



Bidding & Contracting

MULCAHY Community Association Cheat Sheet®

**BRINGING ANSWERS
TO COMMUNITY
ASSOCIATIONS**

This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.

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BIDDING AND CONTRACTING

Managing an association's finances is one of the fiduciary duties of an association board of directors. Within that financial responsibility is the management of the reserve fund and any association contracts. This oversight, may at times require that the board do its due diligence and request bids to complete a new capital project, follow through with an identified reserves maintenance project or renew contracts held by the association.

It is important that the board have enough knowledge or experience to know when it is reasonable, practical and necessary to have an attorney, specialist or consultant assist with the project to keep the association out of legal or financial trouble.

A successful project requires planning, clear and exacting communication and vigilant oversight in its execution.

BIDDING AND CONTRACTING TERMS AND PROCESSES

Project identification:

The board, through the reserve study or other means must identify the project, the necessity of the project and discuss the project expectations with regard to the budget. The association should know exactly what common areas and property are its responsibilities to care for. These responsibilities are typically defined in the legal documents.

Scope of Work or Specifications:

The board (or a consultant, engineer or specialist) must establish a detailed description of the work to be completed. The specifications should contain technical details of the materials, application requirements and procedures at the site including exact results or project expected and date of completion. An attorney, consultant or specialist should be consulted with this stage of the project.

Finding a Qualified Vendor:

A search for a qualified vendor should include asking other community associations who have completed similar projects, in size and scope, about their experiences. Check a vendor's references, do financial research, check for licensing, type of bonds held, insurance coverage, check the Better Business Bureau, the Arizona Registrar of Contractors for licensing and the vendor's complaint background. Additionally, investigate for technical training, certifications and any professional designations that are appropriate to the scope of work to be completed. Contractors should be licensed, bonded and insured. Doing research of vendors before submitting your request for bids will save time and is more likely to result in qualified bids.

Request for Bids:

A request for bid typically contains the technical and other pertinent information associated with a project to allow a contractor to be able to respond with a comprehensive *written* bid for the project. It is typical to submit a request for bid to three viable contractors. The association may want to include a form requesting each contractor to specify his qualifications and what type of protection the contractor provides, e.g. bonds, insurance and warranties. Detailed specifications of the project including quality of materials to be used should be included. The association should include project location and allow access to the site and request that bidders walk the site if necessary. Identical requests and specifications with a date for bid submission and a contact person should be sent to each qualified contractor at the same time to allow for a fair comparison.

For large projects the association may want to hold a pre-bid conference. If so, all association contact information, date, location of the conference and requirements should be sent to the contractors with the request for bid.

Projects vary, therefore, following is a list of suggestions of what might be included in a request for bid. There could be additional information that would be specific to your project that should be requested but is not listed below. Further, there may be suggestions listed that are not necessary for your particular project. Please note: you should seek the advice of an attorney for your specific contracting situation.

- Include the name of the association requesting the bid with a contact number.
- State what constitutes acceptance of a successful proposal.
- State the deadline for accepting a bid.
- Deadlines should be stated, when should the work be started and completed, when can the contractors work.
- State that the contractor is responsible for inspecting the work site with respect to submitting a bid.
- Give a detailed description of the scope of work.
- Detail the quality of materials required.
- Detail the skill level of the contractors.
- Equipment requirements, if any.
- Bonding – request information and types of bonds.
- Request proof of insurance.
- Licenses and building permits (if necessary). Who obtains them? Who pays for them?
- How will negligence be addressed?
- Notice of Federal Regulations regarding Hazard Communication Program.
- How will the work site be inspected for completion and acceptance?
- Total Price should be stated with change/variation information and costs included.
- Invoice method and payment specifications.
- Give access and security information about the site.
- Include a map of the site if necessary.

Compare the Bids and Select the Contractor:

The board should compare each bid line by line and select two bids that best meet their specifications. Be cautious about using a contractor's bid that is substantially lower than the other bids. Further, the board may want to request that the contractors meet with the board for further questioning. Meeting a potential contractor allows the board to get to know the potential contractor and ask further questions. Additionally, it allows the contractor to get to know whom they might be working with. Open questioning may allow the contractor to give additional ideas or point out problem areas that may arise.

Depending on the size of the project you will need to check, re-check and ask about the following:

- Call all references and ask questions regarding quality of work and work materials, adherence to time lines and how the contractor handles problems if they arise.
- The company owners name and correct spelling.
- The contractor's license number(s), contractor identification cards.
- Check the contractor's web site and phone numbers.
- Get emergency contact information for the contractor/company.
- Is there a list of subcontractors and contact numbers if they are to be used?
- What is the policy on equal or better products or services?
- Ask for proof of liability and workman's compensation coverage and verify.
- Guarantees should be offered in writing.
- If necessary, ask about building permits and who obtains and pays for them; get it in writing.
- For a larger project, ask for lien releases for each subcontractor working on the project. When necessary you will need to verify the lien releases.
- Pricing: ask for the annual price for a service such as landscaping, monthly payments, lump sum for a total specific project or with large projects payment at certain points after successful completion.

QUESTIONS TO ASK REGARDING A CONTRACT

Our firm suggests that the association ask the advice of an attorney when executing or reviewing contracts to keep the association out of legal problems. *Please find a suggested list of questions to ask when reviewing or executing a contract:*

1. Does the contract clearly define the parties and the requirements of the parties involved?
2. Are there any hidden costs in the contract?
3. Are the project start and completion times clearly defined in the contract?
4. Is the payment method clearly defined?
5. Is there a provision to handle/resolve conflicts between the contracting parties?
6. Is negligence on the part of the contractor addressed? Who is responsible if someone is hurt?
7. What type of protection, (insurance/bonds) is provided the association should the contractor fail to perform the contract requirements?
8. Are board members personally liable for payments due the contractor?
9. Should the association hire an expert to review the contract or act as a supervisor for the project?