

# Issues in Competitive Bidding

Helping You Succeed  
Schools and Libraries Division

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# Overview

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

# 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...

# 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

# 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

# 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

# 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)

# 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**



# 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

# 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

# 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

# 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

# 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

# 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

# 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**

# 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



- 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

- 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

# 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?



# Questions?