Finance & Operations Procurement and Business Services Policy FO-PUR-10
Advertisement

The term “advertisement” is perhaps misleading since we do not actually place advertisements in newspapers for all procurements. Normally, we advertise by mailing Invitations for Bids (IFB) or Request for Proposals (RFP) to those vendors listed on the bid list for the specific commodity.

For purchases with a total value of $5,000.01 to $10,000, a representative of an academic or administrative department or Procurement and Business Services will informally contact at least three vendors, two being HUBs, and ask for a quotation. A written quote is required from the vendor with the lowest and best bid and the completed Informal Bid Form must be submitted with the departmental purchase order. The form is found at: http://www.shsu.edu/administrative/policies/forms/

Informal bid solicitation is normally performed by telephone conversation between the buyer and the seller. Care must be taken to assure that all of the terms of the agreement are clearly understood by both parties. The departmental buyer absolutely must exercise caution to be sure that each vendor is provided the same information, terms, and conditions of the transaction.

Buyers are subject to ethical standards and laws concerning fraud. Improper actions on the part of the buyer could result in disciplinary action or criminal prosecution.

For purchases with a total value of $10,000 or $25,000, Procurement and Business Services will obtain informal bids. This includes minority-owned and woman-owned businesses for the commodity.

For purchases exceeding $25,000, Procurement and Business Services will solicit Invitations for Bids to bidders listed for a specific commodity. Purchasers in the Procurement and Business Services Department are solely authorized to solicit formal Invitations for Bids to vendors. Representatives of other academic and administrative departments are not authorized to solicit formal IFBs or RFPs, and any bids obtained in such a manner will not be considered for award.

**BID OPENING DATE FOR IFB’s**
For purchases with a total value less than $25,000, the bid opening should normally be 10 calendar days from the date the Invitation for Bids are solicited. However, if the specifications are complex or more time is likely to be needed, then a longer period may be used. Please note that a minimum of two weeks is requested to prepare IFB’s over $25,000. All requisitions with complete specifications are worked as first in/first out by the Procurement and Business Services Department.

An advertisement period of less than 10 days may be authorized by the Director of Procurement and Business Services in cases of an emergency or when the need is otherwise urgent.

In cases in which a bid opening date was set and no bids were received, a new Invitation for Bids will be prepared and sent out by the Procurement and Business Services Department. These Invitations for Bids will have a new set opening date and time.

For purchases with a total value of $25,000 or more, the bid opening date should normally be 14 calendar days from the date the Invitation for Bids is solicited/advertised.

**BID OPENING TIME**
The bids shall remain sealed or in the form they are delivered until the date and time specified on the face of the Invitation for Bids.

The Procurement and Business Services Office clock will determine the time of day in the event that any question arises.
At the specified time, the buyer will open all bids received (in their possession). Any bids that are submitted after the specified time, even if only 1 minute late, shall not be opened and considered. All pages of a faxed bid must be totally received and date stamped by Procurement and Business Services personnel by the specified bid opening time. Partially received fax bids will be considered late if still transmitting after the specified time of the bid opening.

**WITNESS**
To prevent questioning of the handling of the bid opening, an employee witness shall be present with the buyer opening the bids. The witness is to see that all bids are opened and read aloud.

**COPIES OF BIDS**
Vendors or any member of the public may request a copy of one or more bids. Their request must be in writing and on their company letterhead. Copies of bids will be made available as prescribed by law. A summary of the bids received will be available upon written request after the contract is awarded.

**TABULATION**
All bids will be tabulated (recorded) when opened. This tabulation should include:

- Name of each bidder;
- Manufacturer (make) and model or part number, if bidding alternate product or service;
- Bidder identification number (federal identification number or social security number);
- Unit price for each item;
- Delivery in number of days;
- Historically underutilized business (HUB) status;
- Bidder point-of-contact. A record of bids received late should be made. If possible, reproduce (copy) the front of the sealed envelope without opening the bid. A record of unsigned bids should also be made; and
- HUB Subcontracting Plan, if required.

**AWARDS**
An award is made to the bidder submitting the lowest and best bid meeting or exceeding the bid specifications. Complying with the specified time limit for submission of written data, samples, or models, on or before bid opening time, is essential to the acceptability of a bid.

In determining the lowest and best bid, the safety record of the bidder may be considered. If considered, an adopted written definition and criteria for accurately determining the safety record of a bidder must be provided to prospective bidders in the bid specifications. The criteria must not be arbitrary and capricious.

Any of the following criteria may be considered as long as provisions are outlined in the detailed specification. Evaluation criteria must be in place in the solicitation when it goes out and should specifically outline what will be considered and what weight it will carry. Any criteria must have objective definitions and identified measures. An evaluation team should be utilized including individuals with working and industry knowledge regarding the procurement.

**To determine the best bid, in addition to price, best value criteria may be considered if set forth in the solicitation:**
The quality, availability, and adaptability of the supplies, materials, equipment, or contractual services to the particular use required:

- The number and scope of conditions attached to the bid;
- The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- Whether the bidder can perform the contract or provide the service promptly, or within the time required, without delay or interference;
- The character, responsibility, integrity, reputation, and experience of the bidder;
- The quality of performance of previous contracts or services;
- Any previous or existing noncompliance by the bidder with specification requirements relating to time of submission of specified data such as samples, models, drawings, certificates, or other information;
- The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service; and
- The ability of the bidder to provide future maintenance, repairs parts, and service for the use of the contract.

AIDS TO EVALUATION

The WRITTEN DATA RULE applies as follows:

1. The purchaser may request written data in order to evaluate bids. A bid invitation that expressly requires the submission of written data with the bid must include the following statement or its substantial equivalent. A bid may be disqualified if data is not submitted with the bid. “Failure to provide the required information with the bid response may disqualify the bid from consideration for award in connection with this transaction.”

