

Chapter 9. Competitive Sealed Bidding: Evaluating Bids

Summary

This chapter describes the steps to be taken in order to properly evaluate each bid received in response to an invitation for bids. The two key determinations in the evaluation process are whether the bid is responsive to the invitation, and whether the apparent low bidder is responsible.

Essential Information in this Chapter

- Bids are evaluated upon the criteria set forth in the invitation for bids.
- A responsive bid is one that is in substantial conformance with the requirements of the invitation for bids.
- The determination of whether a bid is responsive is made at the time the bid is opened.
- The purchasing agent may waive informalities in bids.
- A responsible vendor is one who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will ensure good faith performance.
- In determining the bid price, the initial costs and other cost factors must be considered.
- If the bid from the lowest responsive and responsible bidder exceeds available funds, the purchasing agent and the using department may negotiate with the bidder to obtain a contract price within available funds.

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
Section 2.2-4318: Negotiation with lowest responsive and responsible bidder; available funds exceeded
Section 2.2-4319(B): Authority to waive informalities in bids
Section 2.2-4324: Tie bids
Section 2.2-4359: Determination of nonresponsibility

9-1 General

Bids are evaluated to determine the lowest responsive and responsible bidder. The evaluation is based upon the criteria 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 of the bid with respect to minimum qualifications of the bidder.

9-2 Evaluating a Bid's Responsiveness

A responsive bid is one that is in substantial conformance with the requirements of the invitation for bids. The determination of whether a bid is responsive is made at the time the bid is opened, i.e., there is no opportunity for the vendor to provide information to the purchasing agent after the bid is opened in order to make the bid responsive.

The purchasing agent and the selection committee, if one is established for the procurement, shall evaluate each bid received to determine whether it contains all of the information and supporting documentation required by the invitation for bids. This evaluation shall consist of the following:

- Determine whether all required information included in bid: The purchasing agent shall determine whether all information required by the invitation for bids is included in the bid. This information includes, to the extent required for a particular procurement, a completed bid form, a certificate of non-collusion, and a bid security.
- Determine whether documents are properly signed: The purchasing agent shall determine whether documents submitted with the bid are properly signed by the vendor or by an authorized agent thereof.
- Determine whether the goods or services generally comply with the specifications: The purchasing agent shall determine whether the goods or services offered by the vendor generally comply with the specifications in the invitation for bids.
- Identify all exceptions, qualifications, errors or omissions in the bid: The purchasing agent shall identify all exceptions and qualifications in the bid to the County's procurement requirements identified in the invitation for bids, as well as all errors or omissions.

9-3 Nonresponsive Bids

If the purchasing agent determines that a bid does not satisfy all of the requirements stated in Section 9-2, the bid shall be determined to be nonresponsive unless the defect may be waived as an informality as provided in Section 9-4. The following are examples of defects in a bid that may render the bid nonresponsive:

- Substitution of terms and conditions: The vendor substitutes its standard terms and conditions for the County's, unless the County reserves the right in the invitation for bids to consider the vendor's terms and conditions.
- Limitation of liability: The vendor qualifies its bid in such a manner so as to nullify or limit its liability to the County.

- Failure to comply with delivery schedule: The vendor fails to offer to meet the County's required delivery schedule.
- Pricing defects: The vendor qualifies its prices in such a manner that its bid price cannot be determined, e.g., "the price in effect at time of delivery"; or the price is not stated in conformance with the required bid format, or the vendor qualifies the price to protect the vendor from unknown future market conditions.
- Qualification of bid to be contingent on another contract award: The vendor makes its bid contingent upon it receiving an award on another bid currently under consideration.
- Shift of burden to determine conformity with specifications: The vendor makes the County responsible for determining whether the vendor's goods conform to the specifications.
- Failure to furnish bid surety: The bid fails to furnish bid surety, if required.
- Limitation of County's rights: The bid attempts to limit the rights of the County under any contract clause.
- Vendor is debarred: The vendor is currently listed among debarred vendors.
- Conflict of interest or collusion: There is a reasonable basis to suspect either a conflict of interest or collusion among vendors.
- Failure to include expressly required materials: The vendor fails to submit required information, literature, samples, or affidavits with the bid that were expressly required in the invitation for bids.
- Failure to sign the bid: The bid is not signed by the vendor or an authorized agent of the vendor.
- Advance payment: The bid contains a condition that requires payment in advance.
- Alternate item bid when not authorized: The bid proposes an alternate item when alternate items are not authorized by the invitation for bids.

