

TOWNSHIP GOVERNMENT: BEYOND THE BASICS

UNDERSTANDING COMPETITIVE BIDDING AND QUALIFICATIONS-BASED SELECTION (“QBS”)

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**UNDERSTANDING COMPETITIVE BIDDING AND
QUALIFICATIONS-BASED SELECTION (“QBS”)**

I. GENERAL DISCUSSION OF COMPETITIVE BIDDING

- A. Competitive bidding is the preferred method for the procurement of supplies, routine services, or construction projects.
- B. It is a good practice to award all municipal contracts by the process of competitive bidding, with the exception of:
 - 1. Small purchases
 - 2. Sole source procurement
 - 3. Emergency purchases
 - 4. Professional services contracts, which may be subject to qualifications-based selection (“QBS”).
- C. Competitive bidding is not legally required, unless it is mandated by a grant agency, a statutory requirement, or a local charter, policy or ordinance.

II. INVITATION FOR BIDS

- A. The Invitation for Bids is used to initiate the competitive bid process.
- B. The Invitation for Bids should generally include:
 - 1. Instructions to bidders (time and date set for receipt of bids, address where bids are to be delivered, other special information).
 - 2. Description of proposed purchase
 - 3. Contract terms and conditions
- C. The Invitation for Bids should always reserve the municipality’s right to reject any and all bidders.
- D. The bidding time (the period of time between the date of distribution of the Invitation for Bids and the time and date set for receipt of bids) should be set to provide bidders a reasonable time to prepare their bids.

- E. The Invitation for Bids may provide a form that includes a space in which the bid price may be inserted and which the bidder must sign and submit along with all other necessary submissions.
- F. Invitations for Bids or notices of the availability of Invitations for Bids should be furnished to a sufficient number of bidders for the purpose of securing competition. In the case of larger purchases, notices should be placed in newspapers or trade publications.
- G. Under certain circumstances, bid security (cash deposits, bonds, etc.) may be advisable.

III. PRE-BID CONFERENCES

- A. Pre-bid conferences may be conducted to explain the procurement requirements. If used, they should be announced to all prospective bidders known to have received an Invitation for Bids.
- B. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids.
- C. Nothing stated at the pre-bid conference should change the Invitation for Bids unless a change is made by written amendment.

IV. PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS

- A. Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time and date set for bid opening.
- B. Disposition of Bid Security: If a bid is withdrawn prior to the time and date set for bid opening, the bid security, if any, should be returned to the bidder.
- C. Records: All documents relating to the modification or withdrawal of bids should be made a part of the appropriate procurement file.

V. LATE BIDS, LATE WITHDRAWALS, AND LATE MODIFICATIONS

- A. General Discussion: Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late.

- B. Treatment: No late bid, late modification or late withdrawal should be considered unless received before contract award, and the bid modification or withdrawal would have been timely but for the action or inaction of municipal personnel directly serving the procurement activity.
- C. Records/Notice: Bidder submitting late bids that will not be considered for award should be so notified as soon as practicable. Records should be made and kept for each late bid, late modification, or late withdrawal.

VI. RECEIPT, OPENING, AND RECORDING OF BIDS

- A. Receipt: Upon its receipt, each bid and modification should be time-stamped but not opened and should be stored in a secure place until the time and date set for bid opening.
- B. Opening and Recording:
 1. Bids and modifications should be opened publicly, in the presence of one or more witnesses, at the time, date, and place designated in the Invitation for Bids.
 2. The name of each bidder, the bid price, and such information as is deemed appropriate by the procurement officer, should be read aloud or otherwise made available.
 3. Such information should be recorded at the time of bid opening and bids should be tabulated or a bid abstract made.
 4. The names and addresses of witnesses should be recorded at the opening.
 5. The opened bids should be made available for public inspection, except to the limited extent that trade secrets or other proprietary data may be confidential under the Freedom of Information Act. Confidential material that accompanies the bids must be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid.
 6. Prices, makes and models or catalog numbers of the items offered, deliveries, and terms of payment should be publicly available at the time of bid opening, regardless of any designation to the contrary.

VII. MISTAKES IN BIDS

- A. General Discussion: Correction or withdrawal of a bid because of an inadvertent, non-judgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness.
 - 1. If the mistake is attributable to an error in judgment, the bid may not be corrected.
 - 2. Bid correction or withdrawal by reason of a non-judgmental mistake is permissible, but only to the extent that it is not contrary to the interest of the township or the fair treatment of other bidders.
- B. Mistakes Discovered Before Opening: A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid.
- C. Confirmation of Bid: When the procurement officer knows or has reason to conclude that a mistake has been made, the officer should request a bidder to confirm the bid. Examples:
 - 1. Obvious apparent errors on the face of the bid, or
 - 2. Bid unreasonably lower than the other bids submitted.
- D. Mistakes Discovered After Award: Mistakes may not be corrected after award of the contract, except where the chief procurement officer or the head of a purchasing agency makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

VIII. BID EVALUATION AND AWARD

- A. General Discussion: The contract is to be awarded to the lowest, responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids.
- B. Determination of Lowest Bidder: Following determination of product acceptability, if any is required, bids should be evaluated to determine which bidder offers the lowest cost to the municipality in accordance with the evaluation criteria set forth in the Invitation for Bids.

