

Competition in Contracting Act

How Competition is Regulated in the Acquisition of Government Contracts

INTRODUCTION

The [Competition in Contracting Act](#) (CICA) was enacted in 1984 for the purpose of ensuring that the Federal Government can only enter into contracts upon “...full and open competition through the use of competitive procedures.” CICA requires that for all contract actions expected to exceed \$25,000.00, the contracting agency must publish the proposed contracts in the Commerce Business Daily (CBD). Currently, these notices must be published at least fifteen (15) days before the issuance of a solicitation for bids. The agencies are also required to allow at least thirty (30) days response time between issuing the solicitation and receiving bids (sealed bidding) or proposals (competitive proposals) (FAR 5.203). The term “[Full and open competition](#)” is defined as “*all responsible sources are permitted to submit sealed bids or competitive proposals*” and the responsible source is considered to be a contractor that:

1. Has adequate financial resources to perform the contract, or the ability to acquire such resources;
 2. Is able to comply with the required or proposed delivery or performance schedule;
 3. Has a satisfactory performance record;
 4. Has a satisfactory record of integrity and business ethics;
 5. Has the necessary organization, experience, technical skills, and accounting and operational controls, or the ability to obtain them;
 6. Has the necessary production, construction, and technical equipment and facilities or the ability to obtain them; and
 7. Is otherwise qualified and eligible to receive an award under applicable laws and regulations.
- (See 48 CFR 2.1)

The “full and open” competition requirement is met through the use of sealed bids, competitive proposals, combinations of competitive procedures (i.e. two-step sealed bidding), procurement of architectural or engineering services, competitive selection of basic research proposals, procedures established by the General Services Administration (GSA) for its multiple awards schedule program, and/or procurements conducted pursuant to 15 U.S.C. §644. *Id.* Each of these procedures is outlined further below.

SEALED BIDS

Sealed bids are responses that are provided by contractors via a Request for Bid (RFB). The bids are opened on the required bid submittal date and awards are typically made to the “lowest bidder.” *Id.* The requirements for the organization issuing the solicitation for sealed bids include permissible time to receive and review the bids, award is based on pricing, discussion with bidders will not be necessary, and the Government can logically expect to receive more than one bid. *Id.*

COMPETITIVE PROPOSALS

These types of bids are used when the organization seeking the bids cannot comply with the requirements for sealed bids. These proposals are typically submitted after a Request for Proposal (RFP) and provide the “best value” for the Government. *Id.*

COMBINATIONS OF COMPETITIVE PROCEDURES

As mentioned above, these include “two-step” sealed bidding. The two steps consist of (1) submission, evaluation, and discussion of the proposals without pricing and (2) sealed bids are submitted after it is determined which bidders had “technically acceptable” proposals throughout the first step. *Id.*

PROCUREMENT OF ARCHITECTURAL OR ENGINEERING SERVICES

This procedure requires compliance with the Brooks Act (40 U.S.C. §§541-559) which allows the Government to select architects and engineers based upon qualifications. The award for these types of proposals “...must be made to the highest-ranked offeror unless a reasonable price cannot be agreed upon.”

COMPETITIVE SELECTION OF BASIC RESEARCH PROPOSALS

This procedure results in bids that are based on a solicitation for research and development contracts for small businesses under 15 U.S.C. §638.

PROCEDURES ESTABLISHED BY THE GENERAL SERVICES ADMINISTRATION (GSA) FOR ITS MULTIPLE AWARDS SCHEDULE PROGRAM

This procedure requires that participation in the GSA program is open to all “responsible sources” as defined above and the contracts issued provide the lowest cost to meet the Government’s needs. *Id.*

PROCUREMENTS CONDUCTED IN PURSUANT TO 15 U.S.C. §644

This procedure involves small business set-asides (i.e. solicitations that are specially designated for award to small business entities), although all eligible small businesses are allowed to compete in the bidding process. *Id.*

CONCLUSION

Bidders need to be aware of the type of proposal or bid that is required, depending upon the solicitation. These requirements have been put in place to ensure that there is an equal level at which bidders can compete with one another for contract award. CICA ensures that the process remains as it was intended – through competitive procedures.

Thus, retaining the assistance of a professional consultant should be seriously considered to protect a contractor’s interests properly and thoroughly. The experts at Excell Consulting International, Inc. stand ready to assist and evaluate your company’s position and provide valuable and cost-effective guidance for your business.

In the end, you will be glad you made the call; by the way, it’s a FREE CALL.

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