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COFFEE TALK
A Health Industry Seminar Series

Bids and RFPs: Make the Process Fit the Purchase

October 21st, 2009

Bill Pigott

Agenda

- Bid/RFP: What's the difference?
- When to use what?
- How to avoid accidents
- How to get what you want
  (most of the time)

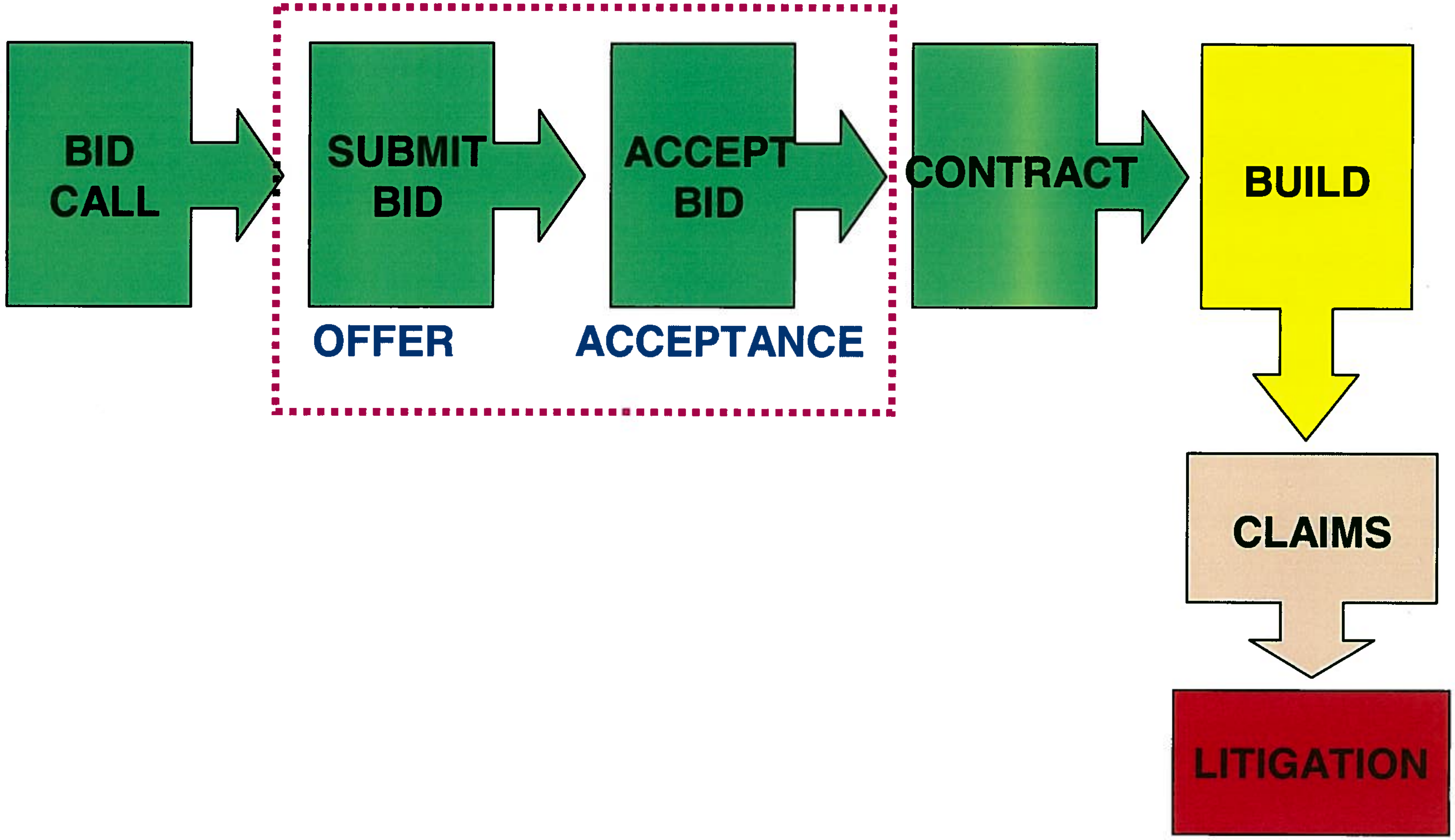
Bid RFP: What's The Difference?

