



I. **CONTRACTOR AWARD PROCESSES**

A. **COMPETITIVE SEALED BIDS**

- (1) PUBLICALLY ADVERTISE AN INVITATION FOR BIDS
- (2) BIDDERS SUBMIT SEALED BIDS BASED ON CRITERIA SET FORTH IN INVITATION
- (3) OPEN THE BIDS PUBLICLY AND EVALUATE SUCH BIDS WITHOUT DISCUSSIONS WITH BIDDERS; AND,
- (4) THE CONTRACT SHALL BE AWARDED TO THE ***LOWEST RESPONSIBLE AND RESPONSIVE BIDDER WHOSE BID MEETS THE REQUIREMENTS AND CRITERIA SET FORTH IN THE INVITATION FOR BIDS***



A. COMPETITIVE SEALED BIDS (CONT.)

- IF THE BID FROM THE LOWEST RESPONSIBLE AND RESPONSIVE BIDDER EXCEEDS THE FUNDS BUDGETED
 - MAY NEGOTIATE WITH SUCH APPARENT LOW BIDDER TO OBTAIN A CONTRACT PRICE WITHIN THE BUDGETED AMOUNT
 - NEGOTIATIONS MAY INCLUDE CHANGES IN THE SCOPE OF WORK AND OTHER BID REQUIREMENTS



A. COMPETITIVE SEALED BIDS (CONT.) – ADDITIONAL REQUIREMENTS

- MUST HAVE PLANS AND SPECIFICATIONS AVAILABLE ON THE FIRST DAY OF THE ADVERTISEMENT
 - SHALL BE OPEN TO INSPECTION BY THE PUBLIC
 - THE PLANS AND SPECIFICATIONS SHALL INDICATE IF THE PROJECT WILL BE AWARDED BY BASE BID **OR** BASE BID PLUS SELECTED ALTERNATES **AND:**



A. COMPETITIVE SEALED BIDS (CONT.)

- A STATEMENT LISTING WHETHER ALL ANTICIPATED FEDERAL, STATE, OR LOCAL PERMITS REQUIRED FOR THE PROJECT HAVE BEEN OBTAINED OR AN INDICATION OF THE STATUS OF THE APPLICATION FOR EACH SUCH PERMIT INCLUDING WHEN IT IS EXPECTED TO BE OBTAINED; **AND**
- A STATEMENT LISTING WHETHER ALL ANTICIPATED RIGHTS OF WAY AND EASEMENTS REQUIRED FOR THE PROJECT HAVE BEEN OBTAINED OR AN INDICATION OF THE STATUS AS TO WHEN EACH SUCH RIGHTS OF WAY OR EASEMENTS ARE EXPECTED TO BE OBTAINED



I. CONTRACTOR AWARD PROCESSES

B. COMPETITIVE SEALED PROPOSALS

- “COMPETITIVE SEALED PROPOSALS” MEANS A METHOD OF SOLICITING PUBLIC WORKS CONTRACTS WHEREBY THE AWARD IS BASED UPON CRITERIA IDENTIFIED IN A REQUEST FOR PROPOSALS
- AWARD A CONTRACT TO “THE RESPONSIBLE AND RESPONSIVE OFFEROR WHOSE PROPOSAL IS DETERMINED IN WRITING TO BE THE MOST ADVANTAGEOUS, TAKING INTO CONSIDERATION THE EVALUATION FACTORS SET FORTH IN THE REQUEST FOR PROPOSALS”
- ELIMINATES THE REQUIREMENT THAT CONTRACTS MUST BE AWARDED ONLY TO THE LOWEST BIDDER



B. COMPETITIVE SEALED PROPOSALS (CONT.)

- FOR COMPETITIVE SEALED PROPOSALS, A GOVERNMENTAL ENTITY SHALL:
 - (A) PUBLICLY ADVERTISE A REQUEST FOR PROPOSALS
 - INCLUDE CONCEPTUAL PROGRAM INFORMATION
 - DESCRIBING THE REQUESTED SERVICES IN A LEVEL OF DETAIL APPROPRIATE TO THE PROJECT DELIVERY METHOD SELECTED
 - DESCRIBE THE RELATIVE IMPORTANCE OF THE EVALUATION FACTORS



