

# Recommended

# Bidding Procedures

7th Edition



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# FOREWORD

Competitively bid construction projects constitute the largest segment of the largest industry in the United States. While the industry has long recognized the importance of this segment of the construction market, it has, until recent years, not adequately addressed the importance of a more uniform set of bidding guidelines for the market. Owners, Designers, and Constructors have, with increasing frequency, moved from one geographic region to another, only to discover a new set of local bid procedures. These local differences lead to long bid periods, often to less competition, and often to higher bids.

Recognizing a need to establish more uniform guidelines for bidding competitively priced construction projects, the American Society of Professional Estimators resolved, in consultation with other national industry associations, to research local bidding practices and to develop a comprehensive set of bid procedure guidelines which, if widely implemented by the industry, will serve to clarify and advance the industry toward a national perspective.

The Society wishes to express its gratitude to all those industry associations and individuals which contributed time and information to this effort.

This revision of the Recommended Bidding Procedures pamphlet was initiated by the Standards Committee of the American Society of Professional Estimators in conjunction with the the Board of Trustees, and completed in April, 2013.

The Board of Trustees  
American Society of Professional Estimators  
April, 2013

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Success completion of a construction project depends upon a team effort without the full cooperation and fair treatment of all team members – the Owner, the Design Team, and the Construction Team – this objective will not be realized.

It is with this goal in mind – Successful Project Completion – involving Cooperation and Fair Treatment of all team members – that this booklet has been developed.

Recognizing that every project and governing jurisdiction has varying Policies, Procedures, and Regulations that must be followed, the goal of this document is to provide a broad outline of the best practices for design professionals to incorporate in the project documents during the bid and award phases.

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# 1. INVITED OR SELECTED BIDDERS

## 1.1 Prime Bidders

### **The Issue:**

Should proposals be received from any Prime Bidder, or should bids be received only from invited (pre-qualified) Bidders?

### **Discussion:**

Many public Owners are required by law to solicit and accept bids from any bidder which meets the criteria set forth in the bidding documents (e.g., which provides a bid bond, properly executes its bid form, etc.). These criteria are often inadequate to determine whether the Prime Bidder is "responsible". That is, such criteria fail to determine whether the firm has the financial and organizational resources necessary to bid and construct the project under consideration.

For this reason, many Owners use a pre-qualification process to gather information from and about a prospective bidder prior to issuing bid documents. After evaluating this information, the Owner selects those Prime Bidders which it determines are best qualified to both bid and construct the project.

### **Recommendations:**

Where pre-qualification is used:

- The number of Prime Bidders selected should be limited to no more than four to six. This number will insure both adequate and spirited competition.
- The selected Prime Bidders and the construction community at large should be notified of the names of selected Prime Bidders prior to issuing bid documents.
- Bids should be publicly opened. See also Section 4, Day and Time for Receiving Bids.
- The contract should be awarded to the lowest responsive and responsible bidder.
- All pre-qualified Prime Bidders should be able to furnish payment and performance bonds for the project being bid to the Owner, and to identify for the Owner the costs for such bonds.
- The scope of work for the bidders needs to be included in the project specifications.

## **1.2 Subcontractors and Material Suppliers**

### **The Issue:**

Should Subcontractor and Material Supplier bids be received from any Subcontractor and Material Supplier or only from those which the Owner pre-qualifies?

### **Discussion:**

There are two principal schools of thought on this issue. One is that the Prime Bidder should bear the responsibility for the Subcontractors and Material Suppliers it uses. The other is that the Owner has a valid interest in assuring itself as to the capability of its Subcontractors and Material Suppliers. An associated question for Owners in this case is the extent to which pre-qualification is carried. Some Owners choose to pre-qualify only mechanical and electrical Subcontractors; others additionally pre-qualify roofing, masonry, and excavation Subcontractors; still others pre-qualify all Subcontractors. Whether and to what extent Subcontractors are pre-qualified is the choice of the individual Owner. Many Prime Bidders would prefer the Owner not pre-qualify Subcontractors and/or Material Suppliers.

### **Recommendations:**

Where Subcontractor pre-qualification is used:

- The names and disciplines of all pre-qualified Subcontractors and Material Suppliers should be published concurrently with those of pre-qualified Prime Bidders.
- All pre-qualified Subcontractors and Material Suppliers should be able to furnish payment and performance bonds for the project being bid to the Prime Bidders, and to identify the cost for such bonds.



## **2. ADVERTISEMENT FOR BIDS**

### **The Issue:**

Should a bid be advertised? If so, what information should be included in the advertisement?

### **Discussion:**

A typical bid advertisement is issued prior to the issuance of bid documents for the purpose of attracting prospective bidders. It may be mailed to individual firms, published in an appropriate newspaper or magazine of general circulation in the construction industry, emailed to prospective bidders, published on a website, and posted in plan rooms.

### **Recommendations:**

A bid advertisement should:

- Be circulated sufficiently in advance of the distribution of bidding documents to allow prospective bidders to include the project in their respective bid calendars. The minimum advance notice should be twenty-one (21) days prior to bid document issue.
  - Contain a short description of the project including bid date, time, point of contact, pre-proposal meeting date, time and location, approximate contract amount, approximate size or capacity, project location, licensing requirements, bonding requirements, special project goals such as DBE and MBE.
  - Be circulated to all prospective bidders - Prime, Major Subcontractor, and Material Supplier bidders; published in construction oriented magazines and newspapers; and posted in plan rooms.
  - State the date of document availability, location to obtain documents, and deposit and refund provisions. Documents may also be available from on-line plan rooms, ftp sites, by email, or other distribution means, and should be noted in the advertisement.
-

### **3. ESTIMATING AND BIDDING TIME**

#### **The Issue:**

How much time from the issue of bidding documents should be allowed for bid preparation?

#### **Discussion:**

Bid preparation is a function of the number of sets of bid documents issued, availability of digital documents, the efficiency with which they are dispersed, the completeness and complexity of the documents, the complexity of the bid form, and the complexity of the project.

Simple projects (usually of lesser value, for example, under \$1,000,000) with simple bid forms, complete documents, and which involve only bidders in a small geographic area do not require estimating periods as long as more complex projects with more complex bid documents, a wider geographic appeal, or incomplete documents.

Regardless of the size, and complexity, it is essential that construction documents are complete when they are issued. Issuing complete construction documents for bidding purposes will result in proposals that provide the Owner a proposed cost that will more accurately reflect the final cost of the project, reduce the time required for generating and answering requests for clarifications of the bidding documents, and reduce the needs for time extensions in the pricing process.

#### **Recommendations:**

- Complete and review, for accuracy, all construction documents before issuing them for bid. Highly recommend performing a constructability review prior to issuing the documents.
  - When determining bid date, consider holidays and non-work events in the project vicinity.
  - Allow two (2) weeks minimum preparation for small (under \$1,000,000) or simple projects.
  - Allow four to six (4 – 6) weeks for large and/or complex projects.
  - For extremely large projects (\$50,000,000 or more), extremely complex projects, or extremely complex bid requirements, the estimating time allowed should be determined after consultation with the potential Prime Bidders.
-

## **4. DAY AND TIME FOR RECEIVING BIDS**

### **The Issue:**

What days of the week, times of the day and under what conditions should bids be received?

