
The Bidding Game: Contractors and Contracts

**A seminar for Association Managers
and HOA Directors,
Presented by Carl Brown, RCI, RRO**

Bidding is a Game of Strategy

- Many Contractors are experts at bidding and trying to be the lowest bidder to get the job
- Contractors have different resources to perform work that can lower their cost
- Contractors have different W/Comp rates that can affect their cost of doing business
- Contractors can have many levels of management that make their cost higher
- Bigger is not always better
- Contractors never list their bad references
- Contractors plan on Extras to make profit goals

Insurance

Insurance Types:

- **Workers Compensation**; required by all CA businesses, especially contractors. Covers injury to employees onsite and in offices.
- **General Liability**; covers *damage* to persons or property caused by contractor, his employees or sub-contractors.

General Liability is NOT a guarantee of the contractor's work or quality of the work. It may pay for *damages* caused by poor work (leaks)

Insurance

- **Have your agent or attorney review policies**
- **Two types of GL: Claims Made / Occurrence**
- **Check Expiration Dates (may occur soon)**
- **There is NO exclusion for C-39 contractors, all must have a W/C policy in force**
- **Check Policy Exclusions Pages Carefully**
- **Always require HOA to be named additional insured on both types.**

Contractor Bonds

- **License Bond:** required for all licensed contractors. Typical is \$12,500. Intended to pay sub-contractors, labor or materials suppliers, if necessary
- **Labor-Material Bond:** optional & specific to a project and paid for by the HOA as part of the bid. Used to pay sub-contractors, labor or materials if contractor defaults
- **Completion Bond:** optional & specific to a project. Paid for by the HOA as part of the bid. Pays another contractor to finish the job if abandoned
- **NONE** of the above are a Guarantee of the WORK

RFP vs RFB

- **RFP = Request for Proposal = We don't know what to do, so we will ask as many people as we can find and then try to guess who is correct.**
- **RFB: Request for BID = We know exactly what we want because we did our diligence and don't want the confusion of 3-4-5-6 different "bids" all with different systems, colors, finishes, warranties, etc, etc.**

Any project that requires more than one paragraph to describe should be an RFB

Two Paths for Large Projects

- **Path One = Self managed**
- **Board of Directors recognizes need for construction project**
- **Board checks reserve for funding (no idea of cost)**
- **Board notices CAM to “Get Bids”**
- **CAM selects bidders from vendor list or other sources**
- **CAM writes general description of work for and sends out RFP (request for proposals)**
- **Bidders send in 3-4-5-6 proposals, all different**
- **BOD tries to Guess which one suits their needs**
- **BOD discovers they cannot afford any of them**

Path Two: Project Manager

- Board recognizes need for project
- Board recognizes their lack of knowledge
- Board requests CAM to find Project Managers to select from; takes “bids”.
- Selected PJM helps BOD make informed decisions for large expense projects and helps set a Budget
- PJM creates a custom Project Manual
- PJM manages bid process; helps select bidder
- PJM provides QAO services to successful completion

Vetting Contractor Bidders

- Use reliable resources including:
- Management company vendor list
- CAI and CACM long term members
- Consultants bidder list
- Must have insurance at time of bid
- Must have clean license (www.cslb.ca.gov)
- Must have history of HOA work
- Must have history of completed work with products HOA wants
- Approved by manufacturer for selected products

What should the RFB contain?

- **A cover page: with the name of project, location, community management and a photo of the front entry to help bidders identify the correct property.**
- **A table of contents: indicating what is in the RFB package and where to find information**
- **A Bid Form: stating what the work is and listing options if any to be completed by the bidder. Contractor forms not acceptable.**
- **A Tract Map of the project property**

What should the RFB contain?

- **The project description, location number of buildings, map of directions.**
- **The General Scope of Work**
- **The General Provisions of the Contract**
- **The Technical Specifications**
- **The Drawings and Details as needed**
- **The Product Makers Warranty Sample**
- **The Do's and Don't of working onsite**
- **The Billing and Document requirements**

The Pre-Bid Conference

- **Set the meeting date with at least 1 week notice to all prospective bidders**
- **Require bidders to RSVP their intentions**
- **Notice contains requirements of insurance**
- **Provision for access to roofs or decks, etc**
- **Provision for return visits by estimators**
- **Review all Terms and Conditions of Work**
- **Review all technical specifications**
- **Go onto roof to respond to any questions**

