

**RECOMMENDED PROCEDURE
FOR
COMPETITIVE BIDDING
AND LETTING OF
BUILDING CONSTRUCTION**

FORWARD

Code of Ethics have become an important factor in the development of standardized competitive conduct among members of responsible organizations. Such organizations recognize that the best service to the public can be obtained only through fair practice.

In the development of the following code, the object of primary importance was the establishment of a standard competitive bidding guideline for construction, considered eminently fair to owners and all connected with construction industry – practices that will bring together an owner, architect or engineer and a general contractor of a project at a reasonable price with elimination of the controversies from which all parties frequently emerge losers.

The Manual of Recommended Procedure for Construction Contract Bidding and Awards was compiled by the AIA-AGC Committee comprised of representatives from the Nebraska Building Chapter of AGC and the Nebraska Chapter of the American Institute of Architects. The Manual is based on the best recognized practices prevalent in the North Central region of the United States. Primarily, the code deals with relations between commercial building Contractors and Owners, Subcontractors, Architects and Engineers. Reasonable and continued adherence to these practices will raise the ethics, promote fair dealing, avoid unnecessary confusion and result in better quality construction at the most reasonable cost.

The importance of having this Code of Ethics for the Construction Industry in Nebraska has been eagerly pursued by all segments of the Industry. We solicit your earnest study of this document.

SECTION I
CODE OF ETHICAL PRACTICES
FOR
COMPETITIVE BIDDING AND AWARD OF BUILDING CONTRACTS

ARTICLE 1

SELECTION OF BIDDERS

It is the privilege and the responsibility of Architects and Engineers to select a reasonable number of bidders possessing skill, integrity and responsibility and qualified by experience and finances to execute the type of work to be bid upon.

It is recommended that under ordinary circumstances the number of bidders should vary from five to ten.

Selected bidders, upon receipt of plans and specifications, shall promptly advise the Architects and Engineers if not interested in the project.

ARTICLE 2

DISTRIBUTION OF PLANS

DEPOSITS

Upon request by a contractor one set of full size plans and specifications will be forwarded upon receipt of the required deposit. The entire deposit will be refunded to bona fide bidders who submit a proposal for the job. Plans should be furnished principal subcontractors on the same basis.

ADDITIONAL SETS

It is recommended that, when feasible, Architects and Engineers, when requested by the General Contractor, furnish without charge, a second set of general plans and specifications with all mechanical plans and specifications, thus to better enable the General Contractors to more intelligently prepare his estimate. In any event, that one set of plans should be furnished to show as completely as possible the nature of all other work affecting general construction.

Contractors are asked to be as economical as possible in the number of plans and specifications requested. They should promptly return same within the required time and as early as possible if the contractor decides to not bid.

If additional sets of plans are desired by bidders, a reasonable charge shall be made which shall be limited to the actual cost of reproduction. These plans should be returned without refund, if so requested by the A.E.

PLAN ROOMS

It is recommended that two or three sets of general plans and specifications complete with electrical and mechanical plans be filed with recognized plan agencies and the places of filing be noted in the Instructions to Bidders.

ARTICLE 3

TIME OF ESTIMATING

Ample time shall be allowed the General Contractor for the take-off of quantities, preparation of his estimate, and the closing of his bid, and to facilitate this, the following minimum schedule is suggested:

- Jobs under \$250,000 2 weeks
- Jobs \$250,000 to \$1,000,000 3 weeks
- Jobs over \$1,000,000 4 weeks

The above minimum schedule of estimating times does not take into consideration the issuance of addenda. (See Article 4)

ARTICLE 4

RECEIVING BIDS AND AWARDING CONTRACTS

TIME AND PLACE

A definite time and place for receiving bids should be stipulated at the time bids are invited. The place should be reasonably convenient to the bidders and bid closings should be limited to Tuesdays through Fridays at 2:00 p.m. However, no bid closings should be on a holiday or the day immediately thereafter.

SCHEDULING DATES

It is recommended that Architects and Engineers contact the Nebraska AGC Office in Omaha when preparing to schedule lettings to determine the best date for receiving bids so as to possibly avoid conflicting dates and at the same time provide better spacing and time for estimating. Increased cooperation in this regard will bring greater benefits to all concerned.

TIMELINESS OF BIDS

Bids should be filed and opened on time, as specified, regardless of the method of delivery; telephoned or telegraphic bids should not be considered; telegraphic corrections of previously submitted bids should be considered if received prior to scheduled bid opening time; mailed bids, the same as those delivered personally, should be filed on time without exception for any cause whatsoever. Late bids submitted after the published bid time should not be accepted or read under any circumstances.

