Chapter 22 - IT Competitive Sealed Bidding/Invitation for Bid (IFB)

Chapter Highlights

Purpose: This chapter covers both policies and guidance for competitive sealed bidding and the invitation for bid (IFB) procurement method used in the acquisition of IT goods and services, excluding professional services.

Key points: In competitive sealed bidding, it is important that the IT goods or services being procured are capable of being specifically described so that bids can be evaluated against the description in the IFB requirements. Terms and conditions in an IFB are nonnegotiable. It is imperative that the IFB include all mandatory, statutory, special IT and other terms and conditions required by the Commonwealth and by the procuring agency.

- Public opening and announcement must be made of all bids received.
- Award is made to the lowest responsive and responsible bidder.
- If an agency receives two or more responses to an IFB that meet the criteria established in Section 2.2-4328.1, the agency may only select among those bids.

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22.0 Introduction

Competitive sealed bidding is a method of bidder selection, other than for professional services (§ 2.2-4302.1). The types of IT contracts resulting from competitive sealed bidding are usually those that provide for one-time purchases that are agency-specific and term contracts that reflect repetitive purchases of IT goods by agencies over a period of time. An invitation for bid selection (IFB) process should not be used for procuring Cloud/Software as a Service (SaaS) solutions or other complex IT services. IFBs can also be used to solicit multiple award contracts that list more than one bidder of similar IT items. Refer to Chapter 1, Purpose and Scope, of this manual, for VITA authority and delegation approval requirements for the IFB procurement method.

§ 2.2-4302.1 of the VPPA includes the following elements in competitive sealed bidding:

- Issuance of a written IFB containing, or incorporating by reference, the specifications and contractual terms and conditions applicable to the procurement.
- The IFB shall include a statement of any requisite qualifications of potential bidders.
- State public bodies must post IFBs on eVA for at least 10 days prior to the date set for the receipt of bids and may elect elect to publish IFBs in a newspaper of general circulation and bids may be solicited directly from potential bidders. Local public bodies are encouraged to post IFBs on eVA in addition to their other postings.
- Public opening and announcement of all bids received.

- Evaluation of the bids based on the requirements set forth in the invitation.
- Award is made to the lowest responsive and responsible bidder.

In competitive sealed bidding, it is important that the IT goods or services being procured are capable of being specifically described so that bids can be evaluated against the description in the IFB. After evaluation, an award is made to the lowest responsive and responsible bidder, or if multiple awards are so provided in the IFB, awards may be made to the lowest responsive and responsible bidders. Award may be made to a reasonably priced DSBSD-certified small business that is other than the lowest priced bidder when the provision for such an award is specifically included in the IFB.

For an overview of the complete IFB process, please refer to Appendix 22.0 of this manual.

22.1 Preparing and issuing an IFB

Competitive sealed bidding includes the issuance of a written IFB containing IT specifications, scope of work/purchase description and the contractual terms and conditions applicable to the procurement. Before developing an IFB, agencies are urged to first check the VITA website for available statewide contracts which may serve their procurement need(s). These are available at this URL: http://vita.cobblestonesystems.com/public/. Each agency may have and use its own preferred IFB document template. Subsections below highlight special areas of consideration when developing an IT IFB.

22.1.1 Terms and conditions

Terms and conditions in an IFB are non-negotiable. It is imperative that the IFB include all mandatory, statutory and other terms and conditions required by the Commonwealth and by the procuring agency. Additionally, the IFB must include any special IT a terms and conditions required by VITA or any Federal grant mandatory flow down. The terms or conditions must also include how the agency will publicly post the notice of award or announce a decision to award the contract. IFBs should include a statement that "Any vendor-supplied terms that are in addition to or at variance with the Commonwealth's will be of no effect." It is recommended NOT to issue any IFB for cloud services solutions, since the required Additional Cloud Services Terms and Conditions are often negotiated.

22.1.2 Small business requirements

As part of the Commonwealth's commitment to promote and encourage the participation of small businesses in public procurement, procurements of IT goods and services up to $100,000 shall be set aside for qualified DSBSD-certified IT small business participation to achieve the Commonwealth's goal that 42% of its purchases be made from small businesses. Further, VITA is committed to enable a minimum of three percent (3%) participation by service disabled veteran businesses as defined in Virginia Code § 2.2-2000.1 and § 2.2-4310 when contracting for goods and services. If available, four (4) qualified DBSBD-certified small business sources including at least one micro business.

