

2-27-01

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RFP

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Sen. Robin Taylor, Vice-Chair
Sen. Lyda Green
Sen. Georgianna Lincoln
Rep. Jeannette James
Rep. Joe Hayes



State Capitol, Room 116
Juneau, AK 99801-1182
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Anchorage, AK 99501
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Administrative Regulation Review Committee

AGENDA

Tuesday 02/27/01, House State Affairs, Room 102, 2:45-4:30pm

- I. Proposed "Best Value" Procurement
- II. Kachemak Bay Closure to Bottom Mariculture

*This Hearing will be teleconferenced

UAF's Best Value Construction Procurement Proposal at Issue

UAF's Physical Plant Renewal project (\$3,750,000) was advertised in late January 2001 to be a "Best Value" procurement.

"Best Value" means that offers would be received and evaluated, taking into consideration the bid price and the experience, past performance and technical expertise of the general contractors, and their team of mechanical and electrical sub-contractors in projects of similar size and complexity. The respondents submit their bid amount in a separately sealed envelope. Upon evaluation of references and review of past performance of the various respondents, a committee reviews the sealed bid amount and recommends to the procurement officer the respondent with the team that represents the best value to the University. The procurement officer implements the recommendation or remands for additional consideration.

For renovation projects, where work requires extraordinary levels of communication and coordination between the owner and the contractor, UAF and others believe that the traditional "Low Bid" process does not necessarily ensure the best value in terms of quality of construction, maximizing the budget, and assuring timely completion of the project.

In this regard, the "Best Value" contracting method is a process that has been utilized very successfully for new construction and remodel work by the federal government for the past six years. UAF has extensively studied the federal government's track record and processes, and first attempted to utilize the "Best Value" construction RFP process in January for UAF's Physical Plant Renewal. Additionally, many in the contracting community have embraced this type of procurement and worked successfully with the federal government using this procurement method. As with any process, there are dissenting opinions.

UAF believes that it is critical for selected projects in the future to move forward with the Best Value procurement method. Selected projects would most likely be renewal projects where the exact extent of repair work, e.g. behind walls, is not known, since it is prohibitively expensive to perform 100% sampling of materials and conditions before bidding a project.

UAF encourages contractors and others to express their concerns. UAF will discuss those concerns and anticipates gaining consensus within the contracting community and further developing and explaining a fair and consistent evaluation process that addresses the concerns that are raised.

We hope that you can support us in this process. Thank you.

Online Public Notice

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Submitted by	Date Modified	AK Admin Journal	Attachments	Public (Web Edit)
Carol L. Pickett/FBX/UA on 01/24/2001 at 03:35 PM	02/07/2001 03:33:37 PM	[not printed]	No files attached	

UA - Physical Plant Code Corrections and Renewal - IFB #2001049

Category: Competitive & Other Solicitations
Sub-Category: Invitation to Bid
Publish Date: 01/24/2001

**Department: University of
Alaska**
Location: Fairbanks
Region: Northern

Body of Notice:

Physical Plant Code Corrections and Renewal
Invitation For Bids Number 2001049, Project Number 2001008 PPDF

This is a "Best Value" type of competitive procurement. Under this methodology, the University of Alaska will evaluate and select the responsive and responsible Bidder, who, in the opinion of the University of Alaska, provides the best overall value.

Sealed bids for the Physical Plant Code Corrections and Renewal project will be received by the University of Alaska, Facilities Services, Office of Division of Design and Construction until Wednesday, 2:00 p.m., February 28, 2001, at the Office of Division of Design and Construction, 590 University Avenue, 2nd Floor, Fairbanks, Alaska. The Contractor is to submit a response to this ITB that demonstrates experience, past performance, and technical excellence separate from the sealed bid.

The work consists of: Remodeling for five maintenance shops within the East portion of the Physical Plant building. Demolition of interior walls, hazardous materials abatement, construct interior walls, upgrade structural components, upgrade sprinkler and fire alarm systems, and install new mechanical and electrical systems.