### **Discussion:**

Owners who wish to receive the most competitive bids must recognize that the construction industry has certain days and times to tender bids which are preferred. The preferred days are Tuesday, Wednesday, and Thursday. The preferred time is between 2:00 p.m. and 4:00 p.m. local time. Bids tendered at times and on days other than these could possibly receive less coverage and not be as competitive.

### **Recommendations:**

- Bids should be received at a specific time between 2:00 p.m. and 4:00 p.m. on Tuesday, Wednesday, or Thursday.
- Bids should not be received on holidays, on the day before or after holidays, or during the week between Christmas Day and New Year's Day. Observance of local non-work events should also be considered.
- Prime Bidders should be afforded a location for receiving and recording last minute changes to their bids, and telephones in close proximity to the place for receiving bids if cell phone service is unavailable.
- The time of receipt should be clearly stated and strictly enforced. An official clock should be displayed in the place receiving bids, and the person receiving bids should stamp bids received with the time of receipt and publicly state when the time for receipt of bids has elapsed. Bids received after that time should not be accepted.
- The duration for which the bid shall remain valid should be clearly stated in the Bidding Documents.
- The Owner's construction budget for the project and basis for selecting the low bidder should be announced in conjunction with bid advertising. See also Section 10, Pre-Bid Conference and Section 19, Owner's Proof of Financial Ability.
- Bids should be publicly opened and read aloud. Obvious problems with a bidders responsiveness (no bid bond, failure to acknowledge addenda, failure to comply with listing requirements, etc.) should be noted. If protests are allowed, the mechanism for them should clearly defined in the bidding documents.

- Other pertinent bid information, such as alternates and subcontractor listing, should also be read aloud.
  - Interested parties should be allowed to review the bidding documents of all bidders.
  - The schedule for award should be announced. Bids should not be held longer than sixty (60) days without an award announcement being made.
  - Complete bid results should be formally published in a timely manner.
-

## **5. BIDDING DOCUMENT AVAILABILITY**

### **5.1 Bidding Document Availability - Plan Deposit - Plan Holder**

#### **The Issue:**

Under what conditions should Plan Holders be required to pay a plan deposit when bidding a project?

#### **Discussion:**

Many Owners and Architects charge a deposit fee for plans used during the bidding of their projects. Normally, these deposits are refundable to the Plan Holders when the bidding process is complete, if certain requirements are met.

Owners and Architects use this policy to promote the return of their plans for possible reuse and security concerns.

#### **Recommendations:**

When plan deposits are used:

- The apparent low bidder and other bidders whose bid security is retained by the Owner should be allowed to retain bid documents until the contract has been awarded. If other bidding documents are returned to the Owner or Architect within ten (10) days of bid, in good condition, their deposit should be fully refunded.
- A bidder which decides against bidding and which notifies the Owner or Architect two days prior to bid and which returns its bid documents in good condition should have its deposit fully refunded.
- The deposit amount should closely approximate reproduction costs of plans and specifications and deposits for all sets returned in good condition should be fully refunded.
- If a plan deposit system is not used, bid documents should be available for purchase at the cost of reproduction and handling.
- Digital Plans and Building Information Modeling: When plans are issued digitally:
- Digital Files may be distributed at no charge using an FTP site, by flash drive, CD or DVD's at no charge or cost to produce the media.
- On-line plan rooms may also be utilized for distribution.

## 5.2 Bidding Documents Availability - Plan Rooms & Plan Services

### The Issue:

Should the Architect or Owner supply plans to the local Plan Rooms and Plan Services?

### Discussion:

With the increasing use of Plan Rooms and Plan Services, the Architect and Owner have a means of reaching a larger number of interested bidders for their projects.

These facilities enable a larger number of bidders to have access to the documents, many of whom might not have had the opportunity to review them otherwise. The availability of bid documents to a larger number of bidders benefits the Owner by increasing competition.

### Recommendations:

- Each local Plan Room should receive, free of charge, two (2) to four (4) complete sets of bidding documents at the time of initial issue.
- If the projects are large or complex, additional sets of documents should be furnished to the plan rooms and services, in order to offer more time for the bidders in their bid preparation.
- Local plan rooms or services should notify the Architect if additional sets of plans and specifications are needed.
- The Architect should furnish the plan rooms and services any addenda or changes to bid documents, as well as names of all registered Plan Holders.
- Plan Rooms and Plan Services should not be required to provide a bid deposit or purchase bid documents.

Digital Plans and Building Information Modeling: When plans are issued digitally:

- Digital Files may be distributed at no charge using an FTP site, by flash drive, CD or DVD's at no charge or cost to produce the media.
  - On-line plan rooms may also be utilized for distribution.
-

## **6. BID FORMS AND PRIME BIDDERS**

### **The Issue:**

Are bid forms becoming overly complex?

### **Discussion:**

It is increasingly difficult to complete bid forms for projects. Bid forms are asking for more information in the form of alternates, unit prices, listing requirements and general information.

Complex bid forms add to the degree of possible error at bid time. The closing hours prior to bid time are filled with Prime Bidders receiving bids from Subcontractors and Material Suppliers and trying to confirm that each bid is complete.

Overly complex bid forms add to the Prime Bidder's work load and unduly encumber the bidder during the critical hours prior to bid time.

### **Recommendations:**

- Bid forms should be as simple as possible, with the minimum pertinent information included at bid time. General information required from the Prime Bidders should be requested prior to or after bid time, and prior to award.
  - Alternates and unit prices should be kept to a minimum.
-

## **7. ALTERNATES**

### **7.1 Required Alternates**

#### **The Issue:**

Should bids have required alternates?

#### **Discussion:**

It is becoming increasingly popular for Architects and Owners to include alternates with the base bid for the project. This offers the Owner a multiple number of building features, making determination of the low bid at bid time more tenuous and increasing the amount of time and work needed to compile a bid for the project. These increased costs must be passed on to the Owner in increased bids.

The need for alternates from the original bidding documents can be reduced or eliminated through competent estimating during design development. Each alternate required increases the probability of an error in the bid. How each alternate affects the base project must be determined and clearly defined in the bid documents.

The Owner gets the best bid when the estimating team spends the bid time crunch working on the numbers and not the other miscellaneous items that may be required to be submitted with the bid like alternates. Simple alternates that affect a single trade are easy to calculate, but complex alternates that affect a group of trades, like a building addition, take time to compile because the low subcontractor bidders continue to change.

#### **Recommendations:**

- Where alternates cannot be eliminated from the bid, they should be the absolute minimum in number, and as simple as possible. Multiple discipline alternates (those that impact the work of many trades) in fact require the preparation of two (or more) complete mini-bids and should be avoided. Alternates should be add alternates if possible.
- Pricing for alternates should be submitted with the base bid if single trade alternates. If there are multiple alternates or multiple trade involved alternates they should be submitted separately at stated time. All base bids and alternate bids should be opened at the same time, at the stated time, usually one (1) or two (2) hours after the base bid is submitted. The base bids and alternates should be opened at that time.
- Alternates should be clearly defined in both plans and specifications including adequate specification description of work areas and drawing exposition of interface requirements.
- Determination of the apparent low bidder should be made upon the base bid, precluding the appearance of arbitrary low bidder selection by manipulation of alternate selection. If alternates are used to determine the apparent low bidder, the project budget should be



announced prior to opening bids, and the alternates should be evaluated in the order of priority. This order, as well as the basis of award, should be clearly set out in bid documents.