IT IFBs over $100,000 shall include a requirement for offerors to submit, as part of their bid, a Supplier Procurement and Subcontracting Plan. If a bidder is a DSBSD-certified small business, the bidder shall so indicate in its bid response. If the bidder is not a DSBSD-certified small business, the bidder is required to identify the portions of the contract the bidder plans to subcontract to DSBSD-certified small business by completing and returning the Supplier Procurement and Subcontracting Plan. A copy of the Supplier Procurement and Subcontracting Plan form is available on the VITA website at the following URL: https://www.vita.virginia.gov/procurement/policies--procedures/procurement-policies/.

Please refer to Chapter 7.1 of this manual above for more detailed policy requirements and of the DSBSD-certified small business program. Please also refer to the following VITA policies: Small Purchase Policy and IT Procurement Policy for Enhancing Opportunities for Small, Women- and Minority-Owned Businesses, found at this location: https://www.vita.virginia.gov/procurement/policies--procedures/procurement-policies/.

22.1.3 Bids from water or energy efficient bidders

If an executive branch agency receives two or more bids in response to an IFB for goods that are Energy Star Certified, meet the Federal Energy Management Program's (FEMP) designated efficiency requirements, appear on FEMP's designated efficiency requirements, appear on FEMP's Low Standby Power Product List, or are WaterSense Certified, the agency may only select among those bids (See Virginia Code § 2.2-4328.1).

22.1.4 Technical and functional requirements and specifications

The IT IFB may include special requirements including life-cycle costing, value analysis and other criteria such as testing, quality, workmanship, delivery and suitability for a particular purpose to help determine acceptability. These requirements should be described accurately and completely. Unless the public body has provided for prequalification of bidders, the IT IFB shall also include any requisite qualifications of potential bidders. The following guidelines apply when writing IFB technical and functional requirements:

- Verify that the requirements/specifications accurately define the IT goods or services being procured. An error or omission can be costly, so it is important to validate them before the IFB is posted.
- Perform a requirements/specifications validity check. Do the goods orservices specified provide the functions which best support the business owner's needs?
- Perform a requirements/specifications consistency check to ensure there are no conflicts.
- Requirements and specifications should be checked for completeness. Are all functions required by the business owner included? Are all federal, Commonwealth or VITA IT requirements, standards or specifications included?
- Perform a reality check. Can the requirements be implemented given the project's or business owner's available time, budget, resources and technology? Are the requirements realistically testable?
- Are the requirements written so that they can be properly understood?
- Can the requirements be changed without a large impact on other requirements?

An IFB for technology goods or services should include requirements that are broad enough to encourage free and open competition and that are compatible with industry-standard technology products and services.

22.1.5 Used or newproducts

A bid must offer new items of new or current design unless the IFB specifies that used, reconditioned or remanufactured products are acceptable.

22.1.6 Prohibition on the use of certain products and services

Virginia Code § 2.2-5514 prohibits the use of any hardware, software or services that have been prohibited by the U.S. Department of Homeland Security for use in federal systems.

22.1.7 Use of brand names/substitutions

When a bid contains a brand name, trade name, catalog number, "or equal" or "as per sample" other than that specifically named in the IFB's specifications and the bidder proposes to furnish this equal substitute commodity, such fact shall be noted on the bid sheet or on a separate page attached to the bid. Information or descriptive literature explaining the substitution item must be attached to the bid. Failure to provide literature for substitutions may be grounds for rejection of the bid. When the IFB's specified item(s) must be compatible with or fit into an existing installation, or due to other essential reasons, the business owner may decide that a substitution cannot be accepted.

For a detailed explanation of the use, and limitations on use, of brand names in IT procurements, please see Chapter 8.6 of this manual above.

22.1.8 Price

Unless the IFB specifies otherwise, a bidder shall submit a firm, fixed price for the goods and services being purchased for the term of the contract. Bidders must extend unit price to fractions. The price a bidder submits in response to an IFB shall include all travel expenses for the bidder to perform the contract in accordance with the Commonwealth's authorized per diem rates published by the Department of Accounts and available at: http://www.doa.virginia.gov/. The Commonwealth will not pay travel expenses that are not included in the bid price. Also, unless otherwise specified in the IFB, all items are bid F.O.B. destination.

If price negotiations may be a possibility due to budget constraints, such negotiations may be undertaken with the apparent low bidder only under conditions and procedures described in writing in the IFB and approved by the public body prior to issuance of the IFB.