This list is not exhaustive.

9-4 Informalities

An informality is a minor defect or variation of a bid from the exact requirements of the invitation for bids that does not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured, unless the requirement was expressly required by the invitation for bids. The purchasing agent may waive informalities in bids.

The purchasing agent shall consider the following three factors in determining whether a defect is an informality:

- Nature of the defect: Determine whether the defect affects the price, quantity, quality, or delivery schedule or important policy, such as the provision of a valid bid bond. If the defect is only a matter of form or is an immaterial variation from the exact requirements of the invitation for bids, then the informality is minor.
- Significance of the defect: If the defect affects price, quantity, quality, or delivery schedule, determine how significant the defect is. In order for the defect to be waived as an informality, it must have trivial or no effect on these factors.
- Creation of unfair competitive advantage: If the defect potentially gives the apparent low bidder an unfair competitive advantage, then the defect is material. Thus, a waiver of a defect may not affect the relative standing of vendors or be otherwise prejudicial to them.

Following are examples of informalities that may be waived by the purchasing agent, depending on the particular circumstances of the procurement:

- Failure to furnish with the bid any required information regarding the vendor's qualifications to perform the contract.
- Failure to submit descriptive information on the goods or services offered.
- Failure to return the proper number of executed bids or attachments thereto, including certifications and affidavits.
- Failure to return a bid addendum or amendment if, on the face of the bid, the vendor acknowledges receipt of the addendum or amendment, or if the addendum or amendment has no material effect on the vendor's liability under the terms of the contract. The purchasing agent may determine that the vendor has constructively acknowledged the addendum by clear evidence on the face of the bid documents.
- Failure to properly sign a bid bond.
- Failure to properly notarize signatures.

- Inclusion of a separate, but inapplicable, tax charge.

This list is not exhaustive.

9-5 Determining Whether a Vendor is Responsible

A responsible vendor is one who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will ensure good faith performance. Put another way, responsibility includes the capacity to perform, the financial ability to perform, and the integrity, perseverance, and tenacity of the vendor. The applicable criteria to determine responsibility, investigating whether a vendor is responsible, and the procedure to follow if a vendor is determined to be not responsible, is set forth in Chapter 23.

9-6 Determining the Low Bidder, Generally

In determining the apparent low bidder, the purchasing agent shall first review each bid for clerical errors in the calculation of the bid price. The purchasing agent shall then determine which bid will require the least expenditure of funds, considering not only initial costs, but also the following:

- Operational costs: The purchasing agent shall evaluate the operational costs for the goods being purchased.
- Taxes: Although the County and the School Division are exempt from paying federal excise or state sales taxes on purchases, both are subject to these taxes paid on materials that are installed and become a part of real property. Thus, the purchasing agent shall consider the applicable taxes.
- Prompt payment discounts: The purchasing agent shall consider prompt payment discounts offered by the vendor, but only if the vendor allows at least twenty days for the prompt payment after the goods or services are received or after the invoice is received, whichever is later.
- Shipping costs: If the destination of the goods is other than the F.O.B. point, the purchasing agent shall consider the shipping costs.
- Costs related to multiple versus aggregate award: If the invitation for bids provided that awards could be made to more than one vendor, the purchasing agent shall consider the expenses associated with the administration of multiple contracts.

