

## § 201.22

country or any of its subdivisions or instrumentalities.

### § 201.22 Procurement under public sector procedures.

(a) *General requirements.* When the importer is the government of the cooperating country or any of its subdivisions, agencies or instrumentalities, all purchase contracts for commodities shall be awarded under public sector procedures in this section unless otherwise authorized by USAID. Such contracts shall be awarded on a competitive basis unless otherwise authorized by USAID under paragraph (g) of this section.

(b) *Formal competitive bidding.* Formal competitive bidding procedures shall be used for all procurements estimated to exceed \$100,000 or the equivalent, exclusive of ocean or air transportation costs, except when other procedures are authorized in accordance with this section. Formal competitive bidding procedures may also be used for procurements under \$100,000 at the option of the importer. Formal competitive bidding procedures include advertising the availability of an invitation for bids in accordance with paragraph (h) of this section, issuance of the invitation for bids, public opening of sealed bids, evaluation of bids, and award of the contract, except as provided in § 201.22(b)(3), to the lowest responsive bid by a responsible bidder.

(1) *Contents of the invitation for bids.* The invitation for bids and every attachment and amendment thereto shall be in the English language and shall be available to prospective suppliers free of charge unless otherwise authorized by USAID. The following minimum requirements are applicable:

(i) *Statement of requirements.* The invitation for bids shall state specifically that the formal competitive bidding procedures set forth in this § 201.22 apply. The terms and conditions of the procurement shall be clearly indicated, including any factors other than price to be used in the evaluation. Commodity specifications shall be stated in a non-restrictive manner and in sufficient detail to permit maximum response from prospective suppliers. The metric system of measurements shall be used for specifications unless USAID

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determines in writing that such use is impractical or is likely to cause significant inefficiencies or the loss of markets to U.S. firms.

(ii) *Statement regarding submission of bids.* The invitation for bids shall be appropriately numbered and state the complete physical address, as well as any post office box number, to which bids or offers are to be sent, the closing hour and date for submission and the date, hour and place of the public opening of the bids. If additional drawings, details, regulations or forms are necessary for submitting a bid, the invitation shall state where such material may be obtained.

(iii) *Statement regarding this part 201.* The invitation for bids shall expressly indicate the extent to which any resulting contract is subject to the requirements of this part 201.

(iv) *Statement regarding late bids.* The invitation for bids shall state that no bid received at the address designated in the invitation after the closing hour and date for submission will be considered for award unless its late arrival at that address is attributable solely to mishandling of the bid documents by the importer or any of its agents directly associated with receiving or processing the bids. In no case will the importer consider a bid which was not received at the place of public opening before the award was made.

(2) *Handling bids.* Bids received shall be held intact and sealed and shall be safeguarded against disclosure of contents prior to bid opening. The bids shall be opened publicly as specified in the bid invitation, and all properly submitted bids shall be considered. Direct submission of a bid by a prospective supplier, rather than through an agent or other representative of the supplier in the cooperating country, shall not be cause for rejection.

(3) *Awards.* Every award shall be made to that responsible bidder whose responsive bid is lowest in price. If any factor other than price is used in evaluating bids, each such factor shall be computed in accordance with the formula in the invitation for bids.

(c) *Two-stage formal competitive bidding.* Subject to the approval of USAID, two-stage formal competitive bidding

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may be used in the procurement of specialized equipment, where requirements are stated in performance-type specifications. Two-stage bidding involves a request for technical proposals for the equipment being purchased, submission of proposals without price information, discussions with the offerors as necessary to clarify proposals, followed by a request for priced bids for those proposals found to be fully acceptable following discussions between the offerors and the purchaser. The priced bids shall be publicly opened. Handling and award of the bids shall comply with paragraphs (b) (2) and (3) of this section.

(d) *Competitive negotiation procedures.*

(1) If approved by USAID based on a written record of the reasons therefor, a competitive negotiation procedure may be used. Competitive negotiation procedures include advertising the availability of a request for quotations in accordance with paragraph (h) of this section, issuance of the request for quotations, receipt and evaluation of offers, negotiation (when appropriate), and award of the contract to the offeror submitting the most advantageous offer, price and other factors considered. Competitive negotiation procedures may be approved in the following circumstances:

(i) When it is impossible to develop adequate commodity specifications for use in an invitation for bids;

(ii) When price alone would not be an effective means of determining an award (*i.e.*, when criteria, such as time of delivery or service capability need to be evaluated);

(iii) When emergency procurement is justified by a demonstration that the time required for formal competitive bid procedures would result in an unacceptable delay in delivering the commodities;

(iv) When proprietary procurement is justified; or

(v) When adherence to formal competitive procedures would impair program objectives.

