



Support Bid Listing to Ensure Predictability for Specialty Contractors Hired on Federal Construction Projects

Issue Background:

Bid shopping and bid peddling are unethical business practices that threaten the integrity of the competitive bidding system. These practices work to undermine the presentation and fair consideration of accurate information to owners. The bid amount of one competitor should not be divulged to another before the award of the subcontractor or order. Bids should not be used by a contractor to secure a lower proposal from another bidder on that project (bid shopping). Neither should a subcontractor or supplier request information from a contractor regarding any sub-bid in order to submit a lower proposal on that project (bid peddling). Requiring bidders to list the subcontractors to be used in their bids (bid listing) would significantly reduce the practice of bid shopping and bid peddling on federal construction jobs.

Key Points:

- *Once a Contract is Awarded, Prime Contractors Have No Legal Obligation to Accept Any Offer from Any Subcontractor Who Contributed Pricing Information Used in the Prime Contractor's Bid.* A significant amount of time and money is spent by subcontractors to complete accurate, reliable bids for a prime contractor. It is hoped that the close, interdependent relationships required to put together a complex bid would be of paramount interest to all parties; however, subcontractors end up being shopped and primes get peddled, to the customer's detriment.
- *Bid Shopping and Bid Peddling Negatively Impact the Competitive Bid System:*
 - Fails to meet the customer's expectations when a bid is awarded.
 - Incentivizes corner-cutting on construction.
 - Increases the likelihood of claims and change orders.
 - Delays project completion.
 - Facilitates deterioration of relationships between prime contractors and subcontractors, subcontractors in the same trade, and suppliers.
- *Enacting Bid Listing Legislation Would Provide Several Guarantees to the Government and Industry by Reducing the Possibility of Bid Shopping and Providing Some Certainty Over How Subcontractors Are Selected:*
 - The government would be assured the price received from a prime contractor is the actual low bid.
 - Subcontractors would be guaranteed protection from being shopped by prime contractors.
 - Competition among subcontractors would increase because they would be incentivized to bid.
 - Errors in the bidding process and disputes over costs and scope of work would be substantially reduced, resulting in more projects being completed on time and budget.

- *Bid Listing Was Successfully Used and Enforced On Federal Construction for Approximately 20 Years.* The General Services Administration and other federal agencies implemented bid listing rules through administrative procedures and were successfully able to make use of this data.
- *Several States Have Laws Requiring Bid Listing for Public Construction Projects.*

NECA Position:

NECA supports bid legislation that protects against bid shopping and bid peddling by requiring prime contractors bidding on Federal construction projects of \$1 million or more to: 1) list subcontractors in their bids that would perform work of \$100,000 or more, and 2) prohibit the substitution of another subcontractor for a listed subcontractor, prohibit any subcontract to be voluntarily assigned or transferred, or from subcontracting work for which the contractor listed itself, except with the consent of the contracting officer for a good cause.

Related Legislation:

Bill: Construction Quality Assurance Act of 2013 (H.R. 1942)

Sponsor: Rep. Carolyn Maloney (D-NY)

Number of Co-Sponsors: 0

NECA Position: Support