Documents with Bid**
  - Generally, don’t require additional information to be submitted with the bid.

  - Read bidding documents carefully for other submittal requirements:
    - Information on bidder qualifications
    - Product specification information
    - Proposed schedule or suppliers

- **Responsiveness** – Generally a material irregularity
Responsive Bids - Mandatory Pre-Bid Site Meetings

- **Use with caution**: Restricted or secure facilities, particularly complex projects.
- **More than 1 meeting**: If possible, schedule more than one meeting to give bidders an option of when to attend.
- **When and where**: Clearly state the time and place of the meeting in the bidding documents.

- **Document reasons** in bidding documents for requiring.
- **Attendance List**: Have a sign-in sheet for those attending.
- **Consequences**: Bidding documents should state that no bid will be accepted from a bidder not attending the meeting.
- **Protest**: Uncertain whether a protest of a bidder not attending meeting would be successful or not.
Responsive Bids - Making the Decision

- What do the bidding documents say?
- Applicable law or court cases?
- Case-by-case analysis based on facts
- Consult your attorney or other experts

Does the Irregularity give the bidder an advantage or benefit not enjoyed by other bidders?

Material? Immaterial?

Responsible Bidders

- Before bidding
  - Prequalification
  - “Unsettled area of law in Washington”

- After bidding, before award
  - Bidder Responsibility Criteria
    - Mandatory
    - Supplemental
Local Bid Preferences

- 5% Percentage preference

<table>
<thead>
<tr>
<th>State</th>
<th>Bidder Preference %</th>
<th>Bid Price for Evaluation Purposes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nevada</td>
<td>5%</td>
<td>$104,000</td>
</tr>
<tr>
<td>Alaska</td>
<td>5%</td>
<td>$103,000</td>
</tr>
<tr>
<td>New Mexico</td>
<td>5%</td>
<td>$103,000</td>
</tr>
<tr>
<td>Wyoming</td>
<td>5%</td>
<td>$105,000</td>
</tr>
<tr>
<td>Nevada</td>
<td>0%</td>
<td>$100,000</td>
</tr>
<tr>
<td>Alaska</td>
<td>0%</td>
<td>$100,000</td>
</tr>
<tr>
<td>New Mexico</td>
<td>0%</td>
<td>$100,000</td>
</tr>
<tr>
<td>Wyoming</td>
<td>0%</td>
<td>$100,000</td>
</tr>
</tbody>
</table>

Reciprocal Bid Preference

<table>
<thead>
<tr>
<th>Bidder</th>
<th>In-State</th>
<th>Out-of-State</th>
<th>Bid Amount</th>
<th>Preference % for state of out-of-state firm</th>
<th>Bid Price for Evaluation Purposes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>X</td>
<td></td>
<td>$100,000</td>
<td>5%</td>
<td>$105,000</td>
</tr>
<tr>
<td>2</td>
<td>X</td>
<td></td>
<td>$103,000</td>
<td>N/A</td>
<td>$103,000</td>
</tr>
<tr>
<td>3</td>
<td>X</td>
<td></td>
<td>$104,000</td>
<td>0%</td>
<td>$104,000</td>
</tr>
</tbody>
</table>

RCW 39.04.380
Bid Protests and Appeals

- Review applicable regulations and policies
- Include process in bidding documents
- Ensure due process
- Give opportunity to be heard

---

Michael E. Purdy Associates, LLC
- Contact Information

<table>
<thead>
<tr>
<th>Office</th>
<th>(206) 762-2699</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cell</td>
<td>(206) 295-1464</td>
</tr>
<tr>
<td>E-mail</td>
<td><a href="mailto:mpurdy@mpurdy.com">mpurdy@mpurdy.com</a></td>
</tr>
<tr>
<td>Web</td>
<td><a href="http://www.mpurdy.com">www.mpurdy.com</a></td>
</tr>
<tr>
<td>Blog</td>
<td><a href="http://PublicContracting.blogspot.com">http://PublicContracting.blogspot.com</a></td>
</tr>
<tr>
<td>LinkedIn</td>
<td><a href="http://www.linkedin.com/in/mpurdy">http://www.linkedin.com/in/mpurdy</a></td>
</tr>
<tr>
<td>Twitter</td>
<td><a href="http://twitter.com/#!/MikePurdy">http://twitter.com/#!/MikePurdy</a></td>
</tr>
<tr>
<td>Facebook</td>
<td><a href="https://www.facebook.com/pages/Michael-E-Purdy-Associates-LLC/92090808667">https://www.facebook.com/pages/Michael-E-Purdy-Associates-LLC/92090808667</a></td>
</tr>
<tr>
<td>PO Box 46181, Seattle, WA 98146</td>
<td></td>
</tr>
</tbody>
</table>

---

© 2010-2013 by Michael E. Purdy Associates, LLC
www.mpurdy.com
Michael E. Purdy Associates, LLC
- Brief Bio of Mike Purdy

- **Public Contracting Manager:**
  - Retired in February 2010 after more than 30 years
  - City of Seattle, Contracting Manager
  - Seattle Housing Authority, Contracting and Procurement Manager
  - University of Washington, Contracts Manager

- **Procurement and Contracting Consultant:**
  - Consultant and frequent speaker/trainer since 2005
  - Helps public agencies, contractors, and consultants in understanding complexities of public contracting issues
  - Author of the popular Mike Purdy’s Public Contracting Blog (http://PublicContracting.blogspot.com)

- **Education:**
  - Bachelor’s degree in business and public administration and MBA from University of Puget Sound (Tacoma, WA)
  - Master of divinity degree from Fuller Theological Seminary (Pasadena, CA)

Michael E. Purdy Associates, LLC
- The Fine Print

1. **Copyright:** This document is copyrighted by Michael E. Purdy Associates, LLC. All rights reserved. No part of this document may be reproduced, modified, or transmitted in any form or by any means, electronic, mechanical or otherwise without prior written permission from Mike Purdy.

2. **Not Legal Advice:** The opinions, information, and interpretations provided in this document are the personal opinions of Mike Purdy, are for educational and informational purposes only, and do not represent legal advice. Mike Purdy is not an attorney. When appropriate, readers of this document are encouraged to consult with an attorney to obtain legal advice.