The award for construction of this Project will be made to a responsible Bidder whose proposal is responsive and offers the best value to the University. Best value will be determined on an integrated technical assessment of each proposal in terms of price, experience, past performance, and technical excellence.

Invitation For Bids may be obtained from the Office of Division of Design and Construction at the address listed above, phone (907) 474-5299.

A Pre-bid conference will be held Thursday, February 15, 2001, at 9:30 a.m. at the Physical Plant, University of Alaska, 803 Alumni Drive, 1st Floor Dispatch, Fairbanks, Alaska.

The University of Alaska reserves the right to reject any or all bids, offers, or parts thereof it deems

Invitation to bid
On line version

necessary, to waive any informality in the bid or offer received, and to award in the best interest of the University.

The University of Alaska Fairbanks is an affirmative action/equal opportunity employer and educational institution.

Revision History:

01/24/2001 03:35:45 PM by Carol L. Pickett/FBX/UA/State/Alaska/US

01/25/2001 10:04:00 AM by Carol L. Pickett/FBX/UA/State/Alaska/US

02/07/2001 03:33:37 PM by Carol L. Pickett/FBX/UA/State/Alaska/US

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THE
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A Bidder may replace a listed subcontractor other than the prime mechanical and electrical subcontractor if the subcontractor:

1. fails to comply with AS 08.18, Construction Contractors;
2. files for bankruptcy or becomes insolvent;
3. fails to execute a contract with the Contractor involving performance of the Work for which the subcontractor was listed and the Contractor acted in good faith;
4. fails to obtain bonding;
5. fails to obtain insurance acceptable to the Owner;
6. fails to perform the Contract with the Contractor involving work for which the subcontractor was listed;
7. must be substituted in order for the prime contractor to satisfy required Owner federal affirmative action requirements;
8. refuses to agree or abide with the Contractor labor agreement or;
9. is determined by the Owner not to be a responsible subcontractor.

A Bidder who attempts to circumvent the requirements of this section, for example, by listing as a subcontractor another contractor who, in turn, sublets the majority of the Work required under the Contract violates this section. If a contract is awarded to a Bidder who violates this section, the Owner may:

1. cancel the Contract; or
2. after notice and a hearing, assess a penalty on the Bidder in an amount that does not exceed ten (10) percent of the value of the subcontractor at issue.

Replacement of electrical or mechanical subcontractor will be considered ground to reject the bid and the bid security may be retained by the Owner.

13. COMPARISON AND EVALUATION OF BIDS

A: This Invitation to Bid is prepared for a single general contract unless otherwise stated herein or on the Bid Form.

This is a "Best Value" type of competitive procurement. Under this methodology, the University of Alaska will evaluate and select the responsive and responsible Bidder, who, in the opinion of the University of Alaska, provides the best overall value. Inherent in this process is the use of subjective judgment on the part of the evaluators in assessing technical merit and in weighing the assessment against price, thereby selecting a Bidder who evaluators determine provides the overall "best value" for the University of Alaska. Therefore, Bidders acknowledge this will be a subjective evaluation and agree, by submittal of their bid, that the University of Alaska may accept other than the lowest priced responsive bidder if the University of Alaska's assessment in terms of General Contractor experience, General Contractor past performance, and Subcontractor experience, in the sole opinion of the University of Alaska, are worth the higher price.

The award will be made to the responsible Bidder whose bid is responsive and offers the best value to the Owner. Best value will be determined based on an integrated assessment of each bid in terms of price, General Contractor experience, General Contractor past performance, and Subcontractor experience. Therefore, subjective judgment by the Owner is implicit in the evaluation process. In addition, award may be made to other than low priced bid and may be made without conducting discussions.

If a Bidder does not have relevant past performance history (e.g., no experience in utility construction), the Bidder may not be evaluated favorably or unfavorably on past performance.