B. COMPETITIVE SEALED PROPOSALS (CONT.)

- (B) OPEN ALL PROPOSALS AT THE TIME AND PLACE DESIGNATED IN THE RFP
 - AVOID DISCLOSURE OF CONTENTS TO COMPETING OFFERORS; **AND**

- (C) MAKE AN AWARD TO THE RESPONSIBLE AND RESPONSIVE OFFEROR WHOSE PROPOSAL IS DETERMINED IN WRITING TO BE THE MOST ADVANTAGEOUS
 - EVALUATION FACTORS SHALL BE THE BASIS OF AWARD DECISION

 - THE CONTRACT FILE SHALL INDICATE THE BASIS ON WHICH THE AWARD IS MADE.



B. COMPETITIVE SEALED PROPOSALS (CONT.)

- OFFERORS MAY BE AFFORDED AN OPPORTUNITY FOR DISCUSSION, NEGOTIATION, AND REVISION OF PROPOSALS
 - DISCUSSIONS, NEGOTIATIONS, AND REVISIONS MAY BE PERMITTED AFTER SUBMISSION OF PROPOSALS AND PRIOR TO AWARD
 - FOR THE PURPOSE OF OBTAINING BEST AND FINAL OFFERS




B. COMPETITIVE SEALED PROPOSALS (CONT.)

- ALL RESPONSIBLE OFFERORS FOUND TO HAVE SUBMITTED PROPOSALS REASONABLY SUSCEPTIBLE OF BEING SELECTED FOR AWARD SHALL BE GIVEN AN OPPORTUNITY TO PARTICIPATE IN SUCH DISCUSSIONS, NEGOTIATIONS, AND REVISIONS
- DURING THE PROCESS OF DISCUSSION, NEGOTIATION, AND REVISION, THE GOVERNMENTAL ENTITY SHALL NOT DISCLOSE THE CONTENTS OF PROPOSALS TO COMPETING OFFERORS



B. COMPETITIVE SEALED PROPOSALS (CONT.)

- THE STATUTE PROVIDES NO GUIDANCE WITH RESPECT TO WHAT CONSTITUTES ACCEPTABLE “EVALUATION FACTORS”
- COMMON FACTORS
 - THE OFFEROR’S QUALITY OF WORK
 - GENERAL REPUTATION IN THE COMMUNITY
 - FINANCIAL RESPONSIBILITY

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- COMMON FACTORS (CONT.)
 - PREVIOUS EMPLOYMENT ON PUBLIC WORKS
 - EXPERIENCE WITH PROJECTS OF THE *SPECIFIC TYPE* BEING CONSIDERED
 - SUBCONTRACTORS
 - THE QUALIFICATIONS AND EXPERIENCE OF THE MANAGEMENT PERSONNEL
 - REFERENCES FROM OWNERS, ARCHITECTS, SUBCONTRACTORS, AND SUPPLIERS
 - COMPLETING PROJECTS ON TIME, WITHIN BUDGET, AND WITHOUT CLAIMS



COMPETITIVE SEALED BIDS AND COMPETITIVE SEALED PROPOSALS

- PRACTICE POINTERS
 - CANNOT BLEND THE TWO APPROACHES
 - MAGIC WORDS ARE IMPORTANT



II. THE OPPORTUNITY TO PREQUALIFY CONTRACTORS

- “PREQUALIFICATION” OF BIDDERS OR OFFERORS IS THE PROCESS OF DETERMINING WHO IS QUALIFIED TO BUILD A PROJECT BEFORE BIDS OR PROPOSALS ARE SOLICITED
- CONTRACTORS DEEMED UNQUALIFIED ARE SIMPLY NOT ALLOWED TO PARTICIPATE
- OWNERS ARE ABLE TO EXERCISE SOME CONTROL OVER THE QUALITY OF THE CONTRACTORS COMPETING FOR AWARD OF THEIR PROJECTS



II. THE OPPORTUNITY TO PREQUALIFY CONTRACTORS (CONT.)

- FIVE RULES FOR PREQUALIFICATION

(1) MUST “ADOPT A PROCESS” FOR MANDATORY PREQUALIFICATION

(2) PREQUALIFICATION CRITERIS MUST BE REASONABLY RELATED TO THE PROJECT OR THE QUALITY OF WORK



- FIVE RULES FOR PREQUALIFICATION (CONT.)