- Where alternate prices result in listed Subcontractors or Material Suppliers changes, such changes in the listing of Subcontractors or Material Suppliers should be recorded when alternate prices are submitted.

## **7.2 Voluntary Alternates**

### **The Issue:**

Should voluntary alternates be solicited with the base bid?

### **Discussion:**

The solicitation of voluntary alternates in the bidding process increases the difficulty of establishing the true low bidder and the appearance of bid manipulation by the Owner. On state and federal projects with public monies they are not allowed.

The use of voluntary alternates may lead to using materials or systems that do not meet the intended specifications. In this process the Owner does not always get the final project intended by the Architect.

The use of voluntary or "Contractor's Alternates" is considered an unnecessary complication of the bidding procedure.

### **Recommendations:**

- Voluntary alternates should not be allowed at bid time.
  - If the Owner desires cost saving ideas, these should be gathered through the use of cost cutting meetings after the award of the contract to the apparent low bidder. It is illegal to negotiate with the apparent low bidder without having the contract signed on public works projects. It is also illegal to negotiate with the apparent low bidder if the bids received were all over budget in the hopes of lowering the bids to sign a contract. The Prime Bidder, in turn, should negotiate only with its legitimate low Subcontractors and Material Suppliers.
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## **8. SUBCONTRACTOR AND MATERIAL SUPPLIER LISTING**

### **The Issue:**

Should Subcontractor and Material Supplier listing be required on competitively bid projects?

### **Discussion:**

In a properly administered bid, the apparent low Prime Bidder is immediately known. In the absence of requirements to list the names of Subcontractors and Material Suppliers, these companies do not have the same opportunity to determine which of them the apparent low Prime Bidder proposes to use.

Some Owners and Architects argue that listing requirements are necessary to assure that only responsible Prime Bidders participate in the bidding process and to help assure that they receive the lowest price.

Subcontractors and Material Suppliers argue that such requirements are necessary to curtail bid shopping, and that their firms are entitled to the same treatment as are the Prime Bidders. They also stress the importance of knowing whether they will be participating in the project so they can better judge their ability to bid on other projects.

The Owner gets the best bid when the estimating team spends the bid time crunch working on the numbers and not the other miscellaneous items that may be required to be submitted with the bid like subcontractor listing. A late subcontractor bid cut may not be able to be used because there is not enough time to change the sub listing.

### **Recommendations:**

- Subcontractors and Material Suppliers whose bids exceed 1/2 of 1% or \$5,000, whichever is greater, of the Prime Bidder's bid should be listed.
- Prime Bidders should not be allowed to change from a listed Subcontractor or Material Supplier to another without sufficient cause. Requirements for listing changes should be fully set out in bidding documents and strictly enforced. If bid alternates change the apparent low sub-contractor bid the listing should be allowed to be changed.
- Subcontractor and material supplier listing, unless it is only Mechanical, Electrical and Plumbing subs, should be submitted at a later time, usually one (1) or two (2) hours after the bid is submitted. The bids should be opened after the listing is submitted.

These are listed on the bid form and read aloud at the bid opening.

Many public and private agencies are now using the bidder responsibility criteria allowed per laws to limit the contractors able to bid on projects unless certain criteria is met.

## 9. UNIT PRICES

### The Issue:

Should unit prices be required in the bid process?

### Discussion:

Many bidding documents require the submittal of unit prices which can be used in the pricing of additional project work, or for site conditions encountered which cannot be reasonably anticipated. Many require that unit prices for additional work equal those for work deleted.

With few exceptions, unit prices given at bid time substantially complicate bid preparation. Pricing is intimately related to quantity of the item to be performed or omitted. Lower quantities typically indicate higher unit prices; higher quantities usually indicate lower unit prices. Project administration and project schedule effects cannot be reasonably assessed, and requiring equal pricing for additive and deductive units fails to address these issues.

### Recommendations:

- Unit prices (except for work which cannot be reasonably quantified, e.g., piling, caissons and rock and associated earthwork) should be removed from the contract documents.
- If unit prices are required, those for additional work and for deleted work should be separated
- The pricing should be on a sliding scale for quantities so that the smaller quantities can have a higher unit price than the larger quantities. Think of rock removal – a small quantity will cost much more per c.y. than a large quantity.

Unit prices needed should be negotiated with the apparent low bidder after the scope of changes is better known, through the change order process. Requirements for change orders should be fully set out in bidding documents. See Section 26, Change Orders. However, on state and federal public works projects the unit prices are turned in with bids and not open to negotiation.

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## 10. Pre-Bid Conference

### The Issue:

Should pre-bid conferences be held?

### Discussion:

Pre-bid conferences are a vehicle for the Owner and Design Team to communicate information about project procurement, financing and administrative procedures. They may also be used to present technical questions related to bidding documents though the response to such questions, after investigation, is usually issued in an addendum.

Many members of the industry question the value of pre-bid conferences, believing them to be an unnecessary restatement of information contained in the bidding documents, and a dilution of bid preparation efforts, rather than an enhancement of them.

### Recommendations:

- Pre-bid conferences, if necessary, should be held where possible at the project site at the approximate mid-point of the bidding period, but no later than ten (10) days prior to bid date.
  - Information communicated should be a substantive addition to the bidding process; restatement of information already available in bidding documents should be avoided.
  - Pre-bid conference minutes and answers to technical questions should be issued to all plan holders as an addendum.
  - The source and amount of funds available for construction should be discussed.
  - Mandatory attendance at pre-bid conferences by prospective bidders should be avoided unless it is necessary for instance:
    - very complicated project
    - very detailed phasing
    - very secure area where work is to be done
-

# 11. PRODUCT SUBSTITUTION

## The Issue:

Under what conditions should product substitutions be allowed in competitively bid projects?

## Discussion:

Many project specifications include "or equal" clauses which allow products not specifically named to be considered for use. These clauses establish the conditions under which alternate products may be submitted for consideration and identify the party whose responsibility it is to accept or reject such alternate products.

"Or equal" clauses allow potential added competition by broadening a product range. Problems associated with them occur in the timing of their submittal and review. Clauses which allow alternate product submittal after bids are taken and a contract is awarded place bidders in the position of determining themselves whether such alternate products are in fact equal and the probability that the reviewing entity will accept them. Often bidders are not qualified to make such a determination and expose themselves to substantial losses if alternate lower product prices are used in bidding and originally specified products are required.

## Recommendations:

- Where possible, the Designer should specify a range of products sufficient to result in adequate competition. "Or equal" clauses should not be used.
- If "or equal" clauses are used, alternate product submittals should be required sufficiently in advance of the date bids are due so that the reviewing entity can rule on their acceptability and publish the list of accepted products to all bidders at least ten days prior to bid date. Products not named in the original specifications or by addendum prior to bid should not be allowed: A list of "or equal" products, manufacturers, model numbers etc. should be included in the specifications not just the line "or equal".

