

## Chapter Six,

invitation for bids. Contents, we're gonna talk about the invitation for bids process, about the invitation for bids process, the bid openings, and the contract awards. Sealed bids are used for purchases above small purchase threshold. What is your small purchase threshold? 50,000 for Texas, 60,000 for New Mexico; however, there is nothing prohibiting you for doing this sealed bid at 40,000, Texas, or at 50,000 for you. at 40,000, Texas, or at 50,000 for you. at 40,000, Texas, or at 50,000 for you. Solicitation for sealed bids is done for you to get the best price is done for you to get the best price because price is the only award factor other than responsive and responsible. You with me? So you know what we always wanna do? A firm fixed fee for stuff if we can. Sometimes it's not reasonable, but if we can. We'll talk about it more. Solicitations pursuant to that may have similar elements for all of 'em. may have similar elements for all of 'em. The IFB package would be something along the lines of perhaps a cover sheet explaining stuff, a bid form, and then specifications and statement of work, and then HUD-required forms.

Now these 5369 forms Now these 5369 forms are forms for the bid only. They're not for the contract. They're not for the contract. Contracts ensue from the bid, right? Let's break it down a little bit. The 5370 forms are contract conditions, yet I always put the 5370 in my bids. If the contract has nothing to do with the bid, bidding the work, why do I put the contract form in my bid? Say it out loud. She said terms. That's very, that's good, you're on the right path. I'd want the contractor to know what they're gonna have to agree to when the contract is already going. Let me give you an example. I'm gonna show you a bid for construction, and it's gonna be right here like this. And I'm gonna go to Phoenix City. And I'm gonna go to Phoenix City. The executive director at Phoenix City, Alabama worked for HUD for over 10 years. She jumped out of the pan and into the fire. She became an executive director at a housing authority. And here is a bid And here is a bid And here is a bid for the installation of a park in a new development that she and some investors have developed. She's replacing, she's not going RAD. She's replacing all of her public housing with mixed-income level with mixed-income level financed projects, developments. Boy, they're beautiful too.

It's really nice. And they're all gonna be 40% low income, 60% market rate. A lot of that is because she has all this land on a river that people use to recreate on, on a river that people use to recreate on, so instead of selling the land for big bucks, she's developing it herself. Yeah, it's working out. Now this 1.0 document, Now this 1.0 document, can you see that at least kind of? I have a construction document there, and then you see I have the 5369-A form, which is the instructions, and then I have the Section 3 forms, and then I have the 5369 certifications form, then I have the sample contract form. And look at all of this. Starting here all the way through these 19 documents, those are all HUD-required documents for a construction project. Yeah, these are more inclusive than anybody else has, why? Because I've spent 45 years doing it, so I know what forms are required. And then I have, of course, the ICE, which was completed, the checklist, the pre-bid conference agenda sign-in sheet, and the recap of bids received, okay? So, for me, this is what a IFB looks like, this one specifically for construction. The ones I have for non-construction are much shorter because there's not as many HUD-required forms, okay? HUD labels the next section Method of Solicitation, and what they're talking about is advertisements; however, I'm gonna give you guys all the thought.

The least effective way you can make bidders aware of a bid is to put an ad in the paper. Nobody is ever reading those ads, or the majority of them are not. So why do we do it? Well, HUD gives you alternatives. HUD says you can advertise in newspapers or trade journals, or use an E-procurement site, okay? Yeah, that's what HUD says. Where do your requirements

come from out of the newspaper? They come from your state laws. State laws require local government agencies to place ads in the newspaper. Even though it's not a truly efficient way to get bidders, it makes you look much more open and fair. Everybody got that thought? Now how do you actually get bidders. By sending them a notice directly saying, "I have this bid for this construction," or, "this bid for this refrigerator," or this bid for something else. So we usually have a bidder registration system where bidders register. Now, for me, I do everything on the internet. Everything I do is on the internet. I use some software. There are lots of softwares on the market for you to do that. You just go to your Google and put in housing authority software bidding, and you'll probably see 10 or 15 different softwares that you could utilize for that. But it is a much quicker way because people all the time send me a thing.

They go, "Mike, I only got one bid." And I go, "Well, how many notices did you send out?" And they go, "Oh, I put it in the paper." I said, "No, how many notices did you send out?" And they said, "Well, just one." Well, then that's why you only got one, because nobody else knew about your bid. That's how you get quotes, bids, and proposals back, by notifying people who have registered with you to receive those, okay? And then there's a variety of software products you can use for that, that can help you with that. Now pre-bid conferences are, you don't have to do a pre-bid; however, Don, are you experienced in construction somewhat? Yeah, we always do a pre-bid for construction because, correct me if I'm wrong, because construction contractors need to not only hear about the bid, which they can read from your documents, but they need to walk the site, and we call that a walk through, okay? Now I always, always do pre-bids for construction. I will typically do pre-bids for maintenance services. I never do a pre-bid for audit, fee accounting, or legal.

Why don't I ever do a pre-bid for those? Say it again. - It doesn't make a difference. - It doesn't make a difference is one thing. First of all, those people. First of all, those people. - They're already (speaking faintly). - They're already hanging around all the time. You see, they already know those kind of processes, but here's the other reason why. They ain't gonna come to town to go to a pre-bid, except under two conditions: you're a really good, big contract, then they'll probably come to town to look for it, and by really big I mean 100,000 a year, and the other issue they'll come to town is if it's Las Vegas, Nevada, (class chuckling) because when I was at Las Vegas, all of the bidders all demanded pre-bids for everything that I did, and they asked me to schedule them on a Friday morning. (class chuckling) (class chuckling) And I was very happy to accommodate because they just really needed to come there, they said, "to get a feel for our needs." And to throw them dice, baby. (chuckling) Yeah, I always did, my authority, because people demanded that I do it, and it did, you know, that was one way it was good because if somebody paid for their people to come to my pre-bid, I know they're probably most certainly gonna return a bid or proposal, and I was always worried about getting how many? That's my goal, is to get three.