- (3) CRITERIA MUST BE AVAILABLE TO ALL

- (4) MUST INCLUDE A METHOD OF NOTIFYING ALL OF THE CRITERIA; **AND**,

- (5) THE PROCESS MUST INCLUDE A PROCEDURE FOR A DISQUALIFIED BIDDER
OR OFFEROR TO RESPOND TO ITS DISQUALIFICATION

- NO REQUIREMENT FOR A FORMAL APPEALS PROCEDURE



II. THE OPPORTUNITY TO PREQUALIFY CONTRACTORS (CONT.)

- CONTRACTOR WILL AGGRESSIVELY DISPUTE DISQUALIFICATION
- REPERCUSSIONS FOR THE CONTRACTOR
 - LOSS OF ITS ABILITY TO COMPETE FOR OTHER JOBS
 - IMPAIRMENT OF ITS BONDING CAPACITY



II. THE OPPORTUNITY TO PREQUALIFY CONTRACTORS (CONT.)

- ARBITRARY OR CAPRICIOUS PREQUALIFICATION CRITERIA SHOULD BE AVOIDED
- CRITERIA DESIGNED TO AID OR HARM A SPECIFIC BIDDER OR OFFEROR ARE INAPPROPRIATE
- CRITERIA SHOULD BE EQUITABLY APPLIED TO ALL BIDDERS AND OFFERORS



II. THE OPPORTUNITY TO PREQUALIFY CONTRACTORS (CONT.)

- THE PUBLIC OWNER HAS DISCRETION TO DETERMINING QUALIFICATION STATUS
- ABSENT ABUSE OF SUCH DISCRETION OR FRAUD, THE OWNER'S DECISION
CONCERNING A CONTRACTOR'S QUALIFICATIONS SHOULD BE UPHELD



III. **RESPONSIBILITY AND RESPONSIVENESS OF BIDS OR PROPOSALS**

- THE AWARD MUST GO TO A “RESPONSIBLE AND RESPONSIVE” BIDDER OR OFFEROR



A. RESPONSIBILITY

- WHETHER CONTRACTOR POSSESSES THE JUDGMENT, SKILL, EXPERIENCE, FINANCIAL RESOURCES, PERSONNEL, FACILITIES, EQUIPMENT AND INTEGRITY NECESSARY TO PERFORM THE CONTRACT
- IT IS A PUBLIC **DUTY** TO INQUIRE INTO AND DETERMINE RESPONSIBILITY
- DETERMINATION THAT THE CONTRACTOR LACKS RESPONSIBILITY TYPICALLY UPHOLD, ABSENT A SHOWING OF ABUSE OF DISCRETION OR FRAUD



III. RESPONSIBILITY AND RESPONSIVENESS OF BIDS OR PROPOSALS (CONT.)

B. RESPONSIVENESS

- RESPONSIVENESS IS DETERMINED BY CONFORMANCE OF ITS BID OR PROPOSAL IN ALL MATERIAL RESPECTS TO THE BID DOCUMENTS OR THE PROPOSAL DOCUMENTS
- IF BIDDER OR OFFEROR HAS NOT UNEQUIVOCALLY AGREED TO PERFORM THE EXACT WORK AS REFLECTED IN THE BID OR PROPOSAL DOCUMENTS, OR IF THE BIDDER OR OFFEROR HAS EITHER OMITTED CERTAIN ITEMS OR SUBSTITUTED FOR THEM, THE BID OR PROPOSAL IS NOT “RESPONSIVE” AND MAY BE REJECTED