Bid		RFP
√	Fixed Close	√
√	Irrevocable Offer	X
√	Offer Security	X
√	Performance Security	X
√	Scope Fixed	X
X	Negotiations	√
√	Contract Fixed	X

AN RFP CAN BE A BID!

WATCH YOUR LANGUAGE!

Bidding Until 1981



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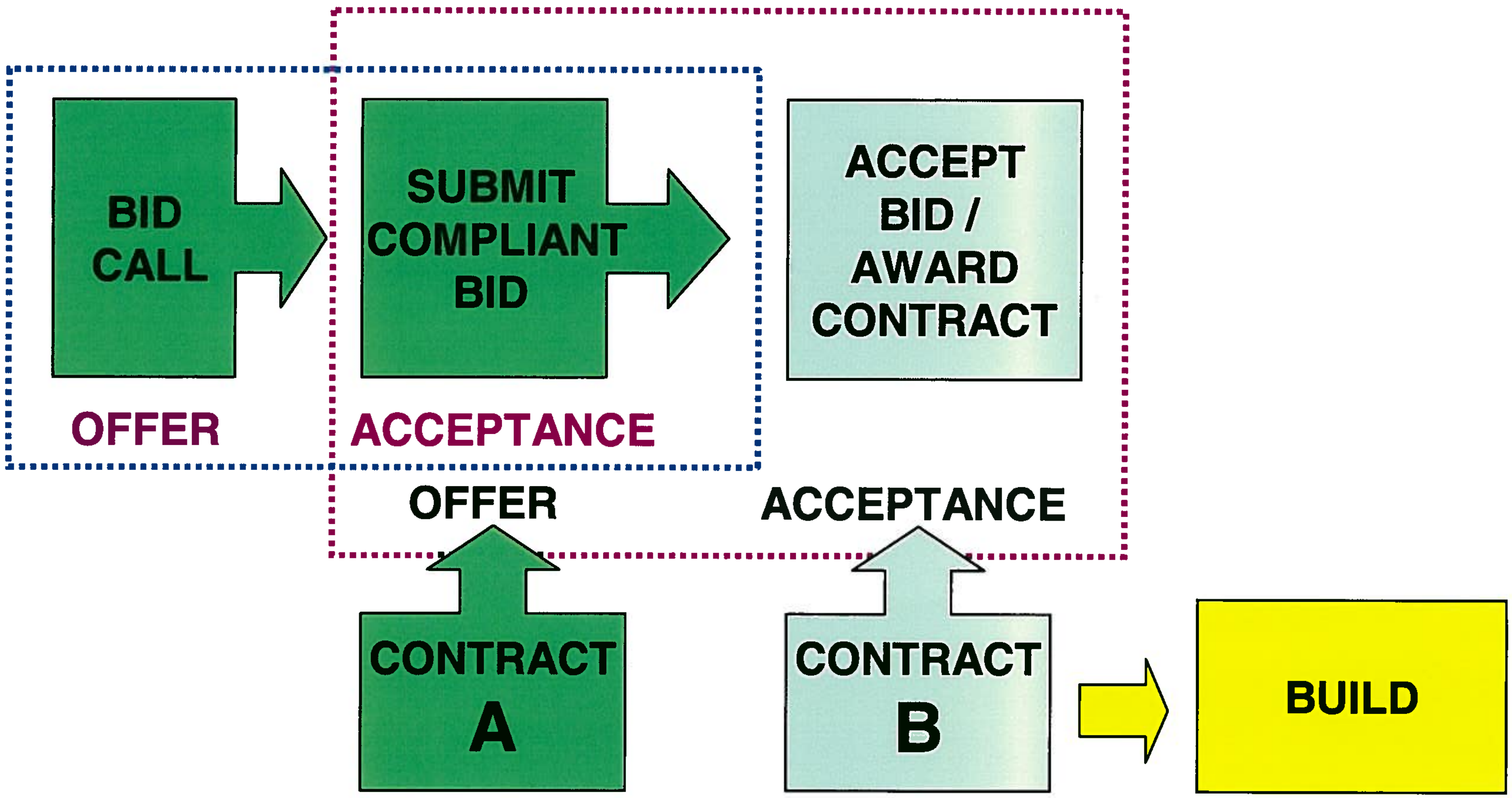
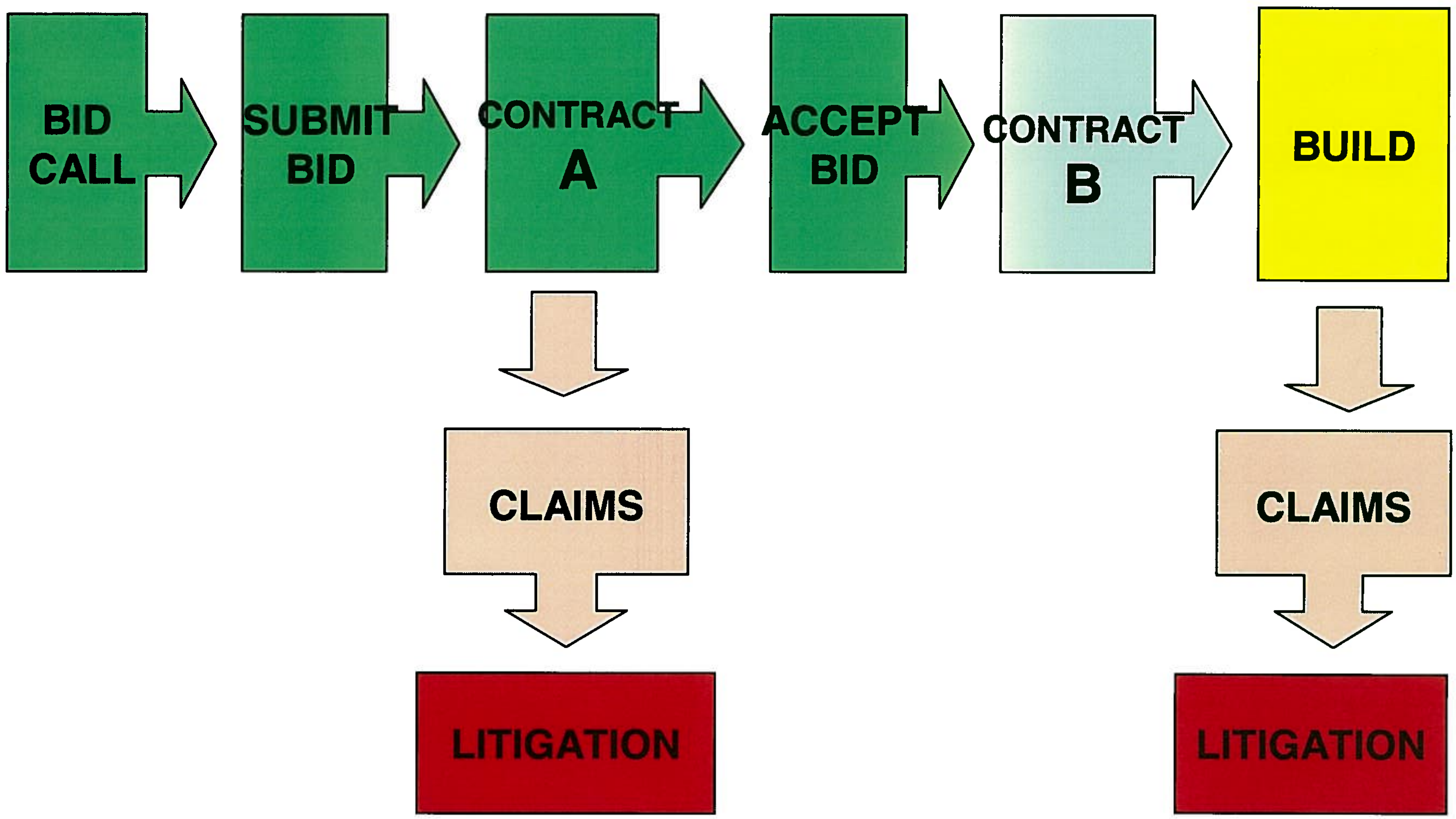
1981 – *Ron Engineering:* The Big Bang



