

An Introduction to Sealed Bidding

A Bentley White Paper

Tim Schmidt
eSourcing Software Consultant
Bentley Systems

Published
November 2017



www.bentley.com

Sealed bidding adds value by significantly decreasing opportunities for collusion on high-stakes projects.



Introduction

I've been involved in consulting with public procurement organizations for over a decade. In that time, I've worked with many governments that have procurement policies requiring sealed bidding for goods and services that exceed a certain dollar threshold. Sealed bidding promotes fair and transparent procurement in the world of public procurement. While a far less frequent technique in the private sector, sealed bidding adds value by significantly decreasing opportunities for collusion on high-stakes projects.

Beyond the obvious benefits of preventing collusion, sealed bidding is often chosen for financial reasons. In circumstances where the buyer has leverage in the marketplace or there is uncertainty regarding the market price, sealed bidding can incentivize bidders to make a low offer out of fear of not winning the opportunity.

In this white paper, we will explore when sealed bidding makes sense, especially in the absence of regulatory requirements. We will start with the definition of sealed bidding, examine the history and benefits of sealed bidding, highlight the role of technology, contrast one-step and two-step sealed bidding, and, finally, outline criteria for when sealed bidding is the best choice.

What is sealed bidding?

In the sealed bidding process, bid or tender responses remain sealed until after the deadline for submitting bids has passed. This ensures that no one can view the bid responses until they are officially opened at a pre-determined time.

Sealed bids are also used to ensure a "fair and open competition" where the buying organization does not have the opportunity to influence the bidding process or steer the selection of a supplier. Without sealed bidding, an individual could manipulate the procedure by sharing competitive bid information during the bidding process, allowing a supplier to adjust their response.

Federal regulations give preference to sealed bidding over contracting by negotiation, or sealed bids over competitive proposals, if:

- Time permits the solicitation, submission, and evaluation of sealed bids.
- The award will be made based upon price and other price-related factors.
- It is not necessary to conduct discussions with the responding providers about their sealed bid because they adhered to the requirements.
- There is a reasonable expectation of receiving more than one sealed bid.

If any of these conditions are lacking, contracting by negotiation is the prescribed procurement method over sealed bidding.

History of Sealed Bidding

The term “sealed bidding” is derived from the offline world where bids are submitted in sealed envelopes, stored in a secure location, and opened at a specific date and time in a public forum where the results are read aloud. The transparency of the public forum is designed to prevent collusion.

While it may seem archaic, contractors are still called on to drive to the location of the bid opening just to sit in a conference room for a few minutes to see the bids being opened and hear the bids read aloud, leading to the announcement of the “apparent low bidder.” The state of North Dakota was one of the first to use an online meeting as the public bid opening forum. Public agencies that choose to host an online public forum offer transparency and accountability to suppliers, without the hassle of an in-person meeting. Online public bid forums are not the only process improvement that the internet has enabled.

Using a simple time-based “electronic lock box” function, the software can prevent the buyer from seeing the bids prior to the bid opening date and time.

Web applications can now facilitate the sealed bidding process electronically. Bids or tenders are submitted with document attachments in electronic formats through a secure online portal. A login process keeps the bids protected and the suppliers are able to edit their bid anytime until the submission deadline. Using a simple time-based “electronic lock box” function, the software can prevent the buyer from seeing the bids prior to the bid opening date and time. The software also improves upon the current process of tearing open sealed envelopes by logging when the bids were unlocked. For example, in one of our projects a bid must be simultaneously “unlocked” by three authorized users before the bids are visible. This provides even greater security against possible collusion.

Benefits of Sealed Bidding

Sealed bidding has many benefits; it facilitates fair and transparent procurement, prevents collusion, and levels the playing field for suppliers. It also significantly reduces the complexity of the bidding process by ruling out bid shopping.

For construction bidding, every subcontractor will tell you about the dreaded practice of “bid shopping.” Bid shopping is the practice of taking the low bid for a project and sharing it with a preferred subcontractor to obtain additional price concessions. This is called “negotiation” in the private sector, but the sealed bidding process was specifically designed to eliminate this practice in public sector procurement. However, bid shopping still exists between general contractors bidding on public projects and their subcontractors.

The fear of bid shopping might lead subcontractors to wait until the absolute last minute to submit a bid. It is not uncommon to see a general contractor outside the agency bid desk, cellphone to his ear, communicating with his office five minutes before the bids are due. This contractor is trying to identify which competitors are walking in to submit bids while getting updates on the final bid amount. His company has not yet determined what their bid total will be, but the general contractor has five complete bid envelopes in hand, each with different prices. The contractor will choose the envelope with the price that is closest to the number his office gave him over the phone and drop it off with just minutes to spare.