PRIVATE OPENINGS

To promote and maintain harmony in the industry it is deemed in the best interests of all concerned that private opening of bids be avoided and that bids be read publicly.

LOW BID

It is recognized that the competitive bidding system, in which contracts are awarded to the low bidder, has brought great benefits to the public and the construction industry and that the practice of awarding contracts to other than the low bidder will tend to weaken the system. The Architect and Owner should not issue plans to other than responsible bidders.

Therefore, all who are concerned with the preparation, acceptance, or disposition of bids shall be exhorted to honor the lowest responsible bid and to refrain from any action which would cause the contract to be awarded in violation of this principle.

ACTION ON BIDS

A tabulation of bids should be published for all prime bidders. It is requested that the action on bids received should be within 72 hours excepting in very special cases and for good cause.

REJECTION OF BIDS & NEGOTIATION WITH LOW BIDDER

In case original bids are rejected, an attempt should be made to negotiate with the low bidder for an award of the construction contract.

It is recommended that in the event only one bid is received, the owner should be prepared to award the contract, providing the bid is within the budget.

COMPLETION TIME

The time for completion of a project should be stated in the bid documents and not be a determining factor in awarding a contract.

CHANGES

Minor changes required before signing of contract should be negotiated only with the selected bidder. If major changes are necessary, the original bids should be rejected and new bids should be secured on the basis of revised drawings and specifications.

SUBCONTRACTORS

The Contractor should not be required to list his subcontractors with his bid or provide cost data.

ARTICLE 5

BID SECURITY

PRIVATE WORK

Certified checks or bid bonds should not be required from invited bidders on private work.

PUBLIC WORK

It is recommended that bid security on all public works projects of all types be limited to certified checks, cashier's checks, or bid bond. Bid security on mechanical, electrical and other elements of the contract should conform to bid security required on the general contract.

ARTICLE 6

ALTERNATE PROPOSALS, ADDENDA AND UNIT PRICES

ALTERNATES

Alternates, schedules, and/or substitutes should be limited to the least number absolutely essential to the award of the job. Any further adjustments should be determined in conference with the successful bidder. Bidders should quote on each and every alternate requested or mark "no change."

ADDENDA

It is recommended that provisions be made in all proposal forms requiring the contractor to acknowledge receipt of all addenda and that same has been considered and was reflected in the bid.

No alternates, addenda or special instructions should be issued subsequent to seventy-two (72) hours before bidding date. It is recommended that contractors check bid documents as early as possible and immediately contact the Architect or Engineer for clarification of doubtful items.

UNIT PRICES

Unit prices should not be requested from the competing bidders since they are difficult to quote accurately, for units of concrete, excavations, forms, partitions, etc. Unit prices should be discussed with the successful bidder.

Where the owner absolutely insists on unit prices being made a part of the bid, separate prices should be asked for "additions to" and "deductions from." Unit prices shall be limited to five.

ALTERNATE DESIGN

No voluntary alternates shall be written in the proposal. It is recommended that no bids for construction be solicited requesting alternate structural designs to be submitted by the bidder.

AWARD

Awards should be made on low base figure. It is recommended that alternates be taken in order as stipulated in the specification.

ARTICLE 7

DISCLOSURE OF SUB-BIDS OR MATERIAL QUOTATIONS

It is unethical, unjust and detrimental to the construction industry when a General Contractor, prior to the award of a general contract, discloses to Architects, Engineers, Owners or others the amounts of sub-bids or quotations obtained on confidence for the purpose of preparing his bid.

ARTICLE 8

OWNERS FURNISHING MATERIALS

Recognizing that the furnishing of materials for building construction projects is part of the business management function in construction which can most efficiently and economically be performed by the General Contractor, it is recommended that the purchase of material by the Owner be discouraged.

ARTICLE 9

MEETING THE LOW BID

It would defeat the purpose of fair competition for one competing bidder, after he has knowledge of the bids, to reduce his bid so as to deprive a lower bidder of his legitimate advantage. It is likewise unfair for the Owner, Architect or Engineer to whom the bids were rendered to induce or allow a competing bidder to do this.

Conversely, since all bidders know their competitors' bids, it would be unfair for the low bidder to raise his bid and still remain the low bidder.

