

The Nature of Public Bid Projects - Yu-Ngok Lo, AIA, LEED AP

In the realm of publicly funded projects, the contract award process is very different from most residential, commercial, or other privately funded projects. State and local laws often govern the conduct of public bidding. The purpose of these laws is to eliminate favoritism, fraud, and corruption in the award of public contracts. They are also intended to prevent the misuse of public funds and to provide all qualified bidders with fair bidding opportunities. All of this sounds good, and the lawmakers' intentions are certainly noble. However, is the public bidding process working as effectively as it is meant to?

Traditional Low Bid Method

There are many excellent contractors in the public bid environment who provide good services and high-quality buildings. These contractors know what they should be anticipating for construction projects (such as prevailing wages, Owner's OCIP program, construction bonds, special testing requirements, and field condition allowances), and include allowances in their bids to cover these costs. As a result, their bids are often higher than bids submitted by inexperienced contractors who know little about public contracts. In effect, good contractors are penalized for their knowledge and experience.

This was my experience during the 2008–2009 recession. An inexperienced residential contractor won a school modernization project by submitting a significantly lower bid than the other bidders. During construction, when the school district exercised its contractual right to strictly monitor and enforce prevailing wage requirements (for example, field surveying the workers and reviewing certified payroll), the contractor declared bankruptcy. The bonding company eventually took the project over and completed it. The resulting delays and legal hassles led to an unpleasant project experience for all the participants.

Not all unsuccessful publicly bid projects are the result of inexperienced contractors. Some contractors are experienced, and they use that to "play the game" to their advantage. These contractors submit bids they know are 20%–30% lower than they should be, just to win the job. During construction, the contractors' project managers are told to submit change order requests for any reason, whether the claim is legitimate or not. Every construction meeting becomes an argument between contractors and architects over what's in the contract documents and what's not. Sadly, the ultimate winners in most cases are the contractors, the mediators, and the lawyers.

Documentation for Publicly Bid Projects

On publicly bid projects, there is generally little or no preconstruction involvement by the contractor in the design process. As a result, the design team can't benefit from the contractor's valuable preconstruction input. To shield the owner against the contractor's claims during construction, architects often go beyond documenting design intent and include more extensive notes and details than they would for privately funded projects. However, despite all their care, small mistakes, such as missing the word "Typical" on a call-out bubble on the drawings, often lead to change orders. We architects generally spend much of our time during the Construction Contract Administration answering unnecessary RFIs and processing inappropriate change orders rather than solving problems and getting the building built.

Even "ironclad" documents don't guarantee a smooth construction process. Some contractors use the substitution process to delay the project, diminish its quality, and increase their profits. The countless hours spent by architects reviewing substitution requests, many of which being at best frivolous, detracts from their ability to positively affect the project. Many school districts are attempting to avoid these problems by including in their general conditions language that makes the contractor responsible for the time the architect spends on reviewing substitution requests. Even so, I rarely see owners charging contractors to cover the architects substitution review costs.

Better Delivery Methods?

Despite all this, there is hope. In recent years, many school districts and college systems maintain pools of contractors who are prequalified to bid on their projects. To become prequalified, contractors must demonstrate their experience on similar publicly bid projects. For a specific project, only prequalified contractors would be allowed to competitively bid. This process ensures that the contractor with the lowest responsive and responsible bid is also qualified and experienced to build the project.

Another option available to some public owners is the design-build delivery method. With design-build, the whole team, including design professionals, is prequalified. The owner solicits designs from the prequalified teams based on a target budget and performance criteria; the winning team is selected by a jury panel. In general, the design-build structure provides for better coordination and more collaboration between the owner, the design professionals, and the contractor during the design phase, and often avoids many of the unnecessary hassles resulting from the traditional design-bid-build delivery method. Although not

all state and local laws permit design-build for publicly funded projects, where it is allowed, design-build can help owners maintain a smoother construction process, thus benefiting all the construction phase participants, including the architects.