

Maine Bid Depository System

Frequently Asked Questions

What is the Maine Construction Bid Depository?

The Maine Construction Bid Depository is basically a "mail delivery system" that receives sealed bids from specified subcontractors and delivers them to the general contractors to whom they were addressed with a file copy of each separate price proposal being delivered to the project owner.

What is the purpose of the Maine Construction Bid Depository?

The purpose of the Bid Depository is to improve the bidding process by helping ensure the sanctity of the sub-bids, and to provide adequate time for review of sub-bids by the general contractors so that they may more accurately complete their bids.

Who administers the Maine Construction Bid Depository?

The Bid Depository is administered by the Associated General Contractors of Maine (AGC Maine). It has a broad-based Advisory Committee to provide project owners and awarding authorities with advice on matters concerning the administration of the Bid Depository system.

What is the legal status of the Maine Construction Bid Depository?

The use of the Maine Construction Bid Depository is not required by law. However, the benefits to the bidding process and the reduction of possible errors in bidding from the use of the Bid Depository has resulted in its being used for most publicly bid projects. Who determines which trades are to be "file bid"? Work to be "file bid" should be commonly-accepted bid packages. An industry-wide group has developed recommendations for work to be file bid but the final determination on trades to be "file bid" is made by the owner and designer.

How does a sub-bidder know that "file bids" are required on a specific project?

The project "Advertisement for Bids" should clearly state by the use of specification section titles and numbers, the scope of work that is to be covered by each file bid. Does the use of the Maine Construction Bid Depository guarantee that all General Contractors will receive sub-bids for all required trades? No. The Bid Depository only delivers the proposals that have been received. It is the responsibility of each general contractor to contact sub-bidders prior to the deadline for submission of sub-bids to ensure that they will receive sub-bids.

How are bids submitted to the Maine Construction Bid Depository?

Prior to the deadline for submission of sub-bids, subcontractors must deliver to the Bid Depository, a large white envelope containing the following:

1. Individual sealed PINK envelopes, addressed to each general contractor to whom the subcontractor desires to bid, containing a bid proposal.
2. A GREEN envelope containing a copy of the bid, listing those general contractors intentionally omitted, if any. If different price proposals were given to different general contractors, this envelope must contain a copy of each different price proposal and an indication of which proposal was given to each general contractor. If a general contractor bids to himself on a certain trade, the green envelope must contain a statement of qualifications of the general contractor to perform that sub-trade.

3. A BID BOND, if required, should be enclosed separately from the pink and green envelopes. Can a subcontractor decline to bid to certain general contractors? Yes. Sub-bidders do not have to bid to every general contractor. This is premised on the fact that sub-bidders should not be required to work with general contractors for whom they choose not to work.

Can a subcontractor bid different prices to general contractors?

Yes. Sub-bidders may submit different prices to different general contractors. In the eyes of most subcontractors, most general contractors are not created equally, and those subcontractors should have the opportunity to reflect their respective experiences in their prices. If a sub-bidder chooses to bid different prices, he needs to make copies of all the different prices he has bid and place those copies in the green envelope to the owner.

Do subcontractors have to submit a bid bond?

The requirements for a bid bond come from the owner or designer but it should be noted that practically all projects bid through the file sub bid system do require that subcontractors submit a bid bond. The file sub bid system's general conditions and regulations say that if a bid bond is required, it shall be inserted in the white envelope separate from the green and pink envelopes.

Does the Bid Depository open the sub-bids?

No. The bid depository only opens the white envelope containing the sealed pink envelopes (bids to general contractors), sealed green envelopes (copies of the bids to the owner), and the bid bond. The Bid Depository sees no prices. If a bidder is interested in knowing where he stands in relation to other bidders, he needs to check with the bidding general contractors.

What happens to the file sub-bids after they have been submitted to the bid depository?

Bid Depository personnel (AGC Maine staff) open the white envelopes at the AGC Maine office in Augusta and sort the pink envelopes according to bidding general contractors and the green envelopes are placed in a separate pile. A record is kept of who submits a file sub-bid and to whom they are bidding. The depository also notes the existence of a bid bond for each sub-bid. A letter is compiled listing the names and addresses of all sub-bidders and the sub-trades they are bidding. The letter also lists the names and addresses of all bidding general contractors. That letter is sent to all sub-bidders, general contractors, and the owner. Unless they are personally picked up at the AGC Maine office, the pink envelopes are sent by mail to the general contractors at their own risk. The Bid Depository does not assume responsibility for lost mail. The Bid Depository sends all the green envelopes, plus the bid bonds, to the owner or designer. What if a sub-bid is submitted to the Bid Depository after the deadline for the submission of bids? If a sub-bid is received after the "closing time", the sub-bid will not be processed by the Bid Depository and will be returned to the sub-bidder, unopened.

