

Issues in Competitive Bidding

Helping You Succeed
Schools and Libraries Division

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Notes

Overview

- 28 Day Rule
- Communicating with Bidders
- Multi-tiered vendor selection
- Sham Bidding
- Piggyback Clauses
- Non-traditional providers
- Gifts

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Notes

Competitive Bidding

- Fair and open competitive bidding process
- Avoid conflicts of interest
 - Independent consultant ⇔ Service Provider
 - Applicant ⇔ Service Provider
- Open competition and bid evaluation
- Follow all rules – FCC and state/local
- Read the contract fine print
- Retain your documentation
 - Retain, retain, lessen your pain...

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28 Day Rule

- WAIT 28 DAYS after your Form 470 is posted **and** your RFP is issued before:
 - Evaluating the bids
 - Selecting your service provider
 - THEN sign a contract/legally binding agreement
 - THEN file and certify your Form 471 online

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28 Days

- RFP handed out at walk through
 - 28 day clock starts **after** last of the RFP issued
- Clock for 28 days restarts when
 - If you issue a new RFP, then your 28 days starts again (do not have to post a new 470)
 - Changed services sought
 - Make other cardinal changes to RFP
 - Post new Form 470
- No bids received after 28 days, you may contact vendors to seek bids

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Communication with bidders

- Equal communication with all
 - Ensure that everyone knows the same thing
- Timely communication
 - Provide adequate notice to potential bidders about deadlines, walk-throughs, changes, etc
- Late breaking news
 - Provide adequate notice to all potential bidders

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Multi-tier Bidding Eval

- Disqualification/Qualification Round
 - Factors are binary (meet/does not meet)
 - Factors cannot be scored on range (subjective)
 - Examples:
 - Responded in full to RFP
 - Licensed, Bonded and Insured
 - In-state
 - Has a USAC Service Provider Identification Number (SPIN)

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Multi-tier Bidding Eval

- Qualification Factors
 - Can require that potential bidders meet minimum number of qualification factors
- Disqualification Factors
 - Can require that potential bidders that meet any disqualification factors are not considered
- Ensure that all potential bidders have adequate notice of these items

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Multi-tier Bidding Eval

- Bid Evaluation Round(s)
 - Price of the eligible goods and services **must be** primary factor **in each round**
 - Then can include range of other factors (can be subjective or not)
 - Examples:
 - Technical solution proposed
 - Reputation/Prior History with the entity
 - Other costs of doing business with this provider
 - etc

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Complex Example

- School district sets disqualification factors
 - 10 bidders submit proposals; 7 do not have any disqualification factors and continue
- First round
 - Price 60 pts, Refs 20 pts, History with District 20 pts
 - District accepts all that get at least 50 points
 - 4 of the 7 have at least 50 points and continue
- Second round
 - Price 55 pts, Technical Solution 45 pts
 - Winning Bidder is selected

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Sham Bidding

- “I want to stay with my incumbent”
- Must respond to all legitimate inquiries
 - Bidders can’t just send spam, but you have to talk to bidders, too
 - Providers that are being stonewalled can contact USAC
- Cost to transfer to another provider alone is not by itself a good enough reason to stay with incumbent

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Sham Bidding

- Avoid appearances of a “done deal”
- Don’t post for something you don’t want
- If plans change, have a plan to communicate with potential bidders
 - Post notice on your website
 - Use communication paths already established for RFP, if one was used
 - Keep your documentation

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Piggyback Clauses

- Clause in a contract signed between provider and another entity allowing others to purchase off the same contract
 - Must be permissible under state & local regs
 - The contract or RFP must allow for other entities to be added
 - You must still **post your own Form 470, AND conduct your own competitive bid evaluation**
 - Follow all other FCC rules

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Non-traditional Providers

- ESAs, State Agencies, etc as Providers
 - Pick your side – applicant or provider on single app
 - If both, then build appropriate firewalls
 - Applicant roles: Helping with application or providing technical assistance; help/review tech plan
 - Service Provider roles: Provide services
 - Same staff **cannot** play both roles

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Non-traditional Providers

- Avoid Conflicts of Interest
 - Separate by Category of Service:
 - Act as SP for only one category of service
 - Act as applicant for all other
 - Challenging!
 - Provide functional/organization separation
 - Some staff function only as SP; other staff function only as applicant
 - Challenging!
 - See ESA Guidance on website

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Non-traditional Providers

- People get stuck:
 - Beware of “service provider” contact information on the Form 470
 - Beware of “service provider” representatives that help determine the goods and services for which you are seeking bids.
 - Beware of “service provider” representatives that help with vendor selection

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Gifts

- FCC requires fair and open competitive bidding; gifts could inhibit this
- If acceptable under state/local regulations, could still be in violation of FCC rules
- USAC will review case by case
- Appearance of violations can cause more reviews and delay commitments

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Gifts

- Meals, travel, entertainment etc offered by service provider to an applicant
 - Gifts offered and/or received
- Know and follow your state and local rules regarding acceptance of gifts (limits, timeframes, etc)
- Know and follow your school/library gift policies

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What you can do: Gifts

- Know the applicable regulations
- Make sure that you have a policy that tells your staff how to handle gifts, meals, travel, entertainment, etc offered by providers and potential bidders
- Train your staff: ignorance is not bliss
- Follow the rules
- Is the gift really worth it?

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Questions?

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