

# 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 \$5100,000, 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, ~~or~~ 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~~Minority Business Enterprise~~.
- 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 2.2-4301: Award; competitive sealed bidding~~

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 \$5100,000. 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

The Eleven Steps in the Competitive Sealed Bidding Procedure	
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.	<del>The s</del> ubmittal of bids
8.	<del>The r</del> eceipt of bids
9.	<del>The o</del> pening of bids
10.	<del>The e</del> valuation of bids
11.	<del>Award T</del> he contract award

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 [eChapter 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 at least fifteen workdays~~ 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~~issuance~~ 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. at least five work days for the evaluation of bids, and then issue notice of the award.
- 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. at least ten calendar days for the execution of the contract after the notice of award of the contract.

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 ~~in a designated public area, or publication in a newspaper of general circulation, or both.~~ Public notice on the Purchasing Office's current solicitation website and may also be published on the Virginia Department of General Services' central electronic procurement website ~~and other appropriate websites.~~ 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 ~~and~~ shall include businesses selected from the list provided by the Virginia Department of Small Business and Supplier Diversity ~~Minority Business Enterprise.~~
- 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 ~~the name of the purchasing agent;~~ and (7) the location ~~where bid documents can be obtained;~~ ~~and~~ ~~(8) the legal authority for the procurement.~~

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 ~~and techniques~~ 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 includes a site visit, if necessary.

- When a pre-bid conference should be held: Pre-bid conferences may be particularly helpful ~~advisable~~ when the County seeks to procure goods that are highly technical or complex ~~or for consultant services contracts~~.
- 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 as 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 records 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. The purchasing agent should make a written note of all inquiries and points of contention raised by the prospective bidders. Clarification may be provided at the pre-bid conference so long as the specifications or conditions are not altered. 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 ~~shall~~ be made ~~only~~ ~~be~~ 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 [asen](#)sure that its bid is timely received. The County assumes no responsibility in [asen](#)suring 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 ~~as~~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~~ conduct 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 ~~shall~~ 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 ~~such~~ 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, ~~shall~~ 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~~ shall 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 [eChapter 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; ~~rather~~, it is each vendor's duty to ascertain when the notice of intent to award is issued and posted.
- Protest period: The ~~posting receipt~~ of the notice of intent to award ~~to~~ by 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 [eChapter 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.

# 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.

<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 such 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
<ol style="list-style-type: none"><li>1. The Introduction</li><li>2. General information</li><li>3. Description of the goods or services to be procured</li><li>4. The minimum qualifications of a vendor</li><li>5. Contractual terms and conditions</li><li>6. Minimum standards of a bid</li><li>7. Required elements of a bid</li><li>8. Submittal requirements</li><li>9. Evaluation criteria</li></ol>

### 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~~ should 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 ~~Identify~~ 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: ~~Identify each County contact person and his mailing address, email address, telephone number and fax number.~~ 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. ~~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 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 bidsproposals, 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 eChapter 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, 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 eChapter 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 ~~These~~ 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 ~~and~~ 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 ~~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 ~~as~~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.
- ~~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. 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. ~~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 ~~s~~Sections ~~5-7 and 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, ~~which allow consideration of the overall~~

~~combination of quality, price and other elements that in total are optimal relative to the County's needs. "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. 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)



# Chapter 7. Competitive Sealed Bidding: Specifications

## Summary

This chapter outlines the method to develop specifications, which are the description of the goods or services to be procured. Included in this chapter are discussions of the purpose for developing appropriate specifications, the types of specifications, sources to assist in developing specifications, the task of writing specifications, and the use of brand names.

<b>Essential Information in this Chapter</b>	
<ul style="list-style-type: none"><li>• A specification is a description of the physical or functional characteristics of the goods or services to be procured.</li><li>• Performance specifications are the preferred form of specifications.</li><li>• The using department has the primary responsibility for writing specifications.</li><li>• Specifications should be written in clear, simple language, free of vague terms or those subject to variation in interpretation.</li><li>• The using department should use brand name specifications with caution.</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 Section 2.2-4315: Use of brand names	

### 7-1 General

A specification is a description of the physical or functional characteristics of the goods or services desired to be procured. Specifications also describe the proper quality level of the goods or services and, because of their nature as public records, provide a check on the exercise of official discretion in the evaluation and award of bids. Viewed functionally, specifications are a device for **as**ensuring that the goods or services to be procured will be of a quality suitable for their intended uses.

