

Contract Formation

Activity 16: Sealed Bidding

A method of contracting that, through an invitation for bids, solicits the submission of competitive bids, followed by a public opening of the bids.

Related Flow Charts: [Flow Chart 16](#)

Related Courses: [CLC 003: Sealed Bidding](#)

Part A: Sealed Bidding

| Tasks | FAR Reference(s) | Additional Information |
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| 1. Determine that all the conditions for sealed bidding are met. | FAR 6.401(a) Sealed bids [sealed bidding and competitive proposals]. | <p>Contracting officers are required to solicit sealed bids if the following circumstances exist:</p> <ul style="list-style-type: none">• Time permits the solicitation, submission, and evaluation of sealed bids;• The award will be made on the basis of price and other price-related factors;• It is not necessary to conduct discussions; and• There is an expectation that more than one sealed bid will be received. <p>Select two-step sealed bidding when:</p> <ul style="list-style-type: none">• More than one technically qualified source is expected to be available;• There is sufficient time for the two-step sealed bidding process;• Discussion of offers with offerors can be limited to determining the acceptability of the offered supplies or services; and• Final award can be made on price and price-related |

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| <p>2. Determine whether to follow two-step process for sealed bidding.</p> | <p>FAR 14.501 General [two-step sealed bidding].</p> <p>FAR 14.502 Conditions for use [two-step sealed bidding].</p> | <p>factors alone.</p> <p>Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available.</p> <p>Step one consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered.</p> <p>Step two involves the submission of sealed priced bids by those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with FAR Subparts 14.3 and 14.4.</p> <p>Proceed to Part B: Two-Step Sealed Bidding for procedures.</p> |
| <p>3. Prepare the noncommercial item invitation for bids (IFB) using the uniform contract format or a simplified format based on the requirements.</p> | <p>FAR 14.101(a) Preparation of invitation for bids [elements of sealed bidding].</p> <p>FAR 14.201 Preparation of invitations for bids [solicitation of bids].</p> <p>FAR 14.202-1 Bidding time [general rules for solicitation of bids].</p> | <p>Use information gathered during acquisition planning to complete each section of the solicitation.</p> <p>If using the uniform contract format then use the FAR Provision and Clause Matrix to select the appropriate provisions/clauses to include in the appropriate solicitation section.</p> <p>If using the simplified format use the Standard Form (SF) 1447.</p> <p>If necessary, prepare and include in the contract file justification why acceptable products cannot be acquired without the submission of bid samples.</p> <p>If necessary, document in the contract file the reasons why product acceptability cannot be determined without the submission of descriptive literature.</p> <p>Establish a response time that will give prospective bidders a reasonable opportunity to respond following release of the solicitation.</p> |

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| 4. Publicize the IFB to interested parties. | <p>FAR 14.203-1 Transmittal to prospective bidders [methods of soliciting bids].</p> <p>FAR 14.203-2 Dissemination of information concerning invitations for bids [methods of soliciting bids].</p> <p>FAR 14.205 Presolicitation notices [solicitation of bids].</p> <p>FAR 5.101 Methods of disseminating information.</p> <p>FAR 5.102 Availability of solicitations [dissemination of information].</p> <p>FAR Subpart 5.2 Synopsis of proposed contract actions.</p> | IFBs or presolicitation notices must be provided. |
| 5. When applicable, hold pre-bid conference. | FAR 14.207 Pre-bid conference [solicitation of bids]. | A pre-bid conference is a way to inform prospective bidders that explains the requirements early. The conference is held after the invitation has been issued and before the bids are opened. |
| 6. When applicable, amend the IFB. | FAR 14.208 Amendment of invitation for bids [solicitation of bids]. | <p>Changes in quantity, specifications, delivery schedules, opening dates, etc., or a correction to a defective or ambiguous invitation, require an amendment.</p> <p>Issue the amendment notice using the Standard Form (SF) 30, Amendment of Solicitation/Modification of Contract. An amendment notice issued before the bid opening must be distributed to all firms on the solicitation distribution list.</p> |