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Conditions under which alternate products will be allowed after award of contract should be clearly stated in the specifications and scrupulously followed. Among these is specified product unavailability due to causes beyond the bidder's control.

## 12. ADDENDA

### **The Issue:**

What is the purpose of an addendum?

### **Discussion:**

Questions which arise after bid documents are issued should be answered in addendum form. The initiating authority has the responsibility to answer all questions prior to bid time.

### **Recommendations:**

- Questions should be submitted in writing, as RFI's (request for information), on a collaborative website and/or by email (if allowed) to the entity identified in the bidding documents.
  - All answers should be transmitted by written addendum to all plan holders.
  - All addenda should be issued no later than three (3) working days prior to bid date.
  - If an addendum cannot be issued three (3) working days prior to bid opening, the bid date should be extended, unless it is a very minimal addenda adjusting bid time, place or form.
  - Verbal instructions, or changes, should not be allowed and typically are not valid.
  - All addenda changes to drawings should be clearly identified, either by "clouding" or by issuing supplemental drawings.
  - Addenda should be used to clarify the documents. Replacement of large sections of the documents should not be made via addenda.
-

## 13. BID BOND REQUIREMENTS

### The Issue:

Under what conditions should bidding security requirements be imposed upon Prime Bidders and Subcontractors?

### Discussion:

Owners have a legitimate interest in insuring that the low Prime Bidder on a competitively bid construction contract 1) executes a contract for its bid amount and 2) provides payment and performance bonds if required by the bidding documents. To insure that both events transpire, bidding requirements usually require each Prime Bidder to furnish acceptable bid security in the amount specified or have its bid rejected as non-responsive. Bid securities are essentially insurance which allows the Owner a mechanism for financial recovery should the low Prime Bidder default upon its bid.

Bid securities are usually a specified percentage of the Prime Bidder's price, typically 5% to 10%. They may entitle the Owner to collect as actual damages the difference between the low Prime Bidder's price and the second bidder's price (to the maximum limits of the bond amount), or they may entitle the Owner to the face amount of the Bond as damages regardless of the low and second Prime Bidders' prices.

Acceptable bid securities may include Bid Bonds written by U.S. Treasury-approved surety companies for this purpose, including agreement to provide Payment and Performance Bonds as specified. A certified check, an irrevocable letter of credit, negotiable securities, or other instruments may also be acceptable bid securities depending on the laws of the state which the bid is received.

### Recommendations:

- Bidding documents should clearly set out all bid security requirements including permissible forms, amount, whether actual or liquidated damages types and time period to remain valid.
- Bids received should be accompanied by documentation demonstrating compliance with bid document requirements, or they should immediately be rejected.
- Bid securities should be returned to all bidders not being considered. Bidders under consideration shall have securities held until contract is awarded.
- Bid securities should not be required of any bidder at any tier of the project which will not contract directly with the Owner.

## 14. PAYMENT AND PERFORMANCE BOND REQUIREMENTS

### The Issue:

Under what circumstances should payment and performance bonds be required of successful construction project bidders?

### Discussion:

Payment and performance bonds are written by a surety or an insurance company and insure faithful performance of the work contracted and full payment to those companies that provide services or materials for the project. They may protect the Owner from default by the Prime Bidder, or the Prime Bidder from default of its Subcontractors or Material Suppliers (i.e., a "Supply Bond"). In some instances a Subcontractor may also require payment and performance bonds of its sub-subcontractors and material suppliers, and so on.

The premium for such bonds may be paid directly by the entity requiring them or its cost may be included in the bidder's price, the bidder then paying and being reimbursed in the initial contract progress payments.

Premium amounts may vary from 1/2 of 1% to more than 2% of the contract or subcontract in question.

### Recommendations:

- Where payment and performance bonds are required of the Prime Bidder, their requirements should be clearly and completely set out in bidding documents. These should include the verbatim language which will appear in the Bonds proper, the amount and type of such bonds, and the mechanism for payment of their cost.
  - The time allowed to provide such bonds from notice of award should be clearly identified as well as the consequences of failing to do so as stated in the contract documents.
  - Prime Bidders should inform their Subcontractors and Material suppliers of their requirements for such bonds, including the party responsible for payment. This should be done prior to receipt of the Subcontractors or Material Suppliers bids, not later in any case.
  - It is recommended that owners or prime contractors require subcontractors with bids exceeding \$300,000 be required to provide performance and payment bonds.
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## **15. ETHICS IN BIDDING**

### **The Issue:**

What constitutes ethical practice in bidding and contracting construction projects?

### **Discussion:**

- Refer to the ASPE Estimating Canons as the need arises.
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## **16. AWARD OF CONTRACT TO PRIME BIDDER, SUBCONTRACTORS, AND MATERIAL SUPPLIERS**

### **The Issue:**

To which bidders should construction contracts be awarded?

### **Discussion:**

Many construction firms representing all tiers of the project bid on construction projects. They invest time, money, and effort in the hope and belief if they are the low bidder for their portion of the work, they will be awarded a contract.

### **Recommendations:**

- Construction contracts should be awarded to those responsible and responsive bidders, at all levels of the project, which submit the low bids for their portions of the work prior to bid time as required by the Contract Documents.
  - All laws and regulations should be followed in the determination of the award of the contract.
-

## 17. RE-BIDDING PROJECTS

### The Issue:

Under what conditions should competitively bid construction projects be re-bid?

### Discussion:

Occasionally owners of competitively bid construction projects find it necessary to re-bid their projects. Often this is necessary because initial bids received exceed the Owner's construction budget. The Owner must then make changes to the project's scope to reduce its cost, either through removing elements of construction, approving substitute materials of lesser cost, or a combination of both. After the changes are incorporated into bidding documents, the documents are re-issued and new bids are taken.

Sometimes, private owners use the re-bid process to simply drive bid prices down, without substantive changes to project scope. This is possible because original prices, both of the Prime Bidder and Subcontractors and Materials Suppliers are widely known, the rationale being that bidders who know their competitors' prices will reduce their own prices during re-bidding to allow themselves a better chance of being successful.

In either case, re-bidding typically results in lower bids, though not necessarily less costly or higher quality projects.

### Recommendations:

- If at all possible, re-bidding construction projects should be avoided.
- If the lowest bid is within fifteen percent (15%) of the estimated or budgeted funds, an attempt should be made to negotiate cost reductions with only the apparent lowest Prime Bidder if a private owner, public owners must negotiate within the limits of laws allowed within the state they operate. The Prime Bidder should, in turn, negotiate cost reductions with its legitimate responsible/responsive Subcontractors and Material Suppliers as allowed by governing laws.
- If the lowest bid exceeds the estimated or budgeted funds by more than fifteen percent (15%), or as allowed by governing laws, and cost reducing items are not easily identifiable, then re-bidding should be considered.
- When making the determination of whether to re-bid or to negotiate, the parties should consider construction cost escalation, further delay in ultimate completion date, and the cost and time of the Design Professional, Prime Bidder and Subcontractors and Material Suppliers to re-bid the project.

