

ENR Viewpoint

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How a Badly Needed New Firehouse Proved the Danger of Low Bids

A construction project with no pre-qualification process burns through money

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A few years ago, a group of business and tradespeople in a small but growing Midwest U.S. town needed a bigger firehouse. They understood from personal experience how the world works. However, with pressure from the municipality, they opened the project to all bidders, and the low bidder was a contractor with a reputation of being difficult to do business with. The business and tradespeople suspected the contractor was not qualified, but they had not required any prequalification process to screen bidders.

They should have known better.



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Sophisticated buyers of construction services don't use the design-bid-build process to select contractors because it simply does not work. The old joke that the bidder that makes the most mistakes gets the job no longer is amusing because it is way too close to the truth. I have been in construction almost 60 years and have had too much experience with low bidders to even let one near my property. Selecting based on a low bid practically guarantees you will end up with the least qualified contractor for your project and that it will cost you more in the long run for less quality and more headaches.

The scheduled 12-month project began with difficulties with building department inspections, some work that had to be torn out, some questionable areas left in place and lots of arguments.

The volunteer inspector for the fire company and the architect's inspector were intimidated by, and no match for, the overbearing and aggressive contractor, who claimed that with a lump-sum contract he could build it as he saw fit and that their only concern should be the finished product. Complaints of deficiencies and construction not according to specifications were ignored and grievances built up while new work was put in place on top of work not yet accepted. And the work continued.

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There were notices that walls were in the wrong location and that the elevator did not fit in the shaft. Additional notices concerned abundant flaws, faults and defects. Just about everyone threw up their hands. A sewage catch basin that failed municipal inspection was so deficient it had to be replaced. At the time, however, the contractor did not call for an inspection—the company just backfilled it and paved over the basin. The owner should not have continued to make progress payments, but each time it tried to stop, the contractor threatened to abandon the project and sue. As the project fell further and further behind schedule, the owner's desperate need for a bigger firehouse played in the contractor's favor. Eventually, the owner needed the building so badly that exceptions were made; in effect, it became a victim because its own contractual deadline requirement impeded its bargaining power with the contractor.

When the building was completed, the municipality refused to issue an occupancy certificate. There were electrical deficiencies, the replaced sewage catch basin failed inspection, and the roof and many windows leaked. The list was far too long to itemize here. Suffice it to say, the project was delivered six months late, and an independent consultant's estimate to correct the deficiencies, needed to get an occupancy permit, exceeded \$1.5 million.

The original low bid had been \$2.5 million. Some would ask, how can that be?

Let's look at just a few of the more costly items. Keep in mind it is usually more costly to take something out and repair or replace it than to just put it in new. Over 50 windows were not installed correctly. They were not installed in accordance with specification, which was the manufacturer's requirement, so the guarantee was void unless corrected. This fix alone was priced at \$240,000.

The main electrical panel, which was fully wired, was undersized and had to come out and be replaced. The main spiral staircase was 5 in. in the wrong location. And of course, the replaced precast concrete sewage manhole with inlet and outlet piping attached, covered entirely with 4 ft of dirt and paved over, has to be replaced.

The consultant said the roof could not be repaired. It must come off and be replaced. There are structural steel lintels over the top of 50 windows that are incorrect and repair or replace has not even been decided. All of the precast windowsills and copings on the entire building are not according to specification. There is little to be gained by completing the long and expensive list of deficiencies.

This is not the complete story about the design-bid-build nightmare. The fire company used all the funds it had, along with the building funds raised over years, for the construction of the new firehouse. They are struggling to make the mortgage payments on the millions they borrowed. Therefore, there is no money available to make any of the \$1.5 million in repairs it will take to get an occupancy permit. It will be years until this comes to trial, but that is contingent on whether or not the fire company can continue to pay their lawyers, which is becoming questionable.

Role of Surety Misunderstood

You may ask where the surety was in all this. Apparently none of the parties to the contract understood there was a bond or what it was for. There is now some question as to whether they have exceeded certain notice provisions required by the bond documents. It would be fair to say that the bond would not likely have prevented the nightmare, so if it pays for the consequences, does that mean the nightmare never happened? Does it mean that design-bid-build does work?

Unfortunately, the nightmare does not end here, because there was another huge consequence caused by the low-bid process. The actual events I have described happened in 2014, and in 2015 the project was delivered supposedly ready for occupancy. As I write this in 2018, no one has occupied or used the facility for any purpose. Ongoing carrying costs such as insurance, security and the like continue, but no one can use the building for any purpose.

The low bid process doesn't work. Notice that I do not blame the low bidder who performed as he always had. A sophisticated buyer of construction services would say he performed in a predictable manner. Using an appropriate best value contractor selection, the consistently poor performance history would have been discovered and the contractor would have been screened out at the pre-bid stage.

The big question is: Do you want the low bidder anywhere near your project?