That's right. That's right. We do not make pre-bids mandatory, even for construction. HUD says you can, but, "Danger, Will Rogers, danger." That's a "Lost in Space" reference. Here we go, danger. If you make a pre-bid mandatory, and you don't get three bids, if HUD or anybody else sees that you made it mandatory, HUD will typically not approve that one bid. They will typically say, "Don't make your pre-bid mandatory. "There may have been other people "who would bid on this, and they could just walk the site on their own." Are you with me? So that's typically what HUD will look for. I'll tell you that since HUD's not here. That's typically what they will look for, is what did you do to restrict competition, am I right? Yes, you do little things to restrict competition, sometimes unwittingly, you didn't mean to do it, but that's what a pre-bid mandatory serves to do, is to restrict. At a pre-bid, we do not answer questions. How many have been through a pre-bid? How many have been through a pre-bid? Yeah, let me tell you

why you don't answer questions. Yeah, let me tell you why you don't answer questions. Anything said verbally has no standing. Much of this stuff that I'm saying, each of you is hearing it differently. You're hearing it based on your experience, You're hearing it based on your experience, based on your knowledge. You're hearing me say different things.

If they ask questions, okay, do me a favor, will you? We're at pre-bid right now. This is gonna be really easy. This is gonna be really easy. Ask me, I want you to raise your hand and say, Ask me, I want you to raise your hand and say, "Can I use blue paint instead of green?" So I'm glad to go ahead and do that. So, well, yeah, so, question? "Can I use blue paint instead of green?" - That's an interesting question: can you use blue paint instead of green? Well, it sounds okay, but I'm not really, sure, yeah. Some people heard yes, some people heard no. Do you know what I mean? You never know, good job. (everyone chuckling) You never know what somebody is really saying, You never know what somebody is really saying, plus, I can't answer that question. I have to go talk to my construction guy over here and talk about that question, and I have to make sure I understood the question. So what do I have them do? Watch this. You know, that's a very good question. Would you please put that in writing and send it to me by email? Now I know exactly what the question is, then when I answer it, everybody receives it at the same time when I issue an, Do you see how these things make sense? Yeah, there are certain processes you wanna go through. Yeah, there are certain processes you wanna go through. But the pre-bid can be used to clarify expectations, especially to the solicitation process. I go over the pre-bid a little bit, I go over during the pre-bid the documents and let them know about a few high points. I'll give you an example. How many here remember seeing those thick, old construction bids that everybody turns in? You have, haven't you? Do you know to respond to my construction bid for \$50 million, you can do it in five pages? I have the Form of Bid, I have the certifications form, I have the Form of Bid, I have the certifications form, and they have to give me the bid bond, and add on, if they wanna request a Section 3 preference, which nobody ever gets, they have to turn in that three-page form, two-page form. they have to turn in that three-page form, two-page form. How do I get away doing a \$50 million bid? You know all that extra paperwork that bidders don't need to turn in, only the construction contractor does? I save them for the winning bidder only; therefore, my construction bids, I drive up the number of bids because they're so easy to respond to. because they're so easy to respond to. Yeah, if you guys ask for that sample, I'll just send it to you, then you'll have it. Be careful, though. Your architect may say, "I don't think this is legal." Your architect may say, "I don't think this is legal." Just let me know, and I'll talk to him or her with you and let him know it is perfectly legal, and it's efficient. Yes, it works to only have five or six pages turned in because I make the successful bidder turn 'em in within five days of the bid opening. Now they're gonna win. They're motivated to do all that paperwork.

I don't get big fake bids, just small ones. Remember, anything that we hear at a pre-conference must, if there's any changes, those are delivered to everybody by issuance of an addendum. Every one of them is by issuance of an addendum. Amendments to the bid packets, if you must make changes, you must do so, you must do so in writing only. Let me see if I have an addendum here. I don't, but I have one over here. Ongoing bathroom renovations. Yup, here's an addendum. This is addendum number one. Do you guys notice that all these forms look alike? That is very warming to auditors, whether it's at HUD, OIG, or a third-party auditor. Everything looks alike, that's good. Okay, here's an addendum that I issue to everybody, and I do it on a software product. As long as you're registered, question, we received the following questions. Is this the same bid from the pool of contracts you're a part of? This is not the same bid. You see what I mean? They asked a question, I responded to what they want, and this goes to everybody at the same time. That was the only one on that bid. They ask a question, I give the response. The questions I copy and paste right off of their

email so that I'm answering exactly what they did. Everything has to be a very formal process. This is very formal. Yeah, we made a mistake in the bid. Somebody pointed out that the submittal deadline was listed as Eastern time. No, excuse me, we did not make a mistake on the bid. Shows Eastern, but aren't you located in Central? Well, they're located, and this is good because this is a bidder that came from northern Alabama, if I recall.

All of Alabama is in the Central time zone except for Phoenix City across the river from Columbus, and they carved out that little, tiny area there and made it in the Eastern time zone because they were tied to that other city. So we let everybody know, no, it's located in the Eastern time zone. Now what you've gotta be careful of is somebody may ask this verbally, and you may answer the question, and then they might miss the bid deadline. Even if you answered it verbally exactly as we said there, they will swear that you said the opposite. If it ain't written, don't exist. If it ain't written, it never happened, so you have got to write things down. So questions come in and are delivered to everybody only in writing. Remember, amendments must be in writing. Now I'm gonna give you another thought. And amendments must be confirmed. If you send them out by email, do a return receipt open. Ask them to respond that they received it. This old fashion 1950's way of having them confirmed on the Form of Bid doesn't work. There's a lot of errors with that, yeah. Bid opening, every bid that comes in Bid opening, every bid that comes in must be date and timestamped received. Now this is where I tell the people to put the date and timestamp. You have a From, they have to put who it's from on the box or envelope, right? And they have a To, so for those of you who do it, I want you to put the date and timestamp to the right to the From and above the To so that that information is right there within the rest of the information. How do we do it? Well, at my agency, we would put a Post-it Note on a piece of paper, timestamp it on the timestamp machine, and then we would tape that right there where I just told you; however, some people have that little tool where they hit it like this, and it timestamps it.