22.1.9 Reporting, inspection and testing requirements

The IFB should clearly state requirements for reporting, inspection, testing, examination, etc.; for example, "all items are subject to inspection and testing." Items that do not meet specifications or requirements will be rejected. Failure to reject upon receipt, however, does not relieve the bidder of liability. When subsequent tests are conducted after receipt and reveal failure to meet the specifications, the purchasing body may seek damages regardless of whether a part or all of the items have been consumed.

22.1.10 Pre-bid conferences/site visits

All pre-bid conferences and/or site visits shall be described in the IFB. If attendance at such a conference or site visit is a prerequisite for bidding, the public notice period shall be long enough to provide adequate opportunity for potential bidders to obtain a copy of the IFB and attend. Mandatory pre-bid conferences scheduled during a period of suspended State business operations should be rescheduled to a date and time which will permit notification to all potential bidders.

22.1.11 Bidder samples

Bidders generally shall not be required to furnish bid samples unless there are characteristics of a product that cannot be described adequately in the IFB's specifications. Bid samples will only be used to determine the responsiveness of the bid and will not be used to determine a bidder's ability to produce the required items. Samples may be requested to verify quality levels or to test equipment to determine conformance with the specifications stipulated in an IFB and/or to determine ability to interface with existing equipment. When bidders are requested by language included in the IFB or by request during the evaluation process to provide sample supplies or equipment or examples of work, they should be advised that it is at their own expense. Such requests shall fully describe the samples required; state the number of samples required; if appropriate, the size of the samples to be submitted; state that examination or testing will be conducted; and list all the characteristics for which the samples will be examined or tested. All samples are subject to test. Submitted samples must clearly identify the bidder's name, the bid number and the item the sample represents in the bid.

Samples required in the IFB must be submitted prior to the bid opening date and be accompanied by a descriptive invoice indicating if bidder desires return of sample(s) not used or made useless through tests. Samples should be properly labeled, stored, and controlled by the receiving agency until disposal or return to the bidder. Failure to submit samples when requested may result in rejection of a bid. Bids will be rejected as nonresponsive if the samples fail to conform to each of the characteristics listed in the invitation. Unsolicited samples submitted in response to an IFB will not be evaluated and the agency may dispose of these samples.

Return of submitted samples that are not destroyed in testing will be at bidder's risk and expense upon the bidder's request. Samples belonging to bidder(s) awarded a contract(s) may be retained by the procuring agency for comparison with deliveries until the completion of the contract(s). Samples not picked up by non-awarded bidders within 30 days of award will become the property of the purchasing body. If, after 60 days of award, non-awarded bidders have not picked up their samples or provided disposition instructions, samples may be offered to other agencies or internal operating departments for use. If the items have significant reusable utility value, they should be disposed of using established property disposal procedures.

22.1.12 Descriptive literature

Bidders should not be required to furnish descriptive literature unless it is needed before award to determine whether the product(s) offered meet the specification and to establish exactly what the bidder proposes to furnish. If required for bid response, however, the IFB should clearly state what descriptive literature the bidders must furnish, the purpose for requiring the literature, the extent of its consideration in the evaluation of bids and the rules that will apply if a bidder fails to furnish the literature before the specified closing date of the IFB.

The procuring agency should document in the procurement file the reasons why product acceptability cannot be determined without the submission of descriptive literature.

22.2 Validity period ofbids

Unless stated otherwise in the IFB, once opened all bids are irrevocable until an award is made. Following award, bidders will have the option to honor their bid or to make a written request to withdraw their bid from consideration.

22.3 IFB sources

Sources for IFBs can be located from conducting an industry market analysis as well as by performing a "Small, Women and Minority (SWaM) Vendor Search" from the list made available by DSBSD (refer to https://www.sbsd.virginia.gov/).

IT solicitations up to $100,000 shall be set aside for qualified DSBSD-certified small businesses. In estimating the total cost of the procurement, all possible renewal periods on a term contract must be considered to determine if the procurement will exceed $100,000. Set asides do not apply to orders placed against an optional use or mandatory use statewide contracts.

If two or more DSBSD-certified small businesses cannot be identified as qualified to set aside the procurement under $100,000, the procurement file shall be documented with efforts made through eVA and DSBSD to obtain the number of required sources. An award may be made to a qualified, reasonably ranked small business that is other than the highest-ranking offeror if the price submitted is fair and reasonable and does not exceed five percent (5%) of the lowest responsive and responsible noncertified bidder. If the set-aside is withdrawn and the procurement awarded to other than a DSBSD-certified small business, the reason shall be documented in the procurement file.