C. Low Tie Bids: Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the Invitation for Bids.

1. Award may be made in any permissible manner that will discourage tie bids. If no permissible method will be effective in discouraging tie bids, and a written determination is made so stating, award may be made by drawing lots.
2. Records should be made of all invitations for bids on which tie bids are received, showing at least the following information:
 - a. The identification number of the Invitation for Bids;
 - b. The supply, service, or construction item; and
 - c. A listing of all the bidders and the prices submitted.
3. Procedures that can be used to discourage tie bids include:
 - a. Award the contract to a business providing supplies produced or manufactured in the municipality or to a business that otherwise maintains a place of business in the municipality;
 - b. Where identical low bids include the cost of delivery, award the contract to the tied bidder farthest from the point of delivery;
 - c. Award the contract to the identical bidder who received the previous award and continue to award succeeding contracts to the same bidder so long as all low bids are identical.

IX. DOCUMENTATION AND PUBLICATION OF AWARDS

Following the award of a bid:

1. A record showing the basis for determining the successful bidder should be made a part of the procurement file.
2. Written notice of award should be sent to the successful bidder.
3. Each unsuccessful bidder should be notified of the award.
4. Notice of the award should be made available to the public.

X. PURCHASING POLICIES

1. Routine Purchases
 - A. Identify an agent responsible for routine purchasing; permit delegation of that authority if advisable.
 - B. Identify a maximum dollar amount allowed as a routine purchase; make exception for emergency purchases above the amount; define "emergency"
 - C. Identify factors to be used in choosing vendors
 - i. Best value, reputation of vendor, etc. (note that using "diversity" as a factor in choosing vendors is no longer permissible as discussed below.
 - D. Establish procedures for routine purchasing
2. Bidding Policy
 - A. For all purchases above the maximum dollar amount for routine purchases; and all contracts for recurring services.
 - B. Require approval of the Municipal Board
 - C. Establish advertising procedures and procedures for award as discussed above.
3. Samples: Carrollton Township Policy; Charter Township of Brownstown
4. Constitutional Amendment
 - A. State Ballot Proposal No. 2 passed in the November 2005 general election and amended the State Constitution by adding a new Article I, Section 26. The new language states in part: "The State shall not discriminate against, or give preferential treatment to, any individual or group, on the basis of sex, color, ethnicity or national origin in the operation of public employment, public education, or public contracting."
 - i. "State" includes any city, county or other political subdivision of the State.

XI. QUALIFICATIONS-BASED SELECTION ("QBS")

- A. QBS is the preferred method for the selection of Engineers, Architects, Attorneys, Planners, and other professional consultants.

- B. QBS may be required by state and federal grant agencies (e.g., Brooks Act) who may also have detailed procedures the municipality must follow.
- C. QBS allows the procurement of professional services from the most qualified firm, with secondary emphasis on price.

XII. QBS HAS PROVEN TO BE SUPERIOR TO COMPETITIVE BIDDING FOR PROFESSIONAL SERVICES.

- A. A low bid may reflect a lack of knowledge or experience in the area concerned.
- B. In hiring professionals, the specific details of the engagement are rarely known before proposals are received.
- C. Because details of the engagement are ambiguous, bids are frequently too low, too high, or conditional.
- D. Price bidding does not encourage high-quality service.
- E. You are hiring professionals so they can help you define your goals, and then achieve them. Price bidding has no direct relevance to these objectives.

XIII. REQUEST FOR PROPOSALS (“RFP”)

- A. The selection process begins with an RFP.
- B. RFP should disclose as much detail about the proposed project or requested services as possible. More information will allow more complete and relevant proposals.
- C. RFP should solicit relevant information about the firms’ personnel, their particular qualifications, and experience with similar engagements.
- D. Send the RFP to firms recommended by other municipalities (call around to other municipal officials or the applicable municipal association).
- E. Consider publishing notice of the RFP in relevant trade publications to increase the response rate.

XIV. DEVELOP A SHORT LIST

- A. Appoint a committee to review the proposals and select a small number (3-5) for further review.
- B. Give the committee specific evaluation criteria in making their selections.

XV. RANK THE FIRMS

- A. Interview each firm; meet the professionals who will actually do the work.
- B. Contact references and past clients.
- C. Visit the firms' offices and specific projects they have handled (if applicable).
- D. Rank the firms based upon board consensus.

XVI. NEGOTIATING THE SERVICE AGREEMENT

- A. Jointly define the scope of services with the top-ranked firm.
- B. Establish budget constraints, goals, schedules, then redefine the scope of services if necessary.
- C. Incorporate all of the foregoing into an agreement, together with an agreed-upon fee, and retain the firm.
- D. If unable to reach an agreement with the top-ranked firm, begin negotiation with the next-ranked firm, until an agreement is reached with a firm.

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