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Evaluating Responsive Bids

Eileen Youens
UNC School of Government

Session Objectives

- Learn and apply the legal standard for determining what constitutes a responsive bid.
- Develop a framework for analyzing responsiveness.
- Explore different perspectives about what constitutes a “fair” evaluation of a bid.

What is Responsiveness?

- A legal requirement found in
 - Statutes, local ordinances, or regulations
- Or
- Applied by courts even without legislation
- A nonresponsive bid is not valid and must be rejected.
- A contract awarded to a nonresponsive bidder is void.

Responsiveness Defined

- “A responsive bid conforms to the *material* elements of an invitation to bid.”
- “Bids must conform *in all material respects* to the criteria in the invitation to bid.”
- “A responsive bid *conforms substantially* to specifications and does not contain a *material variance*.”

Exercise

- Why is responsiveness a legal requirement in public bidding?

(Discuss at your table and summarize the top two reasons)

Responsibility vs. Responsiveness

Responsibility

- Relates to the bidder's qualifications.
- Evidence of responsibility is sometimes obtained after the bid opening.
- Determining responsibility sometimes involves discretion and judgment by the awarding authority.

Responsiveness

- Relates to the bid document(s) itself.
- A nonresponsive bid cannot be cured after bids are open.
- The determination of responsiveness is not discretionary (although it does require interpretation of the standard).

Example

- Bid specifications require bidders on a jail construction project to submit information about their recent experience on similar projects.
- Bidder A does not include the information with the bid. Bidder A is:

Nonresponsive

Not responsible

Example (con't)

- Bid specifications require bidders on a jail construction project to submit information about their recent experience on similar projects.
- Bidder B submits information showing that his experience is limited to small building repair projects. Bidder B is:

Nonresponsive

Not responsible

Bid Withdrawal vs. Bid Rejection

- Most bidding procedures allow withdrawal of a bid with documentation of a clerical error.
- If the withdrawal standard and procedures are met, a bid that is nonresponsive may be withdrawn.

Example

- Bid form listing several items is received with no bid listed for one item.
- Bidder may withdraw if procedure is followed and bidder can demonstrate a clerical error.
- The bid may also be deemed nonresponsive if the item is mandatory in the bid.

No Correction Allowed

- Bidding procedures generally DO NOT allow correction of bids in order to avoid withdrawal or rejection.

Waiver of Bid Defects

- What provides authority to accept a bid that contains a defect?
- Specifications may state the authority to “waive minor irregularities, technicalities, or informalities.”
- Legal standard only requires rejection if defect is “material.”

When *must* a bid be rejected?

- Does not comply with applicable law.
- Does not provide what the unit seeks to acquire (either too much, or too little).
- Contains a material defect:
 - Waiver would give the bidder a competitive advantage over the other bidders.

Exercises:

- Each group will take on one of the following roles:
 - (1) low bidder; (2) second-low bidder;
 - (3) awarding authority
- For each scenario, decide whether you think the bid
 1. Must be rejected as nonresponsive;
 2. May be accepted because the defect is not material (defect may be waived); or
 3. Must be accepted as responsive.

Scenario 1

- Bid specifications require bidders to submit a corporate resolution on a blank resolution form provided by the unit. The lowest bidder submits a corporate resolution on the corporation's own form rather than the one provided in the bid package. The resolution is in all other respects acceptable.
 1. Must be rejected as nonresponsive;
 2. May be accepted because the defect is not material (defect may be waived); or
 3. Must be accepted as responsive.

Scenario 2

- The low bid on a construction project does not contain the affidavit acknowledging receipt of the final addendum to the specifications. The addendum added quantities to several line items on the bid sheet. The face of the bid does not show whether the additional quantities have been incorporated into the bid price.
 1. Must be rejected as nonresponsive;
 2. May be accepted because the defect is not material (defect may be waived); or
 3. Must be accepted as responsive.

Scenario 3

- The bid form specifies a 120-day schedule for the proposed project. The low bidder offered a substantially lower price on the project with a modified time to completion of 240 days. The chief administrator in charge of the project indicates that the longer schedule is acceptable.
 1. Must be rejected as nonresponsive;
 2. May be accepted because the defect is not material (defect may be waived); or
 3. Must be accepted as responsive.

Scenario 4

- A public bid opening is scheduled for 2:00 p.m. Several vendors are present when the purchasing official announces that receipt of bids is closed. At 2:03, a bidder arrives and announces that he was late due to a malfunctioning elevator in the building. All bidders present agree to waive any objection to accepting the bid.
 1. Must be rejected as nonresponsive;
 2. May be accepted because the defect is not material (defect may be waived); or
 3. Must be accepted as responsive.

Framework for Analyzing Responsiveness

- Does the bid comply with legal requirements? If not – reject.
- Does the bid provide what the unit seeks to acquire? If not – reject.
- Does the bid contain an error or defect?
 - Notify the bidder of procedures for withdrawal
 - Analyze whether error or defect is material or waivable (Does it give the bidder a competitive advantage over the other bidders?)

Questions?

- Eileen Youens – 919-962-0942,
eyouens@sog.unc.edu