

Chapter 6. Competitive Sealed Bidding: Elements of an Invitation for Bids

Summary

This chapter identifies the minimum elements of an invitation for bids when procuring goods or services using the competitive sealed bidding procedure. This chapter also identifies strategies for detecting and preventing collusive bidding.

Essential Information in this Chapter
<ul style="list-style-type: none">• The competitive sealed bidding procedure formally begins when the invitation for bids is issued.• The invitation for bids must, at a minimum, describe the goods or services to be procured, and identify the applicable contractual terms and conditions, the minimum qualifications for the successful vendor, and the criteria by which each bid will be evaluated.
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

6-1 General

The competitive sealed bidding procedure formally begins when the purchasing agent issues an invitation for bids. The invitation for bids defines the responsibilities of the vendor as well as those of the County, describes the requirements for performance, and identifies the criteria against which the vendor will be measured. At a minimum, the invitation for bids must contain:

- A description of the goods or services to be procured.
- The contractual terms and conditions applicable to the procurement, or incorporate those terms and conditions by reference.
- A statement of any requisite qualifications of the potential vendors.
- A statement describing the criteria by which each bid will be evaluated.

The following sections discuss in detail each of the elements of an invitation for bids. The level of detail contained in an invitation for bids depends in part on the nature of the particular procurement.

Table 6-1

The Nine Elements of an Invitation for Bids

1. The Introduction
2. General information
3. Description of the goods or services to be procured
4. The minimum qualifications of a vendor
5. Contractual terms and conditions
6. Minimum standards of a bid
7. Required elements of a bid
8. Submittal requirements
9. Evaluation criteria

6-2 The Introduction

The introduction to the invitation for bids provides prospective vendors with general, but important, information pertaining to the procurement. The introduction should contain the following:

- Identifying information: Provide the full names of the County and the using department, the name of the project, and the invitation for bids number assigned by the purchasing agent.
- Summary description of the goods or services: Briefly describe what is being procured.
- Summary explanation for the procurement: Briefly explain why the using department is procuring the goods or services. The explanation may include, as appropriate, information about the goals and objectives of the using department and how the procurement relates to the department's goals and objectives, a summary of the functions to be supported by the goods or services, or a statement that the goods will supplement or replace existing equipment.

The information provided in the introduction should be stated in clear, simple, concise language. Information that is not directly related to the procurement should not be included.

6-3 General Information

The general information section of the invitation for bids should provide information about the procurement process and instructions as to how to respond to the invitation for bids. This section should contain the following information:

- Anticipated procurement schedule: The anticipated procurement schedule, setting forth each milestone from the date bids must be received to the date performance of the contract will begin.
- Procurement procedure: A brief description of the competitive sealed bidding procedure applicable to the procurement.

- Proposal requirements: A statement that each bid must be prepared and submitted as provided in the invitation for bids.
- Designate proprietary information: A statement that vendors may designate those portions of the bids which contain trade secrets or other proprietary data which may remain confidential in accordance with state law.
- Identify references: Identify all documents pertinent to the procurement, such as studies, feasibility studies, surveys, drawings, plans, configurations, specifications and standards, government regulations and correspondence, and when and where the reference documents are available to prospective vendors.
- Identify the contract: Identify the proposed contract that will be used for the procurement.
- Identify contact persons: Identify each County contact person and his mailing address, email address, telephone number and fax number. The purchasing agent should be identified as the contact person for procedural questions pertaining to the procurement, and a representative of the using department should be identified as a contact person for questions pertaining to the goods or services to be procured.
- Solicit comments: A statement soliciting comments from all prospective vendors about the invitation.
- Information pertaining to addenda: A statement informing prospective vendors that inquiries relating to the interpretation and technical details of the invitation must be in writing and must be received by the purchasing agent, not the using department, at least seven days prior to the date bids must be received. The statement shall include a provision advising prospective vendors to contact the purchasing agent five days before the date bids must be received to ascertain whether addenda have been issued.
- Right to waive informalities: A statement that the purchasing agent may waive informalities in any bid.
- Right to cancel the procurement or reject all offers: A statement that, at any time prior to award of the contract, the purchasing agent may cancel the invitation for bids for any reason, or reject any or all of the proposals, as provided by law.

The purchasing agent should include any other general information when appropriate for a particular procurement, such as anticipated funding or budgeting requirements.

6-4 Description of the Goods or Services to be Procured

The goods or services to be procured should be described in detail. If goods are being procured, the description should be in the form of a specification developed pursuant to chapter 7.

If services are being procured, the description should state in simple non-technical terms the services to be performed by the vendor. The description should include the following information:

- Deliverables: All items to be delivered and services to be performed by the vendor, including operating manuals, training, repair parts, software and reports. The services to be performed should be identified by each required task, set forth in a logical sequence. The description should state whether alternate items may be bid.
- Mandatory approaches: If a service must be performed in a particular manner, it must be identified.
- Quality assurance: Identify quality assurance requirements applicable to performance of all items to be delivered and services to be performed.
- Questions requiring answers: Identify all questions that the County has that require answers.

