

# Chapter 5. Competitive Sealed Bidding: Procedure

## Summary

This chapter provides an overview of the procedure for procuring goods and nonprofessional services using the competitive sealed bidding procedure. Where the cost of the goods or services to be procured is expected to exceed \$100,000, the competitive sealed bidding procedure is the applicable procedure, unless another procedure is expressly authorized.

### **Essential Information in this Chapter**

The five key procedural steps in the competitive sealed bidding procedure are:

- Preparation of the invitation for bids: The preparation of an invitation for bids which contains or incorporates by reference the specifications and contractual terms and conditions applicable to the procurement and a statement of any requisite qualifications of potential contractors.
- Issuance and public notice of the invitation for bids: The public notice of the invitation for bids is given at least ten days prior to the date set for the receipt of the bids by posting the notice in a public area, publishing the notice in a newspaper of general circulation, or both. The purchasing agent also may solicit bids directly using the County's "bidder list" which includes businesses selected from a list made available by the Virginia Department of Small Business and Supplier Diversity.
- Public opening and announcement of all bids timely received: All bids timely received are opened in public at the time, date, and place stated in the public notice, and the bid prices are read aloud.
- Evaluation of the bids: The bids and the qualifications of the bidders are examined by the purchasing agent for compliance with the requirements set forth in the invitation for bids.
- Award to the lowest responsive and responsible bidder: After the evaluation of all bids and the bidders, the award is made to the lowest responsive and responsible bidder who meets the requirements set forth in the invitation for bids.

### **Key References to the Code of Virginia Applicable to this Chapter**

Section 2.2-4301: Definitions of competitive sealed bidding and other key terms

Section 2.2-4303(A): When competitive sealed bidding required, generally

## **5-1 General**

The competitive sealed bidding procedure may apply if the cost of the goods, nonprofessional services, construction or insurance is expected to exceed

\$100,000. See Chapter 4 for a discussion of when goods, nonprofessional services, construction, and insurance may be procured by the competitive sealed bidding procedure.

**Table 5-1**

| <b>The Eleven Steps in the Competitive Sealed Bidding Procedure</b> |   |
|---|---|
| 1.  | Identify the goods or services to be procured                   |
| 2.  | Prepare the invitation for bids                                 |
| 3.  | Establish the procurement schedule                              |
| 4.  | Compile a list of vendors                                       |
| 5.  | Issue the invitation for bids and provide public notice thereof |
| 6.  | Conduct pre-bid conferences or site visits, if warranted        |
| 7.  | Submit bids   |
| 8.  | Receive bids  |
| 9.  | Open bids   |
| 10.   | Evaluate bids   |
| 11.   | Award the contract  |

The remaining sections of this chapter are a step-by-step outline of the competitive sealed bidding procedure. The procedure to be used for a particular procurement may need to be modified to fit that procurement.

### **5-2 Identify the Goods or Services to be Procured**

The using department must identify the goods or services to be procured. It is important to develop a comprehensive definition of the goods or services. Goods should be defined using the procedure identified in Chapter 6. Services should be defined using the procedure identified in Chapter 12.

### **5-3 Prepare the Invitation for Bids**

The invitation for bids shall be prepared by the using department and the purchasing agent. Before drafting a complex invitation for bids, particularly one for the procurement of services, it is recommended that the using department prepare a work statement. The work statement should identify the required goods or services (broken down by tasks) to be procured in a logical sequence, assist in establishing realistic milestones or delivery schedules, and help determine supplier cost realism. Each task of the work statement should be coordinated with the invitation for bids, and the numerical coding of tasks in the work statement and task descriptions should be identical or cross-referenced. Development of the work requirements should be closely coordinated between the using department and the purchasing agent to ensure complete definition of the requirements in written terms that are clear.

