**Section 734.855 Bidding**

As an alternative to the maximum payment amounts set forth in this Subpart H, one or more maximum payment amounts may be determined via bidding in accordance with this Section. Each bid must cover all costs included in the maximum payment amount that the bid is replacing. Bidding is optional. Bidding is allowed *only if the owner or operator demonstrates that corrective action cannot be performed for amounts less than or equal to maximum payment* [415 ILCS 5/57.7(c)(3)(C)]set forth in this Part. Once a maximum payment amount is determined via bidding in accordance with this Section, the Agency may approve the maximum payment amount in amended budgets and other subsequent budgets submitted for the same incident.

a) Bidding must be *publicly-noticed, competitive, and sealed bidding that includes, at a minimum, the following:*

1) *The owner or operator must issue invitations for bids that include, at a minimum, a description of the work being bid and applicable contractual terms and conditions. The criteria on which the bids will be evaluated must be set forth in the invitation for bids. The criteria may include, but shall not be limited to, criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measureable.*

A) The invitation for bids must include instructions and information concerning bid submission requirements, including but not limited to the time during which bids may be submitted, the address to which bids must be submitted, and the time and date set for opening of the bids. Invitations for bids may include, but shall not be limited to, contract terms and conditions, including but not limited to warranty and bonding or other security requirements, and qualification requirements, which may include, but shall not be limited to, factors to be considered in determining whether a bidder is responsible pursuant to subsection (d) of this Section. The time during which bids may be submitted must begin on the date the invitation for bids is issued and must end at the time and date set for opening of the bids. In no case shall the time for bid submission be less than 14 days.

B) Each bid must be stamped with the date and time of receipt, and stored unopened in a secure place until the time and date set for opening the bids. Bids must not be accepted from persons in which the owner or operator, or the owner's or operator's primary contractor, has a financial interest.

2) *At least 14 days prior to the date set in the invitation for the opening of bids, public notice of the invitation for bids must be published* by the owner or operator *in a local paper of general circulation for the area in which the site is located.* The owner or operator must also provide a copy of the public notice to the Agency. The notice must be received by the Agency at least 14 days prior to the date set in the invitation for the opening of bids.

3) *Bids must be opened publicly* by the owner or operator *in the presence of one or more witnesses at the time and place designated in the invitation for bids.*

A) *The name of each bidder, the amount of each bid, and other relevant information must be recorded and submitted to the Agency in the applicable budget* in accordance with subsection (b) of this Section*.*

B) *After selection of the winning bid, the winning bid and the record of each unsuccessful bid shall be open to public inspection.*

C) The person opening the bids may not serve as a witness. The names of the persons opening the bids and the names of all witnesses must be recorded and submitted to the Agency on the bid summary form required under subsection (b) of this Section.

4) *Bids must be unconditionally accepted* by the owner or operator *without alteration or correction. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measureable. The invitation for bids shall set forth the evaluation criteria to be used.*

5) *Correction or withdrawal of inadvertently erroneous bids before or after selection of the winning bid, or cancellation of winning bids based on bid mistakes, shall be allowed in accordance with* subsection (c) of this Section*. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the owner or operator or fair competition shall be allowed. All decisions to allow the correction or withdrawal of bids based on bid mistakes shall be supported by a written determination made by the owner or operator.*

6) *The owner or operator shall select the winning bid with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The winning bid and other relevant information must be recorded and submitted to the Agency in the applicable budget* in accordance with subsection (b) of this Section*.*

7) *All bidding documentation must be retained by the owner or operator for a minimum of 3 years after the costs bid are submitted in an application for payment, except that documentation relating to an appeal, litigation, or other disputed claim must be maintained until at least 3 years after the date of the final disposition of the appeal, litigation, or other disputed claim. All bidding documentation must be made available to the Agency for inspection and copying during normal business hours.* [415 ILCS 5/57.7(c)(3)(B)]

b) All bids must be summarized on forms prescribed and provided by the Agency. The bid summary forms, along with copies of the invitation for bids, the public notice required under subsection (a)(2) of this Section, proof of publication of the notice, and each bid received, must be submitted to the Agency in the associated budget.

c) Corrections to bids are allowed only to the extent the corrections are not contrary to the best interest of the owner or operator and the fair treatment of other bidders. If a bid is corrected, copies of both the original bid and the revised bid must be submitted in accordance with subsection (b) of this Section along with an explanation of the corrections made.

1) Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before the time and date set for opening of bids by withdrawing his or her bid and submitting a revised bid prior to the time and date set for opening of bids.

2) Mistakes Discovered After Opening of a Bid but Before Award of the Winning Bid

A) If the owner or operator knows or has reason to conclude that a mistake has been made, the owner or operator must request the bidder to confirm the information. Situations in which confirmation should be requested include obvious or apparent errors on the face of the document or a price unreasonably lower than the others submitted.

B) If the mistake and the intended correct information are clearly evident on the face of the bid, the information shall be corrected and the bid may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid are typographical errors, errors extending unit prices, transportation errors, and mathematical errors.

C) If the mistake and the intended correct information are not clearly evident on the face of the bid, the low bid may be withdrawn if:

i) a mistake is clearly evident on the face of the bid but the intended correct bid is not similarly evident; or

ii) there is proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.

3) Mistakes shall not be corrected after selection of the winning bid unless the Agency determines that it would be unconscionable not to allow the mistake to be corrected (e.g., the mistake would result in a windfall to the owner or operator).

4) Minor informalities. A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation from the exact requirement of the invitation for bid, the correction or waiver of which would not be prejudicial to the owner or operator (i.e., the effect on price, quality, quantity, delivery, or contractual conditions is negligible). The owner or operator must waive the informalities or allow correction depending on which is in the owner's or operator's best interest.

d) For purposes of this Section, factors to be considered in determining whether a bidder is responsible include, but are not limited to, the following:

1) The bidder has available the appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements;

2) The bidder is able to comply with required or proposed delivery or performance schedules, taking into consideration all existing commercial and governmental commitments;

3) The bidder has a satisfactory record of performance. Bidders who are or have been deficient in current or recent contact performance in dealing with the owner or operator or other clients may be deemed "not responsible" unless the deficiency is shown to have been beyond the reasonable control of the bidder; and

4) The bidder has a satisfactory record of integrity and business ethics. Bidders who are under investigation or indictment for criminal or civil actions that bear on the subject of the bid, or that create a reasonable inference or appearance of a lack of integrity on the part of the bidder, may be declared not responsible for the particular subject of the bid.

(Source: Amended at 36 Ill. Reg. 4898, effective March 19, 2012)