IV. COMPETITIVE AWARD PROTESTS

- IF THE STATE OR LOCAL OWNER REFUSES THE COMPLAINING CONTRACTOR'S PROTEST, GENERALLY THEY HAVE BEEN RELEGATED TO THE COURTS FOR RELIEF
- THE LAW OF GEORGIA IS NOT WELL-DEVELOPED CONCERNING COMPETITIVE AWARD PROTESTS



IV. COMPETITIVE AWARD PROTESTS (CONT.)

- FUNDAMENTAL PRINCIPLES
 - “FRUSTRATED BIDDERS” MAY FILE LAWSUITS FOR MONEY DAMAGES, INJUNCTIVE RELIEF, OR BOTH
 - INJUNCTIVE RELIEF MUST BE APPROPRIATE UNDER THE FACTS
 - IF THE PROJECT IS WELL-UNDERWAY AND A DELAY WOULD CAUSE HARDSHIP TO THE PUBLIC, AN INJUNCTION MAY BE INAPPROPRIATE, ESPECIALLY IF THERE IS AN ADEQUATE REMEDY AT LAW (I.E., MONEY DAMAGES)



IV. COMPETITIVE AWARD PROTESTS (CONT.)

- FUNDAMENTAL PRINCIPLES (CONT.):
 - MONEY DAMAGES RECOVERABLE IN SUCH A LAWSUIT ARE THE REASONABLE COST OF BID PREPARATION
 - LOST PROFITS ARE **NOT** RECOVERABLE
 - ATTORNEYS' FEES MAY **NOT** BE RECOVERED, "AS AN INHERENT PART OF THE DAMAGES INCURRED BY A FRUSTRATED BIDDER"
 - BUT MAY BE RECOVERED BY "ESTABLISHING THE REQUIREMENTS OF THE PARTICULAR STATUTE THAT AUTHORIZES ATTORNEY FEES"
 - WHETHER A "PUBLIC OFFICIAL COULD BE HELD PERSONALLY LIABLE FOR OTHER DAMAGES IN THE EVENT OF FRAUD, COLLUSION OR CORRUPTION" IS AN OPEN QUESTION



IV. COMPETITIVE AWARD PROTESTS (CONT.)

- THE LOCAL GOVERNMENT BODY HAS DISCRETION TO REFUSE TO APPROVE A CONTRACT, OR REJECT ALL BIDS OR PROPOSALS AND START OVER



V. GEORGIA DEPARTMENT OF EDUCATION RULE 160-5-4-.15 AND RULE 160-5-4-.18

A. HIGHLIGHTS OF RULE 160-5-4-.15 (EFFECTIVE ON OCTOBER 29, 2008)

- DEFINES VARIOUS CONSTRUCTION DELIVERY METHODS AVAILABLE TO LOCAL BOARDS
 - “AT RISK” PROJECT DELIVERY METHODS
 - “DESIGN/BID/BUILD”
 - “CONSTRUCTION MANAGEMENT AT RISK”
 - “DESIGN/BUILD”



A. HIGHLIGHTS OF RULE 160-5-4-.15 (CONT.)

- “NOT AT RISK” CONSTRUCTION SERVICES
 - CONSTRUCTION MANAGEMENT AGENT
 - “PROGRAM MANAGEMENT”
- MANDATES THAT “NOT AT RISK” SERVICES OF CONSTRUCTION MANAGERS AND PROGRAM MANAGERS ALSO MUST BE AWARDED BY A COMPETITIVE PROCESS




A. HIGHLIGHTS OF RULE 160-5-4-.15 (CONT.)

- REQUIREMENTS OF RULE 160-5-4-.15 APPLY “TO ALL PUBLIC SCHOOL CONSTRUCTION PROJECTS REGARDLESS OF PROJECT FUNDING SOURCE UNLESS EXEMPT BY O.C.G.A. § 36-91-22”
- RULE 160-5-4-.15 REQUIRES THAT “[T]HE LOCAL BOARD OF EDUCATION SHALL SUBMIT TO THE DEPARTMENT FOR APPROVAL ALL PLANNING AND CONSTRUCTION DOCUMENTS FOR THE DESIGN AND/OR MODIFICATION OF ANY FACILITY OR STRUCTURE THAT WILL HOUSE PUBLIC SCHOOL CHILDREN OR THAT WILL BE UTILIZED TO PROVIDE SERVICES FOR PUBLIC SCHOOL CHILDREN”
- PLANS AND SPECIFICATIONS FOR ALL PROJECTS WITHOUT REGARD FOR THE FUND SOURCE OR CONSTRUCTION DELIVERY METHOD MUST BE APPROVED BY THE DOE