THE BIG BANG



BID CALL
SUBMIT BID
CONTRACT A
ACCEPT BID
CONTRACT B
BUILD
CLAIMS
LITIGATION
CLAIMS
LITIGATION

When Would You Use An RFP?

- Wish to avoid "Contract A"
- Need flexibility because
  - Scope not fixed
  - More than one solution
  - Want to explore
  - Need to negotiate
  - Vendor terms may apply

AN RFP IS COMPETITIVE!

THE PATH TO CONTRACT B IS DIFFERENT

No "Contract A" (True RFP)

Advantages

- Maximum flexibility
- Either party can walk
- Allows negotiation
- Explore solutions
- Test pricing
- Low key
- Tort damages / low risk

Disadvantages

- No commitments
- Either party can walk
- Negotiation
- No time limit
- Very loose
- Tort damages
- No leverage

When Would You Use “Contract A”?

- Purchase suitable
  - Product/service fully specified
  - Competition required and available
  - Comparison possible
  - No competing drivers
  - Owner contract available

Contract A: Balance Sheet

Advantages

- Irrevocability
- Competition
- Apples to apples
- Bid security
- Nuance/privilege clause
- Flexibility (some)
- Limit/exclude liability
- Arbitration

Disadvantages

- Obvious error
- Qualifications (yes, but)
- Fairness/evenness
- Non-compliance
- Can be rigid
- Owner obligations
- Contract damages / risk

LIMITS CHOICES - SOMEWHAT

Avoiding Accidents

- If true RFP avoid:
  - Irrevocability
  - Bid security
  - “late bids shall be rejected”
  - Fixed form of contract
  - Requesting an “offer”
  - Avoid “bid”, “tender”, “bidder”
- Either way
  - State intentions: be clear
  - Beware “copycats”

WATCH YOUR LANGUAGE!

Avoiding Accidents **(Continued)**

Consider your process carefully

- Bid process
  - No negotiation (usually)
  - Implied duty to be fair
  - Strict accountability for actions
  - Exposed to damages for process mistake
- Non-binding process
  - Can negotiate (usually)
  - Either party can walk away – no / little risk
  - Negotiations anticipated
  - No contract duty on buyer to “play fair”

Make The Process Fit The Buy

- Envelope 1 (RFP)
  - open/flexible
  - evaluate
    - Technical proposals
    - Financials
    - Track record
    - Expertise
- Envelope 2 (Bid Contract)
  - firm offer
  - contract objections

GET THE BEST OF BOTH PROCESSES

Some RFP Suggestions

- Flexibility is great but
  - Pick preferred, then
  - Negotiations are tough
  - Choice: walk or bad contract
- Structure RFP to
  - Provide contract or key terms
  - Invite contract comments
  - Limit negotiations to comments
  - Evaluate on extent of comments
  - Retain second proponent, just in case
  - State: debrief or not

Some Myths

- Only a “bid” is competitive
- We must reveal scores
- We are obliged to debrief
- We have to be “fair”

THERE ARE MANY WAYS TO BE COMPETITIVE

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