Bidders are required to provide specific data on all contracts performed within the last five years that are similar in scope, size, and complexity. In addition, for each contractor the Owner may prepare a list and contact other references known to the Owner, consumer protection organizations, and other sources that may have useful and/or relevant information.

Upon compilation of the list of contacts for each contractor, evaluators will collect information as necessary on General Contractor experience, General Contractor past performance, and Subcontractor experience, noting responses to a list of standardized questions asked of references.

Once information have been gathered, bidders will be evaluated by committee members using the assessments identified herein for General Contractor experience, General Contractor past performance, and Subcontractor experience.

When the committee members have completed evaluations for all the bidders, the evaluations will be forwarded to a separate committee. This committee will review the completed evaluations, open the sealed envelope containing the Bid Price, and then forward a recommendation to the Contracting Officer as to which bidder provides the "Best Value" to the University of Alaska. The Contracting Officer will make the final determination of "Best Value."

GENERAL CONTRACTOR EXPERIENCE:

Low Risk - Little doubt exists, based on the Bidder's experience in governmental contracts, that the Bidder can complete this kind of work. Standard: Good experience in projects of similar size, scope and complexity in governmental contracts.

Moderate Risk - Some doubt exists, based on the Bidder's experience, that the Bidder can complete this kind of work. Standard: Good experience in non- governmental projects of similar size and scope or extensive experience as the primary subcontractor for governmental projects similar in size and scope.

High Risk - Significant doubt exists, based on the Bidder's experience, that the Bidder can complete this kind of work. Standard: No experience in projects of this kind and no experience in governmental and only limited experience in non-University projects of similar size and scope or some experience as a subcontractor for governmental in projects of similar size and scope.

GENERAL CONTRACTOR PAST PERFORMANCE

Excellent - Entirely favorable past performance. Standard: A significant majority of the sources of information are consistently firm in stating that the Bidder's performance was superior and that they would unhesitatingly do business with the Bidder again. Complaints are negligible or unfounded. The Bidder has no record of criminal conduct, civil fraud, or negligence, or the record is old and the Bidder

CONTRACTORS LICENSE #AA116

February 13, 2001



Mr. Mark Hamilton, President
University of Alaska
P.O. Box 755000
Fairbanks, AK 99775

Re: UAF Best Value Procurement Method

Dear President Hamilton:

GHEMM Company applauds the University of Alaska for their insight that the low dollar bid does not always represent the owner's best interest.

The UAF Physical Plant Code Corrections and Renewal bid document requires the general contractor to list up to ten previous contracts for pertinent experience and ten previous contracts for performance evaluation. The two main subcontractors, mechanical and electrical, must also list ten previous contracts for similar reference checks. This is the same reason an employer asks potential new hires for a resume and why pay typically depends on an employee's experience (DOE). The relative ratings of the contractors will be compared against the bid dollar amount. The UAF will then select the "best value" contractor for this project.

During a contract, the successful bidder in a low dollar only approach has little incentive to do its best as all they have to do to win a contract in the future is to get low. In best value contracts, poor performance becomes baggage that is opened the next time they bid.

In "best value" procurement, the owner is charged with making sure the selection process is accomplished in a forthright manner acceptable to the contracting community and to assure the bid is fair and open to all. To generalize and say best value procurement is wrong does not make sense. Sometimes the naysayer carries baggage from past projects. Others are suspicious that the owner will not treat the bids with an honest approach. Suspicion can be eliminated by post bid debriefings and by acceptance of input prior to bidding.

Quality, timeliness, fair change orders, completeness, warranty and coordination are all cost factors in every construction bid and/or contract. For example, a bidding advantage can be gained by ignoring an owner's completion date.



Mark Hamilton - University of Alaska
February 13, 2001
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Should that late contractor's next low bid be considered on an apples-to-apples basis with a contractor that would have performed on time? Perhaps finishing late will cost the owner more than the dollar difference in the bids.