- If only one bid is received and a re-bid is considered, it is the Owner's responsibility to return the unopened bid to the Prime Bidder or be prepared to make an award on the basis of the single bid received if the bid is not over a previously stated estimate or available funds.
  - If re-bidding is necessary, they should not be solicited until design changes will bring the project cost within the funds available. The changes in the project requirements should be such as to effect a change of at least fifteen percent (15%).
  - When re-bidding, each modification should be clearly and accurately identifiable in the plans and specifications, and the scope of the modification should be clearly and accurately defined.
-

## 18. RETAINAGE

### The Issue:

Under what circumstances should retainage be included in a construction contract?

### Discussion:

Retainage is an amount of money, typically 5% of the each pay application withheld until final acceptance or as required by governing laws. It gives the owner a means to settle all material and labor liens as well as a way to complete deficient work by the prime contractor, sub-contractor or suppliers on the project.

If the amount retained is greater than the anticipated profits of the Prime Bidder and its Subcontractors and Material Suppliers, retainage forces them to fund the difference between the amount retained and their costs, either out of their own working capital or through arrangements with lending institutions to provide needed funds. The cost of these funds must be passed to the Owner in the form of higher bids, or they must be absorbed by the bidders. In effect, the bidders subsidize the cost of construction to the extent retainage exceeds profits.

### Recommendations:

- For all publicly funded projects retainage should be applied to meet all governing laws of the state where applicable. For privately funded projects the bullets below could be applied in the use of retainage.
- Retainage should not be held if satisfactory construction progress is achieved. In situations where satisfactory progress is not being achieved, retainage may be held until the situation is corrected. The Owner should consider the use of other mechanisms (Payment and Performance Bonds, Release of Liens, etc.) to promote a successful project completion.
- If retainage is held, funds should be retained only on a line item basis at a rate no higher than 10 percent only until 50% of the work is completed, after which there should be no additional retainage, provided the work has proceeded to the satisfaction of the Architect and/or Owner.
- When the line-item work is completed, all retainage should be released except amounts required for final work completion or for work in dispute. Upon final work completion, these amounts should be promptly paid.
- All retainage held during the progress of the work should be deposited by the Owner into an escrow account, with the interest accumulating thereon accruing to the Prime Bidder. The Owner should furnish documentation to the Prime Bidder on the amount of interest earned and the location of the account.

- Upon the approval and agreement of the Architect or Engineer and the Prime Bidder, the Owner should release those amounts retained from the Prime Bidder for release of retainage to those Subcontractors and Material Suppliers who have completed their work in compliance with the contract documents, without negating the contractual obligations of the Subcontractors and Material Suppliers to the Prime Bidder or releasing the Subcontractor and/or Material Supplier from their full and complete responsibilities under the contract documents.
  - Bonds or securities acceptable to the Owner and having a value equal to or greater than the amount of the retention may be substituted by the Prime Bidder for funds in the escrow account, with interest accruing on those securities accruing to the account of the Prime Bidder.
  - On projects with multiple buildings, or phased construction, or of completion and occupancy by the Owner of portions of a building prior to full completion, provisions for release of retainage based on the determination of "substantial completion" and "beneficial occupancy" by the Architect or Engineer should be applied to each building, phase, or completed and occupied portion in the same manner as for a single unit project.
  - Retainage should apply to only materials and equipment provided and services actually performed in connection with the construction project. In no instance should retention or retention escrow accounts be misused in the event of a dispute, to provide coverage for damages or third-party liability anticipated or resulting from the dispute. It is the function of a performance bond, insurance warranties, or legal action to provide for contingencies of this nature.
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## 19. ERRORS IN BIDS

### The Issue:

Under what circumstances should a Prime Bidder be allowed to withdraw its bid for a construction project?

### Discussion:

A Prime Bidder may make a substantive error in its bid to the Owner which may result in bankruptcy or other financial hardships. Should the Owner require the Prime Bidder to perform the work for its bid price in spite of such an error, the resulting project may create an undue hardship upon the Prime Bidder or its Subcontractors and Material Suppliers. Neither condition is likely to result in the successful completion of the project.

### Recommendations:

- If, after bids are opened, the low Prime Bidder claims it has made a substantive error in the preparation of its bid and can support such claim with evidence satisfactory to the Owner, Architect and within the governing laws, it should be permitted to withdraw its bid, without forfeiting its bid security.
- When the low Prime Bidder has withdrawn its bid due to a substantive error, its bid security should be returned and it should be disqualified from again bidding on the project in the event re-bids are requested.
- In the event that the apparent low Prime Bidder has withdrawn its bid due to a substantive error, action on the remaining bids should be considered as though the withdrawn bid had not been received.
- In the absence of legal provisions to the contrary, under no circumstances should a Prime Bidder claiming an error be permitted to alter its bid after the bids have been opened.
- Any claim of error should be filed in writing with the Owner or Architect within twenty-four (24) hours of bid opening time or as designated in the contract documents. The provisions for filing such a claim should be clearly set out in the bidding documents.
- A bid may be returned upon request from the Prime Bidder provided the time for bid receipt has not passed and bids have not been opened. The Owner should return such bids only upon written request of an authorized agent of the Prime Bidder.

## **20. BUILDING PERMITS**

### **The Issue:**

Who should assume the responsibility of submitting plans to the permitting authority and obtaining the required permits?

### **Discussion:**

Contractors often encounter problems obtaining permits because the permitting authority will not approve the plans and specifications as submitted. This results in delaying the start of construction while changes and/or additions are made to the plans and specifications. These changes often result in otherwise unnecessary change orders. Starting the permit process before a construction contract is executed will help to avoid these delays. On major or unusual projects, the permitting authority should be involved in the early design stages.

### **Recommendations:**

- Approval of plans and specifications for a construction permit should be obtained from the permitting authority prior to issuing bidding documents.
  - In the event plans and specifications are not complete prior to advertisement for bids, the Owner should submit the documents to the permitting authority for review. The amount to be paid for plan review and permit fees should be stated in the bid documents, in order that Prime Bidders may calculate the fees to be paid.
  - Inordinate delays by governing bodies in the issuance of permits should be treated in accordance with the provisions of Section 26, Change Orders.
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## 21. UTILITY COMPANY FEES

### The Issue:

How should payment for utility company connection charges and tap fees be specified?

### Discussion:

Bid documents often do not clarify the requirement for tap fees and connection charges (Example: "All permits and fees are to be paid by the contractor"). When utility distribution system extensions are to be made, connection charges are often extremely difficult to obtain from the utility companies and are frequently performed on a cost plus basis.

The utilities may be controlled by a company or district whose jurisdiction over utilities for the proposed construction site is not obvious. It is therefore important that this information be included in the project manual as a project can be delayed while a bidder loses time locating the proper utility.

### Recommendations:

- The design team should review, in advance, the project with the utility companies so fees can be determined in advance of the bidding time.
  - The bid documents should set out the proper utility companies to contact along with address, telephone number, and the name of contact person.
  - Connection charges (i.e., participation fees, impact fees, development fees, parking fees, etc.) for which the bidder will be responsible should be clearly set out in bid documents.
  - If the project will require payment of fees or charges which cannot be determined by the contractor prior to the date of bid, the Owner should pay these costs directly, or state an allowance amount to be included in the bid documents for them.
  - If the fees cannot be determined for the Bidder at bid time, they should not be the responsibility of the Bidder.
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## 22. TESTING AND INSPECTION FEES

### **The Issue:**

What is the full extent of inspection and testing required and who will pay for it?