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| 7. When necessary, postpone bid opening. | FAR 14.402-3 Postponement of openings [opening of bids and award of contract]. | <p>A bid opening may be postponed even after the time scheduled for bid opening when:</p> <ul style="list-style-type: none"> • Informed of mail delays, transmission of bids failure or for causes beyond their control and; or • Emergency or unanticipated events interrupt normal governmental processes. <p>An announcement of the determination must be publicly posted.</p> <p>A note should be added to the file explaining the circumstances of the postponement.</p> |
| 8. Determine whether cancellation of the IFB prior to bid opening is appropriate. | FAR 14.209 Cancellation of invitations before opening [solicitation of bids]. | <p>Cancellation would be appropriate:</p> <ul style="list-style-type: none"> • Where there is no longer a requirement; or • Where amendments would be voluminous. <p>If the contracting officer determines to cancel, then send a notice of cancellation to all prospective bidders to whom invitations were issued upon cancellation of the IFB.</p> <p>The notice of cancellation must:</p> <ul style="list-style-type: none"> • Identify the invitation for bids by number and short title; • Briefly explain the reason; and • Where appropriate, assure prospective bidders that they will be given an opportunity to bid on any resolicitation. <p>Additionally, return bids unopened to the bidders.</p> <p>After IFB cancellation, determine whether to complete the acquisition through negotiation.</p> |

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| 9. Receive bids. | FAR 14.401 Receipt and safeguarding of bids [opening of bids and award of contract]. | <p>Safeguard all bids and attached documents unopened in a bid box or safe.</p> <p>Bidders are responsible for submitting bids, and any modifications or withdrawals, by the time specified in the IFB.</p> <p>If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated government office on the date that bids are due.</p> <p>A late bid will not be considered unless it is:</p> <ul style="list-style-type: none"> • Received before award is made; • Determined that accepting the late bid would not unduly delay the acquisition; and • Transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or • Acceptable evidence to establish that it was received at the government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids. <p>However, a late modification of an otherwise successful bid, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.</p> <p>Late bids and modifications that are not considered must be held unopened, unless opened for identification, until after award and then retained with other unsuccessful bids.</p> |
| 10. Accept modifications to or withdrawals of bids. | FAR 14.303 Modification or withdrawal of bids [submission of bids]. | A bid may be modified by any method authorized by the solicitation if the designated office receives notice not later than the exact time set for bid opening. |

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| 11. Open bids. | FAR 14.402-1 Unclassified bids [opening of bids]. FAR 14.402-2 Classified bids [opening of bids]. | Abstracts of bids for unclassified acquisitions must be available for public inspection. The general public may not attend bid openings for classified acquisitions. A bidder or its representative may attend and record the results if the individual has the appropriate security clearance. |
| 12. Record bids. | FAR 14.403 Recording of bids. | SF 1409, Abstract of Offers, or Optional Form 1419, Abstract of Offers—Construction (or automated equivalent), must be completed and certified as to its accuracy by the bid opening officer as soon after bid opening as practicable. |
| 13. Announce apparent low bidder. | FAR 14.402 Opening of bids. | The bid opening officer will announce the apparent low bidder. |
| 14. Determine whether there is a minor informality or irregularity in bid[s]. | FAR 14.405 Minor informalities or irregularities in bids [rejection of bids]. | A minor informality or irregularity is one that is merely a matter of form rather than substance. It also pertains to some immaterial defect in a bid or variation from the IFB's requirements that can be corrected or waived without prejudice to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the supplies or services being acquired. |
| 15. Determine whether to reject unreadable electronic bids. | FAR 14.406 Receipt of an unreadable electronic bid [opening of bids and award of contract]. | If a bid received at the government facility by electronic data interchange is unreadable to the degree that conformance to the essential requirements of the IFBs cannot be ascertained: <ul style="list-style-type: none"> • Immediately notify the bidder; or • Reject the bid absent such convincing evidence. |
| 16. Determine whether there is a mistake in bid. | FAR 14.407-3(g) Other mistakes disclosed before award. | Examine bids to identify: <ul style="list-style-type: none"> • Apparent clerical mistakes; or • Other apparent mistakes. |
| 17. Request verification of bids with suspected mistakes. | FAR 14.407-3(g) Other mistakes disclosed before award. | If the bid review identified an apparent mistake, immediately request bidder verification of the bid as intended. |

