



Bid Tip: Take Care to Disclose Open Cases Against your Company or your Principals if Requested in the Bid Form.

For years Union contractors that have gleaned the advantages of the level playing field that the Prevailing law have provided are now being prosecuted under the same laws that once sheltered them. This issue will provide guidance in responding to the AIA bid form

AIA Document A305 Contractor's Qualification Statement Requires Disclosure

Many Owners require bidders to disclose disputes in which the bidder is currently involved. The typical AIA Document A305 Contractor's Qualification Statement requires such disclosure. Do not expend your company's valuable time and resources estimating a low bid only to be challenged by a disappointed bidder because you inadvertently provided false information.

tion Statement requires Contractors to identify any and all "judgments, claims, arbitration proceedings or suit pending or outstanding against your organization or its officers." This inquiry is broad enough to encompass claims made by the Department of Labor, regardless of merit. If a bidder responds in the negative to this question when there is a Department of labor case that is *open* against the organiza-

tion or its principals, regardless of the merit, the bidder has just made a false statement and has left himself open to a challenge by another bidder.

While competent counsel may preserve your bid and possibly defeat the challenge, prudence dictates that one would be better off identifying the open matter and disclosing the unsettled status as opposed to providing arguably false information. *(continued on other side)*

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• DISCLAIMER

These materials are intended to provide general information about the subject matter and are presented with the understanding that neither these materials nor the authors have, nor intend to, render any legal or other professional service or opinions. Anyone dealing with a specific legal matter should research any and all matters described generally herein and should not act upon this information without seeking professional counsel. Do not send us confidential information until you speak with one of our attorneys and get authorization to send that information.

A Bidder that Makes a False Statement on a Bid has More to Lose than the Bid

Technically, a bidder that has responded “no” to the question “Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?” when the Department of Labor has an open case against him has made a false, deceptive or fraudulent statement. Under the New Jersey Educational Facilities Construction and Financing Act such a false statement is crime in the fourth degree and is punishable by permanent disqualification from bidding on all school facilities project. Specifically, the Act provides:

Any contractor who willfully makes, or causes to be made, a false, deceptive or fraudulent statement in the certifications required pursuant to P.L.2000, c. 72 (C.18A:7G-1 et al.), shall be guilty of a crime of the fourth degree and shall be permanently disqualified from bidding on all school facilities projects; and, in the case of an individual or the officer or employee charged with the duty of making the submission for a contractor, he shall be guilty of a disorderly persons offense.

N.J.S.A. 18A:7G-39

Although no recorded New Jersey cases are directly on point, New York has examined the potential detriment caused by a bidder that falsely denies open actions against it in response to a public bid. The Court held:

Here, not only did the [public body] rely upon the false statements in awarding the contract to [the bidder], the statements prevented the [public body] from conducting a thorough investigation into [the bidder] qualifications prior to the commencement or completion of the work. *Prote Contracting Co., Inc. v. New York City School Const. Authority*, 248 A.D.2d 693, 696 (N.Y.A.D.,1998)

Even though you may be completely innocent of the alleged violations, in order to avoid a challenge by a disappointed second low bidder, it is best to answer all questions on a bid form as truthfully as possible.

As always, should you have any questions or comments, please feel free to contact our firm at 856-751-1860 or email Steve Berkowitz at sberkowitz@ContractorLawOffices.com.