This list is not exhaustive. The primary purpose of the description is to inform prospective vendors what the County desires to procure.

6-5 Minimum Qualifications of Vendors

The invitation for bids shall specify the requisite qualifications of the successful vendor by identifying the minimum necessary experience, background, or expertise in the area of the procurement. The qualifications will vary depending on the goods or services to be procured. However, they may not be so onerous so as to restrict competition. The qualifications of vendors are discussed in more detail in chapter 23.

6-6 Contract Terms and Conditions

The contract terms and conditions contained in an invitation for bids shall be only those terms and conditions developed by the purchasing agent and the county attorney. The using department shall not substitute any term or condition.

- General contract terms and conditions: The invitation for bids shall contain general terms and conditions for doing business with the County that apply to all procurements by the County.

- Specific terms and conditions: The invitation for bids shall also contain terms and conditions that are specific to the procurement.

These terms and conditions are set forth in the Appendix, and are subject to change from time to time by the purchasing agent and the county attorney.

6-7 Minimum Standards of a Bid

The invitation for bids shall include a section that sets forth the required standards of a bid to assure that the County receives information from each vendor in a consistent format. The minimum standards of a bid are as follows:

- Bid must be in writing: The bid shall be in writing, in legible text.
- Bid must be in a standard format: The bid shall be in a standard format, provided by the County. The reasons for this requirement are: (1) to place vendors of different sizes on a more equal basis; and (2) to assist the purchasing agent, the using department and the selection committee in its evaluation of the bids, since all vendors will provide similar information and it will be easier to make comparisons and determine which vendors are less qualified.

The purchasing agent may impose other standards including, but not limited to, page limitations.

6-8 Required Elements of a Bid

The invitation for bids shall include a section that sets forth the required elements of a bid to assure that the County receives relevant information from each vendor. The required elements of a bid are as follows:

- Identification of vendor: The name of the vendor, the location of the vendor's principal place of business and, if different, the place of performance of the proposed contract.
- Identification and experience of key personnel: The names, abilities, qualifications and experience of all personnel who would be assigned to work on the project. This element is required for the procurement of services, but may be waived for the procurement of goods.
- Discussion of the project: A statement of the vendor's understanding of the problem, the work to be done, or the program, and the approach to be used to achieve the objectives of the procurement. For the procurement of services, this discussion should also include a plan giving as much detail as is practical explaining how the services will be performed. The plan should include a list of the key verifiable milestones in the project.

- Price: The price of the goods or services to be procured, including those for any optional items identified in the invitation for bids.
- Identification of prior experience: Identification of all other contracts under which goods or services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time.

Other elements may be required, in the discretion of the purchasing agent. In requiring additional elements, the purchasing agent should consider the evaluation criteria established for the procurement, in order to assure that the proposals will address all of the evaluation criteria.

6-9 Submittal Requirements

The invitation for bids shall identify all of the bid submittal and receipt requirements identified in sections 5-7 and 5-8.

6-10 Evaluation Criteria

The invitation for bids shall specify the criteria that will be applied to determine whether a bidder is responsive and responsible. For the procurement of goods and services other than construction and professional services, the evaluation criteria may include best value concepts, which allow consideration of the overall combination of quality, price and other elements that in total are optimal relative to the County's needs. These other elements include, but are not limited to, the requisite qualifications of the successful vendor, life cycle costing, value analysis and any other criteria that are helpful in determining acceptability of the goods or services, such as quality, workmanship, delivery, and suitability for the particular purpose.

6-11 Detecting and Preventing Collusive Bidding

Collusive bidding is a practice among multiple vendors whereby they agree on the cost of the goods or services that the County desires to procure. Collusive bidding is contrary to the competitive procurement process and may violate state and federal law.

- Common forms of collusive bidding: One of the most common forms of collusive bidding is an agreement between the vendors to adhere to published price lists or to other predetermined prices. Another common form of collusive bidding is one in which competing firms collaborate to pre-select the low bidder each time the bidding occurs.
- Detecting collusive bidding: Collusive bidding can be detected by analyzing the patterns of awards over a long period of time. In addition, a pattern of identical bidding among the same group of vendors is sufficient cause for suspicion to be raised.

- Preventing collusive bidding: The purchasing agent can take several actions to combat the collusive actions of vendors: (1) state in the invitation for bids that identical bids or bids which otherwise appear suspicious will be reported to the Attorney General's Office; (2) include in the invitation for bids items that are not price controlled and award the contract on an aggregate or low-total basis if "fair-traded" or other manufacturer-price maintained items are involved; (3) award the contract to the vendors located furthest from the point of delivery when identical bids include delivery costs; (4) reject all bids, and re-advertise with a statement that the previous bids were identical and, therefore, unacceptable; and (5) contact the Attorney General's Office and report suspicions if flagrant "price fixing" is suspected.

A combination, conspiracy or agreement among vendors to raise or otherwise fix the price of goods or services is a Class 6 felony. (Virginia Code § 59.1-68.7)
Filing a knowingly false certificate of non-collusion is also a Class 6 felony. (Virginia Code § 18.2-498.4)