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| <p>18. Determine appropriate action on a bidder request for permission to correct an alleged mistake other than an apparent clerical error.</p> | <p>FAR 14.407-3 Other mistakes disclosed before award.</p> | <p>Any clerical mistake, apparent on its face in the bid, may be corrected before award.</p> <p>Request the bidder to:</p> <ul style="list-style-type: none"> • Provide evidence of the mistake and the bid intended. • State in writing whether the firm requests permission to correct or withdraw the bid. • If the evidence does not warrant permission to correct or withdraw the bid, the agency head may make a determination that the bid be neither withdrawn nor corrected. |
| <p>19. Determine whether the bid conforms to the essential requirements of the IFB.</p> | <p>FAR 14.404-2 Rejection of individual bids.</p> <p>FAR 14.404-4 Restrictions on disclosure of descriptive literature [rejection of bids].</p> <p>FAR 28.101-4 Noncompliance with bid guarantee requirements [bonds and other financial protections].</p> | <p>Any bid that fails to conform to the essential requirements of the invitation for bids must be rejected.</p> <p>Any bid that does not conform to the applicable specifications must be rejected unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation.</p> <p>Any bid that fails to conform to the delivery schedule or permissible alternates stated in the invitation must be rejected.</p> <p>Bids must be rejected when the bidder imposes conditions that would modify requirements of the invitation or limit the bidder's liability to the Government, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids must be rejected in which the bidder:</p> <ul style="list-style-type: none"> • Protects against future changes in conditions, such as increased costs, if total possible costs to the Government cannot be determined; • Fails to state a price and indicates that price must be "price in effect at time of delivery;" • States a price but qualifies it as being subject to "price in effect at time of delivery;" • When not authorized by the invitation, conditions or qualifies a bid by stipulating that it is to be considered |

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| | | <p>only if, before date of award, the bidder receives (or does not receive) award under a separate solicitation;</p> <ul style="list-style-type: none"> • Requires that the Government is to determine that the bidder's product meets applicable Government specifications; or • Limits rights of the Government under any contract clause. <p>A low bidder may be requested to delete objectionable conditions from a bid provided the conditions do not go to the substance, as distinguished from the form, of the bid, or work an injustice on other bidders. A condition goes to the substance of a bid where it affects price, quantity, quality, or delivery of the items offered.</p> <p>Any bid may be rejected if the contracting officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid, but the prices for individual line items as well.</p> <p>Any bid may be rejected if the prices for any line items or subline items are materially unbalanced.</p> <p>Bids received from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the bid opening date must be rejected unless a compelling reason determination is made.</p> <p>Low bids received from concerns determined to be not responsible pursuant to Subpart 9.1 must be rejected (but if a bidder is a small business concern, see FAR 19.6 with respect to certificates of competency).</p> <p>When a bid guarantee is required and a bidder fails to furnish the guarantee in accordance with the requirements of the invitation for bids, the bid must be rejected, except as otherwise provided in FAR 28.101-4 of all rejected bids, and any written findings with respect to such rejections, must be preserved with the papers relating to the acquisition.</p> |

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| 20. Determine responsibility and reasonableness of price. | FAR 14.408-2 Responsible bidder—reasonableness of price. | The contracting officer must determine that a prospective contractor is responsible (see Subpart 9.1) and that the prices offered are reasonable before awarding the contract. The price analysis techniques in FAR 15.404-1(b) may be used as guidelines. See Price Analysis, Activity 20, and Responsibility, Activity 22 for further discussion. |
| 21. Obtain any reviews or approvals required prior to contract award. | FAR 14.408-1(a)(3) Award [reviews]. | Obtain any approvals required by agency or contracting activity procedures. Satisfactorily: <ul style="list-style-type: none"> • Answer all questions; • Correct the contract where necessary; and • Do not award until all required reviews and approvals have been obtained. |
| 22. Issue notice of award. | FAR 14.408-1(c) General. | When a notice of award is issued, the formal award must follow it as soon as possible. |
| 23. Make award. | FAR 14.408 Award. | The contracting officer must make a contract award— <ul style="list-style-type: none"> • By written or electronic notice, • Within the time for acceptance specified in the bid or an extension (see FAR 14.404-1(d)), and • To that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the Government, considering only price and the price-related factors (see FAR 14.201-8) included in the invitation. |
| 24. Report the award to the Federal Procurement Data System-Next Generation (FPDS-NG). | FAR 4.603 Policy [contract reporting]. | Contracts whose estimated value is \$3,000 or more or that may be \$3,000 or more must be reported in FPDS-NG. Every modification to that contract, regardless of dollar value must be reported to FPDS-NG. |
| 25. Notify unsuccessful bidders. | FAR 14.409-1 Award of unclassified contracts. | The contracting officer must notify each unsuccessful bidder in writing or electronically within three days after contract award. |