That's okay. And some people don't have anything. They just write down received, initial, date, and time. That is also satisfactory, . Even though it's dropped off and HUD has never put, whatever office does that at HUD has not put it back up. It is still, the 5369 forms are all still required. Late bids are still received and timestamped, although, if you tell them they're late, and they say, "Okay," and don't give it to you, then you don't timestamp it, but you keep them unopened unless they meet the standards of items five on form HUD 5360-B. Item number six on 5360-B, item five on 5369. Let me tell you what that says, and it's a really, really bad rule, but it's there and we have to follow it. It says that if you receive a late bid because the U.S. Post Office messed up the delivery, then you can accept it. They don't allow the same for UPS or FedEx, only the United States Postal Service. Look on the form and you'll see it. It's a horrible rule; however, I have received late bids, and I have had to open them as being received late. And there's some rules on there, what they had to do with the Certified Mail and everything, that they had to be within conformance of that. I've received those. So you've got that note there, so if somebody delivers you by mail a bid or proposal that is late, you wanna check those rules there to see if it was received within those rules. If it was not received in the rules, then it is kicked out. You open bids publicly.

Now here's my recommendation for bids. You open the bids publicly, you read the bidder's name and the prices aloud, and then you record them on a bid tabulation form, where it shows their name, their bid amounts, and then that is all that you do at the bid opening besides sign the form. Now three people are gonna conduct the bid opening. The bid opening officer, the recorder, and the witness. Do not do bids with less than three people. It's not an absolute rule, but I'm telling you, in law, there is some really great benefits for having three people. One person will open the bids and read them aloud, the next person will witness what they read,

and the recorder will write them down, and the witness will witness that they wrote it down correctly. Are you with me? Doing bid openings with one or two people is extremely problematic. Don't do it. Always have three. Now let me give you another thought. At the bid opening, only read the bidder's name and the prices. How many of you have worked with architects, and the architects have you go through the checklist and check the bids right there at the bid opening? Never, ever do your due diligence in front of the public. Ever, you know why? The public is not to be involved in your due diligence. That's your responsibility.

Watch this, watch this. So we're doing that bid opening now, and then we go through the checklist, and you'll say, "Is there a bid bond?" I go, "Well." - I can't find it in this packet. - Yeah, there's a bid bond. No, you've got protest coming all over the place now. See, I don't involve the public in what I do. I had one guy once who said, "I wanna see those bids, now." I go, "And I wanna be president of the United States." Neither one of those are going to occur. He goes, "No, I wanna see those, he got very angry, "I wanna see those bids. "I wanna see if you're cheating." And I turned to my admin, Linda, who worked with me for 20 years, and I said, "Linda, get him the number to the police "and the district attorney. "He has a crime to report." He insisted on seeing the bids. He didn't want to see the bids, folks. He wanted to get his hands on 'em and do something with them. I one time had a bid opening, and I set all of the bids on the table, a public bid opening, read all the bids, and we were signing off on the form, and somebody jumped off the front row of the room, grabbed the bids, and ran out the side door, and they were all gone. Now I'm not telling you that can happen; I'm just telling you it happened to me once. I was just in such shock, I didn't even, I mean, I just sat there with my mouth open. The only thing that we could figure out was it wasn't the winning bidder. (chuckling) (class chuckling) You know what I mean? So we secure the bids after we read them. Never open bids at a board meeting. Oh, Mike, we open bids at the board meeting, and then to be efficient, then we just approve 'em. You're not even close to being ready to approve those bids.

You've gotta, first of all, with the bid bond, you gotta check Circular 570. I'm gonna get to you. You gotta do your due diligence. All of that has to be done. Plus, board meetings are a bad place to involve commissioners in our day-to-day stuff. Listen to me, don't involve commissioners, if you can help it, in any of your day-to-day stuff. That's not their role. Their ED role is to oversee you, not the authority. Your ED role is to oversee the authority. John, please. Richard, please. - I was gonna just say something. The moral of the story, that person stealing all the bids, is have one of the three a fast runner. - (chuckles) Yeah, he said the moral of that story is have one of the three a fast runner. Actually, what we do is when I'm done with the bid, I give it to the witness, and I make sure the witness is somebody who can protect the bid. They keep 'em in their hand right there so if somebody comes up, we can stop it. It only happened that one time, and it was a set up. I set them on the table in front of me. It was like an invitation. - What'd you do, cancel the whole bid? - Yeah, I had to cancel the bid. (student speaking faintly) I couldn't accept their word with them giving me copies of their bids because they would have changed the pricing. No, I couldn't do it.

I had to redo the whole bid. All the bid bonds were gone, everything. Another lady did it once. She let everybody look at the bids, and she said after they left, she goes, "I did exactly what you said. "I laid all the bids out for everybody to look at, "and they stole the bid bonds. "The winning bid was completely gone." And I said, "I said to do the opposite. "I said, 'Don't show it to anybody.'" Plus, that document, those documents have not been verified yet. And, by the way, have you ever heard of the term "you reserve the right to waive informalities?" Yeah, yeah, I've had bids where they didn't even sign the Form of Bid, and I accepted it. I mean, it was too late. It's the bid opening. But they didn't sign the bid. I don't care. They gave me a bid

bond. They were meant to be bound. Sometimes they to forget to put certain documents in the bid. I might waive that as an informality and allow them to still have their bid considered. Just remember, if they make too many mistakes in a bid, what might that be an indication of? Poor work coming from you afterwards. So you have to make those decisions. We evaluate bid on responsiveness, responsibility, and price. Now, remember, if we have deductive alternates, we must, first of all, the only alternate prices we can allow must be deductive in nature. Additive alternates are not allowed. I'll give you an example. I've got this housing authority in Texas, Paducah. I'm sorry, Kentucky, and they are unsure if they have enough money. They've got a really important project to do with replacing HVAC units. They're unsure if they have enough money to do all of the units, so what we're gonna do is we're gonna get a bid for all of the units, and then we're going to do deducts to deduct certain amount of units off the installation. And if we have to, if the bids come in too high, we can start doing deducts until we arrive at a price that we need.