### 7-2 Types of Specifications

There are three types of specifications:

- Performance specifications: Performance specifications describe the capabilities that the goods or services must satisfy.

- Design specifications: Design specifications describe the physical and other characteristics of the goods or services.
- Brand name specifications: Brand name specifications cite a brand name, a model number, or some other designation that identifies a specific product of a manufacturer as an example of the quality level desired, and goods equaling or surpassing the quality level are understood to be acceptable.

Performance specifications are the preferred form of specification.

### **7-3 The Purpose for Specifications**

A properly developed specification should do four things: (1) identify minimum requirements; (2) allow for a competitive bidding process; (3) for goods, identify objective standards to allow them to be tested for compliance with the specifications; and (4) provide for an equitable award at the lowest possible cost.

### **7-4 Sources for Developing Specifications**

The following are sources from which specifications may be obtained:

- The qualified staff of the using department.
- Salespersons.
- Federal agencies, such as the Federal Supply Service.
- Other state and local governments.
- The National Institute of Governmental Purchasing.
- Responsible associations of users, manufacturers, technical societies and associations.
- A staff engineer.

This list is not exhaustive. The purchasing agent and the using department should use caution in relying upon specifications for goods provided by salespersons because they may identify a single or limited number of goods being promoted by the salesperson.

### **7-5 Specification Writing**

The using department has the primary responsibility for writing specifications,

which shall be subject to review by the purchasing agent. Specifications should be written in clear, simple language, free of vague terms or those subject to variation in interpretation. The use of abbreviations should be restricted to those in common usage and not subject to possible misunderstanding.

- Appropriate level of detail: Specifications must be as detailed as practicable in order to **ensure**: (1) potential bidders are bidding on the same goods or services and on the same terms; (2) there is a framework within which potential bidders can adequately assess the risks and rewards of making a bid; (3) there is protection against the possibilities for fraud inherent in vague or indefinite specifications; (4) the requisites for the formation of a binding contract are satisfied; and (5) there is a standard for review of the responsiveness of the bid awarded the contract.

However, specifications should not be so narrowly drafted that they thwart competition. A specification that confines bidding to a single vendor is not acceptable unless there is truly only a sole source.

- Identify essential characteristics: To provide a common basis for bidding, specifications should set out the essential characteristics of the goods or services being procured so that all bidders know exactly what is wanted and can accurately compute their bids. The specifications should identify those measurable physical, functional, and quality characteristics that meet the requirements and are common to at least two manufacturers.

The goods or services to be procured should be able to perform as necessary and be as durable as needed, but they should not have unessential frills or status features. Including nonessential characteristics or omitting essential characteristics should be avoided because the practice is wasteful. Including nonessential characteristics may also result in a specification that is so restrictive that it defeats the object of fostering competition.

- Identify the minimum level of experience: The specifications should establish a minimal level of experience of a bidder, require that the bidder submit at least three references, and that it summarize all performance experience with the County.

## **7-6 The Use of Brand Names**

The using department should use brand name specifications with caution because they may lessen objectivity in the process of evaluation and award, may  
-reduce equality of opportunity among bidders, and may discourage competition.  
-If brand name specifications are used:

- Several brand names should be given, to the extent possible.

- Brand names known throughout the industry should be used so that the desired quality level is known to potential bidders.
- Salient characteristics should be identified that will be used to compare brands and to determine the award, but the specification should be clear that these factors are not the total consideration.
- State that the brand identified is used merely as a specification and not as a statement of a preference for the specific product identified.
- State that, unless otherwise stated, items equal to the identified brand name will be acceptable, considering quality, workmanship, economy of operation, and suitability for the purpose intended.
- Caution should be used to ensure that the brand, make of material, manufacturer, device, or equipment specified does not exclude other goods because of a particular patented feature.

# Chapter 8. Competitive Sealed Bidding: Addenda, Modifications, and Withdrawals

## Summary

This chapter addresses situations in which the invitation for bids is revised by an addendum or the bid submitted by a vendor is either modified or withdrawn. The modification and withdrawal of bids both before and after the bid opening are covered in this chapter.

