

Excerpt From Horry County Schools' Procurement Code

3. **Competitive Sealed Proposals.** (SC Code § 11-35-1530; SC Reg. §§ 19-445-2055, -2095) When the Procurement Director determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the District, a contract may be entered into by competitive sealed proposals. Procurements may be made by competitive sealed proposals above \$25,000 that are highly technical, complex in nature and do not lend themselves to formal competitive sealed bidding. Competitive Sealed Proposals should include, but not be limited to, the general scope of the proposal, criteria for selection, information required to be submitted, activities to be performed, and relevant costs. An award shall be made to the Offeror whose proposal is considered to be most advantageous to the District.
- a. Request for Proposal. Proposals shall be solicited from qualified sources, when such sources are available, through a request for proposals.
 - b. Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Competitive Sealed Bidding procedures.
 - c. Receipt of Proposals. The Procurement Official or designee in the presence of one (1) or more witnesses shall open proposals publicly at the time and place designated in the request for proposals. A record of those offering a proposal shall be made public record. Contents of competing offers shall not be disclosed during the process of negotiation. All Offerors must visibly mark as "confidential" each part of their proposal, which they consider to be proprietary information. The provisions for Telegraphic Bids, Rejection of Bids, Rejection of Individual Bids, All or None Qualifications, Cancellation of Awards, Cancellation of Awards Prior to Performance, and Minor Informalities and Irregularities in the Competitive Sealed Bidding section of this Code shall apply in the context of Competitive Sealed Proposals as well.
 - d. Request for Qualifications. Prior to soliciting proposals, the procurement official, acting through the authorized Procurement Director, may issue a request for qualifications from prospective Offerors. Such request shall contain at a minimum a description of the goods or services to be solicited by the request for proposals and the general scope of the work and shall state the deadline for submission of information and how prospective Offerors may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform the requirements of the contract. After receipt of the responses to the request for qualifications from prospective Offerors, the perspective Offerors shall be ranked from most qualified to least qualified on the basis of the information provided. Proposals shall then be solicited from at least the top two (2) prospective Offerors by means of a request for proposals. The failure of a prospective Offeror to be selected to receive the request for proposals shall not be grounds for protest.

- e. Evaluation Factors. The request for proposals shall state the relative importance of factors to be considered in evaluating proposals but shall not require a numerical weighting for each factor. Price may but need not be an evaluation factor. Criteria to determine acceptability may include inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect bid price and be considered in evaluation for award shall be measurable costs to include, but not be limited to, discounts, transportation costs, total or life cycle costs.
- f. Discussion with Offerors. As provided in the request for proposals, discussions may be conducted with apparent responsive Offerors for the purpose of clarification to assure full understanding of the requirements of the request for proposals. All Offerors whose proposals, in the Procurement Director's sole judgment, need clarification shall be accorded such an opportunity.
- g. Selection and Ranking. Proposals shall be evaluated using only the criteria stated in the request for proposals and there must be adherence to any weighting that have been previously assigned. Once evaluation is complete, all responsive Offerors shall be ranked from most advantageous to least advantageous to the District, considering only the evaluation factors stated in the request for proposals. If price is an initial evaluation factor, award shall be made in accordance with this Code's provisions for Award in competitive sealed proposals.
- h. Negotiations. Whether price was an evaluation factor or not, the District, subject to challenge through a protest, may proceed in any of the manners indicated below:
 - i. Negotiate price with the highest ranked Offeror. If a satisfactory price cannot be agreed upon, price negotiations may be conducted, in the sole discretion of the District, with the second, and then the third, and so on, ranked Offerors to such level of ranking as determined by the District in its sole discretion,
 - ii. Negotiate with the highest-ranking Offeror on matters affecting the scope of the contract, so long as the overall nature and intent of the contract is not changed. If a satisfactory contract cannot be negotiated with the highest ranking Offeror, negotiations may be conducted, in the sole discretion of the District, with the second, and then the third, and so on, ranked Offerors to such level of ranking as determined by the District in its sole discretion.
 - iii. During the negotiation process as outlined in subsections, if the District is unsuccessful in its first round of negotiations, it may reopen negotiations with any Offeror with whom it previously negotiated.
 - iv. If, after following the procedures set forth above, a contract is not able to be negotiated, the scope of the request for proposals may be changed in an effort to reduce the cost to a fair and reasonable amount, and all responsive Offerors must be allowed to submit their best and final offers.

- v. In conducting negotiations, there must be no disclosure of any confidential information derived from proposals and negotiations submitted by competing Offerors.
- i. Award. Award must be made to the responsive Offeror whose proposal is determined in writing to be the most advantageous to the District, taking into consideration price and the evaluation factors set forth in the request for proposals, unless the District determines to utilize one (1) of the options provided in Section h(i) above. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit. Procedures and requirements for the notification of intent to award the contract shall be the same as those used for competitive sealed bidding.
- j. Specified Types of Supplies, Services or Construction. Pursuant to the provisions of this Code relating to Construction Procurement, the following types of supplies, services, or construction **may be procured by competitive sealed proposals**:
 - i. Architect/Engineer services and construction services to be awarded in the same contract for an indefinite delivery of a specialized service (e.g. Hazard waste remedial action).
 - ii. **Design/Build** or Lease/Purchase contracts where there must be selection criteria in addition to price.
 - iii. Energy conservation or other projects to be financed by vendors who will be paid from the District's savings.
 - iv. Supplies, services, or construction, where consideration of alternative methods or systems would be advantageous to the District.