Now that's a very simplistic explanation, deductive alternate. You cannot do additive alternates. It's a HUD rule. I don't like that rule. I've expressed I don't like it. Who cares? That's what they want. That's what we have to do, right? Yeah, it's the law. By the way, why do I keep bringing that up, about some of the things? Because I have people who even expressed to me that they're not in favor of wage rates. And I said, "And so you're telling me this why?" And they go, "Well, I don't wanna use 'em." But it's the law, right? Yeah, if you can't go along with the program, find a different job to do, right? Because we have to follow the rules, yeah. I did have one authority who wouldn't implement wage rates. Yeah, I resigned immediately. Yeah, they just said they weren't gonna do it. They didn't believe in them. (Mike chuckles) Run, real fast, yeah. Here's some on deductive alternates. Look at this. So we have the base bid, but we're unsure if we have enough money, and it was less than 100,000. So the first thing that we have to do, this is the table for deducted alternates, and if you look here in column A, B, and C, okay, then we start invoking, we didn't have enough money, so we're going to apply to deducts all the way across. So this deduct will bring the price down to 90,000. Are you with me? And this one will bring it down to 95, and this one will bring it down to 100, right? Then, we still don't have enough money for what we need, so we'll apply this.

This brings it down to 85,000, this brings it down to 85,000, and this brings it down to 80,000, and that's how much money we have. So the bidder that actually started at 120, is the highest, became the lowest bidder because we went through the deducts. Now you can only invoke deducts to the point that you have enough money, then you have to stop. Any questions on deductive alternates? - Can you give an example? - I just gave you an example. - No, I know, but what would be deducted? - I just gave you the, here, you're not, let me show you, Richard. Oh, what would be deducted. Oh, let's say this is-- - You're doing a renovation project, and need to see a deduction on this. Don't put the doors on-- - No, deductive one would probably be something less important. We have to list them in inverse order, and it would be no exterior painting and deduct two may be landscaping, to take out the landscaping. See what I mean? But you only list them as a deduct if they're less important and you can afford not to do them. - Thank you. - There you go. Thank you, Richard, good point. - I have a question. - Good point here. Yes? - So on those deducts, is the theory you're gonna use your own labor to do it or you're just gonna put that part of the project off? - I have no idea what you're gonna do by invoking the deduct, but she said, is a theory that I would probably go do it from another bid or have my own people, and the answer is potentially. Just remember, though, if you're doing, that's called, doing your own people, is called force account, and it is my understanding that, since I left my authority, that HUD now states that you can only do force account if they approve for capital funds.

Am I right, John? You must get it. Now, hold on. Your justification to HUD to do a force account construction job has to include an independent cost estimate and then analysis of the cost, both showing where you're saving money over a contract you're doing. Danger, danger, danger. I have seldom seen a housing authority that can do stuff in-house for less money, construction work in-house for less money. - We also wanna make sure that when you do force account, they do the regular maintenance where it's impacted by staff doing the modernization. - Did you hear what he said? One of their analysis items is gonna be we wanna make sure that maintenance doesn't, your regular ongoing maintenance does not suffer, but there's other things that have to be looked at too, yeah. Remember, if you do force account through your own staff, labor rates do not apply 'cause your staff are already government employees being paid, but if you hire temporary employees to supplement, Davis-Bacon applies, which can make it very expensive. If any of you are ever thinking about doing force account, I wanna tell you something: the most you're even saving is profit, and that's only 10%. My housing authority did it; what a mess. In fact, if someone have told me that it was because of my authority that Las Vegas Housing Authority messing up our force account, that is to one the reasons why HUD started putting in these other rules. We did great work; we just did less work for the money. Our work was outstanding work, but we started a project to go under force account to rehab 300 units, and we did 140, and they were excellent, but the budget was eaten up. Oops, yeah, that was a big oops. Right here, please. - I have a question on your assignment sample for the alternates, the deductive. Was that based on a percentage? - No, those are not based on a percentage. Those are the prices that the contractor turned in. - Oh, I see. - That's a very good question. Each contractor right here, bidder A turned in those prices, bidder B.

I put places on the Form of Bid for them to enter for each deduct, and I told them what deduct was done. Richard, I'm glad you and her are asking these questions because I think it's making it clearer for everybody. These are bid prices that get turned in. Now, remember, if you put deductive alternates in, you have to read them at the bid opening; however, if the bids, let's say the low bid was 100, and we go, "Wow, that's what we have, is 100?" "We don't have to invoke deduct." Invoke the deducts. We just let them sit, and we just go ahead and award. One last thing about deducts. Let's say that we award to bidder C right here, after two deducts were taken off. They were now the low bidder at 80,000, right? We cannot later, very important to everybody in the room, we cannot put this deduct back in, either one of them. You know why? Because that's no longer the low bidder. No, that's inappropriate. Now even if they were still the low bidder, it might be appropriate to put the deducts back in later, but most certainly you could not do it if it would change the order of finish. Everybody with me on that thought? You have a question? - Well, how many bidders have these? Let's say you have the lower bidder, 80,000, and you need to do those two jobs. - Go ahead. - And then you wanna add them back in, do you have to do three contracts for them? - Okay, now here's the deal. If you award to bidder C-- - I can't hear your-- - I'm gonna repeat it. Her question is if you award to bidder C at \$80,000, this is her question, and then she finds money to add it back in, that's one thing you're asking, can you add 'em back in?

