



TO: John K. Gardner, Chief Financial Officer
FROM: Ara Heinz, Procurement Specialist
SUBJECT: Guidelines on Cancellation of Solicitations, Re-Soliciting, and Sole Source with regards to RFQ # 1415-12
DATE: October 24, 2014

Per your request for additional information regarding the process to cancel and re-solicit for projects, I have found the following.

The Horry County Schools Procurement Code does allow for the cancellation of solicitations. Article IV, Section B states:

Cancellation of Invitations for Bids or Request for Proposals. (SC Code § 11-35-1710)

Any solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or part as may be specified in the solicitation, when it is in the best interest of the District. The reasons for rejection, supported with documentation sufficient to satisfy external audit, shall be made a part of the contract file.

Additionally, when referencing Competitive Sealed Bidding, our Code specifically speaks to Cancellation of Bids Prior to Award. While this solicitation was issued as a Request for Qualifications, and prices/rates are not allowed to be discussed, it does provide guidance on what types of reasons could be used to justify the cancellation of the solicitation. If we were to cancel and re-solicit with a delivery method of design-build rather than the current design/bid/build, I believe that sub-sections ii and viii of Article IV, Section A. 2. j, below, would apply.

Cancellation of Bids Prior to Award. When it is determined prior to an award, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the invitation for bids shall be canceled. Invitations for bids may be canceled after opening, but prior to award, when such action is consistent with Subsection 1 above and the Procurement Director determines, in writing, that any of the following has occurred:

- i. Inadequate or ambiguous specifications were cited in the invitation.
 - ii. Specifications have been revised.
 - iii. Supplies or services being procured are no longer required.
 - iv. Invitation for Bids did not provide for consideration of all factors of cost to the District, such as cost of transporting District furnished property to Bidders' plants.
 - v. Bids received indicate the needs of the District can be satisfied by a less expensive article differing from that on which the bids were invited.
 - vi. All otherwise acceptable bids received are at unreasonable prices.
 - vii. Bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith.
 - viii. For other reasons, cancellation is in the best interest of the District.
- Determinations to cancel invitations for bids shall state the reasons therefore.

To cancel the solicitation and re-solicit for the exact same good/service, especially within a reasonably close time-frame, without justification could give the appearance of a conflict of interest within our system. However, if we were to cancel the current solicitation and re-solicit using a different delivery method (design/build), I believe it is a justifiable action so long as our new solicitation documents clearly reflect the change.

Regarding sole source procurements, our Code does allow them to occur, but only in certain circumstances. Article IV, Section A, 12 states:

Sole Source Procurement. (SC Code § 11-35-1560; SC Reg. § 19-445-2105) A contract may be awarded for a supply, service, equipment or construction item without competition when, the Chief Financial Officer, or a designee above the level of the Procurement Director, determines in writing that there is only one (1) source for the required supply, service, equipment or construction item. Written documentation must include the determination and basis for the proposed sole source procurement. Sole source procurement is not permissible unless there is only a single supplier. The following are examples of circumstances, which could necessitate sole source procurement:

- Where the compatibility of equipment, accessories, or replacement parts is the paramount consideration.
- Where a sole supplier's item is needed for trial use or testing.
- Where a sole supplier's item is to be procured for resale.
- Where the item is one (1) of a kind.
- Printed forms, pamphlets, and brochures, exclusive of printing equipment.

In cases of reasonable doubt, competition must be solicited. Any decision by a District that procurement be restricted to one (1) potential vendor must be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need. Any delegation of authority by an officer above the level of purchasing official with respect to sole source determinations must be submitted in writing to the purchasing official. Any violation of these regulations by the purchasing department may, upon order of the Superintendent result in the temporary suspension not to exceed one (1) year of the Purchasing Department's authority to procure supplies, services or construction items under this section.

Based on the definition above as well as the response given to Mr. Poston during the Board Retreat on 10/20/14 (around minute 35 of the meeting based on the video on the HCS website), the information presented by First Floor/SFL+A is not proprietary and could be replicated by other A/E firms. This admission seems to support that they are not a single supplier of this type of service. Therefore, in my opinion, a sole source procurement could not be justified. However, if we were to move forward with a sole source justification, I believe that we should advertise in SCBO that it is our intent to do so. This would allow any potential firms the opportunity to refute whether the service we are seeking truly is a sole source. If no firms responded, it could be used as backup documentation in addition to the written justification. If firms responded that the services we are looking for cannot be provided by a sole source, then we would have justification to move forward in a different manner.

If we decide to move forward with the Design/Build delivery method (or some other method that allows for financing to be included), the Code provides rules and guidance on that as well. Article X, Section D. 2. c. states:

Competitive Sealed Proposals. (SC Reg. § 19-445.2095(F)). Article IV(B)(9)(j) of this Code provides that the following types of 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. Hazardous 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.

The information I have provided is from our Procurement Code which must be substantially similar to the State's Code. If you are interested, additional guidelines and regulations related to these types of solicitations and/or delivery methods can be found in the South Carolina Consolidated Procurement Code and Regulations as well as the Office of the State Engineer (OSE) Manual for Planning and Execution of State Permanent Improvements Part II. These documents can be found on the following websites: <http://procurement.sc.gov/PS/legal/PS-legal-procurement-law.phtm> and <http://procurement.sc.gov/PS/agency/PS-ose-manual.phtm>, respectively.