### **Discussion:**

Bid documents often do not clearly state the full extent of inspections and testing required or desired by the Owner.

In most situations, responsibility for inspections and testing should rest with the Owner, since the result of these inspections or tests can directly affect the cost of the project. Examples are geotechnical inspections of drilled piers, footing soils for bearing capacity and concrete cylinders.

### **Recommendations:**

- Testing and inspection should be fully described in Division 1 of the specifications. Certification testing of construction products or material should be specified in detail in the applicable specification section.
  - Responsibility for payment of various tests and/or inspections should be fully delineated in Division 1. Inspection or tests of an unusual nature (e.g., wind tunnel testing) that cannot be readily priced from local sources should be paid for by the Owner or included as an allowance amount in the bid documents
  - It should be stated in the bid documents that the prime contractor is responsible for coordination and cooperation with the owner's testing contractors.
-

## 23. CONSTRUCTION SCHEDULE

### **The Issue:**

What kind of construction schedule should be required and how often should it be updated?

### **Discussion:**

On traditional design, bid, build projects scheduling concerns of the Owner may not be as great as for fast-track or multi-prime projects.

Regular coordination conferences with the participation of the Owner, Architect, Prime Bidder, and major Subcontractors and Material Suppliers are of major value in addressing scheduling and completion dates. Schedule updates alone will not bring about a coordinated effort for a timely completion of the job.

It is critical that all concerned parties have a clear understanding of the schedule to meet completion targets.

### **Recommendations:**

- On traditional design, bid, build projects, a critical path schedule baseline should be developed with monthly updates made, however; not saved over the baseline schedule. The baseline schedule should be saved for comparison to future schedules. This schedule may or may not be cost/resource loaded depending on the requirements of the owner. If it is to be cost/resource loaded it would have to be required in the bid documents.
  - On fast-track or multi-prime projects, the Owner should consider employing an independent scheduling consultant as an agent of the Owner. This consultant should participate in the project coordination meetings.
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## 24. LIQUIDATED DAMAGES

### The Issue:

Under what conditions should liquidated damages be specified on a competitively bid project and how should their amount be determined?

### Discussion:

Liquidated damages provisions in contract documents arise from a determination by the Owner that it will suffer adverse economic consequences should its project not be substantially completed on schedule.

### Recommendations:

- Where liquidated damages are specified, their amount and the date upon which they take effect should be clearly specified. The amount of such damages should be in accordance with costs the Owner can reasonably demonstrate. Arbitrarily high liquidated damages may suppress competition and result in higher bids.
  - Occurrences which extend the date upon which liquidated damages take effect should be clearly and completely specified.
  - Where possible, provisions for a bonus for project completion should be included in project specifications. Bonus amounts should be equal to liquidated damage amounts and should be equitably distributed among construction team members.
  - Provisions for actual damages, as opposed to liquidated damages, should be not be allowed. Actual damages cannot be reasonably determined by bidders, and provisions for them may result in a substantially reduced number of prime bidders, and substantially higher bids being tendered. In addition, many sureties require their clients to refrain from submitting bids on such projects.
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## 25. CHANGE ORDERS

### The Issue:

What is an equitable method for establishing fees allowed to cover overhead and profit on Change Orders?

### Discussion:

Change Orders are formal instruments which modify the contract as it relates to project scope and/or time.

The size and scope of the change, its impact upon the construction schedule, the number of companies impacted by the change--all such issues impact indirect costs. Indirect costs associated with small change orders may exceed the costs of the direct work involved. Change Orders which substantially impact schedule may far exceed fixed overhead percentages allowed for such costs.

It is difficult to foresee all the possible occurrences which may arise during construction which affect scope and schedule. When such an unforeseen event occurs, disagreements often develop about whether and to what extent the event alters scope, the exact nature of the change, its impact on schedule, and its cost. Frequently unresolved Change Orders result in litigation which may undermine successful project completion, increase costs, and reduce profits for all parties.

### Recommendations:

- Project documents should be as complete as possible, thereby reducing scope changes resulting from document inconsistencies and/or omissions. Adequate project funds invested in design may save substantially increased costs during construction.
- Specifications should clearly and completely set out procedures for determining when a changed condition exists, how and by whom a potential change may be recognized, the documentation required to substantiate the change, the process and entities by which the change is reviewed, and the schedule for each step in the process. Such procedures should be rigorously followed.
- Adequate provisions for indirect costs, such as field overhead, should be addressed. Indirect costs should be quantified to the same extent as direct costs, and should be processed in the same way as direct costs. In addition reasonable costs to process the change order should be allowed including estimating time, preparation and submittal of the change order. Allowances for profit of Change Orders should also be clearly addressed.
- Change Orders which result in deductions to the project scope and schedule typically allow for the contractor to keep their anticipated profits.
- Indirect costs not incurred at the project site should not be allowed.

## **26. RESPONSIBILITY FOR CODE COMPLIANCE**

### **The Issue:**

How should the responsibility for code compliance be allocated?

### **Discussion:**

Traditionally the Design Team has been given responsibility for designing a construction project in compliance with building codes and constructors have been given responsibility for constructing the project as designed. Often constructors are required to identify any work shown which is at variance with codes and is known to them to be so or bear the costs associated with bringing the project into compliance.

As a practical matter, constructors which have such knowledge should disclose it. Also, as a practical matter, proving that a constructor had such knowledge and did not reveal it is a difficult task.

### **Recommendations:**

- The Design Team should be given full responsibility to design construction projects in complete compliance with building codes.
  - The Construction Team should be given full responsibility to construct the project in complete compliance with the design.
  - Added cost for bringing the project into compliance with codes which is necessitated by design deficiencies should be the responsibility of the Design Team and/or the Owner and should be treated as a Change Order.
  - Contract language which places cost responsibility for correcting code deficiencies on the Construction Team should be avoided.
-

## 27. SUBSTANTIAL COMPLETION

### The Issue:

What is an appropriate definition for substantial completion of a construction project and what activities should follow substantial completion?

### Discussion:

Substantial completion for a construction project has traditionally been defined as the date upon which the project is available to its Owner for the use for which it is intended. Substantial completion implies acceptance of the project by governing authorities as to compliance with life safety and other building codes, and is often certified by appropriate members of the Design Team, usually in the form of the Architect's or, in some instances, the Engineer's attestation. It usually also sets out the date upon which all specified warranties begin.

### Recommendations:

- The date of substantial completion should be the date upon which the project is available for use by its Owner for the purpose its construction was intended. It should be attested by the responsible design official.
- The effective dates of all warranties should be set concurrently with the attestation of substantial completion of the project or designated portion thereof or as defined in the contract documents.
- Punch List items and the schedule for their completion should be clearly identified and fully described. Multiple punch lists should be avoided.

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Procedures for determining the date of substantial completion, the beginning date of warranties, Punch List work items listing, and schedule for their completion, release of remaining construction funds, and final completion of the project should be clearly enumerated in the project specifications.