And the answer is no, you cannot. So her next question is, then how do I get the work done? And my only answer is, "I don't know." If you don't have money now, but you have money in a year, then you do a new bid for those items and anything else you wanna put in. - Just throw it at whoever's your type of funding. - Yeah, yeah, yeah, that's a good one, John. - So you have your five-year plan that's in there, and you're moving around the bid. - Yeah, now some people tell me, they go, "Mike, can I bid in phases "and do one phase this year, and one phase the next year, "and one phase the third?" The answer is you can do a bid that way, but you ain't gonna get any bids, or if you do get bids, 'cause they can't, construction cannot hold their

pricing for two years, but if they do give you a bid, they're gonna price it way higher to accommodate for any, so it is an inappropriate way to do a bid, phased bids over several years. Some people say, "Well, Mike, we can put in escalation factors in other things." Not in a firm fixed-fee bid. Does not work; it's not appropriate. Do you disagree, anybody, John? No, no, right here please. Just a minute. Did we answer the question? Good question, right here. - So if there's the bid is 100,000, and usually a bidder doesn't itemize the cost on them, then how do you fill those deducts? - Okay, now her question is if this bid was 100,000, since bidders don't itemize costs on their bid, how do we know about the deducts? Okay, let me explain two different reactions. Number one, for deductive alternate, we do itemize them on the bid. We put it right on the bid form, deductive alternate number one, and then we gave 'em rules. How much will you delete to not perform that work? Okay, so we do itemize 'em on the bid form.

The bid form's gonna have room for all of these. Now, number two, she brought up another good point. We do not itemize construction bids, absolutely not, and let me explain why. There's a thing called form HUD-51000, which is the Schedule of Amounts. Have you guys seen it? Yeah, sometimes there's another AIA form called Schedule of Values, where we have bidders. The bidder lists all of their breakdowns so we can look at their breakdown of the bid and ours and see if the bid is imbalanced or if they've missed anything. You with me? Never ever, ever never, have those turned in with a bid. We get them from the winning bidder afterwards, and let me tell you why. There is a horrendous court case, and I believe it was in the set a precedents, and I believe it was in Virginia, where the housing authority, by the way, I had visited this authority. I told them to stop doing this, that it was very risky, but they kept doing it. They had the bidder turn in their firm fixed price, then they had them turn in their complete breakdown of all their work items with a price for each. Now here's what happened. The court, this guy sued the housing authority because he bid too low. He bid some of those work items too low, and he was seeking, it was a large bid, and he was seeking a couple of hundred thousand dollars of more money. Now if you turn in a firm fixed-fee bid, John, and you have to eat it, what happens? You have to eat it or you default, and then your business is ruined, right? 'Cause it'll go against your bond. However, the court case says, no, housing authority, you have to pay him that additional money because, stay with me, think real carefully, because they turned in their itemized bid; therefore when the housing authority approved their bid, they were approving the itemized bid also because it was a part of the bid. Therefore, it was the housing authority's fault. That's a horrible ruling; however, it's a ruling. So here's what I'm telling y'all: if you get the itemized breakdown, wait until after the bid deadline, and you get it for informational purposes. It is not a part of their bid offer. Are you with me on the thought?

John, you good with that? Yeah, Mike? Yeah, don't get it then. You guys, excellent questions. This was a robust conversation about deductive alternates, which I'm tired of, so shall we on? Oh, no, we got one more. (chuckling) I'm so sorry. - All right, so I've got a bid-- - Sorry. - And I found another, so then they don't, when I put in deductive alternatives, they all come out above me. At my bid opening, I have three people, I have three for bids, I have to read them the alternatives, I have to read all this (speaking faintly). - Yes, you have to read 'em. - I'm doing my due diligence in front of these people. I don't award the bid in front of these bidders. At what point do I let the bidders know that I'm gonna award the bid, but I'm using people-- - I've invoked deductive alternates. Let's use this bid as the example. So here's his question. So I've done the bid opening. I've read all the deducts. I only read their names and their dollar amounts. I didn't tell nobody nothing. Nothing, okay? And then I go into the back, I evaluate the bids, I apply the deducts and now I've gone to this person, so that's my decision. What do I do next to let everybody know? I send them a post-bid deadline notice detailing out exactly what



we did, probably with this stuff in a chart and saying, "This is who we're awarding to based on our invoking these "because our budget was \$80,000." That's when I do it, but I don't do it in front of them. In fact, even if you don't have deducts, don't ever tell anybody who the winner is. You guys know that, right? Because there's no winner yet 'cause we haven't done our responsiveness and responsibility, or due diligence. Correct, good point. - Let me just say one more comment. So one of the most important things is also make sure you have a good, clear, defined scope of work. - Oh, yeah, yeah. - That way there's never any questions, any issues.

Don't open yourself to a (mic distortion garbling speech). You know, any new thing in there in the contract is important. If they see something, I mean, if you and them-- - Especially in construction. Let me add on to what John said. Especially in construction is, the scope of work is always important because that's what they're bidding on, and you can't change the scope. I'm gonna get to you. You can't change the scope after the bid deadline. You're done. - Yeah, you wanna make sure you compare apples with apples 'cause apples and oranges, they're down in-- - Yeah. (John speaking faintly) So make sure that your scope is detailed. That's why I recommend architects. You know why? Because you're sharing the risk with them. If you put the scope on the architect, that means you still have to read it, you still have to work with the architect, you have to talk it over and decided it's what you want, but once you put it on them, if they forget something that's really important, then, at least, they're gonna have to redesign it no cost, and it might even cost them some more, maybe. It's hard to get money out of architects, but maybe. Right here. - So when you receive those bids and you open it to the public, you're reading to them, you only read the base bids, right? You don't need to read all the deductive? - No, we do read, we do re-read the base bids and we read all the deducts because they're part of the bid, gonna be part of the evaluation, and it's all part of the bid price. Let's go five minutes. - Yes, sir. - RFPs, responsive mean that the bidder has at a minimum addressed all of the requirements that you said, the things you wanted turned back in, and you wanna make sure that the bid is also, that the product, if it's a bid for, for instance, for appliances, we've gotta see are these, they're giving us a different brand name than we listed or equal? Are they giving us a product that meets the minimum of those specifications? And I have forms for that that I'll give you, so there you go, okay? Now responsiveness is the most simple of the two evaluations.