An eVA quick quote will normally be used to solicit bids for IT goods and services (with the exception of telecommunications) for purchases up to $10,000. If available, two or more qualified DSBSD-certified microbusiness sources should be solicited in writing or via eVA Quick Quote. The agency is responsible for determining price reasonableness; refer to Chapter 9 of this manual, Determining Fair and Reasonable Pricing. If no acceptable bids or offers are received, the set-aside may be withdrawn and the requirement re-solicited using competitive, non-set-aside, procedures. If the agency is unable to proceed with the planned set-aside for a micro business, the agency shall document the procurement file to that effect, including stating the basis for that determination.

Purchases over $250,000, unless delegated, shall be conducted by VITA. These procurements may be set- aside, in whole or in part, for qualified DSBSD-certified small businesses. If these procurements are set aside, a minimum of six (6) qualified DSBSD- certified small businesses, if available, shall be solicited. If the procurement is set aside and the agency receives no acceptable bids or offers, the set-aside may be withdrawn, and the procurement re-solicited utilizing non-set-aside procedures.

In addition to the public notice, bids may be solicited directly from potential bidders. Any such direct IFBs shall include businesses selected from a list made available by DSBSD (refer to https://www.sbsd.virginia.gov/).

22.4 Modifications, clarifications, and revisions to the IFB

22.4.1 Modifications to the IFB

When it becomes necessary to issue an amendment to a posted IFB, the amendment must be made by written amendment, which will be posted in eVA. Amendments should be issued to make any modifications to the original IFB including quantity, purchase descriptions, delivery schedules, opening dates or to correct defects or ambiguities in the IFB. Amendments should furnish to other bidders information given to one bidder if the information will assist other bidders in submitting bids or if the lack of information would be inequitable to other bidders. When an addendum is issued that extends the time for the bidder to prepare an IFB response, the opening date should be extended not less than 10 days after the issue date of the addendum. Any amendments to an IFB should meet the following guidelines:

- Be a legitimate change that is necessary due to unforeseen circumstances or predicaments which occur as the procurement progresses. This change must have been unforeseen at time of the IFB posting and not be an attempt to evade competition.
- Be within the scope of the original IFB.

22.4.2 Bidder requested IFB clarifications

If a bidder discovers an inconsistency, error or omission in the IFB, the bidder should request clarification from the issuing agency. Such clarification request should be made to the agency single point of contact (SPOC). Bidders should make their requests for clarification a minimum of five (5) working days before the date of the bid opening unless otherwise noted in the IFB. No other form of clarification request is acceptable.

22.4.3 Extension of bid acceptance period

Should difficulties be encountered by an agency after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for re- advertisement.

22.4.4 Postponement of bid opening

If it becomes necessary to postpone a bid opening, the agency shall issue the appropriate amendments postponing or rescheduling the bid opening. When the procuring agency is closed due to force majeure, the bid opening will be postponed until the same time on the next official business day.

22.5 Cancelling an IFB

An IFB may be canceled or rejected at any time prior to contract award. An agency may cancel any IFB before or after the due date of the bid responses and may cancel before or after receiving bids. Nothing can compel the award of a contract. The reason for cancellation of the IFB must be documented and made a part of the procurement file. A public body may not cancel or reject an IFB, a request for proposal, any other IFB, bid or proposal to avoid awarding a contract to a particular responsive and responsible bidder or offeror. (Virginia Code § 2.2- 4319)

22.5.1 Cancelling an IFB before receipt of bids

If the IFB has been issued but the due date specified in the IFB has not arrived, the agency may cancel the IFB. The issuing agency shall utilize the following procedure in such instances:

- A cancellation notice must be posted promptly in eVA. If the IFB was advertised in a newspaper, the cancellation should also be published in the same newspaper. Notice shall also be provided to agency personnel responsible for receipt and opening of bids to prevent responses from being unintentionally opened.
- Any bids received should be returned unopened to the bidder.
- The reasons for cancellation or rejection of the IFB shall be documented and be made part of the procurement file.

