**Section 1300.2015 Competitive Sealed Proposals**

a) Competitive Sealed Proposals may be used whenever permitted by the Code and as described in this Part.

b) The Competitive Sealed Proposal method of source selection may be used to procure the following categories:

1) electronic data processing equipment, software, and services;

2) telecommunications equipment, software, and services;

3) consulting services; and

4) employee benefits and insurance.

c) Competitive Sealed Proposals may be used on a case-by-case basis when it is determined by the Procurement Officer that competitive sealed bidding is either not practicable or advantageous.

1) "Practicable" Distinguished from "Advantageous." As used in Section 20-15 (Competitive Sealed Proposals) of the Illinois Procurement Code and this Section, the term "practicable" denotes what may be accomplished or put into practical application, and "advantageous" connotes a judgmental assessment of what is in the State's best interest. Competitive sealed bidding may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the State's best interest. Before a contract may be entered into by competitive sealed proposals, the Procurement Officer shall determine in writing that competitive sealed bidding is either not practicable or not advantageous to the OAG.

2) General Discussion

A) If competitive sealed bidding is not practicable or is not advantageous, competitive sealed proposals should be used.

B) The key element in determining relative advantage is the need for flexibility. The competitive sealed proposal method differs from competitive sealed bidding in two important ways:

i) it permits discussions with competing offerors and changes in their proposals, including price; and

ii) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.

C) Where evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or expertise, where the types of supplies or services may require the use of comparative, judgmental evaluations to evaluate them adequately, or where the type of need to be satisfied involves weighing aesthetic values to the extent that price is a secondary consideration, use of competitive sealed proposals is the appropriate procurement method.

3) When Competitive Sealed Bidding Is Not Practicable. Competitive sealed bidding is not practicable unless the nature of the procurement permits award to a low bidder who agrees by its bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the IFB. Factors to be considered in determining whether competitive sealed bidding is not practicable include:

A) whether the contract needs to be other than a fixed-price type;

B) whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;

C) whether offerors may need to be afforded the opportunity to revise their proposals, including price;

D) whether award may need to be based upon a comparative evaluation as stated in the RFP of differing price, quality (which includes technical and performance capability and the content of the technical proposal), and contractual factors in order to determine the most advantageous offering to the OAG; and

E) whether the primary consideration in determining award may not be price.

4) When Competitive Sealed Bidding Is Not Advantageous. A determination may be made to use competitive sealed proposals if it is determined that it is not advantageous to the OAG, even though practicable, to use competitive sealed bidding. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:

A) whether prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the OAG; and

B) whether the factors listed in subsection (c)(3) of this Section are desirable in conducting a procurement rather than necessary.

d) Content of the Request for Proposals

The RFP shall be prepared in accordance with Section 1300.2010 (Competitive Sealed Bidding) provided that it shall also include:

1) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions; and

2) a statement of when and how price should be submitted.

e) Receipt and Registrations of Proposals

Proposals shall be opened publicly or via an electronic procurement system, in the presence of at least one witness, but proposals shall be opened in a manner to avoid disclosure of contents to competing offerors during the process of negotiation. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a Register of Proposals shall be prepared which shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply or service item offered. The Register of Proposals shall be open to public inspection after award of the contract.

f) Evaluation of Proposals

1) Evaluation Factors in the RFP. The RFP shall state all of the evaluation factors, including price, and their relative importance.

2) Evaluation. The evaluation shall be based on the evaluation factors set forth in the RFP. Factors not specified in the RFP shall not be considered. Numerical rating systems may be used but are not required.

3) Classifying Proposals. For the purpose of conducting discussions, proposals shall be initially classified as:

A) acceptable;

B) potentially acceptable, that is, reasonably susceptible of being made acceptable; or

C) unacceptable.

4) Offerors whose proposals are unacceptable shall be so notified promptly.

g) Proposal Discussions with Individual Offerors

1) "Offerors" Defined. For the purposes of Section 20-15(f) (Competitive Sealed Proposals, Discussion with Responsible Offerors and Revisions of Proposals) of the Illinois Procurement Code and this Section, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses who submitted unacceptable proposals.

2) Purposes of Discussions. Discussions are held to:

A) promote understanding of the OAG's requirements and the offerors' proposals; and

B) facilitate arriving at a contract that will be most advantageous to the OAG, taking into consideration price and the other evaluation factors set forth in the RFP.

3) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. If during discussions there is a need for any substantial clarification of, or change in, the RFP, the Request shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information derived from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.

4) Best and Final Offers. The Procurement Officer may request best and final offers with a common date and time for submission of best and final offers. The Procurement Officer may conduct additional discussions or change the OAG's requirements and require another submission of best and final offers. If an offeror does not submit either a notice of withdrawal or another best and final offer, that offeror's immediate previous offer will be construed as its best and final offer.

h) Award

An award shall be made by the Procurement Officer pursuant to a written determination showing the basis on which the award was found to be most advantageous to the OAG, based on the factors set forth in the RFP. The contract file shall contain the basis on which the award was made.

i) Publicizing Awards

After a contract is entered into, notice of award shall be posted in the Procurement Officer's office. When the award exceeds the small purchase limit set in Section 1300.2020 of this Part, notice of award shall be published in the Bulletin.

(Source: Amended at 42 Ill. Reg. 13585, effective June 29, 2018)