

123:5-1-12

The reverse auction process.**(A) Definitions**

In addition to the definitions in sections 125.01 and 125.072 of the Revised Code, the following definitions shall apply:

- (1) "Qualifications summary" means documents required to be submitted by the bidder in order to determine responsibility and responsiveness;
- (2) "Auction event" means a competitive process conducted via the ~~internet~~Internet in which prequalified responsive and responsible bidders compete to submit the lowest price;
- (3) "Bid response" means all documents, whether attached or incorporated by reference, supplied by the bidder in response to an invitation to bid by reverse auction, including a qualifications summary and the lowest price submitted by the bidder during the auction event.

(B) At a minimum, the invitation to bid by reverse auction ("ITB") will contain the following information:

- (1) Instructions and information to bidders concerning the submission of qualifications summaries, including the name and address of the agency, department, office, institution, board or commission which is requesting to purchase supplies and/or services;
- (2) Instructions governing communications, including but not limited to instructions for submitting questions and posting answers electronically;
- (3) A description ~~of the scope~~ of supplies and/or services to be purchased;
- (4) Detailed specifications pertaining to the supplies and/or services to be purchased;
- (5) The contract terms and conditions including any requirement for ~~a bond and the amount of~~ appropriate and applicable financial assurances, such as a performance bond;
- (6) The date, time and place for delivery of the qualifications summary response;
- (7) The estimated date and time of the reverse auction event.

(C) The department shall ~~provide notice of an ITB to competing persons producing or dealing in the supplies or services to be purchased~~ post a notice electronically on the department's website. . Notice shall be given for the number of days determined by the department prior to the scheduled opening of the ITB. ~~The department may fulfill this notifications requirement by posting the ITB on its web site, at its discretion.~~

~~(D) Questions and answers~~

~~Unless otherwise noted in the ITB, bidders shall submit questions electronically through the state's designated web site. Responses to questions shall be posted on the web site in a timely manner. The state reserves the right to establish a deadline prior to the bid opening, after which the state is not required to respond to questions. The deadline for submitting questions will be included in the ITB.~~

~~(E)~~(D) Addenda to the ITB shall reference the portions of the ITB it amends ~~and shall be provided to all prospective bidders known to have received an ITB. The department may fulfill this addenda distribution requirement by posting the addenda on its web site, at its discretion.~~

~~(F)~~(E) Receipt and opening of qualifications summaries: the department shall consider the following upon receipt of a qualifications summary response or modification:

- (1) Upon receipt, each qualifications summary response and modification shall be time and date stamped but not opened and shall be stored in a secure place until the time and date set for the opening of qualifications summaries.
- (2) Qualifications summary responses and modifications shall be opened so as to avoid disclosure of contents to competing offerors. In order to ensure fair and impartial evaluation, qualifications summaries and related documents submitted in response to a reverse auction invitation to bid are not available for public inspection under section 149.43 of the Revised Code until after the award of the contract.
- (3) Qualifications summary responses and modifications shall be opened in the presence of the ~~office of the auditor of state and the~~ department of administrative services at the time, date and place designated in the ITB. A list of respondents shall be made available.
- (4) Any requests by a bidder for nondisclosure of ~~confidential or proprietary information or~~ trade secrets or assertions by the bidder that information in its qualifications summary is ~~confidential, proprietary, or~~ a trade secret shall be

examined by ~~DAS~~ the department to determine the validity of the request or assertion. Bidder requests or assertions must be in writing. If the parties do not agree, the bidder shall be informed in writing by ~~DAS~~ the department regarding what portions of the qualifications summary shall be disclosed. The bidder may withdraw its qualifications summary at any time prior to the completion of the evaluation phase of the process. The qualifications summary and related documents and information, unless ~~confidential, proprietary or~~ a trade secret, shall be open to public inspection upon award of the contract.

- (5) The signature of the bidder on the qualifications summary shall serve as the signature for the entire bid response. The qualifications summary shall include the names and contact information of the persons who will serve as the authorized representatives of the bidder during the auction event.

~~(G)~~(E) Any qualifications summary response received after the time and date set for receipt of responses is late. Any withdrawal or modification of a qualifications summary response received after the time and date set for the opening of responses at the place designated for opening is late. No late response, late modification, or late withdrawal will be considered unless received before completion of the evaluation, and the response, modification, or withdrawal would have been timely but for the action or inaction of state personnel. When deemed as late, a qualifications summary, response, modification, or withdrawal shall be marked as "late", remain sealed and shall be retained in the bid file.