(2) When formal competitive bidding procedures have failed, all bids have been rejected, and further use of such procedures would clearly not be productive, the Mission Director may authorize the use of competitive negotia-

tion procedures. Further advertising is not required. The request for quotations may be prepared as a new document or may incorporate appropriate provisions of the invitation for bids. It shall be submitted to those potential suppliers who originally submitted bids in response to the invitation for bids.

(e) *Small value procurement.* When the estimated value of the contract does not exceed \$100,000 or equivalent (exclusive of ocean and air transportation costs), the purchaser may award a contract by advertising the procurement in accordance with paragraph (h) of this section and soliciting quotations from a reasonable number of sources, including, where feasible, producers of the commodity, taking into consideration:

(1) The nature of the commodities to be purchased;

(2) The number of sources which can supply the commodities;

(3) The value of the procurement; and

(4) The administrative cost of procuring the commodities.

The contract shall be awarded to the offeror with the most advantageous offer, price and other factors considered.

(f) *Proprietary procurement.* Purchasing by brand or trade name or by a restrictive specification (proprietary procurement) may be justified for reasons such as:

(1) Substantial benefits, such as economies in maintenance of spare parts inventories, stronger local dealer organization, better repair facilities, or greater familiarity by operating personnel, can be achieved through standardizing on a particular brand;

(2) Compatibility with equipment on hand is required; or

(3) Special design or operational characteristics are required.

The need for proprietary procurement may serve as the basis for approving the use of competitive negotiation procedures in accordance with paragraph (d) of this section or a waiver for negotiation with a single source in accordance with paragraph (g) of this section.

(g) *Negotiation with a single source—(1) Circumstances.* Competition may be waived and negotiation with a single

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source authorized by USAID under one of the following circumstances:

(i) the purchaser can demonstrate the existence of an emergency situation in which the requirement for competition would result in an unacceptable delay in the procurement of the commodities;

(ii) proprietary procurement is justified and the necessary commodities or spare parts are available from only one source, taking into account any special requirements such as the need for in-country service capability; or

(iii) adherence to competitive procedures would result in the impairment of the objectives of the United States foreign assistance program or would not be in the best interest of the United States.

(2) *Amendments.* Negotiation with a single source to amend an existing contract outside the scope of the contract must be justified under one or more of the criteria in paragraph (g)(1) of this section and formally approved by USAID.

(h) *Advertising—(1) Requirements.* (i) For each procurement estimated to exceed \$25,000, or equivalent (exclusive of ocean and air transportation costs), notice of the availability of the invitation for bids, request for quotations or specific information about procurements under \$100,000 shall be published by the USAID Office of Small and Disadvantaged Business Utilization/Minority Resource Center in the appropriate USAID Bulletin. The purchaser shall submit three copies of each invitation for bids or request for quotations (if any) to the USAID Mission with its request for advertising. The Mission will forward the request for advertising and the procurement documents to USAID/W. The request for advertising should arrive in the Office of Small and Disadvantaged Business Utilization/Minority Resource Center at least 45 days prior to the final date for receiving bids or quotations. The purchaser may, in addition, advertise in appropriate local, regional, and international journals, newspapers, etc., and otherwise, in accordance with local practice.

(ii) Additionally, if the estimated value of the contract is more than \$100,000, or equivalent (exclusive of ocean and air transportation costs),

the notice of availability of the invitation for bids or request for quotations shall be published in the “Commerce Business Daily” of the U.S. Department of Commerce.

(2) *Exceptions.* (i) When negotiation with a single source has been authorized, advertising is not required.

(ii) When formal competitive bid procedures have failed to result in an award pursuant to paragraph (d)(2) of this section and a determination is made to follow competitive negotiation procedures, no further advertising is required.

(iii) The requirements for advertising as set forth above may be waived by USAID to avoid serious procurement delays in certain circumstances, provided, however, that efforts shall be made to secure bids or offers from a reasonable number of potential suppliers.

(i) *USAID approvals.* (1) Each invitation for bids or request for quotations for an USAID-financed procurement which is estimated to exceed \$100,000, or equivalent (exclusive of ocean and air transportation costs), must be approved by USAID prior to issuance.

(2) Each contract in excess of \$100,000, or equivalent (exclusive of ocean and air transportation costs), must be formally approved by USAID prior to finalization with the supplier.

(3) USAID may require that contracts under \$100,000 be formally approved prior to finalization with the supplier.

### § 201.23 Procurement under private sector procedures.

(a) *General requirements.* Procurements under private sector procedures will normally be carried out by importers using negotiated procurement procedures, unless the importer chooses to follow the procedures in § 201.22. Procurement on a negotiated basis shall be in accordance with good commercial practice. Solicitations by the importer for quotations or offers shall be made uniformly to a reasonable number of prospective suppliers, including, where feasible, producers of a commodity, and all quotations or offers received, whether or not specifically solicited, shall be given consideration before making an award.