The invitation for bids should be as comprehensive as possible because the more complete it is, the better the chances are that the vendors will understand what the County desires to procure and what relevant experience and qualifications it should include in its bid. The invitation for bids must, at a

minimum:

- Contain or incorporate by reference the specifications.
- Contain or incorporate by reference the contractual terms and conditions applicable to the procurement.
- Contain a statement of any requisite qualifications of the potential vendors.

A comprehensive description of the elements of an invitation for bids is set forth in Chapter 6.

#### **5-4 Establish the Procurement Schedule**

The purchasing agent and the using department should establish a schedule that will ensure that the procurement is completed on or before the date the goods or services are required. To do so, the purchasing agent and the using department should consult and determine the completion date and then identify the milestones and the dates by which each milestone should be achieved in order to ensure that the procurement is timely completed. The key milestones and the minimum amount of time that should be allowed for each milestone are:

- Preparation of the bid documents: Allow sufficient time for the preparation of bid documents—including a deliberative process during which desired requirements, evaluation criteria, and stakeholder review can all be thoughtfully considered --and the timely publication of a written invitation for bids.
- Public notice period and the date for receipt of bids: Allow at least ten calendar days for the public notice of the invitation for bids prior to the date set for the receipt of bids.
- Evaluation of bids and issuance of notice of intent to award: Allow sufficient time for evaluation of bids, determination of vendor responsibility, and, if necessary, in the event all bids received are above the project budget, negotiation with the lowest bidder prior to publication of the notice of intent to award. A notice of intent to award must be posted for 10 calendar days before a contract can be executed.
- Execution of contract: Allow sufficient time for any issues that may require resolution prior to signing a contract. At least 10 calendar days after notice of intent to award shall pass before execution of the contract. Factors that may affect timing include verification or resolution of vendor's status with the Virginia State Corporation Commission, amendment to a certificate of insurance, or similar considerations.

The purchasing agent and the using department should allow more time at each

stage identified above for procurements of goods or services that are not ordinarily procured by the County, procurements that are complex, and procurements that require bidders to submit substantial amounts of information for evaluation.

#### **5-5 Compile a List of Vendors**

The purchasing agent and the using department should compile a list of vendors from staff knowledge of local vendors and through directories and lists of vendors. The purchasing agent should send invitations for bids directly to these vendors, in addition to the public notice of the invitations for bids that will otherwise be provided. Any additional solicitations shall include certified businesses selected from a list made available by the Virginia Department of Small Business and Supplier Diversity.

#### **5-6 Issue the Invitation for Bids and Provide Public Notice Thereof**

Public notice of an invitation for bids shall be given as provided below:

- Manner of giving public notice: The purchasing agent shall provide public notice of an invitation for bids by posting on the Purchasing Office's current solicitation website and on the Virginia Department of General Services' central electronic procurement website. Posting may also be made in a newspaper of general circulation. In addition, the purchasing agent may solicit bids directly from potential vendors. Any additional solicitations shall include businesses selected from the list provided by the Virginia Department of Small Business and Supplier Diversity.
- Notice period: The public notice shall be given at least ten days prior to the date set for receipt of bids.
- Contents of the notice: The notice shall contain, at a minimum, the following information: (1) the name of the purchasing entity; (2) a brief description of the goods or services to be procured; (3) the date and time of the bid opening; (4) the requisite qualifications for bidders, if applicable; (5) the date and time of the pre-bid conference, if applicable; (6) sample contract or general contract terms and conditions that will be applicable to the eventual contract; and (7) where bid documents can be obtained.

These are minimum requirements, and the purchasing agent may provide any additional notice that he deems appropriate.

#### **5-7 Conduct Pre-bid Conferences or Site Visits, if Warranted**

A pre-bid conference is a meeting among the purchasing agent, the using department and prospective vendors during which the purchasing agent and the using department review the specifications in detail explain the scope and objectives of the procurement, emphasize critical elements of the invitation for bids, and encourage input from the vendors. A site visit allows the vendors to

observe physical characteristics of the land or of structures that are relevant to the procurement. A pre-bid conference and site visit are hereafter collectively referred to as a “pre-bid conference.”