A. HIGHLIGHTS OF RULE 160-5-4-.15 (CONT.)

- PRIOR TO ISSUING THE REQUEST FOR PROPOSAL, THE LOCAL BOARD OF EDUCATION SHALL OBTAIN A LETTER FROM LEGAL COUNSEL THAT THE PROPOSAL HAS BEEN REVIEWED AND MEETS ALL OF THE CRITERIA REQUIRED IN O.C.G.A. § 36-91-20 AND 36-91-21
- THIS PROCESS MUST HAVE A DOCUMENTED METHOD OF EVALUATION FOR SELECTING FIRMS AND SUCH INFORMATION SHALL BE MADE AVAILABLE TO ALL PARTICIPANTS OF THE PROCESS
- AS A MINIMUM, THE LOCAL BOARD SHALL ADVERTISE FOR SUCH SERVICES FOR A PERIOD OF FOUR WEEKS, USING THE CRITERIA SET FORTH IN O.C.G.A. § 36-91-20



B. HIGHLIGHTS OF RULE 160-5-4-.18 (EFFECTIVE ON MARCH 4, 2009)

- THE REQUIREMENTS OF THIS RULE SHALL APPLY TO ALL PUBLIC SCHOOL CONSTRUCTION PROJECTS REGARDLESS OF PROJECT FUNDING SOURCE UNLESS EXEMPT BY O.C.G.A. § 36-91-22
- LOCAL BOARDS OF EDUCATION SHALL SUBMIT TO THE DEPARTMENT A CERTIFIED TABULATION OF ALL BIDS/PROPOSALS RECEIVED FOR CONSTRUCTION PROJECTS



B. HIGHLIGHTS OF RULE 160-5-4-.18 (CONT.)

- LOCAL BOARDS OF EDUCATION MAY USE DEDUCTIVE ALTERNATES TO REDUCE THE BASE BID ON STATE-FUNDED PROJECTS USING THE DESIGN/BID/BUILD CONSTRUCTION DELIVERY METHOD
- THE DEDUCTIVE ALTERNATES SHALL BE BID PRIORITIZED AND EXERCISED IN NUMERICAL SEQUENCE AS USED IN THE BID DOCUMENTS
- WHEN THE LOCAL SCHOOL SYSTEM DETERMINES THAT DEDUCTIVE ALTERNATIVES MUST BE SELECTED, ALL BIDS WILL BE RECALCULATED REMOVING THE DEDUCTIVE ALTERNATES TO BE TAKEN
- THE LOW BID SHALL THEN BE DETERMINED ON THE BASE BID LESS ANY DEDUCTIVE ALTERNATES



B. HIGHLIGHTS OF RULE 160-5-4-.18 (CONT.)

- “[T]HE PLANS AND SPECIFICATIONS SHALL INDICATE IF THE PROJECT WILL BE AWARDED BY BASE BID OR BASE BID PLUS SELECTED ALTERNATES
- ADDITIVE ALTERNATES MAY BE EXERCISED IN ANY ORDER
 - IF THE PLANS AND SPECIFICATIONS STATE THAT THE CONTRACT WILL BE AWARDED ON BASE BID, THEN ADDITIVE ALTERNATES ARE CONSIDERED ONLY AFTER THE LOW BASE BIDDER HAS BEEN DECLARED
 - IF THE PLANS AND SPECIFICATIONS STATE THAT THE PROJECT WILL BE AWARDED BY BASE BID PLUS ADDITIVE ALTERNATES, ALL BIDS WILL BE RECALCULATED ADDING THE ADDITIVE ALTERNATES TO BE TAKEN
 - THE LOW BID SHALL THEN BE DETERMINED ON THE BASE BID PLUS THE SELECTED ADDITIVE ALTERNATES