22.5.2 Cancelling an IFB after receipt of bids

When it is determined after bid opening and prior to award that the requirements relating to the availability and identification of specifications have not been met by any bidder(s), the IFB shall be cancelled. Such determination by the agency should be based on one or more of the following criteria:

- Inadequate or ambiguous specifications were cited in the IFB.
- Specifications have been revised.
- The supplies or services being procured are no longer needed.
- The IFB did not provide for consideration of all factors of cost.
- Bids received indicate that the agency needs can be satisfied by a less expensive article differing from that on which the bids were invited.
- All otherwise acceptable bids received are at unreasonable prices.
- The bids were not independently arrived at in open competition, were collusive or were submitted in bad faith.
- For other reasons, cancellation is in the agency best interests.

If the determination is made to cancel the IFB, the bids may be rejected and the IFB canceled using the following procedures:

- A cancellation notice must be posted promptly in eVA and all websites displaying the IFB at the time the decision to cancel the IFB has been reached.
- Bidders should be notified in writing that the IFB has been cancelled and that duplicate bids, if provided, will be destroyed unless the bidder requests their return, at the bidder'sexpense.
- The opened bids will remain as part of the procurement file.
- The reasons for cancellation or rejection shall be made part of the procurement file.

22.6 Receipt and opening of sealed bids

All public bodies accepting bids must provide an option to submit bids or proposals through eVA, the Commonwealth's statewide electronic procurement system (Virginia Code § 2.2-4303). Local public bodies are encouraged to use eVA to offer an electronic submission option.

The SPOC assigned for the procurement shall only read the following information from each bid aloud:

- Names of bidders.
- Unit prices or low prices.
- Brand names and model numbers, if specifically requested by theattendees.
- Discounts but only if the IFB specifically asks for bidders to include discounts in their bid and the discount will be used to determine the award.

Other questions or bid concerns should not be answered until the evaluation phase is complete and the award decision has been made.

22.7 Late bids

Sealed bids received after the date and time specified for receipt in the IFB cannot be accepted or considered and must be marked “late” and returned unopened to the bidder.

22.8 Bid responses

Agencies assume no responsibility for costs incurred by the bidder prior to the award of any contract resulting from an IFB. In addition, an agency will not compensate a bidder for damages arising from inaccurate or incomplete information in the IFB specifications or from inaccurate assumptions based on the specifications. An agency will not be liable for any damages incurred by a bidder based on inaccurate or incomplete information in the IFB.

22.8.1 Acceptable bid signatures

The bid and all addenda submitted by the bidder by facsimile, or any other means must be signed. The original bid must be signed by a person authorized by the bidder’s company to do so. Typewritten or stamped signatures are not acceptable. The person signing must include his or her title, and if requested, must verify his or her authority to bind the company to a bid and contract. Failure to sign the face of the bid in the space provided will result in rejection of the bid unless the unsigned bid is accompanied by other signed documents indicating the bidder’s intent to be bound.

22.8.2 Responsiveness of bids

To be considered for award, a bid must comply in all material respects with the IFB. Bids should be filled out, executed and submitted in accordance with the instructions in the IFB. Acknowledgment of receipt of any IFB addenda must be returned prior to the time set for receipt of bids or accompany the bid. Failure to acknowledge receipt of any addendum may be cause for rejection of the bid.

Bidders are required to comply with all terms and conditions in the IFB, regardless of whether the bidder has knowledge of the terms and conditions or not or has included any statement or omission in its bid that indicates a contrary intention. The agency cannot agree to any additional or inconsistent terms or conditions proposed by the bidder as the terms and conditions of the IFB are non-negotiable.

22.8.3 Alternate bids

Unless the IFB specifically prohibits alternate bids, a bidder may submit alternate bids. An alternate bid is a bid submitted in knowing variance from the IFB’s specifications and may provide opportunity for a bidder to incorporate the latest in technology or suggest alternative pricing and efficiencies. An alternate bid must be clearly distinguished and marked by the bidder as an alternate bid. The alternate bid must be a complete bid and not refer to information in the bidder’s primary bid or any other alternate bid. The agency will decide whether or not to accept alternate bids. It may be discovered that an alternate bid suggests a revised specification or additional features that should be included in the original IFB. In this case, the agency may decide to reject all bids and rebid the requirement with a revised specification incorporating features of the alternate.

22.9 Evaluating bids

Following public opening and announcement of bids received, the agency shall evaluate the bids received based upon the requirements set forth in the IFB. (See Virginia Code § 2.2-4302.1.) During the evaluation period, bidders are not allowed to contact the procuring agency. The designated SPOC may contact a bidder for clarification, if needed, during the evaluation period. Any resulting contract must be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB. No bid shall be evaluated for any requirements or criteria that are not disclosed in the IFB. Bid responses are evaluated to determine compliance with all specifications and the ability of the bidders to perform.

