

# 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 collusive bidding.

<b>Essential Information in this Chapter</b>
<ul style="list-style-type: none"><li>• The competitive sealed bidding procedure formally begins when the invitation for bids is issued.</li><li>• 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.</li></ul>
<b>Key References to the Code of Virginia Applicable to this Chapter</b>
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.

The template for an invitation for bids solicitation held by the purchasing agent should be used for all invitations, unless the purchasing agent, in his sole discretion, permits a substitution. See Appendix B.

#### **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 may contain the following information:

- Anticipated procurement schedule: The anticipated procurement schedule, setting forth each milestone, if practicable, 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 consistent with this manual and the *Virginia Code*.
- 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: Include in the solicitation the proposed County contract that will be used for the procurement or the County's general terms and conditions, as well as specific terms and conditions. The proposed contract should include the anticipated term and optional renewal period(s).
- Identify contact persons The purchasing agent or responsible buyer in the purchasing office should be identified as the contact person for procedural questions pertaining to the procurement, including the contact mailing address, email address, telephone and fax numbers.
- Solicit comments and questions: A statement soliciting comments and questions from all prospective vendors about the invitation, including any deadlines for submitting questions and providing responses.
- Solicit notice of competition-restricting requirements: A statement requesting notification of solicitation requirement or requirements that restrict competition to a single source.
- 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 or responsible buyer in the purchasing office 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 bids, as provided by law.

The purchasing agent should include any other general information when appropriate for a particular procurement.

#### **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 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, certifications, licenses 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. The invitation may also include or reference a contract template identified by the purchasing agent as applicable to the procurement.
- Specific terms and conditions: The invitation for bids shall also contain terms and conditions that are specific to the procurement.

Contract and solicitation templates, as well as the general terms and conditions are set forth in the Appendix and may be provided in the solicitation or on the purchasing office's website. The templates and general terms and conditions and specific terms and conditions are subject to change from time to time by the purchasing agent and the county attorney. See Appendix A, Contract templates; Appendix B, Solicitation templates; Appendix D, general terms and conditions; Appendix E, specific terms and conditions.

#### **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 ensure 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.

#### **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 ensure 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.

- 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. This factor will be used to assess whether the bid meets minimum qualifications for determination of a responsive bid.

Other elements may be required, in the discretion of the purchasing agent.

### **6-9 Submittal Requirements**

The invitation for bids shall identify all of the bid submittal and receipt requirements identified in Sections 5-8 and 5-9.

### **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. "Best value," as determined in the solicitation, means the overall combination of quality, price, and other elements of required services that in total are optimal relative to the County's needs. These other elements may include, but are not limited to, special qualifications of potential contractors, 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.

### **6-11 Detecting 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.

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)