Can a subcontractor amend his bid after he has filed it with the bid depository?

A subcontractor may amend the bid provided that the amendment is received prior to the sub-bid closing time. The amendment normally comes in the form of a faxed letter to the depository containing adds or deducts from the original price. If the amendment discloses the amount of the subcontract price, the system will declare the bid void.

Can a subcontractor provide a bid after bid closing to a general contractor to whom he had missed bidding?

Yes, however, he must do so at least 24 hours before the closing time of the general contractor bid. In such a case, the subcontractor must never disclose the amount to the Bid Depository. He must write a letter to the depository stating, "We missed bidding to (Black Construction) on (ABC High School). Please consider our bid addressed to (White Construction) as if it were submitted to (Black Construction)." After receiving this letter, the depository will then fax it on to the designer or owner, and it is the responsibility of the subcontractor to notify the general contractor to whom he is extending his bid.

Does the general contractor have to carry the low subcontractor?

No. Just as the subcontractor does not have to bid to every general contractor, a general contractor does not have to carry any sub-bidder he does not wish to carry.

Can a general contractor's proposal be disqualified for carrying an invalid or informal sub-bid?

No. If a general contractor does carry a bid that the owner determines to be informal or invalid (and the owner is the only one who can make that determination), the state's Instructions to Bidders say that that determination will be made only after the opening of the general contractor bids. In that case, the invalid sub-bid will be thrown out (the owner has the decision to pull, or not pull, the bid bond), and the next acceptable sub bidder will be substituted. The general contractor bids will then be recalculated to determine who the low general contractor is. The only way an owner may disqualify a general contractor's proposal is when the proposal contains a sub-trade proposal that has not been filed through the file sub-bid system.

Can an owner force a general contractor to substitute or use a subcontractor that has filed a lower sub-proposal?

No. The owner cannot force the general contractor to use any subcontractor that is not acceptable to the general contractor nor force a subcontractor to work with a general contractor with whom they do not wish to work. The general contractor has submitted what they consider is their best price based on the team they have selected and this is the basis for determining the low bid. After a decision has been made by the owner on the successful general contractor, the general contractor may be requested to substitute a subcontractor with appropriate price adjustment but the change can only occur if there is agreement on the substitution by both the general contractor and the subcontractor.

Can a general contractor change the carried filed subcontractor if the owner selects an Alternate(s) that would have determined another sub-contractor to have the lowest proposal total?

Yes, but only if they have indicated on their bid submission that the acceptance of an Alternate by the owner result in a change if the subcontractor to perform the work covered by that file bid section. Normally, the General Contractor Proposal Form includes a requirement for the general bidder to indicate on the proposal if the acceptance of an alternate will result in a change in subcontractor. This present a complication as it is usually impossible for a general contractor to anticipate all possible combinations of alternates. Owners should not use the selection of Alternates as a method of changing the low bidder. This is also one reason that should be encouraged to keep the number of alternates to an absolute minimum AND not create that cover multiple file bid sections. Once the low bidder

has been determined, any change in subcontractors only reduce the contract amount.

How does the general contractor deal with a low filed sub-bid that does not recognize all the required specified sections?

The general contractor's bid must make sure all specified sections are covered. The general contractor is bidding a complete job to the owner, and it is his responsibility to ensure that it is complete. Where file bids are concerned, the general contractor has the option of using or not using a sub-bid that did not cover all required sections. If the general contractor uses the incomplete sub-bid, he is at risk for any cost not covered in the sub-bid he used. If the sub-bid is clear that it does not cover all required sections, it may be disqualified by the owner as being "non-responsive". Who can disqualify a bid submitted to the Bid Depository prior to the deadline? Only the owner has the authority to disqualify or reject an on-time bid submitted to the Bid Depository. The owner must have legitimate reasons for the disqualification or rejection. If the owner desires, he may request the assistance of the Bid Depository Advisory Committee to resolve any issues relating to compliance with the rules of the Bid Depository.

What happens if a subcontractor wants to withdraw his bid?

Most Instructions to Bidders do not permit a subcontractor to withdraw the bid for a fixed period of time or prior to the submission of the bids by the general contractors. If the subcontractor has made a legitimate error that can be demonstrated, the owner should be contacted and requested to declare the sub-bid as invalid because of the error. If the sub-bidder wants to withdraw the bid without documented or justifiable reason, the sub-bidder risks the owner calling the bid bond.

If a general contractor can perform a certain sub-trade using his own forces, can he file a sub-bid to himself through the system? Who determines whether or not that general contractor is qualified to bid to himself?

