



www.qualityconstructionalliance.org

Federal Construction Contracting Bidding Reform Direct Federal Construction Low-Bid Selection Procedure Reform

Elimination of Bid Shopping on Federal Construction Projects
Ban on Reverse Auctions

Quality Construction Alliance Position:

Direct Federal construction project low-bid selection procedures must be reformed in two ways to eliminate major subcontract bid shopping abuses that seriously jeopardize project performance. There is no bill introduced yet; but the QCA is expecting New York Representative Carolyn Maloney (D-NY-14) to introduce a subcontract bid listing bill in the near future. The ban on reverse auctions will not be in that bill.

Issue:

Sealed bid construction contract selection procedures remain a viable option for contractor selection decisions for many projects of limited scope. Still, the precipitous decline in use of low-bid selection in recent years can be attributed to agency preferences stemming from one glaring defect in the low bid system – bid shopping and bid peddling. In low-bid selection, the agency awards the prime contract on the basis of the successful bidders' single low bid for the project as a whole. However, after the award, the prime contractor and subcontractors can engage in bid shopping or bid peddling; that is, the prime contractor can either demand a lower price or get one from a subcontractor. Also, a competing subcontractor can offer a cut price to be substituted for the one relied on in the original bid. In either case, the taxpayers are not offered the benefit of the lowered price. From there almost invariably, negative consequences for the project ensue, such as, undisclosed change work orders, substituted materials, lower quality, delays, and claims costs on the job. A sure way to address the problem is to require the prime contractor to merely list the names and amounts of each subcontract bid, and then if awarded the contract to subcontract with that firm at the amount listed except for cause.

Key Points:

Public contract bid listing has been successful for public construction programs over the years, and is used in several states today. To create more transparency and to restore integrity in the low bid system, it is time to use bid listing as a way to reform bid practices in low-bid projects.

- Prime contractor opponents of the measure acknowledge the deleterious effects of bid shopping and bid peddling, yet still claim that privity of a single prime contract should trump efforts to reform a flagging system. Even while industry best practices acknowledge project partnering and collaboration among all team members as the best way to build the job.
- Some government agency opponents claim the process is administratively burdensome and had been tried and used by some agencies for substantial periods of time. The General Services Administration used bid listing for 20 years from 1963 to 1984, before dropping it at the request of general contractors. If bid listing was a good idea for 20 years when all projects were low-bid, it may just as well be more viable now that low bid is the exception. Bid listing is a sure way to bring quality firms back into the Federal low-bid market, where high-performing firms frequently stay away from bid shopping/peddling business practices and the problems they engender.





www.qualityconstructionalliance.org

1. Ban low-bid internet reverse auctions for prime contractor selection -- Congress should enact the definitive U.S. Army Corps of Engineers' long-standing recommendation that Federal agencies be barred from using internet reverse auctions for construction contract prime contractor low-bid selection procedures. Virtually all industry groups agree with the USACE recommendation that such electronic bid shopping violates established sealed bidding principles and engenders abusive competitive practices that ultimately jeopardize project performance and agency mission performance as well.
2. Enact major subcontract bid listing requirements on low-bid selection procedures - Major subcontract bid listing on direct Federal low-bid construction contract selection procedures is a long-overdue, good-government public administration reform that is widely adopted by public contracting authorities outside of the Federal market as a proven method to staunch the worst effects of subcontract bid shopping and peddling on construction project performance.

The QCA supports Federal procurement policies that keep pace with changes in the industry. The low-bid contractor selection method is clearly disfavored by Federal agency acquisition and procurement personnel. Design-build and best-value negotiated selection procedures are growing in prevalence on projects of complex scope because of superior performance records, and that trend is justifiable and a welcome advance in Federal contracting policy.

However, a part of the reason for the trend away from low-bid selections for projects of appropriate scope is clearly because the low bid system permits bid shopping and peddling abuses that contracting officials want to avoid. If those abuses were staunched by bid listing reforms, then the low-bid system would be restored to use on projects of appropriate scope and the taxpayers would benefit from use of that selection method. Top-performing construction prime contract and subcontract specialty firms are loathe to enter markets that permit internet reverse auctions for prime contract selection, or where the subcontractor selection procedures allow bid shopping or bid peddling abuses to run rampant and unchecked. If the Federal market were to raise standards by eliminating both sets of abuses, agency projects and taxpayers would benefit immeasurably by top-quality performance improvements.

Actions:

Support and co-sponsor H.R. 1778, the Construction Quality Assurance Act of 2011, introduced by New York Representative Carolyn Maloney. The measure would require prime contract bidders on direct Federal construction projects of \$1 million or more to list in their bids subcontractors that would perform work of \$100,000 or more and to require the apparent low bidder to subcontract with those listed subcontractors in the absence of exceptional good cause for any substitutions.

Updated May 18, 2011



www.icebac.org



www.mcaa.org



www.finishingcontractors.org



www.smacna.org



www.tauc.org