

Sec. 102-373. - Competitive sealed bidding.

(a) *Conditions for use.*

- (1) If the several parts of the work or labor to be done or the supplies, materials and equipment to be furnished shall together or in part involve the expenditure of more than \$100,000.00, such work or labor or supplies, materials, or equipment shall be procured only by contract on public letting founded on sealed bids under such regulations as shall be made by the board of commissioners or other county authority.
- (2) Time permits the solicitation, submission and evaluation of sealed bids.
- (3) The award will be made on the basis of price and other price-related factors.
- (4) It is not necessary to conduct discussions with the responding offerors about their bids.
- (5) There is a reasonable expectation of receiving more than one sealed bid.
- (6) The terms of such contracts, subject to such regulations and in conformity with law, shall be settled by the county attorney as an act of preliminary specification to a proposal for bids. The purchasing agent and the board of commissioners may reject all bids if it shall deem it in the interest of the county so to do; if not, it shall, without other consent or approval, award the contract to the lowest responsible bidder.
- (7) Such bids shall not be accepted after the time limit stated in the proposal for bids and shall not be opened except in the presence of the purchasing agent, or the designee thereof, and the head of the agency requesting the items. Tie bids shall be decided by the agency letting the contract.
- (8) Whenever a contract is awarded to other than the lowest bidder, the agency awarding the same shall file in its office and with said county authority a statement in detail of the reasons therefor.

(b) *Public notice.*

~~(1) *General notice.* An advertisement inviting bids shall be posted on an internet website of Fulton County, or a website designated by Fulton County for such purpose and clearly indicated for that purpose. In addition, the department of purchasing and contract compliance shall place an advertisement inviting bids in the county's legal organ and in any other medium. The public notice shall contain a general description of the supplies, services, construction or professional and consultant services to be procured and shall state the location of where appropriate solicitation documents may be obtained and the time and place of opening the documents.~~

(1) *General notice.* An advertisement inviting bids shall be posted on an internet website of Fulton County and, if the bid is for goods, services or both and is valued at \$100,000.00 or more or is a public works construction contract subject to O.C.G.A. § 91-36 and valued at \$100,000.00 or more, it shall be posted on the Georgia Procurement Registry. In addition, the department of purchasing and contract compliance may place an advertisement inviting bids in any other medium. The public notice shall contain a general description of the supplies, services, construction or professional and consultant services to be procured and shall state the location of where appropriate solicitation documents may be obtained and the time and place of opening the documents.

(2) *Additional notice in unusual or special circumstances.*

- a. *Notice in trade or industry publications.* When required supplies, services or construction are, in the determination of the purchasing agent in consultation with the using agency, either unusual in nature or highly specialized, the purchasing agent shall cause an advertisement to be placed in at least one trade journal or such other specialized industry publication of circulation in the county, whichever is appropriate and most likely to bring responses from qualified and available offerors. The advertisement shall be published once and at least 14 days preceding the date set for receipt of bids. The provisions of this subsection concerning unusual or special circumstances shall be used in addition to, and not in lieu of, the provisions of this section.

- b. *Assistance of using agency.* The purchasing agent may rely upon the subject matter expertise and the assistance of personnel of the using agency who shall, prior to competitive solicitation, make a prompt written determination of the appropriate trade journal or specialized industry publication where the advertisement is to be placed. The written determination by the using agency shall be made sufficiently in advance such that notice and advertisement can be timely placed by the purchasing agent in the next available issue of a journal or industry publication, which will be published at least 30 days preceding the date set for receipt of bids. The using agency shall provide the necessary funds from its budget for the costs and expenses associated with advertisement in trade journals or such other industry publications.
 - c. *Contents of notice.* Notice of bid security, if required, shall be included in the public notice or the trade journal, or such other industry publication. The public notice shall contain a general description of the supplies, services or construction to be procured and shall state the date and location where solicitation documents may be obtained, and the time and place of opening of the bids.
- (c) *Receipt of competitive sealed bids.* All bids must be delivered to and received by the purchasing agent or designated department of purchasing staff at the bid opening and stamped no later than 11:00 a.m. Eastern Time.
- (d) *Clock calibration.* Prior to all bid openings, the purchasing agent or designated department of purchasing staff shall coordinate the clock calibration used in the bid process with the National Bureau of Standards.
- (e) *Bid opening.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The name of each offeror, the amount of each bid and such other relevant information as the purchasing agent deems appropriate shall be recorded.
- (f) *Bid acceptance.* Bids shall be received by the purchasing agent or designated department of purchasing staff without alteration or correction, except as authorized in this article, provided that the bids are delivered to the purchasing agent at the time, place and under the conditions contained in the invitation for bids.
- (g) *Bid evaluation.* Bids shall be evaluated based on the requirements set forth in the invitation for bids and this Code. Those criteria, including but not limited to discounts, transportation costs and total or life-cycle costs, that will affect the bid and price and be considered in the evaluation for the award shall be objectively measurable. The invitation for bids shall set forth the evaluation criteria to be used.
- (h) *Correction or withdrawal of bids.*
- (1) Before bid opening, correction or withdrawal of bids may be allowed by the purchasing agent before the scheduled time and date of bid opening. The offeror may withdraw the bid, without revealing the amount of the bid, by submitting a new sealed bid or providing written notice of withdrawal before bid opening. Notice of withdrawal shall be received by the purchasing agent prior to bid opening.
 - (2) After bid opening, corrections in bids shall be permitted only to the extent that the offeror can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interests of the county or fair competition shall be permitted.
 - (3) The purchasing agent may also exercise all rights a bidder may have to correct its bid provided in this section and may communicate with any bidder concerning the correction or withdrawal of its bid.
 - (4) Withdrawal. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
 - a. The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or

- b. The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids shall be supported by a written determination made by the purchasing agent.

- (i) *Tie bids.* Whenever goods or services of any kind or description are to be obtained through an invitation for bids, for the purpose of making an award to the lowest responsible bidder where two or more bidders have submitted the lowest bid with each of said bids being otherwise equal with respect to cost, but only one such bidder has a business location within Fulton County, then the recommendation for award shall be in favor of the bidder having a business location within Fulton County.
- (j) *Award.* In awarding any contract or determining the lowest responsible bidder for the purpose of awarding a contract, the agency awarding the contract may consider the vendor or bidder's quality of work, general reputation in the community, financial responsibility, previous experience in sales to the public, compliance with a small business enterprise program as adopted by the governing authority of the county or making a good faith effort to comply with the goals of such a program, and compliance with nondiscrimination and equal employment opportunity provisions as adopted by the governing authority of the county.

(Res. No. 13-0052, 1-23-13; Res. No. 16-0864, 10-5-16; Ord. No. 19-0220, Exh. A, 4-10-19; Ord. No. 22-0203, Att. A, 3-16-22)

Note— Formerly Code, Pt. I, §§ 2-314 and 2-316.