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

- The purchasing agent may modify an invitation for bids by issuing a written addendum no later than five calendar days prior to the date bids must be received; if the addendum modifies the date bids must be received, it may be issued at any time prior to that date.
- A bid may be modified or withdrawn by the vendor any time prior to the time and date bids must be received.
- After bid opening, the purchasing agent may allow a vendor to withdraw its bid without prejudice if clear and convincing evidence supports the existence of an error.
- After bid opening, the purchasing agent may allow mistakes other than clerical errors to be corrected only if the evidence of the mistake and of the bid actually intended is clear and convincing.

### **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 2.2-4330: Withdrawal of bid due to error

#### **8-1 General**

Once the invitation for bids is issued, the course of the procurement process is still subject to change. It may become apparent to the purchasing agent or the using department that the invitation contains an omission or an ambiguity that must be corrected or clarified prior to the date that bids must be received. A vendor may realize after its bid has been submitted that it contains errors or omissions that must be corrected or that compel the vendor to desire to withdraw its bid altogether.

#### **8-2 Amending an Invitation for Bids by Addendum**

If, after the invitation for bids is issued but prior to the receipt of bids, the invitation must be amended or clarified, the purchasing agent may issue addenda that modify the invitation. The following procedures shall apply:

- Authority to issue an addendum: The purchasing agent shall have the sole authority to issue an addendum.
- Initiation of an addendum: An addendum may be initiated by the purchasing agent in his discretion, upon his own determination of the need, upon the request of the using department, or upon the request of a prospective bidder who requests clarification of a provision of the invitation for bids.
- Addendum must be in writing: All addenda shall be in writing. No oral modification of any provision of an invitation for bids shall be permitted.
- Timing of issuance of addendum: If the purchasing agent determines that an addendum is necessary, it shall be issued no later than five calendar days prior to the date bids must be received. An addendum extending the date for the receipt of bids or withdrawing the invitation for bids may be issued any time prior to the date bids must be received.
- Notifying prospective bidders about addendum: An addendum shall be provided to all potential bidders who were provided an invitation for bids. Acceptable means of providing addenda to potential bidders are hand delivery, first class mail, fax with telephone confirmation of receipt, or other means designed to [ensure](#) receipt of the addenda as soon as possible.
- Changing the date bids must be received: When issuing an addendum, the purchasing agent should consider the effect on the time for prospective bidders to prepare their bids. If additional preparation time is likely to be required by the potential bidders, the addendum should also extend the date bids must be received by a reasonable period of time.

### **8-3 Modifying or Withdrawing a Bid Prior to Bid Receipt Date and Time**

A bid may be modified or withdrawn by the vendor, subject to the following requirements:

- Notification: The vendor shall notify the purchasing agent in writing of its intentions to modify or withdraw its bid.
- Time to modify: If the vendor modifies its bid, it must submit and the purchasing office must receive the corrected sealed bid before the deadline for receipt of bids.
- Time to withdraw: If the vendor withdraws its bid, it must submit and the purchasing office must receive a written notice of withdrawal before the deadline for receipt of bids.

- Amount of bid may not be revealed: A vendor who withdraws or modifies a bid shall not reveal the amount of the bid. If the amount of the bid is revealed by the vendor, the bid shall be invalid. An attempt to modify a bid by writing on the exterior of the bid envelope shall render the bid invalid.
- Resubmittal of withdrawn bid: Withdrawn bids may be resubmitted to the purchasing agent up to the time and date bids must be received.

A bid may not be withdrawn after the time and date bids must be received and for sixty days thereafter; except that a bid may be withdrawn as otherwise provided in Section 8-4.

#### **8-4 Withdrawing a Bid After Bid Opening**

When a mistake in a bid is discovered by the vendor or by the purchasing agent or using department after the bid opening, and it is an obvious mistake, then the purchasing agent shall notify the vendor of the mistake and request that the bid be verified. If the vendor acknowledges the mistake and requests relief, the purchasing agent shall proceed in the following manner:

The purchasing agent may allow a vendor to withdraw its bid without prejudice if clear and convincing evidence supports the existence of an error. If there is significant and obvious disparity between the prices of the lowest bidder and of the others, the lowest bidder may be permitted to withdraw without prejudice, upon submission of evidence that a non-intentional error occurred.