ARTICLE 10

ERRORS IN BIDS

The only relief granted to a bidder who claims an error is to allow the bidder to withdraw his bid. Bid security should be returned.

In the event that an error is claimed by a bidder and acknowledged by the awarding authority, the erroneous bid should be considered void, and action taken on the remaining bids the same as if the erroneous bid had not been submitted.

ARTICLE 11

BIDDING AND AWARD OF SPECIALTY CONTRACTS

An important part of the construction procedure is the bidding and award of specialty contracts for various specialized portions of the work. Specialty contractors perform essential and vital portions of the project.

If the general contractor is to be completely responsible to the Owner for the execution of all the operations essential to construction of the project, he requires the authority to engage the services of the necessary specialty contractors and to coordinate their work.

To insure uniformity of procedure, contracts between the General Contractor and Subcontractors should be through the use of the AGC Standard Sub-Contract Agreement and the AGC Standard Sub-Contract Agreement for Materials.

It is obvious that the bidding and awarding of such contracts should be done ethically and in accord with sound business practices.

Sound business procedures for the bidding and award of specialty contracts and the purchase of materials, are set forth in Section 3 of the Code of Ethical Conduct of the Associated General Contractors of America, which states as follows:

“The operations of the Contractor are made possible through the functioning of those agencies which furnish him with service or products, and in contracting with them he is rightfully obligated by the same principles of honor and fair dealing that he desires should govern the actions toward himself of Architects, Engineers and client Owners.

"Ethical conduct with respect to subcontractors and those who supply materials requires that:

- "1. Proposals should not be invited from anyone who is known to be unqualified to perform the proposed work or to render the proper service.
- "2. The figures of one competitor shall not be made known to another before the award of the subcontract, nor should they be used by the Contractor to secure a lower proposal from another bidder.
- "3. The contract should preferably be awarded to the lowest bidder if he is qualified to perform the contract, but if the award is made to another bidder, it should be at the amount of the latter's bid.
- "4. In no case should the low bidder be led to believe that a lower bid than his has been received.
- "5. When the contractor has been paid by a client Owner for work or material, he should make payment promptly, and in just proportion, to subcontractors and others."

SECTION II

RECOMMENDED PRACTICE FOR SPECIFICATIONS AND OTHER DOCUMENTS

ARTICLE 12

FORM OF PROPOSAL

It is recommended that Proposal Forms should be bound or attached with the Specifications and that the Contractor be furnished extra copies for submitting his bid.

ARTICLE 13

GENERAL CONDITIONS TO CONTRACT SPECIFICATIONS

It is recognized that the AIA General Conditions to Contract Specifications have been developed as the best general conditions for two parties to a construction contract. They have had National acceptance as such. It is recommended that these General Conditions be inserted with minimum modifications.

ARTICLE 14

STANDARD FORMS OF CONTRACT

The form of contract to be used shall be the standard documents of the American Institute of Architects (approved and endorsed by the AGO, latest edition, including the forms designated as The Standard Form of Agreement Between Owner and Contractor (A101) and the General Conditions of the Contract for Construction (A201), known as the Standard Documents.

ARTICLE 15

DRAWINGS

AS REGARDS MISCELLANY

- (a) The drawings must be clear, accurate, and adequately dimensioned.
- (b) In indicating materials and their use, nationally accepted standard symbols should be employed.
- (c) Construction sections and large scale details sufficient for intelligent bidding and for the purpose of correlating all parts of the work should be a part of the general drawings. This is particularly important when the size of a project makes necessary the preparation of the general drawings at a scale less than 1/8" = 1 '0". A coding method should be used to enable bidder to locate applicable details.
- (d) When necessary for clear indication of mechanical trades, they should be embodied on separate drawings.
- (e) The successful bidder should be given enough sets of plans to build the project.

ARTICLE 16

SPECIFICATIONS

INDEX

It is desirable that specifications include a complete index and all sections include a complete description of the material and processes involved in each classification, so that no section includes work or material pertaining to another section.

The use of the Standard Check List for Specification Titles is recommended and encouraged.

While the standardization of the general provisions is acceptable it is desirable that the language of the specifications bear specific reference to the particular job and not be of wording applicable to any project.

Such wording as "The erection of the building shall be complete in every respect, any omissions in these specifications and the accompanying drawings notwithstanding" should be omitted. The Architect should provide complete plans and specifications, and the General Contractor should adhere to same.

