Knowledge Is Good

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In the movie “Animal House,” the central landmark on the campus of Faber College is the statue of Emil Faber, the institution’s founder and namesake, which bears his famous saying, “Knowledge is good.” That profound observation not only inspired generations of Faber College students, but also succinctly summarizes one of the fundamental tenets of the public bidding process: the more you know the better. Bidders who understand as much as they can about a project are in the best position to aggressively price a job, for the ultimate benefit of the taxpaying public. Specifications which provide expansive information about the work to be performed encourage competition, which in turn lowers prices.

Because this notion is reflected in the case law on public bidding and makes good common sense, it was disappointing in 1997 when a court decision was rendered which limited bidders access to information that would have helped them better prepare proposals for a job being let by the County of Warren. In O’Neill Electric Co., Inc. v. Warren County Freeholders, the Superior Court of New Jersey, Appellate Division upheld a trial court decision which refused dissemination of a list of plan holders maintained by the County on the theory that disclosure of that information “would foster bid-rigging.” This determination was reached notwithstanding the fact that absolutely no evidence was offered to even suggest, let alone establish, that public bid-rigging was a problem in New Jersey or that availability of a plan holder’s list would encourage such conduct.

Now, it appears that the Legislature is ready to restore some sense to this entire issue by enacting legislation which will facilitate dissemination of bidders lists. In Assembly Bill No. 2949 and Senate Bill No. 2407, the Local Public Contracts Law is amended to require contracting entities to provide “the names of all parties receiving the bid documents to any requesting person” in “a timely manner.” According to the Assembly Housing and Local Government Committee Statement to A-2949, the rationale behind this sensible legislation is “to allow subcontractors, including minority owned and women owned businesses, to have timely access to bidders on public projects so that they can submit subcontracting bids to those bidders for the purpose of enabling those bidders to put together their lowest bids to the benefit of the local contracting unit. Under the current system, if the names of the parties who have received bid documents is not released, then only subcontractors specifically contacted by a bidder are able to submit bids on subcontracting work. By expanding the pool of subcontractors vying for a job, the cost should be reduced and the bidder able to submit a lower cost proposal.”
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While it may have been difficult for the judges in the O’Neill Electric case to recognize the soundness of this rationale, it is refreshing to see that the Legislature appears to understand the principle that the more information prospective bidders and subs have about a job, the better position they are in formulate their best price. This process can only be helped where potential subs and vendors know who the plan holders are, for precisely the reasons that the Assembly Housing and Local Government Committee has recognized.

Despite continuing -- and misguided -- opposition from the New Jersey Association of County Purchasing Officials, it is hoped that both the Assembly and the Senate will promptly act upon this important legislative initiative so that all participants in the bidding process will be able to gain access to as much information as possible to help them compete for public contracts. This will not only benefit the public fisc, but will also vindicate the self-evident wisdom of Emil Faber that “knowledge is good,” at least in the area of public bidding.