

An Orientation for Municipal Officials that are Newly Elected,
Re-Elected, or Experienced

Saturday, January 11, 2020

Hilton Meadowlands Hotel

East Rutherford, NJ

OR

Saturday, January 25, 2020

Westin Hotel

Mount Laurel, NJ

“Understanding Public Procurement:

Basic Procurement Information

Presented By

Joseph A. Valenti, LLC

Former Bureau Chief, Retired

Division of Local Government Services

Department of Community Affairs

I. Why A Local Public Contracts Law?

- A. A need to protect the public's business, funds, and records
 - B. A need to administer the entire public procurement process, not just purchasing - public procurement is more than just buying!
 - C. A need for consistency and uniformity in the application of processes, procedures, and practices for all local contracting units
 - 1. Lowest responsible bidder
 - 2. Competitive contracting - most advantageous, price and other factors (RFP)
 - 3. Request for qualifications (RFQ) - there is a need for uniformity, etc.
 - 4. Request for information (RFI) - no known statutory basis for its use
 - D. Integrity to promote
 - 1. Fair and open competition - "level playing field" for potential contractors/vendors
 - 2. Procedures to avoid favoritism and collusion
 - 3. Accountability for spending public dollars
 - 4. Proper use of authority and responsibility by elected and appointed officials
 - 5. Procurement ethics as a set of principles of "right conduct" as opposed to no-bid contracts and allegations of "insider deals," and "kickbacks"
 - E. Protection against unscrupulous vendors
 - 1. Statement of ownership
 - 2. Bid guarantees, surety company certificates, performance bonds, maintenance bonds, payment and labor bonds, etc. - evaluation of exposure/risk
 - 3. Business registration certification
-

4. Prevailing wages (\$16,263/\$2,000) and public works contractor registration with required active participation in a registered apprenticeship program are key requirements for public works/construction contracts

5. Insurance coverages

F. Achieve policy goals

1. Prompt payment - public works/construction

2. Prompt payment - goods/services

3. Project labor agreements

4. Value engineering construction contracts

G. Achieve social goals

1. Affirmative action requirements

2. Establishment of set-aside programs

II. Public Procurement Principles

A. Bid threshold - dictates when to publicly bid or use other statutory procedures

B. Aggregation or contracts not to be divided (important) - "Aggravation"

1. Goods or services similar in character cannot be divided to avoid bidding

2. All goods or services for completion of work must be in the same contract

C. Lowest responsible bidder:

1. Lowest price

2. Responsive - met all specifications' criteria

3. Responsible - contractor's/vendor's ability to complete contract requirements pertaining to experience, workforce, operating capacity, etc., but financial statements have been repealed from the LPCL under certain situations

D. The governing body awards all contracts when the contract price is over bid threshold

E. Procurement is tied to the budget

1. Certificate of availability of funds required from CFO for governing body contract awards, existing law prohibits purposeful and knowing overspending of public funds
2. Encumbrance accounting required for most purchases
3. “Management Decisions” - Are they made? Balance the “We have the funds, but do we need to buy it” concept
4. Planning and scheduling - procurement needs and inventory control, etc.
5. Authorization of bill payments by CFO

F. Change orders - be very careful

G. Standardized changed conditions clauses for construction/public works contracts

H. “Confirming orders” - be very, very careful, there is no statutory authorization to use them

III. What The Law Covers

A. Basic process for awarding all contracts (including purchase orders) - authority and control is with governing body - must have a formal process, over bid threshold and fair and open contracts can only be awarded by governing body - no delegation, under bid threshold an administrative official can be the purchasing agent if so designated by the governing body

1. Public bidding - a formal process of public advertising, receiving bids, and awarding contract
 2. Electronic procurement - advertising/submission of public bids, competitive contracting (RFP), quotes, reverse auctions, sale of personal property. Law is accompanied with rules
 3. Bid exceptions
 - a) Professional services and other exceptions are controlled by Pay-To-Play Law - Fair and Open or the Alternate Process (Non-Fair and Open)
 4. Other types of competition:
 - a) Extraordinary unspecifiable services - application of Pay-to-Play
-