2. When evaluating bids, primary consideration will be given to the written data already held out to the public.

The following are options when considering an award:

AWARD
A bidder is selected which meets all the specifications of the bid with the lowest price. Note: The bidder which meets all the specifications of the bid with the lowest price has the option to lower his price.

Example: The recommended vendor’s price exceeds the department’s budget by 5%. The recommended vendor (lowest bidder) may reduce his bid by 5% to keep from losing the bid, due to lack of funds.

NO AWARD
A no award is based on (1) no bidders responded to bid request; (2) no bidders met the specifications of the bid; or (3) agency decides it does not wish to make an award due to (a) budgetary constraints or (b) change in agency requirements.
RE-AWARD
An award may be made to the next lowest bidder meeting the specifications if the original vendor cannot meet the conditions of the purchase order, or written permission is granted by the vendor to cancel the purchase order.

FRANCHISE TAXES
Prior to making an award, the purchaser must verify that the company has paid their franchise taxes and is in "good standing" with the state of Texas. This requirement can be met by accessing the Comptroller website at [http://ecpa.cpa.state.tx.us/coa/index.html](http://ecpa.cpa.state.tx.us/coa/index.html). Follow on screen instructions from there.

PREFERENCES
Source Preferences – The following source preference is used when applicable goods or services can be supplied by these entities:

Products by Persons with Disabilities – A preference shall be given to manufactured products of workshops, organizations, or corporations whose primary purpose is training and employing persons with mental or physical disabilities, if the products or services meet state specifications as to quantity, quality and price. Competitive bids are not required for purchases of blind-made goods or services offered as a result of efforts by The Texas Council for Purchasing from People with Disabilities – TIBH. When employing treasury funds, and the purchase(s) or service(s) can be provided by TIBH, they will be purchased through TIBH or justify in writing the reason for the rejection and forward the rejection letter to Procurement and Business Services.

TIE-BID PREFERENCES
The following five preferences listed below are used in breaking tie bids. Priority is given in the sequence they are listed below. To claim a preference, a bidder must mark the appropriate box on the bidding document, Invitation for Bids (IFB). If the appropriate box is not marked, a preference will not be granted.

- **Texas Agricultural Products Agricultural**
  Products grown in Texas shall be given preference over comparable products grown outside Texas when the cost and quality of the goods are equal. Agricultural products are considered “grown in Texas” if they contain any amount grown in Texas.

  In case of tie bids between agricultural products claiming the preference, the bidder whose product contains the greatest percentage of the product grown in Texas shall prevail. For the purpose of this preference, agricultural products include, among other things, textiles, and fiber products, processed and unprocessed foods, feed, lumber, and forestry products, live animals, plants, flowers, and nursery stock.

- **Texas Produced Supplies, Materials, or Equipment**
  Supplies, materials, or equipment produced in Texas shall be given preference over comparable goods produced outside Texas when the cost and quality of the goods are equal. Supplies, materials, and equipment are considered to be produced in Texas if they are manufactured in Texas, “manufactured” does not include the work of packaging or repackaging.

- **Texas Resident Bidder**
  A Texas resident bidder shall be given preference over a nonresident bidder when the cost and quality of the goods or services are equal.

- **U.S. Produced Supplies, Materials, or Equipment**
  Supplies, materials, equipment, or agricultural products produced or grown in the United States shall be given preference over foreign products when the cost and quality are equal, if comparable goods of equal cost and quality produced or grown in Texas or offered by Texas bidders are not available.
Historically Underutilized Businesses
A preference shall be given to a certified Historically Underutilized Business (HUB) when the cost and quality of goods or services are equal. In breaking the tie bids, the ordering entity must use the preference claimed by the bidder on the bidding documents/Invitation for Bids. In accordance with current statutes, priority is given in the sequence listed above (bullets).

If two bidders bid the same bid price and preferences, the bid is awarded by drawing lots, by tossing a coin, or drawing names with two witnesses (SHSU employees) to oversee actual occurrence and initial bid tabulation. If two bidders bid the same price and the preferences checked are different, then the award is based on the priority listed above. In other words, the vendor with the higher ranking preference would be awarded the bid.

PROTEST PROCEDURES
Any vendor wishing to challenge the purchase award made by an authorized buyer of the Department of Procurement and Business Services, or by any member of another department to which purchasing authority has been officially delegated, must make a written request to the Director of Procurement and Business Services to review the transaction.

- In the request it must state a specific identification of the statutory or regulatory provisions that the act or omission being complained of alleged to have violated;
- A specific description of each act or omission alleged to have violated;
- A precise statement of the relevant facts and the identification of the issues or issue to be resolved.

Such request may be made at any time, but if any change in the award is to be affected, the request for review must be made within five working days of the notification of award. (It is the responsibility of the vendor to check when the award(s) were made.) The Director of Procurement and Business Services will review the award with the buyer and department and provide a written explanation of the decision to the vendor making the request. In the event the Director of Procurement and Business Services discovers any significant deviation from the rules, the award may be changed at the discretion of the Director of Procurement and Business Services. A vendor who does not agree with the decision of the Director of Procurement and Business Services may request a meeting with the Director of Procurement and Business Services. Following the testimonies of all parties, the Director will render a decision and report the decision to the Vice President for Finance and Operations. If the vendor does not agree with the decision of the Director of Procurement and Business Services, the vendor may follow this appeal channel. Purchases made may be appealed to the President of Sam Houston State University through the Vice President for Finance and Operations. The decision of the President will be final.

Reviewed by: John C. Hitzeman - Director of Procurement and Business Services - 03/28/11
Next Review: 03/28/12