##### **8-4.1 Withdrawal Due to Error, Other than Construction Bids**

For all bids other than construction bids, the following procedure shall apply when a vendor seeks to withdraw its bid after bid opening:

- Notice of claim to withdraw: The vendor shall give written notice of its claim to withdraw its bid to the purchasing agent within two business days after the conclusion of the bid opening procedure and shall submit original work papers with the notice. The mistake shall be proven only from the original work papers, documents and materials delivered to the purchasing agent with the vendor's written request to withdraw its bid.
- Verification of error: The purchasing agent shall inspect the written evidence submitted by the vendor with the request, verify that an error occurred, and determine the nature of the error.
- Withdrawal if bid price substantially lower: The purchasing agent may allow a vendor to withdraw its bid from consideration if the price bid was substantially lower than the next low responsive bid due solely to a mistake therein, provided the bid was submitted in

good faith and the mistake was a clerical mistake as opposed to a judgmental mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work or material made directly in the compilation of the bid. The unintentional arithmetic error or unintentional omission must be clearly shown by objective evidence drawn from an inspection of the original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. Examples of ~~such~~these mistakes include errors in price extension, placement of decimal points, reversal of prices, F.O.B. destination, and F.O.B. point of origin.

- Identification of interests: Before the purchasing agent allows a vendor to withdraw, the vendor shall identify in writing all other corporations, partnerships, sole proprietorships or other like businesses in which it has an interest.
- If withdrawal allowed, award to next lowest bidder: If the purchasing agent allows a bid to be withdrawn, he shall award the contract to the next lowest responsive and responsible bidder, or may reject all bids.
- No withdrawal when second low bidder is the same bidder: No bid shall be withdrawn when the result would be to award the contract to the same vendor, who submitted another bid.
- Participation in procurement by withdrawn bidder prohibited: A vendor who is permitted to withdraw its bid may not, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the vendor to whom the contract is awarded or otherwise benefit directly or indirectly from the performance of the project.
- Notification to vendor if withdrawal denied: If the purchasing agent denies the withdrawal of a bid under this section, he shall notify the vendor in writing within five business days, stating the reasons for the denial and award the contract to that vendor at the bid price, provided that the vendor is a responsible and responsive bidder. At the same time as the notification, the purchasing agent shall return all work papers and copies thereof that have been submitted by the vendor.

#### **8-4.2 Withdrawal Due to Error, Construction Bids**

The following procedure shall apply when a vendor seeks to withdraw its bid for construction after bid opening.

- Claim of error: A vendor shall give written notice to the purchasing

agent of its claim of right to withdraw its bid within two business days after the conclusion of the bid opening procedure.

- Submittal of papers, documents and materials: The vendor shall submit to the purchasing agent with its claim of error its original work papers, documents and materials used in the preparation of the bid. The responsibility for proving the originality and authentication of the papers submitted is the vendor's. Electronic records must have a means of determining date and time stamping. If the authentication cannot be made with the materials submitted, the purchasing agent may reject the claim of right to withdraw.
- Verification of error: The purchasing agent shall inspect the written evidence submitted by the vendor with the request, verify that an error occurred, and determine the nature of the error.
- Withdrawal if bid price substantially lower: A vendor for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw its bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgmental mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid.

The unintentional arithmetic error or unintentional omission must be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. A mistake shall be proved only from the original work papers, documents, and materials delivered to the purchasing office as required herein.

If a bid contains both clerical and judgment mistakes, a vendor may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the bid.

- Identification of interests: Before the purchasing agent allows a vendor to withdraw, the vendor shall identify in writing all other corporations, partnerships, sole proprietorships or other like businesses in which it has an interest.

- If withdrawal allowed, award to next lowest vendor: If the purchasing agent allows a bid to be withdrawn, he shall award the contract to the next lowest remaining bid.
- No withdrawal when second low vendor is the same vendor: No bid shall be withdrawn when the result would be to award the contract to the same bidder or of another vendor in which the ownership of the withdrawing bidder is more than five percent.
- Participation in procurement by withdrawn vendor prohibited: A vendor who is permitted to withdraw its bid may not, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the vendor to whom the contract is awarded or otherwise benefit directly or indirectly from the performance of the project.
- Notification to vendor if withdrawal denied: If the purchasing agent denies the withdrawal of a bid under the provisions of this section, he shall notify the vendor in writing within 5 five business days stating the reasons for its decision and award the contract to the vendor at the bid price, provided the vendor is a responsible and responsive bidder. At the same time as the notification, the purchasing agent shall return all work papers and copies thereof that have been submitted by the vendor.