- b) Competitive contracting for certain services- where the emphasis is not just low price, where qualitative factors can be assessed as part of the selection of vendors
 - c) Cooperatives - taking advantage of “nationally” recognized and accepted co-ops or State of New Jersey government contracts or contracts of other municipal or county governments or boards of education - Can only use such contracts in accordance with certain terms and conditions
5. Soliciting informal quotations
6. For low cost items...local choice, no competition required when less than 15% of your bid threshold, however must use “sound business practices” that reflect current market conditions, quantity and delivery requirements
7. Emergencies - affects public health, safety or welfare requiring the immediate delivery of goods or performance of services, “Chain of Command” - mandatory regulation
- B. The statutory length of contracts - two years is the normal standard, there are exceptions for up to five or seven years and in specific circumstances, up to 20 years or longer, no roll-over contracts, contracts end when they end
- C. Allows governing body to adopt set-aside programs for small, women, minority and veteran businesses
- D. Sale of public (personal property) assets - if the estimated fair market value of the property to be sold exceeds 15% of the bid threshold in any one sale - shall be sold by sealed bids, or at public sale (auction); Such sales require governing body approval
- E. Concessions- private firm, making a private financial (consideration) gain, from a public situation, threshold based on estimated annual value of fees and payments
- F. “Prior negative experience” - Who has the responsibility of documenting contractor/vendor’s performance?

IV. Procurement Oversight

- A. Contract administration
-

1. Need a system in place to monitor performance problems
2. Contracts must be properly performed and completed on time and on budget
3. Contract compliance with bid specifications or a request for proposal's scope of services/work (application to both bid and non-bid contracts) is necessary
4. Performance benchmarks need to be established to assist local officials in reviewing contracts and evaluating contractor/vendor requests for bill payments
5. Does a governing body authorize full or partial payments; does it require submission of project "checklists" with each request for payment; does it require its own department heads and professionals (attorney, engineer, architect, etc.) to "validate" the work of "contracted" contractors/vendors?
6. Contactor/vendor exit review (in-house v. out-sourcing) should be used (Financial Audits - Corrective Action Plans)

B. Sample questions that can guide internal controls

1. Who is in charge of the procurement operation? What is his/her authority? What about accountability and responsibility? (P.A. v. QPA)
 - a) Spending by "advisory" local agencies - must have statutory authorization
 2. Has the governing body addressed procurement procedures through the formal adoption of a resolution, ordinance or administrative code depending on type or form of government?
 3. What are the basic financial and payment procedures used by the local contracting unit?
 4. What are the procedures for award of contracts over and under the bid threshold?
 5. Is the governing body ensuring the availability of funds pursuant to a purchase order-encumbrance procedure?
 6. Are administrative officials carefully reviewing all vouchers/invoices for the correct dollar amounts and descriptions of the purchases before processing payments?
-

7. Are vendors'/contractors' requests for payment being processed and paid in a proper and timely fashion?
8. Has the governing body explored the use of procurement cards? (P-cards, purchasing cards) and electronic funds transfers for the acquisition of goods and services?

C. Selected management tools and procedures that can guide internal controls

1. Procurement procedures and vendor manuals
2. Computer generated reports for "tracking" contract progress and payments (year to date)
3. Completion of a receiving report
4. Submission of a properly and fully executed invoice/voucher - not packing slips
5. Preparation for and conduct of a fixed asset inventory of personal property - When was your last one?
6. Monitoring contract performance
7. Preparation of a written contract- contract provisions holding contractor/vendor accountable is a must

V. What Can You Do?

- A. Contact the Division of Local Government Services for guidance, but your own attorney provides you with legal advice
- B. Division web site: www.nj.gov/dca/divisions/dlgs

VI. Summation

- A. Making it work - procurement is both a management tool and a financial control mechanism
 - B. Procurement/Purchasing is part of an overall governmental operation - Where is yours located?
-