Next we do responsibility. You have to determine that they are somebody that you want to do business with. Now for that quote right over here, this quote for \$20,000, the responsibility could be 10 minutes. Call their references, two or three, and say, "Will you do business with them again? "Do you have any problems doing that?" For a \$20,000 purchase, if they say no, then you'll probably need to ask more questions if, in fact, go ahead, if, in fact, they will even answer them. But for a larger bid, we have to do some due diligence. Now all of these, and I have forms for that on my website, do they have adequate financial resources? See, for me, I would usually start this process around \$300,000 or so, to go through this whole thing, okay? For you, it might be a little bit less. Do they have adequate financial resources, meaning are they in trouble with the IRS? Are they okay? Do they have a bank account? Do they have the capacity, counting operation of controls and skillset? You can find that out from other people. Can they do this stuff? Can they administer the work? You with me on this? It's pretty simple questions, really. Do they have the required equipment facilities? When I do lawn cutting bids, I encourage them to turn in copies of their, pictures of their equipment.

Yeah, you know? And what a lot of 'em do, they go, "That's silly, but I'll do it." And they line their people all up in front of a trailer where you can see all their equipment, and they're all smiling. I go, "Okay, you thought that was silly, "but it tells me two things. "Number one, you got a trailer, "and you got multiple lawn mowers and multiple blowers, "and you've got multiple

people. "That gives me a warm and fuzzy feeling "that you can do my sites." A lot of people say, "But, Mike, I'm only 100 units." You know, folks, it depends on how you look at it. Do you know if you own those 100 units and will still manage 'em, you'd be a millionaire, right? Yeah, it all depends. 40 units and you can be a millionaire. It just depends on how you're looking at things. This is important stuff, even for small housing authorities, okay? How do they have the ability to comply with timeframes? Yeah, again, the references. Did they do the work on time or close to it? If they didn't do it on time, was it justifiable? Do they have a satisfactory performance? Where besides calling clients could we find about their work performance? Contractors boards if your state or local jurisdiction has one. Better Business Bureau. Yeah, some people go Dun & Bradstreet. You know what? Dun & Bradstreet costs a lot of money. I used it, I had to use it for certain, I had a \$35 million bid once and I had to use it. They and I had to get a DMV number, so that's fine, but I'm not gonna do that for smaller bids of 100,000. I'm not gonna do it. But I certainly can call the Better Business Bureau, yeah.

Are they qualified, meaning not debarred? You know, there's two debarred lists: HUD LDP, GSA SAM. Yeah, we'll talk about it more, yeah. Okay, so we research and get financial data from them. Contract award how to determine responsibility. We get financial data from them. We determine, oh, do they have too much work? If they immediately start asking for extensions to time before you even sign the contract, they might not have the time to be able to do the work. Nobody wants to, on work. I have fallen victim to that myself, and then been pretty poor in responding to stuff, why? I took on too much work, yeah. References from previous clients. How satisfied were they? Does anybody ever call you and ask you how contractors did? Let me give you some advice. If they were a really good contractor, this is what I say. Rick, Michael rings me up and say, "How did they do it?" Here's my response: "They completed the work satisfactory. "I would hire them again." You know, I go to some of your NAHRO conferences, and I see pictures of some executive directors at booths for contractors' fee accountants, where the executive director has given a testimonial. So let me ask you something, executive directors. If that person goes bad and start stealing money, are you gonna be partially responsible because you said you he was the greatest fee accountant since buttered bread? Don't give testimonials. Do not do not allow your name to be used. I wouldn't even speak off the record. Other than, "She has been my fee accountant "for several years, "and if she wins it again I'll be pleased." That's the most that I would say. Do you get after-construction contracts, Michael? Do you ever get those rating sheets from bonding, the bond companies? Any of you? Yeah, don't fill them out.

I write on those, "We did not terminate them during the project. "They completed the work satisfactory." That's the most I will say. "Well, no," they call me. "I need you to tell me if they were good, "they were fair." I'm not gonna do it, you know why? It creates a risk for you; risk that you do not need, yes. Confirm, yeah, and you confirm that there are no suspensions or debarments. Has anybody here ever had bids opened, and they're the same, exact to the penny? - Yup. - So, Lee, they were to the penny? - Mm-hmm. - And you had to decide who to award to? Oh, that's ridiculous. Lee said he flipped a coin. (class chuckling) That's exactly how the law reads. In Las Vegas, we give 'em a choice: throw dice or draw cards. (class chuckling) Most people chose cards. Yeah, because they feel their chances are better. That's exactly as Lee said here. That's how it reads. By the way, in the handbook, and it also must be in your procurement policy, and must be in every bid, quote, bid or RFP that you issue. There must be a statement in there as to how they pull bids, but, remember, opening bids, you don't flip the coin right away. Why not, Lee? - We don't know if they're responsible yet. - Lee, you're just giving, Lee is gonna get an extra cookie today. Lee says, "We don't know if they're responsive or responsible yet," and that's exactly right. Yeah, most elections in the United States, do you remember the one in West Virginia about two years ago? After that election, the House and

the Senate were tied equal, and the odd number was tied. The election was tied at like 15,370 votes apiece. Imagine the odds. So you know how they settled it? They first, hold on. They first determined the responsiveness and the responsibility of the election by doing a 10% sampling of the ballots cast, and do you know when that was done, they were tied again. So you know how they did it?