22.9.1 Determining a responsive bidder

A bidder is responsive if its bid responds to the bid specifications in all material aspects and contains no irregularities or deviations from the specifications in the IFB that would affect the amount of the bid or otherwise give the bidder an unfair competitive advantage. (Refer to Virginia Code § 2.2-4301.) When evaluating a responsive bid, consideration is given to price, technical acceptability, conformity with specifications, purposes for which the technology goods and/or services were required, and the quality of the goods or services offered.

22.9.2 Determining a responsible bidder

A responsive bidder is a "responsible bidder" if the bidder has the capability, in all respects, to perform fully the contract requirements and the business integrity and reliability that will assure good faith performance. (See Virginia Code § 2.2-4301.) Agencies utilizing IFBs to purchase technology goods and services should use the following factors to determine whether a bidder is responsible:

- experience
- financial condition
- conduct and performance on previous contracts
- facilities
- management skills
- ability to execute the contract properly
- whether bidder has ever been disbarred by the federal government or Commonwealth.
- records of evaluation of performance as well as verifiable knowledge of agency business, contracting or audit personnel.
- determinations of violations of federal, state or local law or regulation.
- information supplied by the bidder, including bid or proposal information or financial data
- pre-award survey or information reports
- any other publicly available information
- Localities may include a determination of whether a bidder possesses the moral and business integrity and reliability that will assure good faith performance in order to determine bidders' responsibility

Failure of bidder to provide specifically requested relevant information may be grounds for a determination of non-responsiveness.

22.9.3 Determining the lowest bidder

The lowest bidder is the bidder who offers the lowest-cost goods or services in comparison to all other bidders. Discounts and incentives should not be considered in determining the lowest bidder unless the IFB specifically asked bidders to propose discounts and incentives and bidders are informed that the discount or incentive offered will be used to determine the award. After it is determined that the apparent low bidder is also responsive and responsible, the agency may proceed with an award to that lowest priced, responsive and responsible bidder. (See Virginia Code § 2.2-4301 and § 2.2-4302.1.)

The agency may determine that the apparent low bidder is not responsive or responsible and thus not eligible for award.

Award may be made to other than the lowest responsive and responsible bidder when the provision for such an award is included in the IFB. For procurements over $100,000 such awards must be approved in writing by VITA's Supply Chain Management Director or designee before issuance of such award. In those instances, where an award is made to other than the lowest price bidder or highest ranked offeror, the award shall be made to the lowest responsive and responsible bidder or highest ranking, qualified DSBSD- certified small business offeror. If the IFB is a set-aside for small business participation only, award to other than the lowest bidder clause would not be necessary.

22.9.4 Preference for Virginia bidders

Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident bidder of that state a percentage preference, then a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be allowed to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident bidder of a state with an absolute preference, the bid shall not be considered. The Department of General Services shall post and maintain an updated list of state-by-state reciprocal preference data on its website, (select the section titled "State by State Reciprocal Preference Data" on the eVA page at: https://eva.virginia.gov/i-buy-for-virginia.html.)

22.9.5 Determining a bidder is non-responsible and protests of non-responsibility determinations

After evaluation of criteria, an agency may determine that the apparent low bidder is not responsible (refer to § 2.2-4359, *Code of Virginia*). If a bidder who otherwise would have been awarded a contract is found to be non-responsible, a written determination of non- responsibility setting forth the reasons for the finding shall be prepared by the agency and included in the procurement file. Prior to the issuing a written determination of non- responsibility, the agency shall notify the low bidder of this finding, disclose the factual support for the finding and allow the low bidder an opportunity to inspect any documents that relate to the finding of non-responsibility.

The bidder will have five (5) business days after receipt of the notice to request an opportunity to inspect any documents that relate to the finding of non-responsibility. Within ten (10) business days after receipt of the notice, the bidder may submit rebuttal information to the agency challenging the non-responsibility determination.

Within five (5) business days of receiving the rebuttal information from the bidder, the agency shall issue its written determination of responsibility based on all information in its possession, including any rebuttal information provided by the bidder. The agency shall notify the bidder in writing of its determination. Such writing shall be delivered to the bidder by the agency through electronic means and through a certified mailing with return receipt requested. The agency's written determination of a bidder's non-responsibility shall state the basis for the determination. The agency's determination of non-responsibility shall be final unless the bidder appeals the agency's or determination within 10 days after receipt of the notice.