9-7 Determining the Low Bidder, Special Situations

In addition to the factors set forth in Section 9-6, the purchasing agent shall consider other factors in order to determine the low bidder in the special situations described below:

9-7.1 Single Bid Received

An invitation for bids that yields only a single bid from a responsive and responsible bidder may be caused by one or more reasons:

- The goods or services to be procured are a sole source item.
- The specifications were too restrictive and could be met by only one vendor.
- The availability of the goods or services to be procured is controlled through territorial franchising arrangements controlled by the manufacturer.
- A poor selection was made of potential vendors.

If a single bid is received, the purchasing agent should question those potential vendors who failed to respond to ascertain their reasons for not submitting a bid. If the specifications are determined to be the cause, the purchasing agent should consider rejecting the sole bid received and renew the procurement with revised specifications. If the cause for the sole bid was a poor selection of potential vendors, the purchasing agent should reject the bid and renew the procurement process with a new search for possible qualified vendors.

9-7.2 Alternate Items Bid

A vendor who does not have the goods or services that meet the specifications of the invitation for bids, but who has goods or services that the vendor thinks are reasonably close, may offer those goods or services as an alternate. Alternate items may be bid because:

- The County's specifications are obsolete.
- The vendor's policies allow it to accept only the contracts that conform with their own corporate terms and conditions.

If an alternate item functionally meets or exceeds the County's specifications, and alternate items are authorized by the invitation for bids, the purchasing agent may consider the alternate item. If the alternate item bid is selected, the purchasing agent shall make a written determination justifying the acceptance of the alternate item bid.

9-7.3 All or None Bids

The all or none bid is one in which the vendor and not the County qualifies the bid by stipulating that it will only accept a contract for all items on the bid. If all or none bids are to be accepted, the invitation for bids must expressly so state. The purchasing agent should consider the following factors before determining to accept an all or none bid:

- Total is lowest: Whether the total for all of the individual vendor's low-bid items amount to less than the total for the all or none bidder.
- Administrative costs: Whether it is to the County's advantage to avoid the excessive administrative costs associated with making multiple awards.
- Fairness: Whether all other vendors would be treated fairly if the award was made to the lower all or none bidder.

9-8 Tie Bids

In the event of tie bids, the purchasing agent shall break the tie using the following three-step procedure:

- Preference to local businesses: Preference shall be given to the vendor who bids goods, services, and construction produced within Albemarle County or provided by persons, firms, or corporations having principal places of business in Albemarle County.
- Preference to state businesses: If granting a preference to a local business as provided in the paragraph above does not break the tie, then preference shall be given to the vendor who bids goods produced in Virginia or goods, services, or construction provided by Virginia persons, firms, or corporations having principal places of business in Virginia.
- Drawing lots: If granting a preference to a Virginia business as provided in the paragraph above does not break the tie, then the tie shall be broken by drawing lots.

9-9 Procedure if All Bids Exceed Available Funds

If the bid from the lowest responsive and responsible bidder exceeds available funds, the purchasing agent and the using department may negotiate with the bidder to obtain a contract price within available funds, using the following procedure:

- Determination by using department and proposed reduction in scope: The using department shall provide the purchasing agent with a written determination that the apparent low bid exceeds available funds. This determination shall be confirmed in writing by the purchasing agent. The using department shall also provide the purchasing agent with a suggested reduction in scope for the proposed purchase.
- Suggested reduction in scope: The purchasing agent shall advise the apparent low bidder in writing that its bid exceeds available funds. The purchasing agent shall also suggest a reduction in scope for the proposed procurement and invite the apparent low bidder to amend its bid proposal based upon the proposed reduction in scope.
- Addendum to bid: The apparent low bidder may submit an addendum to its bid, which shall include the change in scope of the proposed procurement, the reduction in price, and the new contract value.
- Evaluation of addendum: If the proposed addendum is acceptable, the contract may be awarded within the funds available to the apparent low bidder.
- Negotiations: The purchasing agent and the using department may conduct informal discussions with the apparent low bidder for purposes of obtaining a contract within the available funds.
- Rejection of all bids if negotiations fail: If the County and the apparent low bidder cannot negotiate a contract within available funds, then the purchasing agent shall reject all bids as provided in Chapter 10.