



Support Bid Listing to Ensure Transparency in Federal Construction

Background:

Bid shopping and bid peddling are unethical business practices that threaten the integrity of the competitive bidding system. These practices undermine the presentation and fair consideration of accurate information to owners. A competitor's bid amount should not be divulged to another before the award of the subcontractor or order. Contractors should not use bids to secure a lower proposal from another bidder on that project (bid shopping). Neither should a subcontractor nor 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 in their bids (bid listing) would significantly reduce the practice of bid shopping and bid peddling on federal construction jobs.

Key Points:

- Subcontractors have no legal recourse when shopped by a prime contractor. Upon a contract's award, prime contractors have no legal obligation to accept any offer from any subcontractor who contributed pricing information used in the prime contractor's bid. Subcontractors spend significant time and money to complete accurate, reliable bids for a prime contractor. In theory, 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 upon a bid's award.
 - Incentivizes corner-cutting on construction.
 - Increases the likelihood of claims and change orders.
 - Delays project completion.
 - Facilitates the 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 have assurance 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 there is a greater incentive to bid.
 - Errors in the bidding process and disputes over costs and scope of work would reduce, resulting in more projects completed on time and within budget.
- Bid listing was successfully used and enforced on federal construction for over 20 years. The General Services Administration and other federal agencies implemented bid listing rules through administrative procedures and successfully used this data.
- Several states have laws requiring bid listing for public construction projects.

NECA Asks:

Congress should enact legislation that protects subcontractors 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, any subcontract to be voluntarily assigned or transferred, or from subcontracting work for which the contractor listed itself, except with the contracting officer's consent for a good cause.