Receipt of Bids

- **All bids are done on the approved form only**
- **All bids go to the CAM first**
- **CAM send copies to the consultant for analysis and report of any non-compliance**
- **Consultant contacts any bidder with missing information or other issue of their bid**
- **Consultant meets with BOD and CAM to review and select (2-3-4) bidders for interview**
- **BOD interviews bidders & awards project**

The Contract

- **Correct Names of all parties to the contract**
- **Start and Finish Dates; penalties for delay**
- **Payment schedule (benchmarks not guesses)**
- **Closeout process (documents, etc)**
- **Final Payment checklist**
- **Contract is Bound with the Project Manual**
- **MOU's or Post-Bid Modifications**
- **Have your legal counsel review before signing**

Contractor Billing and Invoices

- All billing to be reviewed first by consultant
- All invoices to be attached to Conditional Lien Releases for materials and labor **
- **All material checks to be Joint Payee w/supplier
- All other payment invoices to have attached UN-conditional Lien Releases from prior payment
- Progress payment checklist to be attached, signed off by consultant's QAO man, attached to invoice
- Final Payment checklist signed by QAO
- Wood replacement list approved by QAO

Quality Assurance Observer

- **QAO will provide daily job visits to inspect work by the contractor or sub-contractors re:**
- **Work installed that meets contract scope**
- **Work that meets industry standards**
- **Work that meets manufacturer specs and warranty requirements**
- **Terms of the contract re: storage, etc**
- **Inspect products on arrival for brand & type**

Quality Assurance Observer

- **Quality Assurance Observer should be onsite for as much time as practical; full time best.**
- **QAO to provide a daily report with color photos of daily work progress &/or issues**
- **QAO reports quality problems to consultant for immediate resolution with contractor**
- **If not resolved, consultant contacts HOA to advise contractor re: payment (withheld)**
- **QAO should be an (RRO) [roofs] or equal experience and training for other work**

Warranties

- **Workmanship Warranty:** by the contractor; varies widely in scope and exclusions. Most are for one year; AWS requires 5 years. Depends fully on whether contractor is in business when a claim is made.
- **Materials Warranties:** vary by product type and manufacturer. From 5-30 years for roofs and decks. Only provides replacement materials not labor to repair or install.
- **Joint Warranties:** Cover both labor & materials to repair leaks. Ask an expert.

Roofing & Waterproofing

- **85% of all construction defect litigation**
- **Most disruptive and contentious (lawsuits)**
- **Largest investment most HOA's will make**
- **Most confusing re warranties & options**
- **Highest turnover of contractor licenses**
- **Lowest price is often the most expensive in the end due to poor performance or Extras**
- **Lowest Bidder is sometimes the one who made the biggest mistake**
- **Leaks are like a tooth decay, they only get worse, not better, and can result in MOLD or structural damage. Not all roofs need to be replaced.**

Other Good Practices

- **The Davis-Sterling Act requires an HOA BOD to act in a Business-like Manner in conducting the affairs of the association; the “Business Judgment Rule”. This can help the BOD to avoid personal liability for their decisions**
- **Never give contractors large “material deposits” before material is installed or at least delivered onsite**
- **Never pay for more work than is completed**
- **Never pay without lien releases (labor & material)**
- **Always have funding sources in place before work starts or you sign a contract.**

Conclusion

- **Boards of Directors are entitled seek outside advice and guidance thru experts, including accountants, attorneys and consultants**
- **The Davis-Sterling act supports it**
- **Most HOA attorneys support using experts**
- **Not all experts are equal, check them out**
- **The Best insurance the HOA will ever get is the *Get the Work Done Right the First Time***
- **Workmanship warranties are only as good for as long as the contractor is *in business***

Things to Remember

- **Trust But Verify – Ronald Reagan**
- **Don't depend on the City Inspections**
- **The Cheapest can become the Dearest in the End**
- **Contractors come and go but their work lives on, good or bad**
- **Start planning every major construction project at least 3 years before expected**
- **Construction work will Not be cheaper next year**
- **A large number of contractors change their name**

AND FINALLY.....

Words of Wisdom:

**YOU DON'T KNOW WHAT YOU DON'T
KNOW.**

ALWAYS PRACTICE DUE DILIGENCE

**REMEMBER THE BUSINESS
JUDGEMENT RULE**

About AWS

- AWS Consultants has provided consulting and project management for over 450 HOA projects in our 17 year successful history. We can help your association with:
- Roof Condition Survey & Analysis
- Product Selection & Budgeting
- Specifications & Contracts
- Quality Assurance & Sign Off
- Call us today: 888/245-6675