## **28. HAZARDOUS MATERIALS**

### **The Issue:**

How should bidding documents address the existence of hazardous materials, such as asbestos, lead, mold or PCB?

### **Discussion:**

The existence of hazardous materials, whether known or suspected, is an issue of major concern to the construction industry. Treatment and/or removal of these materials is a highly specialized, extremely risky field. As a result of this high degree of risk, many surety and insurance companies prefer, and even compel, their clients to abstain from bidding on projects in which bidding documents require the Prime Bidder to accept this work. As a result, Owners receive substantially less competition on such projects. Treatment of pre-existing hazardous materials are and properly should remain the responsibility of the Owner. If known, these materials should be treated or removed by the Owner in a separate contract with a Specialty Contractor in the field, and constructors who follow the remedial work should be absolved of any liability in connection with it.

### **Recommendations:**

- Known hazardous materials should be treated or removed by the Owner prior to seeking bids for the project proper.
  - Hazardous materials discovered during construction should be treated as a Change Order or separate contract, but the Prime Bidder and Subcontractors should not be forced to perform remedial work for this material.
  - The Owner should allow an appropriate extension of contract time after abatement work has been completed. Direct and indirect costs for this extension should be addressed in accordance with Section 25, Change Orders.
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## 29. CONSTRUCTION UTILITIES

### **The Issue:**

Who should furnish utility services (electricity, water, telephone, etc.) necessary for construction?

### **Discussion:**

It has historically been the Prime Bidder's responsibility to provide basic construction utilities such as electricity, water, telephone and temporary sanitary facilities. It is the responsibility of the Prime Bidder and Subcontractor and Material Suppliers to ascertain the acceptability or availability of these utilities. The scope and cost of these must be included in the Prime Bidder's bid.

### **Recommendations:**

- The responsibility for furnishing and paying for construction utilities must be delineated in the bidding documents.
  - Subcontractors and Material Suppliers should clearly state whether they are including or excluding these costs in their bid amount.
  - Prime Bidders and Subcontractors and Material Suppliers must determine their respective needs for their portion of the work. If these needs exceed the requirements set out in the bid documents (e.g., 110v supplied but 220v needed for welding equipment) the added costs for additional service should be included in their bid amount. These should be stated in the bidder's scope of work.
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## 30. MATERIAL HOISTING

### The Issue:

How should bidders approach construction material and manpower hoisting requirements at bid time?

### Discussion:

Material and manpower hoisting requirements receive varied levels of discussion in bid documents. Some contain extensive, thoroughly specified hoisting system requirements, some contain no discussion at all, and others fall between these extremes. Hoisting requirements are particularly important in high-rise construction, though they are a factor in all construction. It is imperative that all bidders develop a thorough understanding of the type, size, and number of pieces of hoisting equipment prior to bid.

### Recommendations:

- If bid documents do not specify, or specify inadequate hoisting facilities, it is the responsibility of the Prime Bidder to develop its own hoisting plan and to communicate this plan to its Subcontractors and Material Suppliers.
  - The hoisting plan should address the type, size, and capacity of hoisting equipment, as well as its hours of operation, and its duration on the project.
  - The Prime Bidder should address whether the hoisting equipment will be used by all without charge, and what costs will be incurred by a Subcontractor and/or Material Supplier if they wish to use hoisting facilities outside normal working hours.
  - Any Subcontractor and/or Material Supplier which feels the Prime Bidder's hoisting plan inadequate should include its additional hoisting requirements in its bid to the Prime Bidder.
  - In absence of a moisture plan, subcontractors should include all hoisting costs necessary for the completion of their work.
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## 31. SCOPE LETTERS

### **The Issue:**

Should Subcontractors and/or Material Suppliers send scope of work letters (or "bid abstracts") to the Prime Bidders?

### **Discussion:**

Diversification of project types and of Subcontractors and Material Suppliers makes the scope letter indispensable to the procurement process. The scope letter is used to clarify and quantify what a Subcontractor and/or Material Supplier is furnishing and excluding in its bid.

### **Recommendations:**

- Scope of work letters (Scope Letters) should be used by all Subcontractors and Material Suppliers on every construction project bid.
  - The Scope Letter should clearly state all information necessary for a Prime Bidder to evaluate their bid. Specific details from bid documents should be incorporated into the Scope Letter to further assist in the Prime Bidders evaluation of the bids.
  - The Scope Letters should be sent by any means necessary, so long as a receipt verification is given, to arrive at the Prime Bidders office at least 24 hours prior to bid time.
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## 32. EMAILED BIDS

### THE ISSUE:

Many subcontractors submit bids via email.

### Discussion:

Emailed bids can be convenient and more readable than a fax. However, a bidder needs to verify that an emailed bid has been received by the estimating team.

### Recommendations:

- Prime contractors should have a specific email address to use for bids to be received that is accessible by the bid team.
  - When possible, prime contractors should have a single designated bid team member that is responsible for monitoring the specified bid day email address to ensure all email submissions are seen and reviewed by the bid team.
  - Subcontractor and Material Supplier bidders should submit their bids to that address and not to an estimator, project manager, company president, etc.
  - Subcontractor and Material Supplier bidders should use that email address solely for submitting bids and not for general project correspondence.
  - Subcontractor and Material Supplier bidders should submit their bids with a read receipt to verify the bid was received.
  - Emailed bids should be submitted no later than thirty (30) minutes prior to the posted bid time. Last minute changes and cuts should be made via phone call.
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# ASPE CODE OF ETHICS

## Introduction

The ethical principles presented are intended as a broad guideline for professional estimators and estimators in training. The philosophical foundation upon which the rules of conduct are based is not intended to impede independent thinking processes, but is a foundation upon which professional opinions may be based in theory and in practice.

Please recognize that membership in and certification by the American Society of Professional Estimators are not the sole claims to professional competence but support the canons of this code.

The distinguishing mark of a truly professional estimator is acceptance of the responsibility for the trust of client, employer and the public. Professionals with integrity have therefore deemed it essential to promulgate codes of ethics and to establish means of insuring their compliance.

## Preamble

The objective of the American Society of Professional Estimators is to promote the development and application of education, professional judgment and skills within the industry we serve. Estimators must perform under the highest principles of ethical conduct as it relates to the protection of the public, clients, employers and others in this industry and in related professions.

The professional estimator must fully utilize education, years of experience, acquired skills and professional ethics in the preparation of a fully detailed and accurate estimate for work in a specific discipline. This is paramount to the development of credibility by estimators in our professional service.

Estimating is a highly technical and learned profession and the members of this society should understand their work is of vital importance to the clients and to the employers they serve. Accordingly, the service provided by the estimator should exhibit honesty, fairness, trust, impartiality and equity to all parties involved.

## Canon #1

*Professional estimators and those in training shall perform services in areas of their discipline and competence.*

1. Estimators shall to the best of their ability represent truthfully and clearly to a prospective client or employer their qualifications and capabilities to perform services.
2. The estimator shall undertake to perform estimating assignments only when qualified by education or years of experience in the technical field involved in any given assignment.