A pre-bid conference may resolve ambiguities, unforeseen and nonessential restrictiveness in the specifications, or technical errors. For purposes here, a pre-bid conference may include a site visit, if necessary.

- When a pre-bid conference should be held: Pre-bid conferences may be particularly helpful when the County seeks to procure goods that are highly technical or complex.
- Notice of the pre-bid conference: If a pre-bid conference is conducted, the invitation for bids must provide the time, date and location of the conference. The conference should be held as soon as possible after the invitation for bids is issued.
- Attendance at a pre-bid conference: Attendance of vendors at pre-bid conferences should generally be discretionary, not mandatory, in order to ensure that qualified vendors who are unable to attend are not excluded from bidding. If attendance is mandatory, only those bids from vendors represented at the pre-bid conference shall be accepted. The purchasing agent, based on information from and discussions with the using department, shall determine whether attendance at the pre-bid conference is mandatory.
- Oral representations at the pre-bid conference: A written record of all inquiries and objections raised by prospective bidders should be kept by the purchasing agent to ensure an accurate response can be provided by addendum to the solicitation. Oral representations made at the pre-bid conference by the purchasing agent or the using department shall not be binding on the County. All material clarifications of any provision of the invitation for bids or the amendment of a specification or condition of the invitation for bids must be made in writing as an addendum, as provided herein.

These are minimum requirements. The purchasing agent may add any additional requirements to a pre-bid conference that he deems appropriate.

## **5-8 The Submittal of Bids**

Bids submitted shall comply with the following:

- Use of bid form: All bidders shall use the bid form included in the invitations for bids when submitting their bid prices.
- Changes to the bid form: All erasures, interpolations, and other changes in the bid form shall be signed or initialed by the bidder.

- Oral, telephonic, or faxed bids not acceptable: The purchasing agent shall not accept oral bids nor bids received by telephone, fax, or other form of electronic transmission.
- Deviations: Bids containing conditions, omissions, erasures, alterations, or items not called for in the bid may be rejected by the County as being incomplete.
- Bid form must be signed: The bid form must be signed in order to be considered. If the bidder is a corporation, the bid must be submitted in the name of the corporation, not the corporation's trade name. The bidder must indicate the corporate title of the individual signing the bid.
- Bid must be submitted in sealed opaque envelope: The bid form and all other documents required to be submitted as part of the bid shall be enclosed in a sealed opaque envelope. The envelope containing the bid should be sealed and marked with the invitation for bids number, the hour and date upon which the bid must be received, and the bidder's Virginia contractor registration number (if required).

#### **5-9 The Receipt of Bids**

The purchasing agent shall receive bids only as provided as follows:

- Bids must be timely received in purchasing office: All sealed bids shall be received in person, through the mail, or by parcel service, in the purchasing office, until, but no later than, the time and date set for the receipt of bids in the invitation for bids. The time stamp clock in the purchasing office shall be the sole clock used to determine whether a bid is timely received.
- Timely receipt of bids sole responsibility of vendors: It shall be the sole responsibility of the vendor under all circumstances to ensure that its bid is timely received. The County assumes no responsibility in ensuring that bids and proposals sent by mail or by parcel service and delivered to the County Office Building will be timely received and time-stamped in the purchasing office.
- Bids must be time stamped: The time for the receipt of bids shall be determined by the time clock stamp in the purchasing office. Vendors are responsible for ensuring that their bids are stamped by purchasing office personnel by the time and date for which bids are to be received.
- Bids must be kept in secure location until opened: All bids received and time stamped will be kept in a secure location in the purchasing office until the time and date set for the opening of bids.
- Identity of bidders confidential: Prior to the time and date of opening, the

identity of the vendors submitting bids and the number of bids received is confidential, and may be disclosed only to County officials only when disclosure is considered necessary for the proper administration of the bidding process.

