



## **Bid Right, The First Time**

by Sewall C. Cutler, Jr.

Every construction project starts with a bid (unless it's a negotiated job, but how many of those are there?), so how a subcontractor bids a job is important.

### **REQUIRED DOCUMENTS?**

Many Invitations to Bid or Project Manuals include documents and forms the general contractor contends are "mandatory," and that the subcontractor consents to by bidding the job. Examples include (of greatest consequence) the subcontract form, along with collateral but related documents, including safety policies and practices, and bond forms.

Many subcontractors believe (and the GCs hope the subcontractors continue to believe) that, if a subcontract form is provided upfront, and bid documents state that the bid constitutes acceptance of the subcontract form, unmodified, the subcontractor has irrevocably accepted the subcontract form by bidding the job. But, wait! Not so fast.

Just as there is no project that a subcontractor has ever bid in which there was complete agreement between the general contractor's idea of what the subcontractor scope was, and what the subcontractor's idea of the scope was, there is also no bid which cannot be qualified appropriately. So, always remember, when bidding a job, include an explicit statement that the bid does not automatically mean that the subcontractor agrees to sign the GC's subcontract form. For example, suggested language might read like this: *"Subcontractor's bid, and its agreement to perform work on this project, is contingent upon negotiation of mutually-acceptable subcontract language."* Regardless of the conditions the GC put on the bid, if the proposal and dollar number are attractive to the GC, they will probably negotiate contract terms, and if they won't, perhaps that is not a project or GC that the subcontractor wants to work for anyway.

### **INSURANCE**

Be wary of the possibility of a Controlled Insurance Programs (OCIPs and CCIPs); sometimes, the existence of one of these beasts is disclosed upfront, and sometimes it is not, but always anticipate the possibility. Notwithstanding the marketing hype, the principal purpose of OCIPs and CCIPs is the removal of money from the subcontractor's pocket to the pocket of the plan sponsor -- whether it be the owner or the general contractor. If there is no CIP mentioned in the bid documents, the subcontractor might include a qualification in the bid such as: *"Subcontractor's bid is based upon no OCIP or CCIP participation."* The subcontractor might also consider, especially if a CIP is disclosed, including the following: *"Subcontractor's participation in a Controlled Insurance Program shall be at no cost to Subcontractor, after due allowance for Subcontractor's cost of administration, the cost of all insurance coverage required to protect the Subcontractor from risks not covered by the Controlled Insurance Program, and any actual net savings to Subcontractor after consideration of all factors."*

## SCOPE, SCOPE, SCOPE!

Subcontractors can never be too specific in identifying the scope it is bidding to perform. Identify, by sheet number, title and date, the Plans on which are being relied upon in preparing the bid, and by date and revision the Specifications. In addition, make sure that all inclusions and exclusions are separately and clearly detailed, with great specificity. Avoid bids with words like "... *all related work*..."; These can be the black hole through which profit disappears! Finally, always review, very closely, the scope as described in the Subcontract, to ensure that it matches what was bid to provide. It is not unheard-of for a contractor to slide a little extra scope in, to cover for a bidding error that they made.

Bid a job right, and you'll improve your odds of contracting right - and making a little money, too!

**Disclaimer:** All content the property of Cutler ▪ Smith, P.C. This article is for general information purposes only and not to provide specific legal advice. Nothing in this article creates, nor be construed to create, an attorney/client relationship between the reader and the author or the author's firm. For specific advice, contact the firm of Cutler ▪ Smith, P.C.