Other public entities are currently successfully using the best value method of procurement. The Corps of Engineers has been using it for the last couple of years and there is little dissention that their bidding is handled in a fair and open manner. If the best value system is not allowed to be tried, then the message put out is that only low dollar matters. To heck with the value that quality, timeliness, etc. bring to the contract.

We support UAF's attempt to provide the public with best value projects.

Sincerely,

GHEMM Company, Inc.

A handwritten signature in cursive script that reads "Albert E. Bell".

Albert E. Bell, PE
President

Cc: Senator Pete Kelly
Senator Gene Therriault
Senator Gary Wilken
Representative John Coghill
Representative John Davies
Representative Hugh Fate
Representative Joe Hayes
Representative Jeanette James
Representative Jim Whitaker

ALCAN BUILDERS, INC.

GENERAL CONTRACTORS

P.O. Box 70752 • Fairbanks, Alaska 99707
Phone: (907) 456-1383 • Fax: (907) 452-4378

February 5, 2001

Open letter to all Interior Senators & Representatives of Alaska Legislature

Dear Legislators,

On 01-31-01, a meeting of several general contractors and subcontractors was held at the local Fairbanks Associated General Contractors, AGC, office for the purpose of introducing us to the University of Alaska Fairbanks new system of construction procurement called "Best Value".

The "Best Value" procurement method is new to the industry and has been experimented with by the Federal Government for the last two or three years.

This "Best Value" system of contractor selection is flawed in many ways and is highly disliked by a majority of general contractors and subcontractors in the Fairbanks area for some of the following reasons.

1. It allows the government to open bids behind closed doors. Hence, the popular public bid opening process is subverted. The public bid process assures accountability to interested parties and prevents government from knowingly or unknowingly corrupting the system. Each bidder and interested party knows where he or she stands on bid day with this tried and proven system.
2. With the new "Best Value" system, contractors are graded on subjective past performance criteria including job size. With the present public opening system, a contractor with a bond for the project in question can bid and procure work above his proven range of capability. This system allows growth. The "Best Value" system grades the contractor on completion of like projects awarding low risk points to contractors who have successfully completed like size projects and high risk points to contractors working out of past price ranges. Hence, a contractor who has completed one to three million dollar projects stands a small chance of winning a contract on a six to nine million dollar job and is locked into the one to three million dollar category with this "Best Value" process. Hence, the contractor is left stratified into one category; small, medium, or large with chance of growth in the private sector only.

3. The "Best Value" process discriminates against new contractors in that a contractor is graded on past performance. Hence, an individual with 30 years of contracting experience to his or her credit operating under a new name has almost no chance of obtaining work in the public sector until his new company can build a track record. A true free enterprise system should welcome individuals into the system to encourage participation for innovation. The "Best Value" system discourages free enterprise and favors only construction companies with proven track records.
4. The "Best Value" process ties up a contractor's bonding, as the evaluation period is slow and cumbersome. A contractor needs to get fast reliable feedback as to where he or she stands on a project, as our construction season is very short. If a contractor bids a multimillion dollar project on May 15th and it takes 60 days to evaluate his or her bid, that contractor may be held back from bidding new work by his bonding company until mid July or later. With the tried and proven public opening process, everyone is informed on the same day as to whether or not they were the successful bidder.
5. The "Best Value" system will result in the eventual blackballing of subcontractors by general contractors as the past performance of subcontractors is a factor in bid award. If a mechanical or electrical subcontractor receives a low score termed as "high risk", other general contractors will eventually blackball the subcontractor on future "Best Value" work. This discourages growth and simply looks in a particular group.
6. The "Best Value" system is very cumbersome as a great deal of demand is placed upon the contractor in providing data on past performance. UAF is requiring that we supply past clients with forms to fill out and mail prior to bid time. The past clients are burdened with providing written opinions on general and subcontractor's past performance. The information they are required to provide can drastically hurt or help a contractor and that information is too subjective. If a past client does a poor job of responding, the contractor is hence, damaged.
7. There are a limited number of subcontractors available in this small Fairbanks area. "Best Value" will result in team marriages between general, mechanical and electrical subcontractors resulting in a very limited number of successful general contractors over the next few years. In other words, we will see contractors either fold or go off into the private sector as a result of the poorly thought out system. If one or two contractors become owner favorites or even appear as favorites for a particular agency, other contractors will pull away from bidding and the cost of construction for the agency will rise dramatically. We are seeing this develop at the local military

bases. Contractors are simply giving up on attempting to bid projects and very closed systems are forming.