"OR EQUAL"

It is recommended that the "or equal" clause be eliminated. As a substitute, one or more manufacturers of a product or method which is acceptable should be named. When a specialty item is specified which does not have a local representative a set of plans and specifications, together with a list of bidders, should be sent to the manufacturer.

SPECIAL ITEMS

Specifications should be broken down into small and accurate sections which will allow subcontractors and suppliers to bid the entire section.

FIELD PAINTING

All field painting should be confined to the painting section, leaving only factory priming or factory finished items outside that section.

BRICK ALLOWANCES

Brick allowances should state whether bricks are standing or modular and whether they apply to cost at the factory, f.o.b. cars, or delivered to site; and whether transportation tax and/or sales tax is included in the allowance. Other allowances should likewise be clearly defined and specific.

**LUMP SUM
ALLOWANCES**

When the exact quantity cannot be estimated, or where the exact nature of any product or detail (such as bronze tablets, concrete bases for equipment, stained glass windows, etc.) cannot be drawn or specified, it is suggested that a lump sum allowance be set up to cover the cost.

**JOB
ALLOWANCES**

It is also recommended that the specifications include the complete text of the official job advertisements.

LANDSCAPING

It is recommended that landscaping not be included in the general contract. Where the owner insists that landscaping be included in the general contract the requirement should be detailed and where this work is delayed by weather conditions the retained percentage should be a proportion of the landscaping and not a proportion of the total job cost.

**SUBSURFACE
CONDITIONS**

It is recommended that subsurface conditions be indicated in the plans and/or specifications whenever feasible. Unless the plans and specifications correctly set forth the nature of the soil and the conditions which will be encountered in the excavation, it is assumed that the contractor's proposal is based upon reasonably dry earth excavation. Should water (except from surface drainage), quicksand, rock or other obstructions be encountered which materially increase the cost to the Contractor he should be equitably paid for such extra costs.

**USE OF
ADJOINING
PROPERTY**

Where it can be foreseen that it will be necessary to secure temporary access to or usage of adjoining property for the construction of a project, the contract documents should include a provision that the Owner shall secure such privileges and rights as may be required for the particular project, and in such time as not to delay the project.

COST CHANGES

It is recommended the specifications provide that where an estimate of change in cost is requested by the Architect or Engineer the Contractor should be prompt and make every effort to report cost information as quickly as possible and before the work is performed. The Architect should be equally prompt in accepting or rejecting such changes.

CHANGE ORDERS

It is recommended that the General Contractor secure written authority before proceeding with change orders or extra work.

ARTICLE 17

SHOP DRAWINGS

It is recommended that Architects and Engineers review and approve all shop drawings for design, conformity and interpretation of detail and that all shop drawings should be submitted to the Architect or Engineer through the prime Contractor who shall also have reviewed and approved said drawings for confirmation with the contract documents. Further, all parties will do everything possible to expedite the reviewing of drawings.

ARTICLE 18

TYPE OF PROPOSAL

SINGLE OR SEPARATE CONTRACTS

It is recommended that the General, Mechanical and Electrical work be awarded under one contract.

The Architect or Engineer may select a list of bidders on mechanical and electrical contracts, from which predetermined list bids shall be invited by the General Contractor and the work of which shall be included in the general contract.

The Architect or Engineer may take mechanical and electrical bids from his own invited bidders and by subsequent agreement with the General Contractor incorporate such work under the general contract for an additional fee to the General Contractor as agreed upon by Owner and General Contractor.

Considering the advantages to the Owner of awarding one general contract for the construction of a project to an experienced and competent General Contractor, the cooperating organizations believe in the general advisability and desirability of the single overall contract.

SEPARATE AND COMBINED BIDS

There should be no demand on the General Contractor to quote separately on General Contract work and alternatively on a combination of General Contract work and one or more mechanical and electrical items.

MECHANICAL AND ELECTRICAL PLANS

Plans for mechanical and electrical installations shall be supplied to General Contractors in all instances whether the mechanical and electrical work is included under the general contractor not. The General Contractors need these plans and specifications so as to know the location of the installations and thus be able to properly figure and estimate their own operations.

**CLEANING,
PATCHING AND
OTHER DELAYS**

In all cases where mechanical and electrical work is not included under the general contract and the General Contractor is therefore not in complete control of the entire project, he shall not be responsible for the cleaning up, patching, delays in progress of work, etc., caused by mechanical and electrical contractors. Specifications covering mechanical and electrical work should provide for these contingencies.

