

## Part 6 Bidding

### **63G-6a-601 Title.**

This part is known as "Bidding."

Enacted by Chapter 347, 2012 General Session

### **63G-6a-602 Contracts awarded by bidding.**

- (1) Except as otherwise provided in this chapter, the division or a procurement unit with independent procurement authority shall award a contract for a procurement by bidding, in accordance with the rules of the applicable rulemaking authority.
- (2) The bidding standard procurement process is appropriate to use when cost is the major factor in determining the award of a procurement.

Amended by Chapter 445, 2013 General Session

### **63G-6a-603 Invitation for bids -- Requirements -- Publication.**

- (1) The bidding standard procurement process begins when the issuing procurement unit issues an invitation for bids.
- (2) An invitation for bids shall:
  - (a) state the period of time during which bids will be accepted;
  - (b) describe the manner in which a bid shall be submitted;
  - (c) state the place where a bid shall be submitted; and
  - (d) include, or incorporate by reference:
    - (i) a description of the procurement items sought;
    - (ii) the objective criteria that will be used to evaluate the bids; and
    - (iii) the required contractual terms and conditions.
- (3) An issuing procurement unit shall publish an invitation for bids in accordance with the requirements of Section 63G-6a-112.

Amended by Chapter 355, 2016 General Session

### **63G-6a-604 Bid opening and acceptance.**

- (1) Bids shall be opened:
  - (a) publicly, except as provided in Section 63G-6a-611;
  - (b) in the presence of one or more witnesses, unless an electronic bid opening process is used where bidders may see the opening of the bid electronically; and
  - (c) at the time and place indicated in the invitation for bids.
- (2) Bids shall be accepted unconditionally, without alteration or correction, except as otherwise authorized by this chapter.
- (3)
  - (a) The procurement officer shall reject a bid if the bid is not responsive or the bid is submitted by a bidder who is not responsible.
  - (b) A bid that is not responsive includes a bid that:
    - (i) is conditional;
    - (ii) attempts to modify the bid requirements;

- (iii) contains additional terms or conditions; or
- (iv) fails to conform with the requirements or specifications of the invitation for bids.
- (c) A bid that is submitted by a bidder who is not responsible includes a bid where the procurement officer reasonably concludes that the bidder or an employee, agent, or subcontractor of the bidder, at any tier, is unable to satisfactorily fulfill the bid requirements.
- (4) An issuing procurement unit may not accept a bid after the time for submission of a bid has expired.
- (5) The procurement officer shall:
  - (a) record the name of each bidder and the amount of each bid; and
  - (b) after the bid is awarded, make the information described in Subsection (5)(a) available for public disclosure.

Amended by Chapter 355, 2016 General Session

**63G-6a-605 Correction or clarification of bids.**

- (1) The chief procurement officer or the head of a procurement unit with independent procurement authority may:
  - (a) allow a vendor to correct an immaterial error in a bid, as provided in Section 63G-6a-114; and
  - (b) request a vendor to clarify information contained in a bid, as provided in Section 63G-6a-115.
- (2)
  - (a) Notwithstanding Subsection (1), a vendor may not change the total bid price after the bid opening and before a contract is awarded.
  - (b) Subsection (2)(a) does not apply to a change in the contract price during contract administration, as allowed under this chapter.

Repealed and Re-enacted by Chapter 355, 2016 General Session

**63G-6a-606 Evaluation of bids -- Award -- Cancellation -- Rejecting a bid.**

- (1) A procurement unit that conducts a procurement using a bidding standard procurement process shall evaluate each bid using the objective criteria described in the invitation for bids, which may include:
  - (a) experience;
  - (b) performance ratings;
  - (c) inspection;
  - (d) testing;
  - (e) quality;
  - (f) workmanship;
  - (g) time and manner of delivery;
  - (h) references;
  - (i) financial stability;
  - (j) cost;
  - (k) suitability for a particular purpose;
  - (l) the contractor's work site safety program, including any requirement that the contractor imposes on subcontractors for a work site safety program; or
  - (m) other objective criteria specified in the invitation for bids.
- (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.
- (3) The conducting procurement unit shall:
  - (a) award the contract as soon as practicable to:

- (i) the responsible bidder who submits the lowest responsive bid that meets the objective criteria described in the invitation for bids; or
  - (ii) if, in accordance with Subsection (4), the procurement officer or the head of the conducting procurement unit rejects a bid described in Subsection (3)(a)(i), the responsible bidder who submits the next lowest responsive bid that meets the objective criteria described in the invitation for bids; or
- (b) cancel the invitation for bids without awarding a contract.
- (4) In accordance with Subsection (5), the procurement officer or the head of the conducting procurement unit may reject a bid for:
- (a) a violation of this chapter by the bidder who submitted the bid;
  - (b) a violation of a requirement of the invitation for bids;
  - (c) unlawful or unethical conduct by the bidder who submitted the bid; or
  - (d) a change in a bidder's circumstance that, had the change been known at the time the bid was submitted, would have caused the bid to be rejected.
- (5) A procurement officer or head of a conducting procurement unit who rejects a bid under Subsection (4) shall:
- (a) make a written finding, stating the reasons for the rejection; and
  - (b) provide a copy of the written finding to the bidder who submitted the rejected bid.
- (6) If a conducting procurement unit cancels an invitation for bids without awarding a contract, the conducting procurement unit shall make available for public inspection a written justification for the cancellation.