Yes, the system allows a general contractor to bid to himself as long as he submits a statement of his qualifications to perform that trade with his sub bid. Such a statement could include a list of equipment, names of key personnel, references, relevant licenses, and a list of other projects on which they have performed the sub-trade work. The system does not prescribe or require what qualifications need to be submitted; that is up to the owner or designer. The system only specifies the procedure for submitting the statement. It is the owner's responsibility to determine the qualifications of the general contractor to perform the sub-trade in question, and unless the designer/owner has written in very specific qualifications in the bidding documents that a general contractor must meet in order to bid to himself, the owner has broad discretion in making that determination.

Who enforces the file sub bid system?

The simple answer is the owner. The use of the system and the incorporation of the system's general conditions and regulations into the bidding documents bring with it a responsibility for the owner and designer to enforce the regulations. By incorporating these requirements into the project manual, the designer has a responsibility to enforce the requirements the same as any other portion of the project manual. The State of Maine Bureau of General Services may be considered the enforcer to the extent that it has the legal responsibility to review and approve the plans and specifications of State projects before they go out to bid and to the extent that they have limited oversight of the construction of local school projects.

If a subcontractor or general contractor feels he has been treated unfairly, is there recourse?

Yes. If a subcontractor or general contractor believes they have been treated unfairly, they should file a formal written complaint with the project owner or awarding authority with a copy of the complaint sent to the project designer and the Maine Construction Bid Depository. The file sub bid system Advisory Committee was set up to receive complaints from aggrieved parties and advise the owner on proper procedures. The owner may, or may not, choose to accept that advice. The Advisory Committee is made up of two representatives each from the following industry groups: general contractors, subcontractors, owners, engineers, and architects. Complaints need to be in writing and submitted to the AGC Maine office. The complaints are forwarded to Advisory Committee members through fax or email with a short note from the Administrator of the system providing a few supplementary facts that may not be contained in the complaint. In considering the complaint, the Committee is instructed to be guided by two criteria: (1) was anyone harmed?; and (2) did anyone attempt to gain an advantage? The answers received from the Committee members may be unanimous, but not always. A letter will then be sent from the Committee to the owner summarizing all the members' responses. As noted before, it is then up to the owner to accept, or not accept, that advice. An aggrieved party may request an opinion from the Advisory Committee without filing a formal complaint where there is a belief the Bid Depository procedures were violated. The response to this request is only sent to the party requesting it and is not sent to the project owner or awarding authority.

What happens if the architect sends out a late addendum?

Architects should observe the time-honored rule of sending out addendum not less than 3 business days prior to the sub-bid closing date if there is any item listed in the addendum pertaining to file bid work. Most design firms realize the risk of sending out late addenda, notably that plan holders may not receive it in time and therefore, may not include it in their bids. However, what happens if, for whatever reason, an architect chooses to issue that late addendum? The file sub-bid system has no authority to declare that addendum invalid just because it is late. Therefore, it is the responsibility, and indeed, good business practice, of subcontractors to check with the designer on the existence of all addenda and their contents.

Are subcontractors required to acknowledge all addenda?

The system's general conditions and regulations say that failure of the subcontractor to acknowledge addenda may result in the disqualification of his bid, so it is extremely advisable for every subcontractor to acknowledge every addendum even if it does not apply to their trade. However, the word "may" in the previous paragraph leaves the question open to owner discretion. Occasionally, the Advisory Committee is asked to intervene give an opinion in a situation in which a subcontractor has not acknowledged an addendum.

Should that subcontractor's bid be declared informal for not having acknowledged every addendum?

The Advisory Committee has advised owners in the past that a subcontractor's bid should only be thrown out (disqualified) if the unacknowledged addendum applies directly to that subcontractor's trade. However, failure to acknowledge all addenda does present a risk to the bidder.

Should the designer/owner open the green envelopes before the general contractor bid?
There should be no reason for the designer to open the green envelopes other than to check, after the general contractor bid, that the bids that were filed were the same ones that were carried by the general contractors. Opening the green envelopes in between the subcontractor bid and the general contractor bid (presumably to "check prices") serves very little purpose because those prices may bear little resemblance to the final general contractor prices. It may also possibly add confusion by the designer examining the sub bids, allegedly discovering an irregularity and attempting to deal with that irregularity prior to the general contractor bid. If such a sub bid defect is present, it should be addressed after the general contractor bid.

End of FAQ's (If you should require any further information about the rules and procedures governing the Maine Construction Bid Depository, please contact Matthew Marks, Administrator of the Depository, at 207-622-4741 or at mmarks@agcmaine.org .)