Bidder may appeal the agency's non-responsibility determination by instituting legal action against the agency as provided in Virginia Code § 2.2-4364. If the agency's determination of non-responsibility is reversed, the relief available to the bidder will be as set forth in Virginia Code § 2.2-4364 or § 2.2-4365, as applicable.

22.9.6 Bidder ineligibility

Any bidder who is refused permission to participate or disqualified from participation in public contracts shall be notified by the agency in writing (Virginia Code § 2.2-4357). Prior to the issuance of a written determination of disqualification or ineligibility, the agency shall:

- Notify the bidder in writing of the results of the evaluation.
- Disclose the factual support for the determination.
- Allow the bidder an opportunity to inspect any documents that relate to the determination, if bidder requests within five (5) business days after receipt of the notice.

Any bidder may challenge the agency's determination by submitting rebuttal information within ten (10) business days after receipt of the determination notice. The agency shall issue its written determination of disqualification or ineligibility based on all information in its possession, including any rebuttal information, within five (5) business days of the date the agency received such rebuttal information.

If the agency's evaluation reveals that the bidder should be allowed to participate in the procurement, the agency will cancel the disqualification action. If the agency's evaluation reveals that the bidder should be refused permission to participate, or should be disqualified from participation in the procurement, the agency shall notify the bidder. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in Virginia Code § 2.2- 4364. If upon appeal, it is determined that the agency's determination of a bidder's ineligibility was arbitrary and capricious or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

22.10 Rejection of bids

A bid be rejected in accordance with Virginia Code § 2.2-4319. If an agency rejects a bid, the reasons for rejection shall be made part of the contract file. An agency may not reject a a bid or solely to avoid awarding a contract to a particular responsive and responsible bidder.

An agency may reject any bid, in whole or in part, if any of the following circumstances exist:

- Bid offers supplies or services not in compliance with the requirements, specifications, or terms and conditions stated in the IFB.
- The price of the lowest responsive and responsible bid is excessive in comparison with market conditions or with the agency's available funds.
- The agency determines that awarding any item is not in its best interest.
- Forms required in the IFB do not contain complete information and the bid may be considered non-responsive. Information supplied by the bidder is not provided in the format specified in the IFB.
- The bid fails to acknowledge receipt of or comply with any IFBamendment(s).
- Bidder states in its IFB response that it will not accept an award unless the IFB terms and conditions are modified or altered.
- Bidder states it will only accept an award for all line items when the IFB allows award by line item or aggregate grouping of line items.
- The offer and award sheet of the IFB is not signed and there is no indication that the bidder is officiallyresponding.
- A bid item does not meet the stated specifications in the IFB, and the bidder has not indicated the item bid is an alternate.

22.11 Withdrawal ofbids and bid mistakes, alterations, andamendments

Refer to Virginia Code § 2.2-4330 for additional provisions regarding withdrawal of bids.

22.11.1 Withdrawal of bid before bid opening

A bidder may withdraw its bid, by written request, any time after the agency receives the bid and before the bid opening.

22.11.2 Withdrawal of bid after bid opening

A bidder may withdraw its bid within two business days after conclusion of the bid opening by written request if there is reasonable proof that an inadvertent mistake was made, and the correction cannot be determined with reasonable certainty. Inadvertent means inattentive or unobservant, due to oversight or without intention. This does not relieve a bidder from the responsibility for the submission of a correct bid. If the bidder then alleges a mistake in bid and can verify to the agency satisfaction that it was a nonjudgmental mistake, the bid may be withdrawn.

22.11.3 Appeal of denial of withdrawal of bid

A bidder may appeal the agency's decision to deny bidder to withdraw its bid pursuant to the provisions of Virginia Code §2.2-4358 the . The agency's decision will only be reversed if the bidder establishes that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

22.11.4 Minor informalities or irregularities in bids

Pursuant to Virginia Code § 2.2-4319(B), a public body may elect to waive minor informalities in bids. A minor informality or irregularity is one that is merely a matter of form and not of substance that can be corrected or waived without being prejudicial to other bidders. The agency either shall give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive the deficiency. Examples of minor informalities or irregularities include:

- Failure to return the number of copies of signed bids required by the invitation.
- Failure to furnish required information concerning the number of its employees.
- Failure to sign its submitted bid, but only if—
  - The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid itself); or
  - The firm submitting a bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by typewritten, printed, or stamped signature and submits evidence of such authorization and the bid carries such a signature.