Amended by Chapter 355, 2016 General Session

**63G-6a-607 Action if all bids exceed available funds -- Exemption.**

- (1) Except as provided in Subsection (2) or (3), if the fiscal officer for the conducting procurement unit certifies that all accepted bids exceed available funds and that the lowest responsive and responsible bidder does not exceed the available funds by more than 5%, the procurement officer may negotiate an adjustment of the bid price and bid requirements with the lowest responsive and responsible bidder in order to bring the bid within the amount of available funds.
- (2) A procurement officer may not adjust the bid requirements under Subsection (1) if there is a substantial likelihood that, had the adjustment been included in the invitation for bids, a person that did not submit a bid would have submitted a responsive, responsible, and competitive bid.
- (3) The Division of Facilities Construction and Management is exempt from the requirements of this section if:
  - (a) the building board adopts rules governing procedures when all accepted bids exceed available funds; and
  - (b) the Division of Facilities Construction and Management complies with the rules described in Subsection (3)(a).

Amended by Chapter 196, 2014 General Session

**63G-6a-608 Tie bids -- Resolution -- Copies provided to attorney general.**

- (1) A procurement officer shall resolve a tie bid in accordance with a method established by rule made by the applicable rulemaking authority. The method may include awarding the tie bid:
  - (a) to the tie bidder who:
    - (i) is a provider of state products, if no other tie bidder is a responsive provider of state products;

- (ii) is closest to the point of delivery;
  - (iii) received the previous award; or
  - (iv) will provide the earliest delivery date;
  - (b) by drawing lots; or
  - (c) by any other reasonable method of resolving a tie bid.
- (2) The method chosen by the procurement officer to resolve a tie bid shall be at the sole discretion of the procurement officer, subject to the rules established under Subsection (1).
- (3) A procurement unit in the state executive branch shall provide a copy of the procurement to the attorney general if an award of a contract to a tie bidder exceeds \$100,000 in expenditures.

Amended by Chapter 445, 2013 General Session

**63G-6a-609 Multiple stage bidding process.**

- (1) The invitation for bids for a multiple stage bidding process shall:
- (a) describe the requirements for, and purpose of, each stage of the process;
  - (b) indicate whether the procurement unit intends to award:
    - (i) a single contract; or
    - (ii) multiple contracts for a series of upcoming procurements; and
  - (c) state that:
    - (i) the first stage is for prequalification only;
    - (ii) a bidder may not submit any pricing information in the first stage of the process; and
    - (iii) bids in the second stage will only be accepted from a person who prequalifies in the first stage.
- (2) During the first stage, the conducting procurement unit:
- (a) shall prequalify bidders to participate in subsequent stages, in accordance with Section 63G-6a-410;
  - (b) shall prohibit the submission of pricing information until the final stage; and
  - (c) may, before beginning the second stage, request additional information to clarify the qualifications of the bidders who submit timely responses.
- (3) Contracts may only be awarded for a procurement item described in stage one of the invitation for bids.
- (4) The conducting procurement unit may use as many stages as it determines to be appropriate.
- (5) Except as otherwise expressly provided in this section, a procurement unit conducting a multiple stage bidding process under this section shall ensure compliance with this part.
- (6) The applicable rulemaking authority may make rules governing the use of a multiple stage process described in this section.

Amended by Chapter 355, 2016 General Session

**63G-6a-610 Contracts awarded by reverse auction.**

- (1) Reverse auction bidding may be used if the procurement officer determines, in writing, that reverse auction bidding will provide the best value to the procurement unit.
- (2) Reverse auction bidding is appropriate to use when there are multiple prequalified providers of a procurement item.

Amended by Chapter 445, 2013 General Session

**63G-6a-611 Invitation for bids for reverse auction -- Requirements -- Publication of invitation.**

- (1) The reverse auction bidding process begins when the issuing procurement unit issues an invitation for bids to prequalify bidders to participate in the reverse auction.
- (2) The invitation for bids shall:
  - (a) state the period of time during which bids will be accepted;
  - (b) state that the bid will be conducted by reverse auction;
  - (c) describe the procurement items sought;
  - (d) describe the minimum requirements to become prequalified;
  - (e) state the required contractual terms and conditions; and
  - (f) describe the procedure that the conducting procurement unit will follow in the reverse auction.
- (3) In order to participate in a reverse auction, a bidder shall agree to:
  - (a) the specifications, and contractual terms and conditions, of the procurement; and
  - (b) be trained in, and abide by, the procedure that the division or the procurement unit with independent procurement authority will follow in conducting the reverse auction.
- (4) The division or a procurement unit with independent procurement authority shall publish an invitation for bids for a reverse auction in accordance with the requirements of Section 63G-6a-112.

Amended by Chapter 355, 2016 General Session

**63G-6a-612 Conduct of reverse auction.**

- (1) A procurement unit conducting a reverse auction:
  - (a) may conduct the reverse auction at a physical location or by electronic means;
  - (b) shall permit all prequalified bidders to participate in the reverse auction;
  - (c) may not permit a bidder to participate in the reverse auction if the bidder did not prequalify to participate in the reverse auction;
  - (d) may not accept a bid after the time for submission of a bid has expired;
  - (e) shall update the bids on a real time basis; and
  - (f) shall conduct the reverse auction in a manner that permits each bidder to:
    - (i) bid against each other; and
    - (ii) lower the bidder's price below the lowest bid before the reverse auction closes.
- (2) At the end of the reverse auction, the conducting procurement unit shall:
  - (a) award the contract as soon as practicable to the lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids; or
  - (b) cancel the reverse auction without awarding a contract.
- (3) After the reverse auction is finished, the conducting procurement unit shall make publicly available:
  - (a)
    - (i) the amount of the final bid submitted by each bidder during the reverse auction; and
    - (ii) the identity of the bidder that submitted each final bid; and
  - (b) if practicable:
    - (i) the amount of each bid submitted during the reverse auction; and
    - (ii) the identity of the bidder that submitted each bid.

Amended by Chapter 196, 2014 General Session