~~(H)~~(G) Mistakes in ITB's

- (1) Correction or withdrawal of a bid response may be permitted due to an inadvertent, ~~nonjudgmental~~ mistake. If the mistake is attributable to an error in judgment, the bid response may not be corrected. Bid correction or withdrawal by reason of a ~~nonjudgmental~~ an inadvertent mistake is permissible but only if it does not affect the amount of the bid response.
- (2) A bidder may correct mistakes discovered before the time and date set for the qualifications summary opening by withdrawing or correcting the qualifications summary as provided in paragraph ~~(FG)~~ of this rule.
- (3) When the department of administrative services knows or has reason to conclude that a mistake has been made, the department will request the bidder to confirm the bid response. Situations in which confirmation will be requested include obvious, apparent errors in the qualifications summary, or a bid response during the auction event that is unreasonably lower than other bid responses submitted, or a clarification of terms, conditions or

specifications offered by the bidder.

~~(H)~~(H) The department will use information from the qualifications summaries to register bidders for the auction event. The state reserves the right to exclude bidders who are deemed not responsive or not responsible.

~~(I)~~(I) Notice to all bidders and invitation to auction event

(1) The department shall provide written notice to each bidder through ~~postal mail~~ or electronic means regarding the bidder's inclusion or exclusion from the qualified bidders list. ~~The notice to excluded bidders shall include an invitation to the auction event, with the date and time of the event and instructions for participation. The date and the time in this invitation shall supercede the estimated date and time written in the invitation to bid.~~

~~(J)~~(J) The department or its agent shall work with the bidder to prepare for the auction event. Preparation may include, but is not limited to: configuration of the auction computer system, testing of the bidder interface, delivery of the event ~~procedure manuals and other~~ documentation, and training.

~~(K)~~(K) Auction event

(1) Only those bidders on the qualified bidders list will be allowed to participate in the auction event.

(2) The department or its agent will provide the necessary administrative support to ensure that the integrity of the auction event is not compromised.

(3) The department or its agent will keep an event record, which will include the prices offered by the bidders. The event record will become part of the contract documents and a public record at the conclusion of the event.

(4) The bidder interface will be configured such that a bidder will not know the identity of competing bidders until the event is complete.

~~(5) The department or its agent will begin the event through electronic notification to all qualified bidders.~~

~~(6)~~(5) Bidders may submit multiple prices during the event. The lowest price offered will become the price portion of the bid response.

~~(7)~~(6) Bids must be submitted by, or under the direction of, an authorized representative of the bidder as designated in the qualifications summary.

~~(8)~~(7) The auction event will have a scheduled stop time. The event may be extended if bids are received within a predetermined amount of time prior to the scheduled stop time. Specific procedures on time extension shall be contained in the event qualification summary~~procedure manual that will be distributed to all qualified bidders~~. The event will conclude at either the scheduled stop time or the time at which all extensions are completed, whichever is later.

~~(M)~~(L) After the conclusion of the auction event, the state will consider the qualifications summary and the price offered during the auction event to determine the lowest responsive and responsible bidder.

~~(N)~~(M) The department reserves the right to reject any and all bid responses, award partial contracts, and/or rebid when:

- (1) Supplies and/or services are not in compliance with the requirements, specifications, and terms and conditions set forth in the ITB; or
- (2) Pricing offered is determined to be excessive in comparison with existing market conditions, or exceeds the available funds of the procuring entity; or
- (3) It is determined that awarding of any or all items will not be in the best interest of the state.

~~(O)~~(N) An apparent low bidder found not to be responsive or responsible shall be notified by the department of that finding and the reasons for it. Such notification may be given by electronic means.

~~(P)~~(O) Written notice of the award shall be provided to the successful bidder. Notice of award shall be ~~made available to the public~~posted on the department's website.

Effective: 03/28/2014

R.C. 119.032 review dates: 01/02/2014 and 03/17/2019

CERTIFIED ELECTRONICALLY

Certification

03/17/2014

Date

Promulgated Under: 119.03
Statutory Authority: RC 125.072
Rule Amplifies: RC 125.072, R.C. 119.032
Prior Effective Dates: 9/21/2004