They put numbers in a hat, high number wins. They put the numbers in sealed capsules, and each one of 'em drew a capsule out, and handed it to them, and they read the capsule, and the high number won. That's the law. The only elections not settled that way are elections for president and for the Senate. Elections for president are settled by the House of Representatives, elections for the Senate are settled by the governor of the state. He chooses who he wants. Isn't that something? Yeah, okay, let's go on. Oh, right here, Michael. - So you got a bid due Friday at noon time. - Bid due Friday at noon time. Stay with us; here we go. - The contractor's gonna be away. He wants to submit his bid on Wednesday. - Contractor's gonna be away. He wants to submit his bid on Wednesday. Of course, we wanna get that bid now. - But Thursday, he learns that he made an error on his figure and he wants to correct it Thursday afternoon. - Thursday, he made an error in the bid. He realized he made an error. Okay, so what we've got is he turned his bid on Wednesday 'cause he's gonna be out of town Friday, bid opening this Friday, which, by the way, is a horrible day for opening bids, but we'll keep going. Thursday, he realized an error and wants to correct it. It's still before the deadline. So the question is, can he have the bid back and correct it? Absolutely, a bidder can take back a bid at any time they wish prior to the deadline. He can take it, go outside, open it up, okay? He can do his changes, seal it. When he comes back in with the seal, though, let me tell you 'cause I know the tricks here, these people pull. You have a taping gun always available, handy. You take in his presence and have him tape around the sealed portion. So because if he opened it, and then resealed it, it's gonna be very loose.

Then you re-timestamp it in again, and give him a receipt, meaning take the time, the package, lay it down on the copier, make a copy of it and give it to him, that copy, and keep one for yourself. You with me? Yes, he can receive it back; however, I have another question for you. So he's out of town on Thursday, and he wants to change his bid by emailing you his revised pricing. Can you accept it? - No. - No, now let me ask you, why can you not accept it? Oh, you are so good. There, she said, "Because it's not sealed," exactly. Simple principles, brothers and sisters. The bid must always be sealed. You cannot accept bids or proposals by email. You can quote because they're informal, but bids or proposals are not formal and they cannot be accepted by email. They must come in sealed if they were advertised. Everybody with me? John, question please. - Define what you mean by insignificant mistakes? - Let's go to minor informalities. You can waive or allow bidders to correct insignificant mistakes. Now I don't know what is insignificant, but I know what is not. The bid price is not an insignificant mistake. Oh, Mike, I forgot to write up my price on the bid. It's after the bid deadline. And I know you read everybody's prices, but here's my worksheets, and, look, I won because I would have written in this amount. Can they do that? - No. - No, I'm glad you laughed, because I know a housing authority that did. Yeah, they said, "No, he had his worksheets." No, that's a setup. Here's another insignificant mistake: turning the bid in unsealed. Now those of you who have receptionists receiving bids, these ladies or men have to be trained. And, in fact, my advice is no receptionist receives bids. You, the receptionist, walks the person back to turn in the bid to the contracting officer, whether that's the ED, or the smaller agency, or you, Mike, or somebody else who's trained.

So two things that are not insignificant, and here's the third one. It's a construction bid, and they were required to submit a bid bond. I won, let me go get my bid bond. (chuckling) No,

that's not fair to the other bidders, is it? For you to wait and buy a bid bond after you discovered you would have been low. Everything else is probably insignificant. - 'Cause it just seems like you're-- - What if the other person wrote a check? - What's that? - What if they wanna write a personal check? - Personal checks are unacceptable. In my template, well, you're laughing, so good. - I know. - Unacceptable because, let me finish with that, because why must we get a cashier's check rather than a, or banker's check, rather than personal? 'Cause they can stop payment on a personal check. The process to cancel a banker's check is much more involved. And, by the way, I did get a banker's check once, and the person said, "I'm gonna stop payment. I've underbid, and I don't wanna do it." So all I did was beat him to the bank. My finance manager took that check right down, endorsed it, and put it in the bank. Now he can't cancel it, and he tried to, because there's a big process for a cashier's or a banker's check, but for a personal check, they can just put a stop payment. But even then, banker's checks clear immediately typically, yeah. So good point. Keep going, John. - It just seems like an insignificant mistake that's open to interpretation for the bid protest (speaking faintly). - John is making a good point. I won-- - I'm sorry that, yeah-- - No, I'm gonna repeat it. John is making a good point.

And, by the way, hit me real quick if I don't repeat the question. John said that using words like insignificant leads for gray areas and open for interpretations, and you're exactly right; however, it is the housing authority's decision what is insignificant or significant. I've told you three things that are not insignificant: price, bond, sealed. Those are not insignificant. They are significant, and if they're violated, you will be required to throw them out; however... Am I in your way? Oh, okay, there I did it. Squirrel, and I missed everything. I forgot my point. No, it'll hit me in a minute. You brought up-- - Insignificant mistakes just open for interpretation, leading to bid protesting. - You got me back on track. Now HUD gave us a handbook that is 200 pages long, and let's say thank you, and I wanna tell you why. Because if they wrote everything out and a procedure for everything, it would be like the Federal Acquisition Regulations, which HUD has to obey, and it can be thousands of pages long. So HUD wrote right in front of the handbook, "We're not telling you everything. We're giving you concepts, "and you have to do the right thing." "Do the Right Thing," that'd make a good title of a movie. (class chuckling) Remember, you can waive these, it is a movie. (chuckles) You can waive these informalities, but some things cannot be waived. Now if you do reject somebody, and I had one of my clients, who's learning to do this stuff, the other day rejected all of the proposers for various things like they didn't sign this form, so I rejected them. They didn't put the date on this form, so I rejected them. No, those are informalities; I can correct those later. If they forget to sign the form at bid, I can have it, sign it two days later because I have a bond that means they're meant to be bound. But if I do reject anybody, I reject them by sending them a letter detailing out in detail everything they did, making references to either the law or the bid document as to what they violated and why I was rejecting them. In some cases, I tell 'em, "You just made too darn many mistakes, "and when we checked your references, "we found them rather lukewarm. "We're going to reject you as non-responsive." Now what can the bidder do about that? They can file a protest, but I've already cleared it with the attorney, the ED, the staff, Michael. Michael's my construction manager here.

