

When Low Isn't Good Enough: How and When to Reject the Low Bid

You know what the statute says but do you really take advantage of the authority it gives you to consider critical factors other than price – even if it means you might get a protest?

- Must be awarded to the lowest responsive responsible bidder
- NRS 332: Determination of responsibility may be judged on the basis of: price; conformance to specifications; qualifications; past performance; performance or delivery date; quality, utility and adaptability of services, supplies, materials or equipment offered; and the best interests of the public
- NRS 338: Determination of responsibility among other criteria, must include whether the bidder has completed projects of similar size, scope or type in the last 5 years, as determined by the local government

Case Study #1 – Food Services Contract for Detention & Enforcement

Food preparation services for inmates and correction officers at the Detention Center's culinary unit facility.

Bidder responsibility included conformance to the standards of the Commission on Accreditation for Corrections of the American Correctional Association (ACA), Correctional Institutions of the American Public Health Association (APHA) and Clark County Health District.

- To verify compliance to ACA and APHA standards, bidders were required to submit sample 14-day menu plans with calorie counts for evaluation.
 - To verify bidders compliance to Clark County Health District standards stated in the bid, bidders had to demonstrate they had a performance record from Clark County Health District that indicated maintenance of the A grade.
1. Staff recommended rejection of the lowest bidder, Jimmy's Cheyenne Market (\$1,386,175) because the meal plan did not meet bid specifications and the company had no institutional food contract experience similar in work scope as required in the bid.

2. Staff recommended rejection of the second low bidder, Aramark (\$1,405,437.50) because they did not meet past performance criteria of maintaining an "A" grade with Clark County Health District while performing similar services for Clark County Detention Center. Aramark was downgraded four times during regular inspections in the last 4 years – twice to a grade "B" and twice to a grade "C."
3. Staff recommended award to the third low bidder, Institutional Food Services (\$1,630,636)

Aramark contacted Council members and met with them individually without filing a formal protest. Though Council was briefed on the protest policy, Aramark was permitted to argue their "case" at the Council meeting. Aramark argued the City could save \$225,000 by awarding the contract to them.

My argument was the bid clearly specified the requirements to be determined a responsible bidder. I had also provided Council with an Agenda Memo that described the Health District violations against Aramark so they were aware of the violations.

The Council vote was 5 For and 2 Against staff recommendation to award to Institutional Food Services

Case Study #2 – Amphitheater Truss Footings – Centennial Hills Park

In this case, the Bidder was pouring a footing to enable another contractor to install a very large steel truss amphitheater system. The bidder had a B-2 license and had poured numerous footings in his career when construction a building or structure up to three stories high.

According to the Contractor's Board, even though the footing specification may have been within the scope and size of work the bidder had performed in prior on-site projects, the distinction of a B-2 license is the contractor must also install the structure onto the footing.

Since this bid only required the construction of the footing, it was considered an off-site project and required an A or AB license and the bidder (\$80,370) was rejected. The second low bidder (\$84,933.20) was awarded the contract.

No protest was filed.

Case Study #3 – How use of discretion in bid evaluations of bidder responsibility can affect low bid awards

Determination of lowest responsible bidder: The bid document said the Bidder had to have successfully completed one project during the 5 years immediately preceding the date of submission of the bid proposal **similar in scope of work and construction value; or similar in type of construction and construction value** as the work to be required by the Owner.

After a protest we now state this responsibility requirement differently:

Whether the Bidder has successfully completed 3 projects during the 5 years immediately preceding the date of submission of the bid proposal similar to **type of construction, construction value and scope**. The following criteria may be considered in evaluating the list of completed projects:

- Construction of detention basins and associated facilities such as spillways, embankments, cut-off, out/inlet structures, monitoring stations, inflow riprap channels, earthen berms, multi-use trails, landscaping, irrigation, pedestrian bridges, revegetation.
- Construction in active roadway corridors with high traffic volumes.
- Construction of large flood control facilities including, but not limited to the following: large storm drains including precast box culverts, cast-in-place box culverts and pipes, junctions structures, drop inlets and manholes.
- Underground utility work, including, but not limited to the following: new and relocated sanitation sewer and large diameter waterline facilities.