22.11.5 Occurrence of bid change

A bidder who desires to change a bid already submitted shall withdraw the submitted bid and submit another bid before the closing date.

- Correction of bid before bid opening: If a bidder withdraws its bid and resubmits it with revisions, the revisions should be clearly identified and signed or initialed by the bidder. The omission of a bidder's signature or initials to a modification may result in the bid being determined non-responsive. Prior to submission of a bid, alterations may be made, but must be initialed by the person signing the bid. A bidder may correct mistakes, amend and/or withdraw a response if the procuring agency receives a written request before the due date and hour. The request must be signed by a person authorized to represent the firm or entity that submitted the bid.
- Correction of bid after bid opening but before award: A public body may permit a bidder alleging an inadvertent error to correct its bid after bid opening only if the mistake and the correction do not affect the amount of the bid or otherwise give the bidder an unfair competitive advantage.

Bids may not be corrected or withdrawn after award of a contract or issuance of an order. No plea or claim of mistake in a bid or resulting contract shall be available as a defense in any legal proceeding brought upon a contract or purchase order awarded to a bidder as a result of the breach or nonperformance of such contract or order. Mistakes shall not be corrected after award of the contract.

22.12 Request for clarification information from bidders

The agency may request additional information to evaluate a bidder's responsiveness to the IFB or to evaluate a bidder's responsibility. If a bidder does not provide the requested information, it may adversely affect the evaluation of the bidder's responsiveness and responsibility.

22.13 Negotiation with the lowest bidder

After the agency has evaluated the technology product or service for acceptability as set forth in the IFB, the bids are then evaluated to determine which bidders offer the lowest cost in accordance with the evaluation criteria set forth in the IFB. Only objectively measurable criteria that are set forth in the IFB shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost and ownership or life-cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but such evaluation factors shall be reasonable estimates based upon information the agency has available concerning future use and shall provide for the equitable treatment of all bids. Pricing for optional supplies or services or for renewal terms may not be considered, particularly when the pricing for such items or terms is unbalanced when compared to other pricing in the bid.

In accordance with the *Code of Virginia*, § 2.2-4318, unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the public body may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the public body prior to issuance of the IFB and summarized therein.

22.14 Posting of award

After evaluation, award is made to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the IFB, awards may be made to more than one bidder. Awards are to be posted on eVA for a minimum of ten (10) calendar days but should only be posted after all required written approvals are received by the agency from a federal sponsor, OAG and/or CIO.

22.15 Cancellation of award prior to performance

When an agency determines after an award has been made but before performance has begun that its requirements for the technology goods and services have changed since the IFB was issued, the award or contract may be canceled and either re-awarded. Alternatively, a new IFB may be issued if it is determined in writing that one or more of the following circumstances occurred:

- Inadequate or ambiguous specifications were cited in the IFB.
- Specifications included in the original IFB have since been revised.
- Supplies or services being procured through the original IFB are no longerrequired.
- The IFB did not provide for consideration of all factors of cost.
- The bids received in response to the IFB indicate that the needs of the agency can be satisfied by a less expensive article differing from the specifications included in the original IFB.
- The bids received did not appear in the agency's opinion to be not independently arrived at or in open competition. The bids were collusive or were submitted in bad faith.
- An administrative error of the issuing agency was discovered prior to performance.
- The agency has decided that cancellation of the award is in the best interest of the public.

22.16 Procurement file documentation requirements

The procurement file for competitively sealed bid procurements should contain:

- A copy of the printed IFB document
- Proof of posting – eVA
- Bid tabulation
- Signed, original tabulation sheet
- Identification of date, time and place of bid opening and attendees

- List of all bids received
- List of bids ranked numerically with the lowest bidder at number one
- Documentation of any negotiations
- Any bid protest correspondence
- Documentation to support the inability to set-aside the procurement for a small business or a small business owned by a disabled veteran.

Documentation of factual support explaining why a bidder is determined to be nonresponsive or non-responsible, including any protest/decision documentation and evidence of having supplied written notification to bidder

- Documentation showing verification of non-debarred status with the DGS Commonwealth debarred list and with the federal EPL system
- Documentation covering receipt and disposition of samples
- Documentation as to any amendments, cancellations, denial of bid withdrawals, etc.