

## Responsive Bid

In design / bid / build, the construction contract is awarded to the lowest responsive bid submitted by a responsible bidder. A “responsive bid” is an unequivocal offer by the bidder to do everything required by the construction and bid documents, without exception. If a bid contains qualifications, conditions, or exclusions that differ from the requirements stated in the construction documents, or if it is an equivocal offer, the bid is said to be nonresponsive and should not be accepted or read into the record. A bid must offer to perform all requirements of the construction documents so the owner’s acceptance of the bid creates a binding contract.

Responsiveness relates to the invitation to bid and the bid itself. This is a principal reason why invitations to bid should be as clear as possible. The bid submittal is responsive if it provides all of the information required in the request for bids issued by the public agency, including pricing, completion time, bid bond requirements, acknowledgement of addenda, and signature of the bidder. A bid irregularity may be waived by the public agency, but only if it does not give the bidder an unfair competitive advantage. For example, in *Gaeta v. Ridley School District*,<sup>1</sup> the court found that obtaining a bid bond from a bonding company with a rating less than that specified was not a waivable irregularity, but a material defect giving the bidder a competitive advantage when allowed to obtain a replacement bond (presumably because the bond premium would be lower for a lower rated company, thus allowing the bidder to submit a lower price).