#### **8-5 Modifying a Bid After Bid Opening**

The correction of mistakes other than clerical errors after a bid opening is not permitted except where evidence of the mistake and of the bid actually intended is clear and convincing on the face of the bid, and the bid as received and as actually intended and corrected is the lowest bid received. Where clear and convincing evidence of a mistake is not present, the vendor shall not be permitted to correct its error.

If the vendor fails to enter into a contract with the County, its bid bond or bid deposit should be forfeited.

# 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 **asen**sure 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 ~~such~~ 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, quantity, quality, 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 ~~that~~ 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 ~~as~~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 [eChapter 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 ~~such~~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 [sSection 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 ~~state~~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 [eChapter 10](#).

# Chapter 10. Competitive Sealed Bidding: Canceling the Procurement or Rejecting All Bids

## Summary

This chapter identifies the circumstances and establishes the procedure when it is necessary or desirable to cancel the invitation for bids or to reject all bids.

Essential Information in this Chapter
<ul style="list-style-type: none"><li>• At any time prior to award of the contract, the purchasing agent may cancel the invitation for bids or reject any or all of the bids.</li><li>• The purchasing agent may cancel the invitation for bids or reject any or all of the bids for any reason, except to avoid awarding a contract to a particular responsive and responsible bidder.</li></ul>
Key References to the Code of Virginia
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 2.2-4319(A): Authority to cancel or reject all bids

### 10-1 General

At any time prior to award of the contract, and for any reason except as provided in [§](#)Section 10-3, the purchasing agent may cancel the invitation for bids or reject any or all of the bids.

### 10-2 Circumstances When Cancellation or Rejection is Justified

Following is a list of circumstances in which cancellation or rejection may be considered:

- Invitation for bids too narrowly written: The purchasing agent may consider canceling the invitation for bids or rejecting all bids if he determines that the specifications or other requirements of the invitation for bids were written in such a way that precluded a reasonable pool of vendors from submitting bids. The purchasing agent should consider canceling the invitation for bids or rejecting all bids if the number of bids received is inadequate to [a](#)ensure that the procurement process is competitive.
- Ambiguous instructions: The purchasing agent may consider canceling the invitation for bids or rejecting all bids if, upon review of the bids, it is apparent that numerous vendors were determined to be nonresponsive for a similar reason, and it is determined that the cause for the

nonresponsiveness may be the result of ambiguous instructions in the invitation for bids. The purchasing agent should consider rejecting all bids if it is determined that there is an inadequate number of responsive bidders.

- Substantial omission in the specifications: The purchasing agent may consider rejecting all bids if it is determined that an essential requirement was omitted from the specifications. The purchasing agent should consider cancellation or rejection if ~~the purchasing agent~~ is unable to determine whether the goods or services will meet the County's needs absent compliance with the omitted requirement or if, in taking into account the omitted requirement during the bid evaluation process, fairness, impartiality or competitiveness in the procurement process is compromised.
- All prices bid exceed available funds: The purchasing agent should not consider canceling the invitation for bids or rejecting all bids if the price bid by the apparent low bidder exceeds available funds unless the purchasing agent and the selection committee have first negotiated with the apparent low bidder pursuant to ~~s~~Section 9-9.
- Reasonable suspicion of collusive bidding: The purchasing agent should reject all bids if a reasonable suspicion exists that collusive bidding has occurred, based upon the guidelines set forth in ~~s~~Section 6-11.

This list is not exhaustive.

### **10-3 Circumstances When Cancellation or Rejection is Prohibited**

The purchasing agent shall not cancel an invitation for bids or reject all bids solely to avoid awarding a contract to a particular responsive and responsible bidder.

### **10-4 Procedure to Cancel the Invitation for Bids or to Reject All Bids**

If the invitation for bids is canceled, or if any or all of the bids received are rejected, the purchasing agent shall state his reasons in writing and place it in the contract file.