- Inadvertent opening of bid: If a bid envelope does not contain the proper identification, and it is inadvertently opened in advance of the prescribed bid opening, the purchasing agent should write an explanation of the inadvertent opening on the envelope, with the invitation number, time and date of opening. The envelope should be resealed and deposited with the other bids.
- Late bids: Late bids shall not be considered under any circumstances and may be returned unopened to the sender or retained unopened in the purchasing office's file.

### **5-10 The Opening of Bids**

The purchasing agent shall open bids according to the following procedure:

- Bids opened and read aloud: Except for bids for construction contracts, all bids timely received in the purchasing office shall be opened and publicly read aloud at the time and date established for the opening in the invitation for bids. Bids for construction contracts may be opened one day following the date and time established for the receipt of bids, if provided for in the invitation for bids.
- Information recorded: The purchasing agent should, depending on the requirements of the solicitation, record the following information for each competitive sealed bid received and opened: (1) name of vendor; (2) bid prices, delivery, and payment terms; (3) acknowledgment of addenda, if any; (4) bid security received or not, if required; (5) contractor registration number, if required; (6) exceptions taken by the vendor, if allowed; and (7) any other information the purchasing agent deems pertinent.
- Transmittal of bids: The purchasing agent should promptly transmit to the using department the recorded information for each bid and at least one copy of each bid received for evaluation. The purchasing agent should allow sufficient time for the evaluation of the bids, which should be based upon the number of bids received, the complexity or number of items being evaluated, and any time constraints that have to be met.

### **5-11 The Evaluation of Bids**

The bids timely received shall be examined by the purchasing agent for compliance with the requirements set forth in the invitation for bids. The purchasing agent should first review each bid to determine whether it has facial deficiencies that preclude it from being further considered.

Bids are evaluated to determine the lowest responsive and responsible bidder. The evaluation is based upon the requirements set forth in the invitation for bids, which may include special qualifications of potential vendors, life cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

The procedure for evaluating bids is discussed in more detail in Chapter 9.

## **5-12 The Contract Award**

After the bids have been evaluated, the contract is awarded to the lowest responsive and responsible bidder according to the following procedure:

- Notice of intent to award: The purchasing agent shall post in a public place, which may include the purchasing office's website, a written announcement of the decision to award, which may be identified as a notice of intent to award. The notice of intent to award shall also include a statement that the public records pertaining to the procurement have been and are available for inspection by those vendors participating in the procurement process. The purchasing agent is not required to provide individual notice of the intent to award to any participating vendor; it is each vendor's duty to ascertain when the notice of intent to award is issued and posted.
- Protest period: The posting of the notice of intent to award to a vendor shall commence a ten-day period in which a vendor who desires to protest the decision to award a contract may do so, as provided in Chapter 24.
- Contract award if no timely protest received: The purchasing agent shall not award a contract until the protest period has expired. After the protest period has expired, and, if no vendor has protested the decision to award, the purchasing agent shall award the contract to the vendor identified in the notice of intent to award.
- Contract award if timely protest received: If a written bid protest is timely received, the purchasing agent shall take no further action to award the contract unless, upon prior consultation with the county attorney, the purchasing agent determines in writing that proceeding without delay is necessary to protect the public interest or unless the bid would expire. The written determination shall be placed in the contract file.
- Contract award if legal action brought: If a legal action is brought by a vendor, actual or prospective, as provided in *Virginia Code* § 2.2-4364, the purchasing agent shall take no further action to award the contract unless, upon prior consultation with the county attorney, the purchasing agent determines in writing that proceeding without delay is necessary to protect the public interest or unless the bid would expire. The written determination shall be placed in the contract file.

In his discretion, and if time is of the essence, the purchasing agent may award a contract without first posting a notice of intent to award. The purchasing agent may consult with the county attorney as to any matter pertaining to the decision to award a contract.