3. The estimator may accept assignments in other disciplines based on education or years of experience as long as qualified associate, consultant or employer attests to the accuracy of their work in that assignment.
4. An estimator may be subjected to external pressures to perform work above or beyond qualifying education and experience. Estimators must retain their integrity and professionalism by actively avoiding involvement in situations that may lead to loss of independence and integrity as a professional estimator.

## **Canon #2**

*Professional estimators and those in training shall continue to expand their professional capabilities through continuing education programs to better enable them to serve clients, employers and the industry.*

- 1) A member of the American Society of Professional Estimators will strive to gain the honored position of "Certified Professional Estimator" and encourage others to obtain this honored position.
- 2) Members will lend personal and financial support, where feasible, to the schools and institutions engaged in the education and training of estimators.
- 3) Members will cooperate in extending the effectiveness of the profession by interchanging information and experience with other estimators and those in training to be estimators, subject to legal or proprietary restraints.
- 4) Members will endeavor to provide opportunity for the professional development and the advancement of estimators and those in training under their personal supervision.

## **Canon #3**

*Professional estimators and those in training shall conduct themselves in a manner that will promote cooperation and good relations among members of our profession and those directly related to our profession.*

- 1) Treat all professional associates with integrity, fairness, tolerance and respect, regardless of national origin, race, sexual orientation, religion, gender or age.
- 2) Extend fraternal consideration when giving testimony that may be damaging to a member of our society, as long as it does not violate this Code of Ethics and the laws governing the proceedings.
- 3) Accept the obligation to assist associates in complying with the code of professional ethics. The professional character of our society is dependent upon continuing mutual cooperation with one another. It is an essential element of our continued success.
- 4) Recognize the ethical standards set by other professionals, such as architects and engineers, directly related to our industry and extend to them the common courtesies they deserve.

- 5) Act honorably, both in personal and professional life, by avoiding situations that may erode public respect.

## **Canon #4**

*Professional estimators and those in training shall safeguard and keep in confidence all knowledge of the business affairs and technical procedures of an employer or client.*

- 1) Privileged information or facts pertaining to methods used in estimating procedures prescribed by an employer, except as authorized or required by laws, shall not be revealed.
- 2) Treat in strict confidence all information concerning a client's affairs acquired during the fulfillment of an engagement and completion of an estimating procedure.
- 3) Serve clients and employers with professional concern for their best interests, provided this obligation does not endanger personal integrity or independence.

## **Canon #5**

*Professional estimators and those in training shall conduct themselves with integrity at all times and not knowingly or willingly enter into agreements that violate the laws of the United States of America or of the states in which they practice. They shall establish guidelines for setting forth prices and receiving quotations that are fair and equitable to all parties.*

- 1) By not participating in bid shopping. Bid shopping occurs when a contractor contacts several subcontractors of the same discipline in an effort to reduce the previously quoted prices. This practice is unethical, unfair and is in direct violation of this Code of Ethics.
- 2) By not accepting quotations from unqualified companies or suppliers. Every effort should be made to pre-qualify any bidder to be used.
- 3) By not divulging quotes from subcontractors and suppliers to competitors prior to bid time in efforts to drive down the prices of either. Should quotes be received from subcontractors or suppliers that are excessively low or appear to be in error, the firm should be asked to review its' price. When making this request the quotes of others shall not be divulged.
- 4) By not padding or inflating quoted bid prices. An unethical practice for professional estimator is to pad or inflate quotes when bidding with firms known for bid shopping. If not a violation of applicable laws, a professional estimator should not provide quotes to known bid shoppers. However, it is not unethical to submit quotes with different values to different contractors, provided there are sound business reasons to justify the differences in the quotes.
- 5) Professional estimators shall not enter into the unethical practice of complimentary bids (also known as comp bids). Complimentary bidding is a violation of this Code of Ethics.

## **Canon #6**

*Professional estimators and those in training shall utilize their education, years of experience and acquired skills in the preparation of each estimate or assignment with full commitment to make each estimate or assignment as detailed and accurate as their talents and abilities allow.*

- 1) To formulate an accurate estimate in any discipline, a full review must be made of all related documents. Any other approach could cause errors or omissions that may endanger professional integrity and reliability.
- 2) It is of paramount importance to a professional estimator to minimize the possibility of making mistakes or errors. The more detailed the estimate, the better the accuracy will be.
- 3) Each estimate should be cross checked by means that will insure that it is technically and mechanically free from mistakes, oversight or errors. If possible and feasible, estimates should be checked by other professionals. If it is not feasible for someone else to cross check an estimate, the estimator should cross check their own estimate by utilizing a different method, such as using historical data or unit prices based on previous cost data on similar project.

## **Canon #7**

*Professional estimators and those in training shall not engage in the practice of bid peddling as defined by this code. This is a breach of moral and ethical standards, and a member of this society shall not enter into this practice.*

- 1) Bid peddling occurs when a subcontractor approaches a general contractor with the intent of voluntarily lowering the original price below the price level established on bid day. This action implies that the subcontractor's original price was either padded or incorrect. This practice undermines the credibility of the professional estimator and is not acceptable
- 2) The same procedure applies to a professional estimator engaged as a general contractor, as defined in the previous paragraph, when the estimator approaches an owner or client to voluntarily lower the original bid price.
- 3) When a proposal is presented, the professional estimator is stating the estimate has been prepared to the best of their ability using their education, expertise and recognized society standards. Entering into unethical practices such as "bid peddling" jeopardizes both personal and society professional credibility, while violating the trust of the clients.
- 4) This canon does not consider the practice of the solicitation of a "best and final offer" to be unethical. Where permissible by law and authorized by the procurement authority, an estimator may request a best and final offer from his subcontractors and suppliers, but must keep the value of the original quotations strictly confidential.



## **Canon #8**

*Professional estimators and those in training to be estimators shall not enter into any agreement that may be considered acts of collusion or conspiracy (bid rigging) with the implied or express purpose of defrauding clients. Acts of this type are in direct violation of the code of ethics of the American Society of Professional Estimators.*

- 1) Bid rigging, collusion and conspiracy, as defined by the American Society of Professional Estimators, may occur between two (2) or more parties. Agreements reached by companies or individuals in the act of conspiring to set the price of a particular project or scope of work with the express purpose of circumventing the competitive bid process are illegal and a violation of this Code of Ethics.
- 2) Professional estimators and those in training to be estimators shall not be associated with firms which are known to participate in the practice of bid rigging.
- 3) There are no conditions that will allow a professional estimator to enter into such fraudulent acts such as bid rigging, knowing that they are held to be unlawful, immoral, unethical and unacceptable to this society.

## **Canon #9**

*Professional estimators and those in training to be estimators shall not participate in acts such as the giving or receiving of gifts, which are intended to be or may be construed as being acts of bribery.*

- 1) Professional estimators and those in estimating should not offer cash, securities, intangible property rights or any personal items in order to influence or that give the appearance of influencing the judgment or conduct of others that would place them in the position of violating any laws or leave them with the feeling of obligation or indebtedness.
- 2) Professional estimators and those in training should not accept gifts, gratuities or entertainment that would place them in a position of violating and laws (municipal, state or federal) or that give the appearance of creating an inducement which would affect the estimator's professional credibility by placing them in a position of obligation or indebtedness.

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