Sealed bidding removes the risk of bid shopping, because it ensures that price information is kept confidential until after the due date.

Two-step sealed bidding requires a longer evaluation cycle and more complex administrative methods than simple one-step sealed bidding.

One-step vs. Two-step Sealed Bidding

With basic one-step sealed bidding, all technical and pricing responses are submitted as a package and opened simultaneously. This works well for simple, or well-defined projects, but is less effective for complex projects without prescriptive requirements. For these projects, many organizations choose to implement two-step sealed bidding, where technical and pricing responses are sealed and opened separately.

Two-step sealed bidding requires a longer evaluation cycle and more complex administrative methods than simple one-step sealed bidding. Time is spent securing responses, distributing bidder response data, and documenting the evaluation process. There are two common methods of two-step sealed bidding, each of which are useful in different circumstances.

The two-step variation of sealed bidding has two principal sub-categories: classic two-step sealed bidding with an initial technical proposal process followed by a separate price proposal submittal, and what is termed a “two-envelope” sealed bidding process where the technical and pricing proposals are submitted simultaneously, but opened sequentially.

Classic Two-Step Sealed Bidding

The classic two-step sealed bidding process is used by the U.S. Federal Government and is documented in Subpart 14.5 of the Federal Acquisition Regulations (FAR). As stated in the FAR, the “. . . objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the government’s requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items.”

The buyer can ensure that they have a qualified and experienced set of participants before soliciting a fee proposal.

In a single-step procurement process, the result is often a simple fixed price bid. By contrast, the two-step process allows the buyer to proceed with less prescriptive requirements. The purpose of the first step, technical evaluation, is not to identify the best proposal but to pre-qualify respondents that can provide an acceptable solution. For large, complex procurement actions, such as weapons system, software application, or a design-build project, the buyer can ensure that they have a qualified and experienced set of participants before soliciting a fee proposal. There is also an opportunity to clarify the technical proposals before proceeding to the second step.

Two-Envelope Sealed Bidding

The “two-envelope” variant of the two-step sealed bidding process requires that both technical and price proposals be submitted at the same time. The two components are separately sealed but submitted as a single proposal. Compared to the classic two-step process above, the requirements must be relatively well defined in the request for proposals to allow the respondents to prepare a technical and a fee proposal.

In U.S. public procurement, the buying team evaluates the technical responses first. In this stage, the buying team identifies top-rated responses, or at least eliminates the responses from less qualified suppliers. The technical evaluation is conducted without access to separately sealed pricing responses that could bias the evaluation towards a cheaper alternative. Private and public organizations outside the U.S. might choose to open the pricing proposal first and eliminate those outside their budget constraints before accessing the technical responses.

Criteria for Using Sealed Bids

In the public sector, sealed bidding is a regulatory requirement. However, in the private sector there are times when sealed bidding should be considered. Consider these risk factors when evaluating whether a sealed bidding process makes sense:

- Mega-bids – The larger the bid, the greater the temptation for one of the bidders or an insider to try to commit “bid rigging.”
- Emerging markets – Business ethics in procurement are one of the elements that have not yet developed in some parts of the world.
- Decentralized procurement – In a large organization, a decentralized purchasing process makes it harder to track spending and compliance with ethical procurement policies.
- Services vs. commodity procurement – Inside information on commodity purchases is less beneficial because there is less margin and variability in pricing. Large, complex services and construction projects, where selection is made using subjective criteria, are easier to influence.

If one or more of these factors are present in your private sector organization or for a specific project, using a sealed bidding method is appropriate. Not only can sealed bidding save you from executing a flawed process that can cost you money or damage your business reputation, but it can save you money when using a modern electronic sealed bidding process.

Conclusion

Many organizations have implemented electronic sourcing applications to make their sealed bidding process more efficient and secure. E-procurement technology provides a centralized, collaborative workspace for the evaluation team and allows management to ensure the integrity of each step in the sealed bidding process. Additionally, electronic bidding tools can log each step in the process including when bids were submitted, who unlocked them, and when they were “unlocked.” For more information on ProcureWare, visit www.procureware.com.

**To learn more, contact us at the office nearest
you or visit us online at: www.bentley.com**

Corporate Headquarters
Bentley Systems, Incorporated
685 Stockton Drive Exton, PA 19341
United States
1-800-BENTLEY (1 800 236 8539)
Outside the United States
+1 610 458 5000

Bentley EMEA
Bentley Systems International Limited
2 Park Place, Upper Hatch Street
Dublin 2, D02 NP94, Ireland
+353 1 436 4600

Bentley Asia
Bentley Systems (Beijing) Co., Ltd.
Unit 1402-06, Tower 1
China Central Place, Beijing 100025, China
+86 10 5929 7000

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