It was Michael who said, "If we can avoid doing business with this person," you've had people like that? "I don't wanna do it." I've already cleared it with everybody. So after I deny their protest, saying, "No, it's our right to do this," what can they do next? They can sue. I've been threatened to be sued over the last 45 years, 32 with the agency, so many times I can't remember. How many times has a bidder sued me? Zero. "You'll hear from my attorney," they say, trying to intimidate you into backing off your decision. You know, I once had a homeless person brush against me at a crosswalk, and he hit my car, and he said, "You'll hear from my

attorney." Everybody suddenly has an attorney. Do you know what I mean? (class chuckling) Attorneys aren't gonna take those kind of lawsuits based on the, what do they call that? When you play cards. - Bluff. - No. - Like if they're gonna jump? - Yeah, place on what they might earn because they'll look at our very detailed letter, and they'll say, "You're out, I'm not gonna take it "unless you wanna give me \$10,000, "but how much are you gonna make even if you won?" Just be careful about people threatening you. It's of no big importance if you're in the right, okay? Bonds, a bid bond, must be with construction bids over a certain amount. For HUD, that amount is \$100,000; however, state public works laws usually set that amount at a lower amount. In Nevada, it's 25,000. In Georgia, it's 40,000. That means if their bid is 40,000 in Georgia, they must have a bid bond in there from a surety. Do we know what it is in New Mexico or Texas? I believe Texas is 50,000. You need to double check that. I wouldn't be surprised if New Mexico, if it didn't mirror their \$60,000 threshold. Are you looking it up? - Yeah. - Does it mirror, you're in New Mexico? Okay, okay, good.

Now, remember, it has to be in the bid package, and if the bidder does not fulfill the requirements of signing the contract for the price they did, you can go against the bond to get that some of that money back. Performance bonds are a guarantee that they will complete the work, and if they don't, you'll be able to go against the bond to get work done. Okay, now, remember, bidders can present bonds in three forms. A surety from a bonding company is one. S-U-R-E-T-Y, surety. If that surety is received, if they're the winning bidder, you must check Circular 570, U.S. Department of Treasury Circular 570, to make sure the surety is listed on there. If they are not, the bond must be rejected, and therefore the bid is rejected. They can also present bonds by way of a letter of credit from a bank, or cash, meaning a cashier's check, and I forgot your first name. - Flora. - Florida, Flora? - Flora. - Flora made a joke about personal checks. Yeah, it's a joke. You can't. There's no law against accepting a personal check, it's just that it's not a prudent thing to do because they can do a stop payment before you can even get the check ran through for payment. Payment bonds ensure that the contractor will pay their employees, their subcontractors, and their suppliers. If they don't pay them, those folks can file a lien against, a mechanic's lien, against the property, and then that will notify us, and then you'll get your attorney to work with them to find out what happens next with those bonds. Remember, even though people do file liens on federal properties like our public housing sites, they cannot be enforced. Federal sites, even though the county will accept the lien, nothing is ever gonna happen because federal sites are exempt from liens. Every state has had to agree with that with the federal government; however, I like to get lien releases. You know why?

Because it's a clear indication that they're releasing, even though I can't be liened, they're still releasing me from any responsibilities for the payments against with that contractor. Questions, page 39. - Okay, so the old law said 25,000, or the law, but we don't know if it's been updated, so we might need to look, check it some time. - He's looking. - Yeah, typically what happens when states raise the bid thresholds, formal bid threshold, they also raise the, but not always, not always. Okay, chapter six, questions. We've got to five of 'em. Are you on page 39, Michael? - Given a lien release, is signing the back of a check, is that? - Is signing the back of the check a lien release? No. - If it's a stamp saying if you cash this check, you're releasing the lien. The question was, if they stamp the check and say, "If you cash this check, you're releasing the lien," I don't know because I don't get checks from contractors, so I just don't know. Oh, you mean if you do that? No, I don't think that'll work. There's a formal process for lien releases, and it's to receive a lien release from the contractor or subcontractor. That's the process, yeah. I'll give you another example. I once settled a dispute, and I wrote to the contractor. I'm sorry, the dispute was for 33,000; I would only agree for 17,000. And I was working with my attorney and others, but they took my recommendation. We paid the

contractor, we gave the contractor a check for 17,000. His dispute was for 33. And then on the check we wrote, "Payment of dispute in full." That's what we wrote in the message line.

The contractor, on the check, scratched out that and put something that I'm not gonna repeat right now. (class chuckling) And that means I don't think he agreed with it by the naughty language he put on it 'cause he was very angry. He cashed the check, yet that had been scratched out, so he changed the contract. Now he can sue if he wants. Yeah, I don't care. I would have never settled for only 17,000 if there was any chance that the other 18,000 was going to be in dispute, was not going to be approved. I would have never done it in the first place. He can sue away. And, by the way, he said he was gonna sue, and a year later, he saw me at an event, and he says, "I'm still gonna sue." (class chuckling) I understand. You know why he wanted the other, it was actually 16,000, you know he wanted it? Because I wouldn't, I'm terrible to get change orders out of the construction, and I wouldn't approve any change orders. He kept trying to get change orders for stuff, this is important, that was already in the specifications, and he said it wasn't clear enough. He bid too low. He wanted that money. He thought that I would give him the money to go away. I didn't. I mean, it's not my first rodeo, and you need to be in that same position. Have you ever tried, people tried to get more money at the end of the contract? You did? Did you give them any partial pardonment of it? (woman speaking faintly) - You gave him partial because you found out. In my case, I found out that my construction manager did some verbal change orders. Yeah, we went out, and we looked at it, and we go, "How did this happen, buddy?" His name was Frank. "How this happened?" He goes, "I'm busy, sorry." Well, okay, we'll pay for them. I mean, they had to then had to write it all up and go through all the paperwork and everything, but we paid him for the partials because the work was done, even though he and Frank both broke the rules, we still have to pay.