ARTICLE 19

CONTRACTOR PAYMENTS

**MONTHLY
PAYMENTS**

In making monthly payments there shall be a retained percentage at the rate of 10% until 50% of the job is completed, after which there shall be no additional retainage for the duration of the project, provided that the work has proceeded to the satisfaction of the Architect and Engineer and/or the Owner.

**SUBCONTRACT
PAYMENTS**

Payments for work under Subcontracts of the General Contract, shall be subject to the above conditions applying to the General Contract.

FINAL PAYMENT

Under Article 5 "Acceptance and Final Payment" of the Standard A.I.A. Form, final payment shall be due 30 days after substantial completion of the work provided the work be then fully completed and the contract fully performed. Substantial completion is defined as such time as it is possible for the Owner to use or occupy the structure or facility.

PROMPT PAYMENTS

All progress payments and final estimates should be paid promptly. Payment of final estimates should not be held up for unreasonable causes. There are cases when work cannot be finally completed as originally intended owing to unforeseen delays, change orders and other causes beyond the Contractor's control. Many such delays are of minor importance or effect and should not be the basis for failure to make prompt payment of final estimates.

ARTICLE 20

EMERGENCY TERMINATION CLAUSE

If the work or construction is stopped under an order of any court or other public authority, for a period of three months, through no act or fault of the contractor or of anyone employed by him, or, in the event of a national emergency, work or construction is stopped, directly or indirectly, by or as the result of the order or action of any court, or federal or state authority, and the circumstances or conditions are such that it is and will be impractical to proceed with such work, or construction; or, if the Architect should fail to issue any certificate for payment within ten days after it is due, or if the Owner should fail to pay to the Contractor within ten days of its maturity and presentation, any sum certified by the Architect or awarded by arbitrators, then the Contractor may, upon ten days written notice to the Owner and the Architect, stop work or terminate this contract and recover from the Owner payment for all work or construction executed and completed at that time, and for any loss sustained upon any plant or materials, and also reasonable profit

and/or damages. If no agreement is reached by the Contractor and Owner within fifteen days after the written notice has been given as above provided, the question or questions in dispute shall be subject to arbitrations as provided in the contract documents.

ARTICLE 21

WAGE RATES

It is recommended that reference to wage rates and pay practices, etc., be excluded from specifications except on such projects as those involving federal funds wherein certain wage and labor law provisions might be required.

ARTICLE 22

PROGRESS SCHEDULES

It is recommended that Contractors submit anticipated progress schedules and also periodic progress reports.

ARTICLE 23

TEMPORARY UTILITIES

- WATER** The Mechanical Contractor shall arrange to install water lines, make connections and metering for water service for use during construction at his expense.
- LIGHT AND POWER** Electrical Contractor shall arrange to install electric lines, make connections and metering for electric service during construction at his expense.
- TEMPORARY HEAT** All heating required by Contractors prior to enclosure of building shall be furnished by each Contractor requiring same. Heating units must be of approved types and equipment and surroundings must be kept in a clean and safe condition.
- PERMANENT HEATING SYSTEM** After the building has been enclosed so that it will provide reasonable heat retention, the Heating Contractor shall have the heating system in readiness for furnishing temporary heat. Heating Contractor shall provide some means of metering if heat is used from Owner's existing plant. The Heating Contractor shall operate the heating system until acceptance of the building. Any radiation or connections set up for temporary heat shall be so connected as to be set out from the wall and when no longer needed the units, valves, etc., shall be cleaned and put into proper working condition for service. The Heating Contractor shall perform and be responsible for same at his own cost. The General Contractor should be responsible for the fuel costs.

ARTICLE 24

GUARANTEES

Guarantees should be for no more than one year. Contractor is not to be held responsible for damage or wear caused by building occupants after the date of substantial completion of the project.

Contract documents may specify certain products and materials requiring a manufacturer's guarantee for more than one year.

ARTICLE 25

INSURANCE

General Contractor should obtain and pay premium for Workmen's Compensation, Public Liability and Property Damage Insurance.

Owner should obtain and pay costs of insurance covering fire, wind, tornado, lightning, and water damages as well as malicious mischief and vandalism. The contract documents shall stipulate the amount of the deductible, if any.

ARTICLE 26

CHOICE OF SURETIES

No action should be taken which would bring about a departure from the traditional practice of permitting the Contractor to secure Surety bonds or insurance from the reputable companies of his choosing, who are licensed to do business at the project location.