

Awarding Competitively Bid Contracts Lowest Responsive Responsible Bidder Flowchart

Lowest Cost: Determine which bid has the lowest proposed cost.



Responsive Bid: Is lowest bid responsive?

- ✓ Bid meets applicable legal requirements.
- ✓ Bid conforms "substantially" to the bid specifications.

Note: If the bid does not conform completely to the specifications, ask if it's fair to the other bidders to waive the defect/irregularity:

- Would waiving the defect/irregularity give the bidder an advantage over the other bidders?
- Would other bidders change their bids if they could use the same defect/irregularity?

If no unfair competitive advantage, the bid conforms "substantially" to the specifications.

If low bid is not responsive, reject and evaluate second lowest bid to determine if it is responsive. If second lowest bid is not responsive, reject this bid and repeat with third lowest bidder, and so on.



Responsible Bidder: Is lowest bidder responsible, considering the **quality**, **performance** and the **time specified** for performance in the bidder's proposal?

- ✓ Bidder has the **skill**, **judgment**, and **integrity** necessary to faithfully perform the contract.
- ✓ Bidder has sufficient **financial resources** to perform the contract.
- ✓ Bidder has the **ability** to perform the contract.



If low bid is responsive but the bidder is not responsible, reject and evaluate second lowest bid to determine if it is responsive and the bidder is responsible. If not, reject this bid and repeat with third lowest bidder, and so on.



If lowest bid is responsive and lowest bidder is responsible, you may **recommend awarding** the contract to this bidder.

Note: If the cost of the bid is in excess of funds available and bidder agrees to negotiate, may negotiate with bidder to bring within budget so long as scope of project is not substantially modified (G.S. 143-129(b)).

References:

G.S. 143-128, 143-129, 143-131; *Professional Food Services Management v. North Carolina Department of Administration,* 109 N.C. App. 265, 426 S.E.2d 447 (1993); *Kinsey Contracting Co. v. City of Fayetteville,* 106 N.C. App. 383, 416 S.E.2d 607, disc. review denied, 332 N.C. 345, 431 S.E.2d 149 (1992). For additional information, see Frayda S. Bluestein, "Understanding the Responsiveness Requirement in Competitive Bidding," Local Government Law Bulletin No. 102 (May 2002), available at http://www.sog.unc.edu/pubs/electronicversions/pdfs/lglb102.pdf.