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| 26. Ensure complete documentation of award is in the file. | FAR 14.408-7 Documentation of award. | The contract file must include the requirement for award to the responsible bidder responsive to the terms of the IFB; and either state that the accepted bid was the lowest bid received, or list all lower bids with reasons for their rejection in sufficient detail to justify the award. |
| 27. Synopsise contract award. | FAR 5.301 General. | Contract awards exceeding \$25,000 must be synopsisized through the GPE. |
| 28. Respond to protest, if applicable. | FAR Part 33 Protests. | Contracting officers must consider all protests and seek legal advice, whether protests are filed directly with the agency, the Government Accountability Office or the U.S. Court of Federal Claims. See Protests, Activity 28 for further discussion. |
| 29. If less than three bids were received, take appropriate action to increase competition for future requirements. | FAR 14.408-1(b) Award [less than three bids]. | Make award although a limited number of bids. Research for reasons relating to the small number of responses. Initiate, if appropriate, corrective action to increase competition in future solicitations. Document the contract file. |
| 30. Should there be an alleged mistake after award, request that the contractor support the alleged mistake. | FAR 14.407-4(e)(1) Mistakes after award [mistakes in bids]. | The written statement concerning the alleged mistake should include how the mistake occurred and the bid actually intended. |
| 31. Determine if there was a mistake and if the contracting officer should have been able to detect it. | FAR 14.407-4(c) Mistakes after award. | Determine if there is clear and convincing evidence that: <ul style="list-style-type: none"> • A mistake was made; and • The mistake was mutual or unilaterally made by the contractor. |

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| 32. Determine the appropriate action regarding the alleged mistake. | FAR 14.407-4 Mistakes after award. | <p>If there is no clear and convincing evidence of a mistake, take no action.</p> <p>If there is clear and convincing evidence of a mistake:</p> <ul style="list-style-type: none"> • Correct it when favorable to the Government and it can be done without changing the essential requirements of the specifications. • Never take contract action when correcting the would not be favorable to the Government or it was not a mutual mistake • Consider rescinding the contract when correcting the mistake is not favorable to the Government or no mutual mistake. |
| 33. Prepare a case file and obtain legal clearance before issuing a decision on any alleged mistake. | FAR 14.407-4(e) Mistakes after award. | The case file must contain the items specified in the applicable FAR part. |

Part B: Two-Step Sealed Bidding Procedures

| Tasks | FAR Reference(s) | Additional Information |
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| 1. Upon determination that two-step sealed bidding is appropriate for the acquisition, initiate the first step by preparing a request for technical proposals. | FAR 14.503-1 Step one [procedures]. | <p>The request must include, as a minimum, the following:</p> <ul style="list-style-type: none"> • A description of the supplies or services required. • A statement of intent to use the two-step method. • The requirements of the technical proposal. • The evaluation criteria, to include all factors and any significant subfactors. • A statement that the technical proposals must not include prices or pricing information. • The date, or date and hour, by which the proposal must be received (see FAR 14.201-6(r)). • A statement that: <ul style="list-style-type: none"> ○ In the second step, only bids based upon |