8. Good ole boy systems will form as a result of "Best Value" contracting. If a contractor provides good performance to an owner on a project, he or she is certain to be favored on future projects as there is no dollar variance criteria allocated to the scoring system. In other words, if bidder A has a much lower price than bidder B, but bidder B is the favored contractor, where is the accountability to the taxpayer if B is selected?
9. The "Best Value" system that UAF has adopted is fundamentally flawed because a general contractor is required to name and use its two major subcontractors, mechanical and electrical. The system does not work if there are alternates because although a subcontractor may be low bidder on the base bid, he or she may not necessarily be low if alternates are selected. The cost impact on a general could be substantial if the owner forces you to go with the selected and approved subcontractor. Remember, you are awarded the project if you and your subcontractors receive a favorable rating. Changing the subcontractors after the fact is not allowed.
10. General contractor's and subcontractor's businesses have been built in the public sector on the public bid system. In other words, through mathematical probability, (supply and demand) we all receive our fair share of public works projects. As our quantity of work decreases, our prices come down and as the quantity increases our prices come up, decreasing our probability of obtaining work. This new "Best Value" system puts that mathematical probability aside as price is only a small factor for award of a contract. "Best Value" will put many of us out of business because the supply and demand system is brushed aside. We are already seeing impact in this community as a result of the military's "Best Value" system. Simply put, a subcontractors probability of obtaining a contract is reduced dramatically with this flawed system.
11. The new "Best Value" system could lead to power brokering and kickbacks as the system is subjective and individuals' decisions will result in contract awards. Selection committees will be made up of individuals who harbor preconceived notions about contractors and subcontractors. Those biases will affect their decision-making and the ultimate contractor selection. The power the new "Best Value" system will place in the hands of individuals could lead to kickbacks because of the amount of money at stake.

In conclusion, I'd like to emphasize that any time government takes bids behind closed doors, we the people have a serious problem. The last major example of restrictive bidding and attempted abuse of tax dollars took place in the mid eighties and a former governor came very close to being impeached over it. That case dealt with what is now the FNSB School District building on 5th Avenue but at the time the state set up a bid packet that restricted an intended lease of office space to a very small location on 5th Avenue in Fairbanks. The case was taken to court and it was found that investors had influenced the process from start to finish. As a result of this case, stricter procurement laws were enacted, particularly at UAF. Time has apparently dulled their memories.

Sincerely,



Jeff Alling

Sec. 36.30.990. Definitions.

In this chapter, unless the context in which a term is used clearly requires a different meaning or a different definition is prescribed for a particular provision,

(1) "agency"

(A) means a department, institution, board, commission, division, authority, public corporation, the Alaska Pioneers' Home, or other administrative unit of the executive branch of state government;

(B) does not include

(i) the University of Alaska;

(21) "state money" means any money appropriated to an agency or spent by an agency irrespective of its source, including federal assistance except as otherwise specified in AS 36.30.890, but does not include money held in trust by an agency for a person;

Chapter 36.30. STATE PROCUREMENT CODE

Sec. 36.30.005. Centralization of procurement authority.