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| | | <p>technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for awards, and</p> <ul style="list-style-type: none"> ○ Each bid in the second step must be based on the bidder's own technical proposals. <ul style="list-style-type: none"> ● A statement that: <ul style="list-style-type: none"> ○ Offerors should submit proposals that are acceptable without additional explanation or information, ○ The Government may make a final determination regarding a proposal's acceptability solely on the basis of the proposal as submitted; and ○ The Government may proceed with the second step without requesting further information from any offeror; however, the Government may request additional information from offerors of proposals that it considers reasonably susceptible of being made acceptable, and may discuss proposals with their offerors. ● A statement that a notice of unacceptability will be forwarded to the offeror upon completion of the proposal evaluation and final determination of unacceptability. ● A statement either that only one technical proposal may be submitted by each offeror or that multiple technical proposals may be submitted. When specifications permit different technical approaches, it is generally in the Government's interest to authorize multiple proposals. If multiple proposals are authorized, see 14.201-6(s). |
| <p>2. Continue the first step by synopsising the request for technical proposals.</p> | <p>FAR Part 5.201 General [synopses of proposed contract actions]. FAR 14.503-1 Step one [procedures].</p> | <p>The requests for technical proposals must be synopsised in accordance with FAR Part 5.</p> |

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| 3. Continue the first step by receiving technical proposals. | FAR 14.503-1(c) Step one [procedures]. | <p>Upon receipt, the contracting officer must:</p> <ul style="list-style-type: none"> • Safeguard proposals against disclosure to unauthorized persons; • Accept and handle data marked in accordance with FAR 15.609; and • Remove any reference to price or cost. |
| 4. Continue the first step by evaluating technical proposals submissions. | FAR 14.503-1(e) Step one [procedures]. | <p>Evaluations must be based on the criteria in the request for proposals but not consideration of responsibility as defined in FAR 9.1.</p> <p>Proposals are to be categorized as:</p> <ul style="list-style-type: none"> • Acceptable; • Reasonably susceptible of being made acceptable; or • Unacceptable. |
| 5. Determine whether there are sufficient acceptable proposals to ensure adequate price competition. | FAR 14.503-1(f) Step one [procedures]. | IFBs are issued to offerors whose technical proposals have been determined acceptable under the first step. Limiting competition in the second step to acceptable proposals is an exception to the normal sealed bid procedures but is an essential element of two-step sealed bidding. |
| 5a. If there is a sufficient number of acceptable proposals to ensure adequate price competition, return to the sealed bidding process. | FAR 14.503-1(f) Step one [procedures]. | Follow sealed bidding procedures. |
| 5b. If there is an insufficient number of acceptable proposals to ensure adequate price competition, continue the first step by obtaining any required reviews prior to obtaining or opening discussions. | FAR 14.503-1(f) Step one [procedures]. | |

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| 6. Request clarifications or proposal revisions. | FAR 14.503-1(f) Step one [procedures]. | In initiating requests for additional information, the contracting officer must an appropriate time for bidders to conclude discussions, if any, submit all additional information, and incorporate such additional information as part of their proposals submitted. Such time may be extended in the discretion of the contracting officer. |
| 7. Continue the first step by evaluating clarified and/or revised step one technical proposals. | FAR 14.503-1(f) Step one [procedures]. | If the additional information incorporated as part of a proposal within the final time fixed by the contracting officer establishes that the proposal is acceptable, it must be so categorized. Otherwise, it must be categorized as unacceptable. |
| 8. Determine whether there are sufficient acceptable proposals to ensure adequate price competition. | FAR 14.503-1(f) Step one [procedures]. | IFBs are issued to offerors whose technical proposals have been determined acceptable under the first step. Limiting competition in the second step to acceptable proposals is an exception to the normal sealed bid procedures but is an essential element of two-step sealed bidding. |
| 8a. If there is a sufficient number of acceptable proposals to ensure adequate price competition, return to the sealed bidding process. | FAR 14.503-1(f) Step one [procedures]. | Follow sealed bidding procedures. |
| 8b. If there is an insufficient number of acceptable proposals to ensure adequate price competition, discontinue the two-step sealed bidding process, and acquire the goods or services through contracting by negotiation. | FAR 14.501(i) Step one [procedures]. | If it is necessary to discontinue two-step sealed bidding, the contracting officer must include a statement of the facts and circumstances in the contract file. Each offeror must notified in writing. When step one results in no acceptable technical proposal or only one acceptable technical proposal, the acquisition may be continued through contracting by negotiation. |