(c) Notwithstanding other provisions of law, all rights, powers, duties, and authority relating to the procurement of supplies, services, professional services, and construction and the disposal of supplies for the University of Alaska are transferred to the Board of Regents. To the maximum extent possible, authority granted under this subsection shall be exercised in accordance with this chapter. The Board of Regents shall adopt regulations under this subsection that are substantially equivalent to the regulations adopted by the commissioner of administration to implement this chapter. For the purposes of this subsection, unless the context otherwise requires, in this chapter

(1) "agency" means a subunit of the University of Alaska;

(2) "attorney general" means the president of the University of Alaska;

(3) "chief procurement officer" means a person designated by the president of the University of Alaska whose qualifications are substantially equivalent to those provided in AS 36.30.010

(a)

(4) "commissioner," "commissioner of administration," or "commissioner of transportation and public facilities" means the Board of Regents or the president of the University of Alaska if so designated by the Board of Regents by regulations adopted under this subsection; and

(5) "department" means the University of Alaska.

Article 02. COMPETITIVE SEALED BIDDING

Sec. 36.30.100. General policy.

(a) Except as otherwise provided in this chapter, or unless specifically exempted by law, an agency contract shall be awarded by competitive sealed bidding.

Sec. 36.30.110. Invitation to bid.

(a) When competitive sealed bidding is used, the procurement officer shall issue an invitation to bid. It must include a time, place, and date by which the bid must be received, purchase description, and a description of all contractual terms and conditions applicable to the procurement.

(b) The bidder must have a valid Alaska business license at the time designated in the invitation to bid for bid opening. A bidder for a construction contract shall also submit evidence of the bidder's registration under AS 08.18.

(c) If the commissioner of transportation and public facilities makes a written finding that the release of the estimated cost of a construction contract would adversely affect the state's ability to obtain the best competitive bid, the estimated cost is confidential information and may not be released to the public before bid opening.

Sec. 36.30.140. Bid opening.

(a) The procurement officer shall open bids at the time and place designated in the invitation to bid. All bid openings are open to the public. The amount of each bid and other relevant information that is specified by regulation of the commissioner, together with the name of each bidder, shall be recorded.

(b) The information recorded under (a) of this section is open to public inspection as soon as practicable before the notice of intent to award a contract is given under AS 36.30.365 . The bids are not open for public inspection until after the notice of intent to award a contract is given. To the extent the bidder designates and the procurement officer concurs, trade secrets and other proprietary data contained in a bid document are confidential.

Sec. 36.30.170. Contract award after bids.

(a) Except as provided in (b) - (h) of this section, the procurement officer shall award a contract based on the solicited bids with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid.

(b) The procurement officer shall award a contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent, an Alaska products preference as described in AS 36.30.322 - 36.30.338, and a recycled products preference under AS 36.30.337 have been applied.

Sec. 36.30.308. Innovative procurements.

(a) A contract may be awarded for supplies, services, professional services, or construction using an innovative procurement process, with or without competitive sealed bidding or competitive sealed proposals, in accordance with regulations adopted by the commissioner. A contract may be awarded under this section only when the chief procurement officer, or, for construction contracts or procurements of the state equipment fleet, the commissioner of transportation and public facilities, determines in writing that it is advantageous to the state to use an innovative competitive procurement process in the procurement of new or unique requirements of the state, new technologies, or to achieve best value.

(b) The procurement officer shall submit a procurement plan to the Department of Law for review and approval as to form before issuing the notice required by (c) of this section.

(c) A procurement under this section is subject to the requirements of AS 36.30.130 .

(d) Nothing in this section precludes the adoption of regulations providing for the use of bonuses instead of preferences in a procurement of construction.

Sec. 36.30.850. Application of this chapter.

(a) This chapter applies only to contracts solicited or entered into after January 1, 1988, unless the parties agree to its application to a contract solicited or entered into before that date.

(b) This chapter applies to every expenditure of state money by the state, acting through an agency, under a contract, except that this chapter does not apply to

3) contracts of the University of Alaska where the work is to be performed substantially by students enrolled in the university;

(15) a contract that is a delegation, in whole or in part, of investment powers held by

(A) the commissioner of revenue under AS 14.42.200 , 14.42.210, AS 18.56.095, AS 37.10.070 , 37.10.071, or AS 37.14;

(B) the Board of Regents of the University of Alaska under AS 14.40.250 - 14.40.491;